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stage did not arise as the application under Section 14(2) was held to be barred by time by the trial Court. There is a good deal of force in this contention and it is not possible to see how the award could be ordered to be made a rule of the Court in this manner without following the procedure laid down in the Arbitration Act consequent upon an application under Section 14(2) being granted or dismissed.

Mr. Bhagwat Dayal also wanted to assail the view of the learned Single Judge with regard to the necessity of getting the award compulsorily registered. It is unnecessary to decide that point in view of the conclusion that the application was barred by time.

In the result, the appeal is allowed and the order of the learned Single Judge is set aside and that of the trial Court restored with costs.

Bhandari, C. J.

Bhandari, C.J.—I agree.

B.R.T.

APPELLATE CIVIL

Before K. L. Gosain and Harbans Singh, JJ.

COURT OF WARDS DADA SIBA ESTATE AND ANOTHER,—*Appellants.*

versus

RAJA DHARAM DEV CHAND,—*Respondent.*

Regular First Appeal No. 143 of 1952.

1959

Sept., 23rd

Indian Contract Act (IX of 1872)—Sections 32 and 56—Doctrine of frustration—Effect of—Whether applicable to contracts creating an estate in land and to leases—Transfer of Property Act (IV of 1882)—Section 108 (e)—Whether applicable to leases for agricultural purposes—Contract of lease—When can be avoided.

Held, that :—

(1) Section 56 of the Contract Act embodies a positive rule of law relating to doctrine of frustration and this section must be treated as exhaustive so far as it goes and the same is applicable only to purely contractual obligations and not to a contract creating an estate in land which had already accrued in favour of a party ;

(2) the effect of the application of the doctrine of frustration is to render the contract void as from the date of the supervening impossibility and to excuse its further performance ;

(3) a contract of lease may be avoided on the happening of an event as contemplated by the terms of the contract which may be either express or implied. This does ont amount to discharge of a contract by the application of the doctrine of frustration but really amounts to construction of the document and discharge of the same under the provisions of section 32 of the Contract Act ;

(4) a contract of lease may further be avoided at the option of the lease on the happening of an event as contemplated under clause (e) of section 108 of the Transfer of Property Act. The avoidance in this case, however, must be differentiated from discharge of contract by frustration because in the latter case, volition of the parties is not at all material, while under clause (e) the option is that of the lessee ;

(5) though, according to Section 117 ofthe Transfer of Property Act, the provisions of Section 108 (e) of the same Act are inapplicable to lease for agricultural purposes, yet in view of the fact that the Transfer of Property Act as such does not apply to the Punjab, the principles underlying section 108 (e) can be applied in the interest of justice and equity. But the provisions of Section 108 (e) will not apply in case the land is neither destroyed nor becomes unfit for the purposes of agriculture. No term in the contract of lease can further

be implied to the effect that the plaintiff must necessarily be present at the spot to personally supervise the agricultural operations or that the same must be carried through by his then existing tenants only. The rights of the plaintiff in the demised property continue to be his notwithstanding the fact that the actual supervision of the agricultural operations cannot be his.

First Appeal from the decree of the Court of Shri Guru Datta Sikka, Senior Sub-Judge, Kangra at Dharamsala, dated the 14th day of May, 1952, granting the plaintiff a decree for Rs. 11,125 with proportionate costs with future interest at the rate of 6 per cent per annum on the principal amount from the date of the decree till realization.

R. N. MALHOTRA & Y. P. GANDHI, for Appellants.

D. N. A. WASTHY & V. C. MAHAJAN & S. K. JAIN, for Respondents.

JUDGMENT

Harbans Singh, J.

HARBANS SINGH, J.—This order will dispose of two Regular First Appeals Nos. 143 and 144 of 1952, in both of which the facts are similar and the points of law that arise are indentical

The facts giving rise to the suit, out of which appeal No. 143 has arisen, may briefly be stated as follows : Kanwar Rajinder Singh defendant No. 2, (at that time a minor) son of Raja Sham Singh of Dada Siba in Kangra District, was under the Court of Wards and *inter alia* owned five squares of land situated at Chak No. 2/1-AL, tehsil Okra, district Montgomery (now in West Pakistan). The Deputy Commissioner, Kangra, who managed this estate, issued a notice in the month of November, 1946, inviting tenders for the giving of this land on lease for a period of one year, namely, for kharif 1947 and Rabi 1948. Thakar Dalip Singh plaintiff (now

