

PERUMAL
v.
DHARMALINGAM

SUPREME COURT.

ISMAIL, J., SHARVANANDA, J. AND WANASUNDERA, J.
S. C. APPEAL No. 8/80—C. A. (S.C.) APPLICATION No. 1360/79
D. C. COLOMBO No. 1765/Spl.
NOVEMBER 27 AND 28, 1980.

Companies (Special Provisions) Law, No. 19 of 1974, sections 2, 6—Contract of partnership with person not a citizen of Sri Lanka—Whether contract prohibited by Statute—Is carrying on of such business rendered illegal?—Intention of legislature as expressed in enactment—Construction so as to avoid injustice and absurdity—Interpretation of Statutes.

The question that arose in this appeal was whether the provisions of section 2 of the Companies (Special Provisions) Law, No. 19 of 1974, rendered a partnership between the plaintiff and the defendant illegal. The Court of Appeal had held that in view of the said Law the partnership was deemed to have ceased to exist on or after 1st January, 1975, which was the appointed date in terms of section 2. The defendant in this action had filed objections pleading, *inter alia* that the partnership between the parties was one prohibited by section 2 as the plaintiff was not a citizen of Sri Lanka and that accordingly the plaintiff could not have and maintain this action or obtain any relief whatsoever on the basis of the deed of partnership between the parties. The plaintiff's action had been for a declaration that the partnership business stood dissolved from a certain date; for an order of winding up, and appointment of a receiver and for an interim and permanent injunction restraining the defendant from entering the premises where the business was carried on.

Held (Wanasundera, J. dissenting)

The effect of section 2 has to be determined by examining the law as a whole and the fundamental question is whether the statute means to prohibit the contract. In such a case the contract would be invalid and no right of action can arise out of the breach of the law. An examination of the scheme of the law reveals that the object of the prohibition in section 2 was not to render the carrying on of such business illegal and did not mean to forbid the continued subsistence of companies which did not comply with the requirements of section 2. The object of the prohibition was to make such refractory companies liable to have their undertakings compulsorily acquired by means of a vesting order made by the Minister under section 6 of the Law.

Per Wanasundera, J. (dissenting)

"The prohibition in the present case is in categorical terms and is the main device for securing the objects intended by the Law. To assert that transactions contravening these provisions are not illegal or invalid would be to give the words containing this prohibition a meaning exactly opposite to what it normally means. The main thrust of this legislation is to bring all foreign companies within the control of the State as part of our national policy. If the Law is so interpreted as to suggest that incorporation of such

companies under our law is not compelling, then such a view will have the effect of frustrating the entire purpose of this legislation and rendering it nugatory."

Cases referred to

- (1) *Canada Sugar Refining Company v. R.*, (1898) A.C. 735; 79 L. T. 146.
- (2) *Mellis v. Shirley Local Board*, (1885) 16 Q.B.D. 446; 53 L.T. 810; 2 T.L.R. 360.
- (3) *Trans-African Bank v. Union Guarantee and Insurance*, (1963) 2 S.A.L.R. 92.
- (4) *Cornellius v. Phillips*, (1918) A.C. 199; 118 L.T. 228; 54 T.L.R. 116.
- (5) *St. John Shipping Corporation v. Joseph Rank Ltd.*, (1956) 3 A.E.R. 683; (1957) 1 Q.B. 267; (1956) 3 W.L.R. 870.

APPEAL from a judgment of the Court of Appeal.

C. *Thiagalasingam*, Q.C., with *H. L. de Silva*, *S. Mahenthiran* and *A. Gnanathasan*, for the plaintiff-appellant.

K. N. Choksy, with *K. Sivanathan* and *S. A. Parathalingam*, for the defendant-respondent.

Cur. adv. vult.

February 5, 1981.

ISMAIL, J.

I have had the advantage of having read the conflicting judgments of my brothers Sharvananda, J. and Wanasundera, J. I shall refer for the purpose of the short order I propose to make in this case to certain provisions of Law No. 19 of 1974. The preamble to this Law reads:

"A Law to prohibit companies from owning property or carrying on any undertakings in Sri Lanka after a specified date unless they are incorporated under the Companies Ordinance or are exempted companies and to enable the acquisition on behalf of the Government of the whole or any part of the undertakings of companies which are not so incorporated or exempted, for which compensation is payable, to appoint a Tribunal for the assessment of such compensation, and to provide for matters connected therewith or incidental thereto."

Section 2(1) states that from the appointed date no company (a) shall have any interest in any property in Sri Lanka whether as owner, co-owner, lessee, mortgagee or otherwise or (b) shall carry on any undertaking in Sri Lanka, unless such company is recognised as an "existing company", or is incorporated under the principal enactment, or is an exempted company. Property which is referred to in sub-section 2(1A), is defined in section 27 as movable or immovable property but does not include shares in a

company or choses in action. Conceivably therefore companies which are not "existing companies" or are not incorporated under the principal enactment or is an exempted company would be free to continue to transact business in shares in companies or in choses in action. Therefore the definition of property does not seem to indicate that a blanket prohibition has been imposed on the activities of companies that contravene the provisions of section 2, or render activities of such companies after the appointed date illegal, but seems to impose certain restrictions on the activities of such companies and render such companies liable to be requisitioned in whole or with regard to certain of their undertakings.

The question that emerges for consideration is whether the provisions of section 2 render companies which fall within the description of that section illegal with effect from the appointed date or whether certain restrictions are imposed on such companies.

