

It is not necessary to separate the amounts that are payable to Surjan Singh and Bachan Singh respectively. Shri Dasaundha Singh stated before us that it is not necessary to divide their shares and he submitted that a consolidated amount may be awarded and it will be open to the two appellants to take their shares severally according to their share under private partition or jointly from the authorities. In these circumstances, I do not consider it necessary to calculate the respective shares of Surjan Singh and Bachan Singh.

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The claimants are, therefore, entitled to receive Rs. 76,762-8-0 for the land and Rs. 4,000 for the four wells. Thus they are entitled to get Rs. 80,762-8-0 in all. The Collector had allowed them Rs. 27,254-11-0 in all while the Arbitrator had increased the amount by Rs. 15,642-8-0 bringing the total of compensation payable to the claimants to Rs. 42,897-3-0. It, therefore, follows that by this judgment the claimants' appeals are accepted to the extent of Rs. 37,865-5-0. They are also entitled to get interest at the rate of 4 per cent per annum as indicated above.

As regards costs, the claimants are entitled to proportionate costs.

In view of the above decision, the appeals, Regular First Appeals Nos. 49 and 50 of 1949, filed by the Government are dismissed, but there will be no orders as to costs.

CHOPRA, J.—I agree.

Chopra, J.

APPELLATE CIVIL.

Before Bhandari, C. J. and Khosla, J.

ASSOCIATED CLOTHIERS, LIMITED,—Appellants.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Letters Patent Appeal No. 49-D of 1955.

Stamp Act (II of 1899)—Section 9(a)—Notification No. 1, dated 16th January, 1937, relating to Articles 23 and 62 of the Stamp Act—Scope and object of.

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Companies Act (VII of 1913)—Section 30—Allotment of shares—Offer and acceptance—Application for allotment—Communication of acceptance—Whether constitutes a legally binding contract.

Held, that Notification No. 1, dated 16th January, 1937, is designed to facilitate reconstruction of a company or amalgamation of two companies which are more or less under the same ownership so that they should be able to re-arrange their affairs without being saddled with liability for payment of stamp duties. A company wishing to claim relief from stamp duty under the provisions of this notification must satisfy the officers concerned (1) that the document evidences the transfer of properties between companies limited by shares, and (2) that shares of the transferee company are in the beneficial ownership of the transferor company to the extent of 90 per cent. Shares must be in the beneficial ownership of the transferor company but legal ownership is not necessary.

Held, that a mere subscription to shares in a company does not constitute a subscriber a share-holder, for until the subscription is accepted, the subscription amounts to nothing more than an offer to take share. On allotment of shares and a communication of that allotment, the contract becomes complete and absolute and the subscriber becomes a share-holder. It has accordingly been held that an application for shares in a company does not constitute the applicant a share-holder until the shares are formally allotted to him and the notice of the allotment is formally given to him. It is only on the communication of the allotment that the title to the shares subscribed by him comes to vest in him and it is only on the receipt of this letter that he has a right to receive the certificate of shares and to be put on the register of share-holders. The application for shares and the letter of allotment constitute a valid and legally binding contract between the applicant and the company, "a contract the fruit of which is shares".

Letters Patent Appeal under clause 10 of the Letters Patent of High Court of Judicature for Punjab, against the judgment, dated the 2nd November, 1955, passed by Hon'ble Mr. Justice D. Falshaw, in Civil Writ No. 297-D of 1954, dismissing the writ petition against Respondent No. 2 to grant the certificate as required under Notification

No. 1 of 1937, and to Respondent No. 3 to grant a certificate under section 32(2) of Indian Stamp Act for exemption from stamp duty.

GURBACHAN SINGH, for Appellants.

BISHAMBAR DAYAL, for Respondents.

JUDGMENT

BHANDARI, C.J.—This appeal raises a point upon the construction of Finance Department, Central Board of Revenue, Notification No. 1, dated the 16th January, 1937, which is in the following terms:—

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“To remit the stamp duty chargeable under Article 23 and 62 of Schedule 1 to the said Act on instruments evidencing transfer of property between companies limited by shares as defined in the Indian Companies Act, 1913, in cases—

- (i) where at least 90 per cent of the issued share capital of the transferee company is in the beneficial ownership of the transferor company, or
- (ii) where the transfer takes place between a parent company and a subsidiary company one of which is the beneficial owner of not less than 90 per cent of the issued share capital of the other, or
- (iii) where the transfer takes place between two subsidiary companies in each of which not less than 90 per cent of the share capital is in the beneficial ownership of a common parent company:

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Provided that in each case a certificate is obtained by the parties from the officers appointed in this behalf by the Local Government concerned that the conditions above prescribed are fulfilled.”