represented by Raja Dharam Dev Chand respondent), submitted a tender offering Rs. 11,125 which was accepted by the Deputy Commissioner, Kangra. The whole of this amount, in accordance with the terms of the tender, was paid in advance on various dates before February, 1947. It has been established on the record—and is not now in dispute—that the plaintiff was already in possession of land, being a lessee of the same for the preceding year, i.e., for *kharif* 1946 and *rabi* 1947 and consequently continued to be in possession of the land, after the expiry of the term of the previous lease, under the present lease for the year 1947-48. Due to riots that immediately preceded and followed the partition of the country the lessee and some of his tenants who were Hindus left Okara and came over to East Punjab and thus, the lessee was not able even to harvest the *kharif* crop of 1947 which was to mature in the month of September or October. On 16th of October, 1947,—*vide* Exhibit D. 7 the plaintiff sent a letter to the Deputy Commissioner, Kangra, informing him that the land in dispute having been taken possession of by the Pakistani Muslims and the Pakistan Government, the amount of Rs. 11,125 paid by him in advance as lease money for *kharif* 1947 and *rabi* 1947 should be refunded to him. Having failed to receive any satisfaction he brought the suit, out of which the present appeal has arisen, on 6th of February, 1950. Paragraph 5 of the plaint gives the grounds on which the refund was claimed along with interest—

(1) That the plaintiff was not giving possession of the land as lessee for *kharif* 1947 and *rabi* 1948;

(2) that so far as the plaintiff was concerned, the land which he had taken on lease "was lost to him on account of the acts

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of beating, looting and violence committed by large mobs of ferocious Muslims";

(3) for the reasons given above, it became impossible for the plaintiff from the middle of June to cultivate and nurture the crop of *Kharif* 1947;

(4) that the consideration for which the lease money was paid had failed and the plaintiff was entitled to receive the amount paid by him by way of refund or compensation.

This suit was resisted on various grounds and *inter alia* it was stated that the possession was already with the plaintiff and he continued to remain in possession of the land even after rabi 1947, and that, in fact, the work of *kharif* 1947 began in the month of April, and May, 1947, that the work of cultivation after August, 1947, could have been continued by the tenants of the plaintiff who belonged to Montgomery District and that the plaintiff was not entitled to any refund. In the replication on behalf of the plaintiff it was further stated that the principle of frustration also applied. In view of these pleadings, a number of issues were settled. However, it would be sufficient to reproduce issues Nos. 1, 4 and 5 on which we were addressed by the counsel for the parties. These are as follows :—

(1) Whether the suit is not cognizable by this Court as the lands leased are situated in Montgomery District ?

(4) Whether the contract of lease became impossible of performance and the consideration for the lease has failed ?

(5) Whether the plaintiff is entitled to any amount as refund or compensation from the defendant ? If so, how much ?

The learned trial Court came to the conclusion that the suit was cognizable by the Courts in Kangra District where the defendant resided and on issues Nos. 4 and 5 it was held that the contract of lease became impossible of performance and that consequently plaintiff was entitled to the refund of the amount. Amount of interest claimed was disallowed. The suit of the plaintiff was, therefore, decreed for Rs. 11,125, with proportionate costs and future interest at 6 per cent. Being dissatisfied, Court of Wards has filed Regular First Appeal No. 143 of 1952.

In the other case, this very Thakar Dalip Singh had taken on lease another five squares of land belonging to Court of Wards, Kutlehr State for a similar amount which was also paid as in the other case and the claim for refund is made in identically the same terms. The issues and the decision were also the same. As agreed to between the parties, the evidence led in each case was to be read in the other.

With regard to the question of jurisdiction of the Kangra Courts, the only point urged on behalf of the appellant was that though section 16 of the Civil Procedure Code applied yet the proviso to section 16, which was held to be applicable by the learned trial Court, was in fact inapplicable. We, however, find that section 16 was not applicable at all to the facts of the present case. The learned counsel for the appellant has not been able to show under which clause the present suit falls. The suit is only for the refund of money and does not

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fall under section 16 at all and is governed by section 20, Civil Procedure Code, and as admittedly the defendant-appellant resided voluntarily in Kangra District, the civil Courts of that district has jurisdiction to deal with the case.