Section 3 (2) clearly contemplates the coming into existence and the functioning of companies in contravention of section 2 after the appointed date. If the purpose of section 2 is to render such companies which are not incorporated etc., illegal with effect from the appointed date, I cannot see how under section 3(2) of this law the Minister can be empowered to grant exemption from time to time to such companies formed or established after the appointed date. Under this section it is comprehended that even after the appointed date companies in violation of the provisions of section 2 can come into existence and function thereafter and could become exempted companies at some future date. If the purpose of section 2 is to render companies in violation of that section illegal as from the appointed date, then there can be no instance under which section 3 (2) can come into operation. This section would therefore be rendered meaningless and would be unenforceable.

The only provisions in this Law providing some sanction consequent to violation of the provisions of section 2 is section 6. Under this section the Minister has the power to vest in the Government the whole or any part of the undertakings of such companies. There is no other consequential penal or punitive provision under this Law. This Law is silent with regard to what happens to the balance part of such undertaking of such

companies. It is also to be noted that under section 6 the Minister is empowered to exercise his powers from time to time in respect of the whole or any part of the undertaking of such companies. This provision seem to lend force to the argument of the appellant's counsel, that the legislature countenanced the business activities of such companies, and the only penalty attached would be that such activities by those companies would render the whole of their business or any part of it subject to a vesting order to vest it in the government. There are no other penal consequences with regard to the rest of the business which are not subject to a vesting order or requisition.

Section 9 is a section dealing with payment of compensation. Under this section notice is to be given to any person who has any interest in any business undertaking or part thereof immediately before the date on which such undertaking or part is vested in the Government, and such person has to make a claim for compensation payable under the law. Under the provisions of this law therefore such person is deemed to have a perfectly legal interest in such business undertaking, or part thereof even after the appointed date until the time of the take-over by the Government.

Therefore the scheme of claiming compensation under section 9 seems to indicate that no illegality is attached to the contravention of the provisions of section 2 but only renders such companies which continue to function contrary to the provisions of section 2 liable to be vested in the Government in whole or in part.

Part I of this Act is under the sub-heading "certain prohibitions on companies after a specified date unless they are incorporated under the principal enactment or are exempted companies."

In view of my understanding of the provisions of sections 2(1), 3(2), 6 and 9 of this Law the use of the phrase "certain prohibitions" in the heading in part 1 of this Act appears to have particular significance. Clearly what is intended under this part is not a total ban of the activities, or rendering illegal the functioning, of such companies after the appointed date but the imposition of certain restrictions. I am of the opinion that the use of the phrase "certain prohibitions" is clearly indicative of what the Legislature had in mind when this law was promulgated. There was no complete prohibition according to the sub-heading. Clearly

therefore it was not intended that companies which come within the description in section 2 (1) should put up their shutters and close shop and cease all activities. The various sections to which I have referred seem to indicate that even after the appointed date if they carry on certain activities than they would render the entirety or portion of their business liable to be requisitioned by a vesting order in favour of the Government. It appears to me that it is in that sense that the phrase "certain prohibitions" has been used in the sub-heading under part 1.

I find that my view on the interpretation of this Law coincides with the views of Sharvananda, J. as set out in his judgment. I therefore agree with his findings and order. I accordingly agree with the orders he has made in the last paragraph of his judgment.

SHARVANANDA, J.

This appeal raises an important question as to the effect of certain provisions of the Companies (Special Provisions) Law, No. 19 of 1974.

The plaintiff-appellant filed this action against the defendant-respondent on the 29th day of January 1979 (a) for a declaration that the partnership business known as 'Laxmi Jewellers' carried on by him and the respondent from the 21st day of October 1974 stood dissolved with effect from 27th January 1979, (b) for an order to wind up the said business and the appointment of a receiver for that purpose, and (c) for an interim and permanent injunction restraining the defendant and his servants and agents from entering premises No. 112 and 112/2, Sea Street, Colombo, where the said business was carried on and carrying on the said partnership business or any other business in the said premises. The plaintiff pleaded that the contract of partnership between him and the defendant was reduced to writing by indenture of partnership No. 1389 dated 9th June 1978 and attested by D. N. Thurairajah & Co., Notaries Public. He further stated that the capital of the said partnership business was Rs. 60,000 that he had contributed an equal share as the defendant and that the said premises No. 112, Sea Street, Colombo, was jointly purchased by them to run the said partnership business. He also averred that the understanding between the parties as to the said premises No. 112, Sea Street, was reduced to notarial agreement No. 1319 dated 9th June 1978 and attested by K. Sivanantham, N.P.

The defendant-respondent filed objections admitting the

execution of the indenture of partnership No. 1389 and the agreement No. 1319 but claimed that the partnership between the parties was "expressly prohibited by the provisions of section 2 of the Companies (Special Provisions) Law, No. 19 of 1974, read with the directions dated 18th December 1974 made by the Minister of Foreign and Internal Trade under section 3 (1) of the Companies (Special Provisions) Law, No. 19 of 1974, inasmuch as the plaintiff is not a citizen of Sri Lanka" and that in the premises the said partnership was illegal and of no force or avail in law and hence the plaintiff could not have and maintain this action or obtain any relief whatsoever on the footing of the said deed of partnership No. 1389.

On 15th March 1979, the application for the issue of an interim injunction alone was taken up for inquiry. After hearing the submissions of counsel for both parties, the trial Judge held that the partnership business was illegal and that no action could be based on such a contract; he therefore dismissed the plaintiff's action. The plaintiff-appellant appealed against the dismissal of the action and also moved the Court of Appeal in revision in application No. 1360/79. The application in revision was heard by the Court of Appeal. By its judgment dated 8th November 1979, the Court held:

"(a) that the plaintiff cannot maintain the action in respect of the partnership carried on after 1.1.75 in view of the provisions of the Companies (Special Provisions) Law, No. 19 of 1974;

(b) that the plaintiff can maintain the action in respect of the business carried on between 21.10.74 and 31.12.74;

(c) that as the partnership business was deemed to have ceased to exist on or after 1.1.75, there was no point in issuing an interim injunction which would relate only to the use of the premises in respect of which there was a separate action D. C. Colombo 3199/Z;"

and set aside the order of the trial Judge and remitted the case for trial in respect of the partnership carried on from 21.10.74 to 31.12.74.