In the year 1952 Phelps and Co., Limited a company incorporated in the year 1937, found that large sums of money belonging to it had been embezzled by the carelessness of its auditors. The Directors accordingly decided that this company should be wound up and its affairs settled, that the name of the company should be altered from Phelps and Company Limited into Associated Clothiers Limited, that the goodwill of Phelps and Company which was of considerable value should be retained, that a new company bearing the name of Phelps and Company, Limited should be incorporated and that all the assets of Associated Clothiers should be taken over by Phelps and Company in lieu of shares which were to be offered by the said company. In pursuance of this scheme of reconstruction the Directors took certain important steps on the 21st March, 1952, among others being—

- (a) that they changed the name of the company from Phelps and Company, Limited to Associated Clothiers Limited, under section 11(4) of the Indian Companies Act;
- (b) that a new company was incorporated under the name of Phelps and Company, Limited, and
- (c) that the Associated Clothiers Limited (hereinafter referred to as the petitioners) entered into an agreement with

Phelps and Company, Limited, according to which the petitioners agreed to sell and Phelps and Company to buy the several assets of the petitioners (including a building situate in the Connaught Place, Delhi, valued at Rs. 2,24,637) for a sum of Rs. 18,58,892 10-9. A part of the consideration was to be paid in cash, a part in the discharge of the debts and liabilities of the petitioners and the balance of the consideration by the allotment of shares of the aggregate value of Rs. 12,30,000. The transfer of the premises in Connaught Place was to take effect from the 1st July, 1952.

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In pursuance of this scheme the petitioners were allotted shares of the face value of Rs. 12,30,000 (out of the total issued share capital of Rs. 12,30,000) partly on the 31st May, 1952, and partly on the 14th October, 1952. After obtaining the consent of the Controller of Capital Issues the share certificates thereof were duly issued to the petitioners and the latter were duly entered as shareholders in the statutory register of members maintained by Phelps and Company. After the shares had been allotted to the petitioners, Phelps and Company called upon the petitioners to execute the sale deed in regard to the premises situate in Connaught Place, Delhi, after obtaining a certificate of exemption from the payment of stamp duty under the Notification of 1937. The petitioners prepared a draft deed of sale and requested the Collector of Stamps, Delhi, to certify that as both the companies were limited by shares and as more than 90 per cent of the share capital of Phelps and Company was in the beneficial ownership of the petitioners, the petitioners were exempt from the payment of stamp duty on the said deed of sale.

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The Collector of Stamps expressed his inability to grant the necessary certificate and the petitioners accordingly presented an application under Articles 226 and 227 of the Constitution. The learned Single Judge, before whom the petition came up for consideration, expressed the view that the state of affairs which gives rise to and justifies this exemption must be in existence before the transaction for transfer of property from one company to the other is entered and not an artificial state of affairs created afterwards for the purpose of taking advantage of this clause. The petitioners' claim for exemption was rejected and the order of the Collector of Stamps upheld. The petitioners have come to this Court in appeal and the question for this Court is whether the learned Single Judge came to a correct determination in point of law.

The notification of 1937 is designed to facilitate reconstruction of a company or amalgamation of two companies which are more or less under the same ownership so that they should be able to rearrange their affairs without being saddled with liability for payment of stamp duties. A company wishing to claim relief from stamp duty under the provisions of this notification must satisfy the officers concerned (1) that the document evidences the transfer of properties between companies limited by shares, and (2) that shares of the transferee company are in the beneficial ownership of the transferor company to the extent of 90 per cent. Shares must be in the beneficial ownership of the transferor company but legal ownership is not necessary.

The first of the two conditions mentioned above has been completely satisfied in the present case, for the draft sale deed evidences transfer of property between two companies limited by shares. The only question is whether at least 90 per cent

of the issued share capital of Phelps and Company is in the beneficial ownership of the petitioners.

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Now what exactly is the meaning of the expression 'beneficial ownership' which appears in clause (i) of the notification referred to above. This expression is not susceptible of a very clear and precise definition. According to Ballentines Law Dictionary it means such a right to enjoyment of property as exists where the legal title is in one person and the right to such beneficial use or interest is in another, and where such right is recognised by law and can be enforced by the Courts at the suit of such owner or of some one on his behalf. One is also said to have the beneficial ownership of land who has done everything to entitle him to a patent from the Government, and who therefore has the legal right to such patent, and all that remains to be done is for the proper officer to issue it.

The question now arises as to the point of time at which a person acquires the status of a shareholder of a company, obtains a right to demand shares and to exercise the rights of a shareholder. A mere subscription to shares in a company does not constitute a subscriber a shareholder, for until the subscription is accepted, the subscription amounts to nothing more than an offer to take shares. On allotment of shares and a communication of that allotment, the contract becomes complete and absolute and the subscriber becomes a shareholder. It has accordingly been held that an application for shares in a company does not constitute the applicant a shareholder until the shares are formally allotted to him and the notice of the allotment is formally given to him. It is only on the communication of the allotment that the title to the shares subscribed by him comes to