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Elaborate arguments were, however, addressed to us on the other issue, namely, whether the contract of the lease in this case had become impossible of performance and, therefore, void under section 56 of the Contract Act. According to the evidence, which was not sought to be challenged before us, the plaintiff through his agents and tenants remained in possession of the land in dispute till 25th of August, 1947. It is further not disputed that the plaintiff was already in possession of the land as a lessee for the preceding year and that the operations regarding the *kharif* crop are taken in hand from March onwards, though the crop is ready for harvesting round about October or November. It is further on the record that on or about 25th of August the mob of riotous Muslims raided the village and turned out the plaintiff's agents and those of the tenants who were not Muslims, and that no Hindu or Sikh could have lived on the land after 25th of August without running the risk of losing his life. In view of this evidence the learned trial Court came to the conclusion that reading clause (e) of section 108, Transfer of Property Act, with section 56 of the Contract Act, it must be held that the contract of lease became impossible of performance due to causes beyond the control of either party and that consequently the plaintiff was entitled under section 65 of the Contract Act to the refund of the benefit derived by the defendant under the aforesaid contract. The plea taken on behalf of the defendant-appellant that the doctrine of frustration is

inapplicable to leases of immovable property was repelled.

Under the English common law the doctrine of frustration operates to excuse further performance of the contract "where (1) it appears from the nature of the contract and the surrounding circumstances that the parties have contracted on the basis that some fundamental thing or state of things will continue to exist, or that some particular person will continue to be available, or that some future event which forms the foundation of the contract will take place, and (2) before breach performance becomes impossible, or only possible in a very different way to that contemplated, without default of either party, and owing to a fundamental change of circumstances beyond the control and original contemplation of the parties." Halsbury's Laws of England, Third Edition, Volume 8, paragraph 320. The effect of the application of doctrine of frustration is to render the contract void as from the date of the supervening impossibility and to excuse its further performance. Strictly speaking, therefore the doctrine of frustration is applicable to purely contractual obligations and cannot put an end to an estate in land which has already created and has accrued in favour of a party. In *London & Northern Estates Co.* v. *Schlesinger* (1), Lush, J., observed as follows:—

> "It is not correct to speak of this tenancy agreement as a contract and nothing more. A term of years was created by it and vested in the appellant, and I can see no reason for saying that because this order disqualified him from personally residing in the flat, it affected

(1) (1916) I K.B. 20

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the chattel interest which was vested in him by virtue of the agreement."

These observations were referred to with approval by Lord Reading, C.J., while delivering the judgment in Whitehall Court Ltd., v. Ettlinger (1); In that case two flats which had been let to a tenant for a term of three years from 1915 were requisitioned and taken possession of in 1917 by the military authorities under the Defence of Realm Regulations and this remained in the occupation of the military till the expiry of the lease in 1918. In a suit brought by the landlord for recovery of the rent stipulated in the lease agreement for the period after the flats had been requisitioned and taken possession of by the military; the defence taken was that in view of the intervening circumstance of the property having been requisitioned and taken possession of by the military authorities, the agreement came to an end either because of the interruption of the "title paramount" or on account of the intervening event which made the further performance of the contract impossible. Dealing with the question of frustration, it was observed by the learned Chief Justice that there was no reason why the estate or the lease interest created in the tenant by the lease agreement was affected merely because the tenant was personally prevented from residing in the flats. This view was again reaffirmed by the House of Lords in *Matthy* v. *Curling* (2), where the facts were similar. In *Pelepah Valley (Johore) Rubber Estates, Limited* v. *Sungej Besi Mines, Limited* (3), Tucker, J., dealt with a case where the liability to pay an annual instalment due from a sub-lessee of tin mines in Johore in Malaya for

(1) (1920) 1 K.B. 680
(2) (1922) 2 A.C. 180
(3) 1944 L.T.R. 338

the year 1942 was resisted on the ground that due to Japanese occupation of Johore in January, 1942, the contract of lease was frustrated and that nothing could be claimed from the defendants. It was held that no implied term could be read into the contract of sub-lease that Japanese occupation would cancel the lease and that "the doctrine of frustration did not apply to mining leases, which, in this respect, did not differ from ordinary leases.

In Cricklewood Property and Investment Trust, Limited v. *Leighton's Investment Trust, Limited* (1), this matter was discussed at length. In this case a certain land forming part of a building estate, was demised to lessees for a term of ninty-nine years in 1936, to be used by them as sites for erecting a number of shops within a time limit. A yearly ground rent was payable a year after the notification by the lessors that erection of shops may proceed in terms of the town planning scheme. A year after the notification, rent was claimed by the lessors. On a portion of the land some shops had been built in 1937 but on the remaining portion no building was constructed. The suit was defended on the ground that due to the war-time restrictions placed by the Government on building material, it became impossible to erect any shops upon these sites. There was a unanimous decision by the House of Lords holding that even if the doctrine of frustration could apply to a lease, the circumstances did not justify such application. Different views were, however, expressed as to the question whether the doctrine of frustration could apply to a lease. According to the views of Lord Russell of Killowen and Lord Goddard, the doctrine of frustration did not apply under any circumstances to a lease while Viscount Simon,