The plaintiff-appellant has preferred this appeal against the said judgment of the Court of Appeal.

The question in issue in this appeal is whether the provisions of section 2 of the Companies (Special Provisions) Law, No. 19 of 1974 (hereinafter referred to as the 'Law') render the partnership between the plaintiff and the defendant illegal as from 1.1.75 as held by the Court of Appeal. The determination of this question involves an examination of the scheme and objects of the Law.

"A statute must be read as a whole and the construction made of all the parts together. The meaning of the statute and the intention of the legislature enacting it can only be properly derived from a consideration of the whole enactment and every part of it in order to arrive, if possible, at a consistent plan. It is wrong to start with some *a priori* idea of the meaning or intention and to try by construction to work that idea into the words of the statute in question." (Odgers' Construction of Deeds and Statutes—5th Edition at p. 237).

As said by Lord Davey in *Canada Sugar Refining Company v. R.* (1) at 741:

"Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or a series of statutes relating to the subject matter."

Section 2 (1) of the Law provides as follows:

"On and after.....'the appointed date',
no Company—

- (a) shall have an interest in any property in Sri Lanka whether as owner, co-owner, lessee, mortgagee, or otherwise, or
- (b) shall carry on any undertaking in Sri Lanka, unless such Company is recognised as an 'existing Company', or is incorporated under the principal enactment, or is an exempted Company."

Section 27 of the Law defines—

- (a) a 'Company' to include any agency house and any business registered under the Business Names Ordinance;

- (b) an 'Undertaking' in relation to a Company to mean the business carried on by such Company and includes all the movable and immovable property and other assets of such Company.

To determine the true effect of section 2 of the Law, it is necessary to examine the Law as a whole.

The preamble to the Law reads as follows:

"A Law to prohibit Companies from owning property or carrying on any undertaking in Sri Lanka after a specified date, unless they are incorporated under the Companies Ordinance or are exempted Companies and to enable the acquisition on behalf of the Government of the whole or any part of the undertaking of Companies which are not so incorporated or exempted, for which compensation is payable, to appoint a Tribunal for the assessment of such compensation and to provide for matters connected therewith or incidental thereto."

Section 3:

- "(1) Before the appointed date, the Ministry may from time to time, with the prior concurrence of the Minister in charge of the subject of Finance, issue a written direction, in this part referred to as a 'direction of exemption', exempting from the application of the provisions of section 2 any such Company or class or category of Companies not incorporated under the principal enactment as shall be specified in such direction. The Minister shall cause notice of such direction to be published in the Gazette.
- (2) After the appointed date, the Minister may from time to time, with the prior concurrence of the Minister in charge of the subject of Finance, issue a direction of exemption exempting from the application of the provisions of section 2 *any such Company or class or category of Companies formed or established after the appointed date* as shall be specified in such direction. The Minister shall cause notice of such direction to be published in the Gazette.
- (3) The direction of exemption shall, for so long and so long only as it is in force, be final and conclusive and

shall not be called in question in any Court or Tribunal.

- (4) A Company in respect of which or in respect of the class or category to which it belongs, a direction of exemption is for the time being in force is in this Law referred to as an 'exempted Company'."

Section 4 confers power on the Minister to revoke a direction of exemption.

Section 6 Part II :

"(1) The Minister *may from time to time* by order published in the Gazette (in this Part referred to as a "vesting order") vest in the Government with effect from such date as shall be specified in the Order *the whole or any part of the undertaking of any such Company* as shall be specified in the Order, being a Company other than an exempted Company, which, on the appointed date, is not incorporated under the principal enactment.

- (3) A vesting order under this Part shall have the effect of giving the Government absolute title to *the whole or part, as the case may be, of the undertaking of any such Company* to which such order applies as shall be specified in such order with effect from such date as shall be specified therein and free from all encumbrances."

Section 7 provides for the appointment of a Competent Authority and section 8 provides for the Competent Authority to take possession of the whole or any part of the undertaking vested in the Government by virtue of the operation of a vesting order.

Section 9:

"Where the whole or any part of the undertaking of any company is vested in the Government by virtue of the operation of a vesting order under this Part, a Competent Authority shall, by notice published in the Gazette, *direct every person who had interest in such an undertaking or part thereof immediately before the date on which such undertaking or part thereof was so vested*, to make within a period of two months reckoned from the date specified in the notice, a written claim to the whole or any part of the compensation payable under this Law in respect of such undertaking or part thereof together with all

documents relied upon by him in support of his claim, and to specify in the claim—

- (a) his name and address;
- (b) *the nature of his interest in such undertaking or part thereof;*
- (c) the particulars of his claim; and
- (d) how much of such compensation is claimed by him."

Section 10:

"(1) A Competent Authority shall refer to the Tribunal for determination the amount of the compensation payable in respect of the whole or any part, as the case may be, of the undertaking of any Company vested in the Government by virtue of the operation of a vesting order under this Part, and shall transmit to such Tribunal all claims made to such compensation, together with all documents furnished by the claimants in support of their claims."

Section 18:

"Where a reference for an award as to compensation is made to the Tribunal, the Tribunal shall, before making such award—

- (a) give every person who has made a claim to compensation an opportunity of being heard either in person or by an agent authorised in that behalf and also of *adducing evidence in support* of such claim."