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vest in him and it is only on the receipt of this letter that he has a right to receive the certificate of shares and to be put on the register of shareholders. The application for shares and the letter of allotment constitute a valid and legally binding contract between the applicant and the company, "a contract the fruit of which is shares", *Collins v. Greyhound Racecourses Limited* (1). An applicant has an equitable right to the shares from the time when the letter of allotment is sent to him and can obtain specific performance of the contract by the company to allot those shares to him, *Oswald v. Tillotson Limited v. Inland Revenue Commissioners* (2). The issue of a certificate of shares is not necessary to constitute him a shareholder, *Eoyth's case* (3), for the certificate is only the indicia of ownership of shares. Section 30 of the Indian Companies Act provides that every person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company, and section 40 declares that the register of members shall be *prima facie* evidence that a person whose name is on it is a shareholder. If in addition it be proved that such person has become, by subscribing the prescribed sum or otherwise, entitled to a share in the company, the evidence that he is a shareholder is conclusive, *Portal v. Emmens* (4). The petitioners in the present case entered into an agreement with Phelps and Company for the allotment of shares. Shares were allotted to them in due course and the allotment was communicated to them. There was thus an application, an allotment and a communication of that allotment. A valid and binding contract came into existence between the petitioners and Phelps and Company,

(1) (1930) 1 Ch. 1

(2) (1933) 1 K.B. 134, 152

(3) (1876) 4 Ch. D. 140

(4) (1876) 1 C.P.D. 201 affirmed in (1876) 1 C.P.D. 664 C.A.

a contract which could be enforced by an action under section 42 of the Specific Relief Act. A certificate of shares was later issued and the name of the petitioners was entered on the register of shareholders. It seems to me therefore that the petitioners acquired not only the beneficial but also the legal ownership of the shares. *Prima facie* therefore they are entitled to the exemption for which a provision has been made in the notification of 1937.

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But Mr. Bishambar Dayal, who appears for the State, contends that the agreement dated the 21st March, 1952, was a composite agreement according to which certain things were to be done by Phelps and Company and certain other things were to be done by the petitioners. The shares which were to vest in the petitioners could vest in them only if they had performed their own part of the contract. They failed to fulfil certain terms of the contract for the property known as 9-A, Connaught Place, which was to be transferred to Phelps and Company has not been conveyed so far. This being so, it is argued, the petitioners cannot be said to have acquired the shares allotted to them or to have become beneficial owners of 90 per cent. of the share capital of Phelps and Company, Limited. Our attention has been invited to certain decisions such as *Manieka Govindan v. Elumulai Govindan and others* (1), *Ramananda Paul and other v. Pankaj Kumar Ghosh* (2), and *Udit Upadhia v. Imam Bandi Bibi* (3), but I must confess with regret that I have not been able to discover any observation which may possibly support the proposition propounded by the learned counsel.

(1) 1956 Mad. Weekly Notes 853

(2) A.I.R. 1938 Cal. 417, 421

(3) I.L.R. 24 All. 410, 419

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An enforceable contract presupposes the existence, of offer, an acceptance and a consideration. It is binding on both parties so that action can be maintained by each against the other. If the contract is broken or time for performance has expired, it is open to the injured party either to bring an action for specific performance or to institute a suit for recovery of damages. If the contract is repudiated the injured party may either rescind the contract *in toto* or he may terminate the contract for purposes of further performance and hold the opposite party liable for damages sustained by reason of the repudiation. A failure of consideration is not a ground for treating shares as unpaid, *Mega and Angier's case*. (1), although an application for shares made upon a condition precedent does not become binding on the applicant until it has been complied or its performance waived.

The agreement of the 21st March, 1952, between the petitioners on the one hand and Phelps and Company on the other, contains reciprocal promises by which one party undertakes to do one thing, and the other party another. Phelps and Company has fulfilled a part of its contract by allotting to the petitioners the number of shares which it had agreed to sell. The share certificates have been issued and the name of Associated Clothiers has been placed on the register of shareholders. All formal acts have been completed and in the eye of law the petitioners have been put in possession of the shares. They have acquired the status of an owner, or at any rate a beneficial owner, of at least 90 per cent, of the issued share capital of Phelps and Company. The contract contains no condition precedent, the fulfilment of which alone would have vested the right of ownership in the peti-

(1) 1875 W.N. 208

tioners. It may be that the contract contains a number of reciprocal promises some of which have been performed and some of which have not, but that fact alone would not, in my opinion, lead one to the conclusion that the petitioners have not fulfilled the conditions on which alone exemption can be claimed. If the petitioners fail to comply with the terms of the contract, it would be open to Phelps and Company to bring an action against them for specific performance or for recovery of damages. Phelps and Company has no power to recall the shares which have been allotted by them or to divest the petitioners of the right of ownership which has come to vest in them.

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For these reasons I would allow the appeal, set aside the order of the learned Single Judge and direct the officers concerned to grant a certificate to the petitioners that the conditions prescribed in the notification of 1937 have been fulfilled. I would order accordingly. There will be no order as to costs.

Khosla, J.—I agree.

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APPELLATE CIVIL.

Before Bhandari, C. J. and Khosla, J.

THE STATE OF PUNJAB,—Appellant.

versus

PREM PARKASH DIXIT AND OTHERS,—Respondents.

Letter Patent Appeal No. 53 of 1954

East Punjab Local Authorities (Restrictions of Functions) Act (IX of 1947)—Section 4, Constitution of India, Article 311—Person appointed by Government to discharge functions under the Act—Whether holds a civil post under the State—Constitution of India, Article 311—Whether applies to Temporary Government employees.

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