(1) 1945 A.C. 221

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L.C., and Lord Wright left the matter open and felt that in rare and exceptional circumstances, the doctrine of frustration could be applicable. Lord Russell at page 233 of the report observed as follows :—

"On the broader question I confess that I am unable to grasp how the doctrine of frustration can ever apply so as to put an end to a lease and the respective liabilities of landlord and tenant thereunder. A lease is much more than a contract. It creates and vests in the leassee an estate or interest in the land. * * * When a contract is frustrated it is because what is called the 'venture' or 'undertaking' in which the parties have contracted to engage can no longer be carried out. The Court in such circumstances declares the contract to be, or treats it as being, no longer binding on the parties. That is an end of the matter. But when a lease is in question, and has been granted by one to another, it is the lease which is the 'venture' or 'undertaking' upon which the parties have embarked. The contractual obligatons thereunder of each party are merely obligations which are incidental to the relationship of landlord and tenant created by the demise. * * * It may well be that circumstances may arise during the currency of the term which render it difficult, or even impossible, for one party or the other to carry out some of its obligations. * * *. The estate in the land would still be vested in the tenant.

> I know of no power in the Court to declare a lease to be at an end except upon findings that some event has occurred on the happening of which the lease terminates by reason of some express provisions contained in the document."

Lord Goddard, similarly after referring to the doctrine of frustration and the three English cases mentioned above, observed as follows :—

> "It is now sought to apply this doctrine of frustration to a lease because circumstances have arisen and restrictions have been imposed, which while not divesting the tenant of his interest do prevent him from putting the land to the use intended both by him and the landlord. Now whatever be the true ground on which the doctrine is based it is certain that it applies only where the foundation of the contract is destroyed so that performance or further performance is no longer possible. In the case of a lease the foundation of the agreement in my opinion is that the landlord parts with his interest in the demised property for a term of years which thereupon becomes vested in the tenant, in return for a rent. So long as the interest remains in the tenant there is no frustration though particular use may be prevented."

The matter was also looked at from another point of view. It was observed that if there be frustration the contract becomes void in the eye of law as soon as the unforeseen intervening event happens making the further performance of the contract impossible and both parties are released from

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the binding nature of the contract. There is no question of volition of any party. The avoidance of the contract is the automatic result of the supervening impossibility. This may lead to strange and unjust results as was observed by Lord Goddard—

> "In the present case if some shops had been built on the blue land and the lease were held to be frustrated the landlords could presumably repossess themselves of the land * * *. If the lease were now to be regarded as at an end the tenants would have no title, however, willing they might be to continue to pay rent and resume building when the orders ceased to have effect. * * *. It is no doubt easy to envisage a hard case; building lessees may find soon after a lease has been granted that a statute is passed prohibiting building on the land in perpetuity, and if the legislature should not see fit to provide for compensation or to make provision for what is to happen to leases in such cases hardship would result, but no greater than if they had purchased the fee simple of a building estate which subsequent legislation prevented them from developing. In either case it is not the estate in the land which is affected, but the use to which it can be put."

Viscount Simon, L.C., and Lord Wright, who were not prepared to go to the length of saying that the doctrine could not ever apply, however, agreed that, generally speaking, the doctrine was inapplicable and that it was only in rare and exceptional circumstances that the doctrine would apply.

It would be instructive to refer to the exceptional circumstances alluded to by these learned Law Lords. Viscount Simon, L.C., at page 229 of the report observed as follows :—

> "* * * if we assume that frustration can only arise in cases where there is a contract and nothing else, the conclusion of course follows that frustration cannot arise in the case of a lease. Where the lease is a simple lease for years at a rent and the tenant * * * * * is free during the term to use the land as he likes, it is very difficult to imagine an event which could prematurely determine the lease by frustration—though I am not prepared to deny the possibility, if, for example, some vast convulsion of nature swallowed up the property altogether, or buried it in the depths of the sea. * * * If, however, the lease is expressed to be for the purpose of building, or the like, and if the lessee is bound to the lessor to use the land for such purpose * * *, I find it less difficult to imagine how frustration might arise. Suppose, for example, that legislation were subsequently passed which permanently prohibited private building in the area or dedicated it as an open space for ever * * * ".

Similar views were expressed by Lord Wright.