Section 19:

"Where a reference for an award as to compensation is made to a Tribunal *in respect of the property of any Company* which is vested in the Government, the Tribunal shall.....
make an award determining—

- (a) whether or not each person who has made a claim to compensation is a person *entitled to compensation*, and, if so, the capacity in which he is entitled;
- (b) *the amount of the compensation payable in respect of such property; and*

(c) *the apportionment of the compensation among the persons entitled to compensation :*

Provided however that *where there is a dispute as to the persons entitled to such compensation or as to the apportionment of such compensation among the persons entitled to such compensation, the Tribunal shall defer making an award and shall refer the dispute for decision to the District Court of Colombo and shall, after such Court makes a decision on such dispute, make an award in accordance with such decision.*"

Section 20 provides for the payment of compensation to the persons *entitled thereto*.

Section 21 provides for deductions from the amount of such compensation by way of payment :

- (a) to the Commissioner of Inland Revenue any sum due from such Company as tax or income from profits or as personal tax ; and
- (b) to the Commissioner of Labour any sum due from such Company to any person employed in any such undertaking.

According to the scheme, all partners of the Company which carried on any undertaking on and after the appointed date without being incorporated or exempted are granted compensation for the undertaking on it being vested in the Government and each partner will be awarded that share of compensation which he, as partner, is entitled to.

The business carried on in partnership between the plaintiff and the defendant under the business name 'Laxmi Jewellers' was registered under the Business Names Ordinance on 12th December, 1974. The Certificate of Registration shows that the business was commenced on 21st October 1974 and that the plaintiff is a non-national (an Indian) and the defendant a national of Sri Lanka.

The Law was certified on 19th June, 1974, and although section 2 of the Law states that the 'appointed date' was the 1st day of September, 1974, yet the Minister, under the power vested in him

by section 2 (2) to alter that, altered it to 1st January, 1975 by his order published in the Government Gazette Extraordinary No. 123/7 dated 8th August 1974. By virtue of the powers vested in him by section 3 (1) of the Law, the Minister, with the concurrence of the Minister of Finance issued a direction published in the Gazette No. 142/9 dated 18.12.74 exempting from the application of the provisions of section 2 of the Law the class or category of Companies and the Companies specified in the schedule thereto. The Schedule specifies any partnership registered under the Business Names Ordinance, all the partners of which are citizens of Sri Lanka. The defendant contends that the exemption does not apply to the partnership in question, as the plaintiff who is a partner is not a citizen of Sri Lanka.

Mr. Thiagalingam for the plaintiff-appellant contended that the partnership business that commenced on 21.10.74 was perfectly legal in its inception and that the Law did not render the continued functioning of the partnership after the appointed date illegal. He pointed to the fact that the word 'prohibit' appears only in the preamble to the Law and in the caption of Part I of the Law and not in the body of the Law and submitted that the penalty of nullification did not attach for disobedience of the veto contained in section 2 of the Law. He argued that according to the scheme of the Law the only consequence of carrying on the partnership business in breach of section 2 was that the Company incurred the risk that the Minister might, by means of a vesting order, vest in the Government, from time to time, the whole or any part of the undertaking of the Company.

On the other hand, Mr. Choksy for the defendant-respondent contended that the Law placed an absolute prohibition on the Company carrying on business after 1.1.75 and also provided for the State taking over the undertaking of a Company which infringed the provisions of section 2 and pay compensation. He said that the prohibition contained in section 2 (1) (b) is express in terms and that section 2 operated to make a partnership in which a non-national is a partner *ipso jure* illegal after 1.1.75 (the appointed date). He submitted that the object and policy of the Law was to keep business in the hands of Ceylonese and in Companies incorporated in Ceylon, and to promote that object the Law had forbidden transactions by Companies which are not so incorporated unless there was a direction of exemption in terms of section 3 (1) and 3 (2) of the Law.

A Court will not lend its assistance to enforce a contract, expressly or impliedly, prohibited by a statute. The Fundamental question is whether the statute means to prohibit the contract. The true effect and meaning of the statute is the determining factor. If the statute means to prohibit the contract, any contract infringing the prohibition is invalid, whether the prohibition be for the purpose of revenue or otherwise, and no right of action can arise out of the breach of the law. A contract which involves in its performance, either directly or collaterally, the doing of something which would be in contravention of a statute is invalid and unenforceable. Lord Esher M. R. stated the rule as follows: "Although a statute contains no express words making void a contract which it prohibits, yet, when it inflicts a penalty for the breach of the prohibition, you must consider the whole Act as well as the particular enactment in question and come to a decision, either from the context of the subject-matter, whether the penalty is imposed with intent merely to deter persons from entering into a contract, or for the purpose of revenue, or whether it is intended that the contract shall not be entered into so as to be valid in law". (*Mellis v. Shirley Local Board* (2) at 451). In the same case, at page 453, Bowen L. J. said: "We have to find out, upon the construction of the Act, whether it was intended by the legislature to prohibit the doing of a certain act altogether, or whether it was only intended to say that, if the act was done, certain penalties should follow as a consequence. If you can find out that the act is prohibited, then the principle is that no man can recover in an action founded on that which is a breach of the provision of the statute." In the case of *Trans-African Bank v. Union Guarantee and Insurance* (3) at 103, Theron A. J. stated the principle thus: "The general rule applicable to the construction of a statute is that every transaction carried out in contravention of a statutory prohibition should be considered null and void despite the absence of any express declaration of nullity in the particular statute in question, unless it appears from the wording of the statute or from a consideration of its object and its scope that the legislature did not intend to render the prohibited transaction invalid". Viscount Haldane in *Cornellius v. Phillips* (4) at 211 referred to the general rule and to the modification thereof by the context in which the apparently prohibitory words are used: "So standing they (the words which the legislature has used) are clear and they prohibit and therefore make void any contract which contravenes them... There might have been inserted in the statute a special context which would have modified the application of the general rule".