The doctrine of frustration under the English common law, as stated in the passage from the Halsbury's Laws of England, reproduced above is either based on the construction of the terms of

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the contract implying a term that on the happening of a certain event, the parties were to be discharged from their obligation or on the basis that on the happening of a certain intervening event, the whole of the contract became impossible of performance or that the circumstances changed to such an extent that the performance became impracticable. In India these matters have been given statutory recognition and are embodied in sections 32 and 56 of the Indian Contract Act. Fazl Ali, J., in *Ganga Saran* v. *Firm Ram Charan* (1), while speaking about frustration at page 11 of the report, observed as follows :—

> "It seems necessary for us to emphasize that so far as the Courts in this country are concerned, they must look primarily to the law as embodied in sections 32 and 56, Indian Contract Act, 1872."

These observations were referred to by Mukherjea, J., as he then was, in *Satyabrata* v. *Mugneeram* (2), and the head-note (b), which deals with the scope of sections 32 and 56 and the relevancy of the English decisions, runs as follows :—

> "To the extent that the Contract Act deals with a particular subject, it is exhaustive upon the same and it is not permissible to import the principles of English law 'dehors' these statutory provisions. The decisions of the English Courts possess only a persuasive value and may be helpful in showing how the Courts in England have decided cases under circumstances similar to those which have come before Indian Courts. * * *

(1) A.I.R. 1952 S.C. 9
(2) A.I.R. 1954 S.C. 44

Section 56 lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties. In cases, where the Court gathers as a matter of construction that the contract itself contained impliedly or expressly a term, according to which it would stand discharged on the happening of certain circumstances, the dissolution of the contract would take place under the terms of the contract itself and such cases would be outside the purview of section 56 altogether. They would be dealt with under section 32 * * * *. In the large majority of cases, however, the doctrine of frustration is applied not on the ground that the parties themselves agreed to an implied term which operated to release them from the performance of the contract. The relief is given by the Court on the ground of subsequent impossibility when it finds that the whole purpose or basis of a contract was frustrated by the intrusion or occurrence of an unexpected event or change of circumstances * * *. * * the Court has to form its own conclusion whether the changed circumstances destroyed altogether the basis of the adventure and its underlying object. This is really a rule of positive law and as such comes within the purview of section 56 of the Contract Act."

At page 47 of the report, it was further observed as follows :—

"We hold, therefore, that the doctrine of frustration is really an aspect or part of

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the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of section 56 of the Indian Contract Act. It would be incorrect to say that section 56 of the Contract Act applies only to cases of physical impossibility."

At page 46 of the report, the word 'impossible' was explained as follows :—

> "This much is clear that the word 'impossible' has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view; and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain it can very well be said that the promisor finds it impossible to do the act which he promised to do."

In this case the defendant-company owned a large tract of land within Greater Calcutta and it started a scheme for development of this land for residential purposes. The plan of the work was that the company entered into agreement with different purchaser for sale of these plots of land and accepted, to begin with, only a small portion of the consideration money by way of earnest at the time of the agreement. The company was to construct roads and drains for making the land suitable for building and residential purposes and as soon as they were completed, the purchasers were to be

called upon to complete the conveyance by payment of the balance of the consideration money. In August, 1940, the predecessor-in-interest of the plaintiff entered into an agreement for the purchase of a plot by paying Rs. 101 as earnest money. The balance of the consideration money was to be paid partly at the time of the registration of the sale-deed which was to take place after the roods etc. had been completed. Under the Defence of India Rules in November, 1941, a portion of the land under the scheme was requisitioned for military purposes. The construction of the roads could not, therefore, be taken up during the continuance of the war and possibly for some years after its termination. In view of this, the defendant-company gave the option to the purchaser to treat the contract as cancelled and get back the earnest money or in the alternative, to complete the conveyance by paying the balance of the consideration and taking the land in the form in which it was. The plaintiff-purchaser, therefore, brought a suit for a declaration that the contract was still subsisting and that he was entitled to get the conveyance executed in terms of the agreement after roads etc. had been constructed. *Inter alia,* it was alleged that the contract of sale stood discharged by frustration as it became impossible, by reason of supervening event, to perform a material part of it. The High Court held that the contract was frustrated and dismissed the suit. Before the Supreme Court, one of the points urged by the learned Attorney-General, who appeared for the appellant-plaintiff, was that the doctrine of frustration had no application to contracts for sale of land. While dealing with this point, Mukherjea, J., at page 49 (Para 18) of the report, observed as follows :—

> "It is true that in England the judicial opinion generally expressed is, that the

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doctrine of frustration does not operate in the case of contracts for sale of land. * * * But the reason underlying this view is that under the English law as soon as there is a concluded contract by A to sell land to B at certain price, B becomes, in equity, the owner of the land subject to his obligation to pay the purchase money. On the other hand, A in spite of his having the legal estate holds the same in trust for the purchaser and whatever rights he still retains in the land are referable to his right to recover and receive the purchase money. The rule of frustration can only put an end to purely contractual obligations, but it cannot destroy an estate in land which has already accrued in favour of a contracting party."

The law in India being different, it was held that a contract for sale in India does not of itself create any interest in the property which is the subject-matter of the contract and, consequently, the doctrine of frustration would be equally applicable to contracts for sale of land as it would be to other contracts not creating an estate in land. On the facts of the case, however, it was held that the contract had not been frustrated simply because the roads etc. could not be built for a number of years, particularly in view of the fact that in the contract for sale no period was fixed within which roads etc. had to be completed.

It is, however, clear from the observations reproduced above that where a contract creates an estate in land, the rule of frustration is inapplicable to put an end to such an estate which has

already been created in favour of one of the parties and that the doctrine of frustration is applicable only to purely contractual obligations. As was pointed out by Lord Russell and Lord Goddard in *Cricklemood Property and Investment Trust, Limited* v. *Leighton's Investment Trust, Limited,* (1), if the doctrine of frustration were to apply even to contracts which create an estate in land, there is likelihood of unjust results though, to use the well-known words of Lord Summer in *Hirji Mulji* v. *Cheong Yue Steamship Co., Ltd.* (2), the doctrine is "a device, by which the rules as to absolute contracts are reconciled with a special exception which justice demands". The exceptional and rare cases referred to by the other two learned Lords, are really covered to a great extent, so far as Indian Law is concerned, by the limited provisions contained in clause (e) of section 108 of the Transfer of Property Act which runs as follows :—

> "108(e). If by fire, tempest or flood, or violence of an army or of a mob or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void ;
>
> Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision."

Though, according to section 117, this provision is inapplicable to leases for agricultural purposes, yet in view of the fact that the Transfer of Property

(1) 1945 A.C. 221
(2) 1926 A.C. 497 at P. 510

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Act as such does not apply to the Punjab, the principles underlying section 108(e) can be applied in the interest of justice and equity.

The question for determination, however, is whether the facts of the instant case are covered by these provisions. The lease in the present case was for agricultural purposes and there is no suggestion that the demised land was either destroyed by floods, erosion or by other violent means or was rendered permanently unfit for the purposes of agriculture. In fact, the land continued to be cultivated either by the Muslim mob who evicted the Hindu tenants of the plaintiff or by some persons who had migrated from this side of Punjab. There is no suggestion that anything was done to the land which rendered it unfit for agricultural pursuits being carried thereon. The mere fact that it was not possible for the plaintiff personally to be present there at the spot to carry on or supervise the agricultural operations, would not mean that the property "has been destroyed or rendered unfit for the purposes of agriculture". It was conceded that the mere fact that a violent mob evicted the plaintiff, would not entitle him to claim any damages for breach of warranty of "quiet" enjoyment" which term is implied in every lease under clause (c) of section 108. All that the lessor undertakes under this implied warranty is that there would be no interruption of the possession of the lessee by the lessor, anybody claiming under him or by a title paramount. In the present case, according to the allegations in the plaint, it was the violent mob which forced the plaintiff to leave and the violent mob cannot be treated as claiming under the lessor and there is no suggestion that any one claiming a title paramount came to interrupt the possession. It was suggested that the Custodian of Evacuee Property took charge of the land

but as is well known, the Custodian took it not as having a paramount title but only for and on behalf of the original proprietors or the persons having interest in the land.

A number of rulings were cited before us by the learned counsel for the respondent for the proposition that the doctrine of frustration was applicable even to leases. Some of these were relied upon even by the learned trial Court. *Inder Pershad Singh* v. *Campbell* (1), relied upon by the trial Court is not a case of a lease at all. There, the plaintiff was the owner of 4 *bighas* of land in village K and was a sub-lessee of another 16½ *bighas* of land in village R. He agreed to grow indigo for the defendant in these 20½ *bighas* for a period of nine years on certain terms. After some time on account of non-payment of rent by the head lessee, from whom plaintiff had taken the sub-lease, the original proprietor of the land took back the possession of the land in village R and thus, the plaintiff lost possession thereof. A suit was brought by the plaintiff for a declaration that the contract *qua* 16½ *bighas* stood cancelled as it became impossible of performance through no neglect on his part. It was held that the contract *qua* the land in village R could be treated as a separate contract and stood cancelled on account of intervening events. This was certainly not a case of any lease being created in favour of the defendant and purely contractual obligations were created to which doctrine of frustration was certainly applicable.