Thus, although a statute may in terms apparently prohibit an act or omission and attach a penalty for any disobedience, it does not necessarily follow that all transactions to which the penalty attaches are illegal; they would be illegal if the statute is in fact prohibitory. But they are not so if on the true construction of the statute the penalty is, as it were, the only sanction for doing what the statute apparently prohibits. Before one can make out that a contract is illegal under a statute, one must make out distinctly that the statute has provided that it shall be so.

The function of a Court is to give effect to the intention of the legislature as expressed in the language of the enactment under consideration. If the language is capable of bearing only one meaning, then the Court is bound to apply that meaning even if to do so leads to injustice. If, however, the language of the enactment is capable of two meanings, the court is free to decide which is the meaning intended by the legislature, having regard to the presumption against intending injustice or absurdity. "Whenever the language of the legislature admits of two constructions and if construed in one way would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended, unless the intention has been manifest in express words." (Maxwell—11th Edition at 193). On the general principle of avoiding injustice and absurdity, a construction which enables a person to defeat or impair the obligation of his contract by his own act, or otherwise profit by his own wrong, should be avoided, unless it is the consequence of the only reasonable meaning which fits the policy and object of the statute. Generally the plea of illegality is an unattractive plea, especially where fiduciary obligations are involved. A Court will be slow to imply statutory prohibition of contracts unless the implication is quite clear.

The language of section 2(1) apparently prohibits any Company having an interest in any property in Sri Lanka or carrying on any undertaking on and after the appointed date unless it is incorporated or an exempted Company. If this section alone is considered, isolated from the other provisions of the scheme of the Law, the language of the section would tend to support the contention of Mr. Choksy that a contract to carry on a partnership business in contravention of the prohibition in section 2(1) would be illegal. A partnership is illegal if formed for a purpose which is forbidden by statute, although independently of the statute there

would be no illegality. And "a partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership". (Section 34 of the Partnership Act). Thus, on Mr. Choksy's construction of section 2, it would follow that it became illegal for the firm of Luxmie Jewellers to carry on any business in Sri Lanka on and after 1.1.75. If the agreement became illegal, the Court cannot decree its specific performance and no action for an account can be maintained by the plaintiff against the defendant in respect of the dealings and transactions of the illegal partnership—the defendant could with impunity snap his fingers at the plaintiff and enrich himself at plaintiff's expense, as no Court will enforce a contract which is prohibited by statute or allow itself to be made the instrument of enforcing obligations arising out of a contract or dealings and transactions of the illegal partnership—the defendant could with impunity snap his fingers at the plaintiff and enrich himself at plaintiff's expense, as no Court will enforce a contract which is prohibited by statute or allow itself to be made the instrument of enforcing obligations arising out of a contract or transaction which is so prohibited.

Ultimately, as Devlin, J. said in *St. John Shipping Corporation v. Joseph Rank Ltd.* (5) at 690: "The fundamental question is whether the statute means to prohibit the contract. A statute is to be construed in the ordinary way; one must have regard to all the relevant considerations, and no single consideration, however important, is conclusive." The true effect and meaning of the statute read as a whole is the determining factor.

In my view, though section 2 of the Law *ex facie* prohibits the carrying on of business by the offending Company, yet, an examination of the scheme of the Law tends to show that the object of such prohibition was not to render the carrying on of such business illegal but to make such refractory Companies liable to have their undertakings compulsorily acquired by means of a vesting order made by the Minister under section 6 of the Law. The following analysis of the several sections of the Law demonstrates that the legislature did not intend to prohibit the Company functioning after the appointed date.

If section 2 is taken at its face value as absolutely prohibiting such a Company carrying on any undertaking after the appointed

date as contended for by Mr. Choksy, such a company cannot, in Law, be formed or established to carry on any undertaking in Sri Lanka on and after the appointed date, viz. 1.1.75. But section 3(2) of the Law provides for exemption being granted by the Minister "from time to time" to "any such Company or class or category of Companies *formed or established after the appointed date*". This section envisages the coming into existence, after the appointed date, of such Company in violation of the provisions of section 2 and its functioning thereafter with the prospect of it being made an exempted Company at a future date. A partnership whose object is to carry on an activity prohibited by any statute cannot be registered under the Business Names Ordinance. The argument of illegality thus founders on this point. Section 3 (2) of the Law militates against Mr. Choksy's contention of illegality. It postulates a Company being formed after the appointed date carrying on an undertaking in breach of section 2. It signifies that the prohibition contained in section 2 does not stamp with illegality the undertaking so conceived or carried on in breach of section 2.

Counsel for the plaintiff-appellant contended that section 6 stipulates the only penal consequence for any disobedience of the prohibition contained in section 2. This section empowers the Minister to vest from time to time, in the Government the whole or any part of the undertaking of any defaulting Company, namely a Company other than an exempted Company which on 1.1.75 is not incorporated under the principal enactment. From the fact that the Minister could exercise his power *from time to time* with respect to the whole or any part of the undertaking of such a Company, it is manifest that the legislature countenanced the business of the Company being carried on by such Company until a vesting order or orders under the section are made in respect of the whole of the undertaking. Under this section the undertaking can be taken over in parts from time to time. Though one part be vested in the Government, the rest of the fabric of the undertaking can continue to function until the final vesting order, if any. This situation can be rationalised only on the hypothesis that the prohibition against carrying on of the undertaking did not render illegal the undertaking after the appointed date, viz. 1.1.75.

Section 9 provides for notice being given to every person who had an interest in such undertaking or part thereof immediately before the date on which such undertaking or part thereof was

vested in the Government to make claims to the compensation payable under the Law. This section thus recognizes every partner continuing to have a legally valid interest in the undertaking of the partnership after the appointed date and being entitled to compensation therefor. If such an undertaking was an illegal undertaking as and from 1.1.75, it is inconceivable why the legislature made provision for the payment of compensation to the persons who carried on the undertaking in breach of such statutory prohibition. This statutory recognition of the right to compensation repels the suggestion that the Law intended to render illegal the carrying on of the undertaking in breach of section 2. In terms of section 9 and the sections following, the parties will be entitled to compensation in respect of the undertaking or part thereof vested in the Government not on the value of the assets that existed on 1.1.75 but on the assets existing at the time of the vesting. Suppose the assets of the partnership on 1.1.75 was only Rs. 10,000 and if by the date on which such undertaking had come to be vested, its assets had been augmented by the parties to Rs. 100,000, the parties would be entitled to compensation in the sum of Rs. 100,000 and that amount will be apportioned among the claimants according to their respective shares. This payment of compensation and the apportionment thereof cannot co-exist with the concept of illegality.

According to Mr. Choksy the Law intended to prohibit non-nationals carrying on business in Sri Lanka, except in the way prescribed by section 2 of the Law. But section 2 deals only with agency houses and business registered under the Business Names Ordinance (vide definition of 'Company' in section 27). It is however relevant to note that the Business Names Ordinance does not require an individual, whether a non-national or not, or a firm consisting of non-nationals or not, carrying on business under a business name which consists of their true full names to be registered. Section 2 of the Law thus does not seek to bar non-nationals carrying on business in Sri Lanka under their true full names. In view of this circumstance, one cannot spell out of the provisions of the Law an intention to bar absolutely non-nationals carrying on business in Sri Lanka.

In my view, the scheme of compensation adopted by the Law repels the contention of illegality—compensation is provided for on the basis of the partner being entitled to same, that he has a

legal right thereto. It lends support to the assumption that a Company can lawfully carry on its undertaking after the appointed date even though that company does not comply with the requirements of section 2 of the Law. It appears that the only penal consequence of such non-compliance is that such Company runs the risk of a vesting order in terms of section 6 of the Law being made in respect of the undertaking. Though section 2 detached from its context may incline one to take the view that the Law prohibits the partnership between the plaintiff and the defendant from carrying on business on and after the appointed date, the other provisions of the Law militate against such construction. It is a settled rule of construction that an Act should be interpreted as to be consistent with itself and each and everyone of its provisions should be given a meaning so as to lead to harmony and not to mutual conflict or repugnance to each other. If the other construction that the only consequence of the failure to comply with the requirement in section 2 is, as set out in the preamble "to enable the acquisition on behalf of the Government of the whole or any part of the undertaking" of the defaulting company is adopted, the scheme of the Law can be rationalised and the various parts of the Law harmonised with each other. The latter construction of the section is in accord with equity and has also the merit of avoiding absurdity and injustice. The argument of illegality has thus to be rejected.

In refutation of Mr. Thiagalingam's argument that section 2 of the Law served only to identify the company whose undertaking could be vested in the Government, Mr. Choksy referred us to section 2 of the Business Undertakings (Acquisition) Act, No. 35 of 1971, which endows the Minister of Finance with sweeping powers to acquire any business undertaking. He submitted that since the Minister of Finance had, under the Act, such unfettered power to acquire any business undertaking, there was no purpose in enacting section 6 of the Law for the limited object of rendering the undertaking of Companies which infringe section 2 to be liable to vesting in the government. He relevantly pointed out that in view of the absolute power of acquisition of business undertakings already existing under section 2 of the 1971 Act, section 2 of the Law of 1974 could not have been enacted only to serve the subsidiary purpose of identifying the Companies whose undertakings could be acquired under section 6 of the Law. There would have been force in Mr. Choksy's argument if the vesting order made by the Minister of Finance under section 2 of

the Act and by the Minister of Foreign and Internal trade under section 6 of the Law have the same legal efficacy. An examination of these two sections brings out a significant difference which invalidates the argument of Mr. Choksy. Subsections (3), (4) and (5) of the Act make the validity of the vesting order made under the Act dependent on the approval of the House of Representatives. If the House refuses to approve the vesting order, the order ceases to be valid. But section 6 of the Law constitutes the Minister the sole authority for making vesting orders, and his exercise of the power is not dependent on the approval of the House of Representatives or of any other authority for its efficacy. In view of this fundamental difference in the authority of the Minister to make operative vesting orders under the Act and under the Law, the contention of Mr. Choksy fails.

In my view the Law did not mean to forbid the continued subsistence of companies which did not comply with the requirements of section 2 of the Law. It has not rendered the business of Laxmi Jewellers carried on by the plaintiff and the defendant in partnership illegal from and after 1.1.75. The lower Courts have misconceived the nature of the prohibition contained in section 2(1)(b) of the Law. In my judgment, the plaintiff can have and maintain this action on the basis that the partnership between him and the defendant continued to subsist in spite of section 2 of the Law and was dissolved only on 27th January 1979 by the notice of termination given by the plaintiff.

I accordingly set aside both the judgments of the District Court and of the Court of Appeal and allow the appeal and direct interim injunction (on the terms suggested in the District Court by counsel for the plaintiff) to issue restraining both parties from carrying on any business in the premises referred to in the plaint until proper accounting is completed and from doing any act which will impede the winding up of the concern. The case is remitted to the District Court for trial to be proceeded with without delay. In my view this is eminently a case where a receiver should be appointed. The plaintiff-appellant will be entitled to costs of the inquiry in the District Court and to costs of the revision application in the Court of Appeal and to costs of this appeal.