In *Parshotam Das* v. *Batala Municipality* (2), the plaintiff had taken a lease of tonga stands within the limits of Batala Municipal Committee for a year on payment of Rs. 5,000. According to the

(1) I.L.R. 7 Cal. 474
(2) A.I.R. 1949 E.P. 301

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terms of the contract, the *tongawalas,* who were to use the stands, were bound to pay a fee of one anna in a rupee to the plaintiff-lessee. In fact, due to certain disputes between the *tongawalas* and the municipal committee, they did not use the tonga stands. A suit was brought for the refund of the lease money and the trial Court, in view of the agreement between the parties that the tongas plying for hire were not to stand at any other place except the fixed tonga stands, decreed the suit which was, however, dismissed in appeal by the learned District Judge. Teja Singh, J., as he then was, while delivering the judgment of the Division Bench, observed as follows :—

> "It is not denied that the tonga stands which were leased out to the plaintiff were meant to be used by all tonga drivers plying their vehicles within the municipal limits. It was also contemplated by the parties that the plaintiff would collect the specified fee from the tonga drivers who use the stands * * * and it was on this assumption that the Municipal Committee leased the tonga stands to the plaintiff and the latter paid the sum of Rs. 5,000. The evidence produced by both sides proves beyond doubt that no tonga driver used any of the stands for a single day * * * * * *. The respondent's counsel submitted that the Committee could not be held responsible for the state of affairs that ensued. This may be so, but no blame attached to the plaintiff either and the fact remains that because of no fault on his part the very conditions, on the strength of which he entered into

contract and paid the lease money to the Municipal Committee, did not come into existence and the contract was thus frustrated."

In support of this, reference was made to what are known as Coronation cases and the learned Judge went on to observe as follows :—

> "In *Krell* v. *Henry* (1) * * the defendant agreed to hire from the plaintiff a flat in Pall Mall for June 26 and 27, on which days it had been announced that the coronation processions would take place and pass along Pall Mall. * * * * As the procession did not take place on the days originally fixed, the defendant declined to pay the balance of the agreed rent. It was held that from necessary inferences drawn from surrounding circumstances, recognised by both contracting parties, the taking place of the processions on the days originally fixed along the proclaimed route was regarded by both contracting parties as the foundation of the contract."

In this case though apparently the rule of frustration was applied, no distinction was made between the positive rule of frustration as embodied in section 56 and the discharge of contract on account of the construction of the document and reading an implied term therein which are really governed by section 32 as observed by their Lordships of the Supreme Court in *Satyabrata* v. *Mugneeram* (2). The question whether the doctrine of frustration

(1) (1903) 2 K.B. 740
(2) A.I.R. 1954 S.C. 44

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applied to contracts creating an estate in land, was not discussed at all and, in fact, the decision in the case was really based on the construction of the terms of the contract. While dealing with this question at page 304 of the report, it was observed that conditions of a contract "need not be expressed in words and there are conditions which may be implied from the nature of the transaction". Furthermore, it is doubtful whether a contract of the type which was entered into between the municipal committee and the plaintiff can be strictly called "a lease" creating an interest in land, All that the plaintiff was entitled to under the contract was a monopoly to receive a certain fixed amount of commission from the *tongawalas* using the stands fixed by the municipal committee, the management of which had been given to the plaintiff Obviously, this case cannot possibly be an authority for the proposition that the doctrine of frustration as embodied in section 56 of the Contract Act, was applicable to leases.

In *Kshitish Chandra* v. *Shiba Rani Debi* (1), it was observed by a learned Single Judge of the Calcutta High Court, that the doctrine of frustration applied to leases. Here, a thatched room, which had been leased, was destroyed by fire and the tenant did not treat the lease at an end, and himself erected a thatched house on the site. It was held that due to the destruction of the original thatched room, which had been let, the contract became impossible of performance. However, the decision can really be supported on the other ground that was given by the learned Judge as follows :—

> "There is one other special aspect in this case. Under the lease the tenant was

(1) A.I.R. 1950 Cal. 441

entitled to occupy the shed as such. On its total destruction even if it had been held that the tenant was entitled to continue to occupy the land, if he agreed to pay the rent, no right existed under the arrangement between the parties to authorise the tenant to raise a structure of his own, thus change altogether the character and nature of the tenancy. It was the use of the room only which had been permitted on payment of rent but the tenant had no right to use it as a lease of the land only on which he may have his own structures."

Mugneeram Bangore & Co. v. *Satyabrata* (1), relied upon by the learned trial Court, need not be discussed because *Satyabrata* v. *Mugneeram* (2), was a case of appeal from this judgment.

In *P. Valiapally* v. *C. Thomman* (3), there was a lease of land for agricultural purposes for a period of three years. In the second year there were unprecedented floods and not only the standing crop was destroyed but also it became impossible to raise the second crop during that year, the result being that due to the floods no crop could possibly be raised. The suit brought by the landlord for the recovery of the rent for this year, was resisted on the ground that it became impossible for the lessee to raise any crop. The learned Judge dealing with the case, in view of the fact that the stipulation was to pay the rent for each of the three years separately at the end of each year, treated the agreement in respect of each year as a separate agreement. Though it was observed that the mere fact that the lease was more than a mere contract,

(1) A.I.R. 1951 Cal. 332
(2) A.I.R. 1954 S.C. 44
(3) A.I.R. 1956 Trav-Co. 59

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would not render the doctrine of frustration as inapplicable to lease transactions, yet the decision was given on the basis that clause (e) of section 108 of the Transfer of Property Act applied to the facts of the case. If the contract of lease for the second year was treated as a separate contract and the land became unfit for the purposes of agriculture due to floods, then clause (e) of section 108 was directly applicable and no fault can be found with the decision. This being so, the observations that the doctrine of frustration is applicable even to leases, are more or less in the nature of an "obiter dictum". It is also to be noted that observations to the contrary, made by their Lordships of the Supreme Court in *Satayabrata* v. *Mugneeram* (1), that this doctrine was inapplicable to cases where an estate in land was created, were not even referred to in this Trav.-Cochine case.

In view of the discussion above, we are of the view that—

(1) Section 56 of the Contract Act embodies a positive rule of law relating to doctrine of frustration and this section must be treated as exhaustive so far as it goes and the same is applicable only to purely contractual obligations and not to a contract creating an estate in land which had already accrued in favour of a party ;

(2) a contract of lease may be avoided on the happening of an event as contemplated by the terms of the contract which may be either express or implied. This does not amount to discharge of a contract

(1) A.I.R. 1954 S.C. 44

by the application of the doctrine of frustration but really amounts to construction of the document and discharge of the same under the provisions of section 32 of the Contract Act ;

(3) a contract of lease may further be avoided at the option of the lessee on the happening of an event as contemplated under clause (e) of section 108 of the Transfer fo Property Act. The avoidance in this case, however, must be differentiated from discharge of a contract by frustration because in the latter case, volition of the parties is not at all material, while under clause (e) the option is that of the lessee.

In the instant case, the lease was created in favour of the lessee and possession was taken by him long before the 25th of August, 1947, and thus, an estate in land was created in favour of the plaintiff long before the aforesaid date. In fact, he actually remained in possession of the land, carried out agricultural operations necessary for the *kharif* crop and partly enjoyed the benefits therefrom, e.g., by taking fooder, etc., before he was dispossessed by the riotous mob, and no subsequent event can have the effect of terminating the 'estate' or otherwise rendering the contract of lease void under section 56 of the Contract Act.

Again, the provisions of section 108(e) of the Transfer of Property Act are also inapplicable because the land was neither destroyed nor became permanently unfit for the purposes of agriculture. No term in the contract of lease can further be implied to the effect that the plaintiff must necessarily be present at the spot to personally supervise

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the agricultural operations or that the same must be carried through by his then existing tenants only. The rights of the plaintiff in the demised property continued to be his notwithstanding the fact that the actual supervision of the agricultural operations could not be his.

For the reasons gievn above, we feel that the Court below was in error in decreeing the suits of the plaintiff and we, consequently, accept both these appeals, set aside the judgments and the decrees of the Court below and dismiss the suits. In view, however, of the fact that the plaintiff was prevented from deriving any substantial benefit out of this lease due to circumstances beyond the control of anybody, we leave the parties to bear their own costs throughout.

Gosain, J.

GOSAIN, *J.*—I agree.

B.R.T.

LETTERS PATENT APPEAL.

Before A.N. Bhandari and D. Falshaw, JJ.

GIAN CHAND AND ANOTHER,—*Appellants.*

versus

PT. BAHADUR SINGH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 319 of 1958.

1959

Sept., 25th

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 31—"Debt"—Meaning of—Whether used in restricted sense as defined in Section 2(6) of the Act—Debts incurred by a displaced person in India after Partition—Whether protected.

Held, that it is an obvious and general principle that where a particular word such as 'debt' is given a definition in the Act, which narrows and restricts its ordinary meaning, the meaning given in the definition must be applied to