WANASUNDERA, J.

This appeal raises questions that relate to the proper interpretation of an important piece of legislation, namely, the Companies (Special Provisions) Law, No. 19 of 1974. Its object was, as can be seen from the Preamble, to bring under the control of the Government, business enterprises that were non-national in nature, which contained a foreign element. Having regard to the ramifications of internal and external trade and business, this was by no means an easy task. The Legislature has sought to achieve this in the form of a short enactment. The scheme as it appears from the Law is to impose a blanket prohibition on the carrying on of such businesses or such businesses owning property in this country and provides for the authorities to grant to any company, class or category of Company exemption from the application of the Law. The exemption orders contained in Gazette No. 142/9 dated 18th December 1974 show that they are extensive in nature. This was necessary to prevent the dislocation of the smooth conduct of trade and commerce. It does not however detract from the effectiveness of the law which is to get a legal control over all businesses which otherwise would have operated free of State control.

This law was enacted on the 19th of June 1974. Although section 2 fixes 1st September 1974 as the "appointed date" for the coming into operation of the Law, subsection (2) of this section empowers the Minister to alter this date. This period of less than three months was apparently considered inadequate for the purpose of bringing about the fundamental changes contemplated by the Law, namely, changing the character of a business from one form to another. Accordingly, the Minister pushed forward the operative date to the 1st of January 1975, thereby giving persons adequate time to comply with the provisions of the Law.

The alleged partnership between the plaintiff and the defendant is a business falling within the ambit of the law. Section 27 defines the expression "Company" to include any agency house and any business registered under the Business Names Registration Ordinance. The plaintiff is a non-national, while the defendant is a citizen of this country. The plaintiff and the defendant had commenced business on 21st October 1974 and had applied on 29th October 1974 for registration of the business under the

Business Names Registration Ordinance. The Certificate of Registration was issued on 18th December 1974. The plaintiff claims that he has contributed a half-share of the capital of Rs. 60,000 of the business and that premises No. 112, Sea Street, Colombo, was jointly purchased by them for the purpose of the business. It would be observed that all these transactions took place after the law was passed by Parliament, though before the operative date, namely, the extended date of 1st January 1975. Even after 1st January 1975, no effort was made by these partners to comply with the provisions of the Law. The partnership continued until 27th January 1979 in disregard of the Law, when notice of the dissolution of the partnership was given by the defendant. Prior to that, when the partnership was in existence, a formal deed of Partnership No. 1369 dated 9th June 1978 notarially executed had been signed by the partners. Further, the partners had on a notarial agreement No. 1319 dated 9th June 1978 set out their rights in respect of premises No. 112, Sea Street.

Consequent on the termination of the partnership on 27th January 1979, the plaintiff filed this action praying—

- (a) for a declaration that the partnership business known as "Luxmi Jewellers" carried on by him and the defendant from 21st October 1974 stood dissolved;
- (b) for an order to wind up the said business and for the appointment of a receiver; and
- (c) for an interim injunction and permanent injunction restraining the defendant and his servants from entering premises No. 112 and No. 112/2, Sea Street.

In the objections filed by the defendant, it was averred that the partnership was expressly prohibited by the provisions of section 2 of the Companies (Special Provisions) Law, No. 19 of 1974, read with the direction of the Minister dated 18th December 1974, and that the partnership was of no force or avail in law.

The District Court held an inquiry into the application for the issue of an interim injunction. After hearing the parties the Court upheld this objection that the partnership contravened the provisions of the Law and was accordingly illegal. In the result, the District Court dismissed the plaintiff's action.

On appeal the Court of Appeal took the view that it was in agreement with the District Court that a partnership which contravenes the Law is illegal. The court however held that this illegality operated only from 1st January 1975 and that an action can be maintained in respect of a partnership business prior to that date. On this basis the Court of Appeal remitted the case to the District Court to determine the rights of the parties on the basis of a valid partnership that terminated on 31st December 1974. The plaintiff appeals from that judgment.

The plaintiff's main contention is that the partnership which commenced prior to the coming into operation of the Law was valid and legal at its inception. It continued to be valid thereafter notwithstanding the imposition of the new Law. The only sanction for non-compliance with the provisions of the Law is the risk that the business may be taken over by the Government. It does not render the partnership illegal. Accordingly the plaintiff was entitled to maintain this action in respect of the partnership business from its inception in 1974 till the time of dissolution in 1979.

My brother Sharvananda has shown agreement with this view and has in his judgment referred to certain provisions in the Law which he states suggest that construction. I regret that I find it difficult to subscribe to this view.

It seems to me that the whole object, purpose and the provisions of the Law, fairly construed, point to an opposite conclusion. The object of this Law is beyond dispute and spelled out in the clearest terms in the Preamble in the following words:

"A Law to prohibit Companies from owning property or carrying on any undertakings in Sri Lanka after a specified date unless they are incorporated under the Companies Ordinance or are exempted companies and to enable the acquisition on behalf of the Government of the whole or any part of the undertakings of companies which are not so incorporated or exempted, for which compensation is payable, to appoint a Tribunal for the assessment of such compensation, and to provide for matters connected therewith or incidental thereto."

In brief, the object of the Law is—

(a) to prohibit companies owning property or carrying on

business in Sri Lanka unless they are incorporated under the Companies Ordinance.

- (b) in the event of such non-corporation and, for that reason only, a power is given to the Government to acquire any such company which contravenes the Law.

The absolute nature of the prohibition is also made explicit in the provisions of section 2 which is pivotal to the whole Law. It reads—

"2. (1) On and after the first day of September, 1974, in this law referred to as the "appointed date", no company—

- (a) shall have an interest in any property in Sri Lanka, whether as owner, co-owner, lessee, mortgagee, or otherwise, or
- (b) shall carry on any undertaking in Sri Lanka, unless such company is recognised as an "existing company", or is incorporated under the principal enactment, or is an exempted company."

It is a well established principle of law that a Court will not assist a party to enforce an agreement which is either expressly or impliedly prohibited by statute. Statutes containing such prohibitions sometimes expressly state that a contravention of such prohibition entails the nullification of the transaction. Such words of nullification however are not always considered necessary and such a consequence can, in a proper case, be inferred as a result following from the illegality. The general rule is that a transaction which is in contravention of a prohibition contained in a statute would be considered null and void, although it does not expressly state so, unless it can be inferred from a consideration of the whole Act that there was no intention to render the prohibited transaction illegal.

The prohibition in the present case is in categorical terms and is the main device for securing the objects intended by the Law. To assert that transactions contravening these provisions are not illegal or invalid would be to give the words containing this prohibition a meaning exactly opposite to what it normally means. The main thrust of this legislation is to bring all foreign companies within the control of the State as part of our national policy. If the Law is so interpreted as to suggest that incorporation of such companies under our Law is not compelling, then such a view will

have the effect of frustrating the entire purpose of this legislation and rendering it nugatory.

It has been submitted that the only sanction for non-compliance is acquisition by the Government of such a business. It was even suggested in the course of argument that this Law merely enacted the machinery for acquisition of business undertakings. A close examination of the relevant provisions shows that these views are clearly untenable. Acquisition can take place only if a Company fails to incorporate under our laws and in no other circumstance. It will also be seen that such an acquisition or risk of acquisition is by no means intended to be a sanction. It is hardly conceivable that the Government would like to be saddled with the responsibility of taking over all companies that fail to comply with the Law. The right of acquisition is clearly discretionary. The Government may acquire any such undertaking or may decide not to do so depending on the need for such a business, its viability, the public and national interest involved and the available resources of the Government. If we have regard to this Law in practical terms, the provisions for acquisition can never operate as a sanction.

Then the question has also been asked why provisions exist in the Law for the payment of compensation in respect of a business that may be carried on illegally after the operative date. I have examined those provisions and I find nothing therein that indicate the payment of compensation on the basis of an existing *de jure* Company. There must be numerous cases of persons who continued to do business despite the provisions of this Law, particularly because it contains no criminal sanctions. The present case is one such example. A law does not have a magical quality to enable it to prevent this kind of action. We must therefore have regard to the fact that there would be *de facto* transactions regardless of the legal provisions.

My understanding of the position is that when there is such a *de facto* business in existence, the law empowers the Government to acquire "the whole or any part of the undertaking of any such company". The term 'undertaking' has been defined "in relation to a Company to mean the business carried on by such Company and includes all the movable and immovable property and other assets of such Company". Such property would naturally be in the possession or custody of a particular person or persons. The

acquisition would be from the possession or custody of such person or persons. Compensation will have to be paid because it cannot be expected of any self-respecting Government that it would resort to plunder and will not pay for property which it takes from a person or persons. Where such property is acquired, the Law requires that written claims should be called for from "every person who had an interest in such an undertaking or part thereof immediately before the date on which such undertaking or part thereof was so vested", and a person is entitled to prefer claims indicating "the nature of his interest in such undertaking or part thereof"—section 9. The operative date for valuation is the date of vesting. The valuation would have to be done not on the basis of a *de jure* partnership but on a *de facto* basis. It is also to be expected that there could well be competing claims, especially in the case of a *de facto* enterprise. Such claims have necessarily to be decided by a court of law in the last resort and this is precisely what the Law envisages—vide section 19. In a matter of such a nature, I have no doubt that a court will resolve the matter on an equitable basis; but having regard to the provisions of this Law, it is forbidden to do so on the basis of an existing legal partnership.

The fact that a person is deprived from claiming his rights on the basis of a *de jure* transaction seems to me the true sanction in this Law. I, therefore, see nothing in these provisions which has the effect of taking away the equitable rights a person may have to rights, interests, or property of such a *de facto* business, provided that they are claimed in a properly constituted action.

Finally it has been suggested that the provisions of section 3 appears to contemplate the coming into existence of a company after the appointed date and that this is strongly indicative of the fact that a company is enabled to function legally even after the appointed date, though not incorporated under our laws. I do not think that the bare coming into operation of such a company is prohibited by section 2. As a matter of pure statutory construction, it seems that for the prohibition in the Law to apply the existence of a company is a pre-requisite and this view in no way contradicts the provisions of the Law if a reasonable meaning has to be given to its language. Further, it would be seen that what is prohibited is not the bare existence of the company, but its activities and even such activities, it seems, are restricted to matters within the confines of this country and not outside. It is also possible to take

the view, if we were to interpret these provisions in a workable manner, that they enable new companies to be established with the prior concurrence of the Minister so that their establishment and exemption would be more or less simultaneous. None of these provisions in my view are at variance with the objects of the statute set out in the preamble, but are only consequential thereto.

For these reasons I am of view this appeal must fail. As I have already indicated earlier, there is nothing in this Law to take away the equitable rights *inter se* between parties to a transaction rendered void by this Law provided they are claimed in a properly constituted action. This case should in my view go back to the District Court for inquiry, only into those limited matters indicated in the judgment of the Court of Appeal. But my brothers however have taken a different view and accordingly their majority opinion would be entitled to prevail.

Appeal allowed.

Interim injunction directed to issue.