the said provisions embrace the same subject matter and field of activity. The conclusion therefore, is irresistible that the operation of enactment, namely, the Punjab Municipal Act, 1911 (including therefore, the provisions of section 121 thereof) were subordinated and limited in operation. If, therefore, a vendor of the petroleum, covered as in the instant case under item III of the Notification, had obtained a license from the Central Government under the Petroleum Act, he could not be called upon once again to obtain a license under section 121 of the Municipal Act.

In this view of the matter the acquittal of the respondents cannot be successfully assailed. This appeal must, therefore, fail, we would dismiss it.

P. D. SHARMA, J.—I agree. Sharma, J.

B.R.T.

FULL BENCH

Before G. D. Khosla, C. J., S. S. Dulat and Harbans Singh, JJ.

GURDARSHAN SINGH AND ANOTHER,—*Appellants.*

versus

BISHEN SINGH,—*Respondent.*

Regular First Appeal No. 44-P of 1953.

1961

November, 24th

Contract Act (IX of 1872)—Sections 32, 56 and 65—Doctrine of frustration—Whether applies to a contract of lease of agricultural land—If applies, on whom should the loss fall, i.e. on the lessor or the lessee.

Held, (per G. D. Khosla, C. J. and Dulat, J.)—

(1) That the doctrine of frustration does apply to leases, but even if it does not in terms apply to a contract of lease of agricultural land, the broad principle of

frustration of contracts applies to leases. The principles of section 65 of the Indian Contract Act also applies to leases and the loss must fall on the lessor, because in theory the estate reverts to him and the lessee is deprived of his rights, whereas the lessor is not.

Held, (per Harbans Singh, J.)—

(1) That section 56 of the Contract Act embodies a positive rule of law relating to the doctrine of frustration and this section must be treated as exhaustive so far as it goes. The doctrine of frustration, as embodied in this section, 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. This doctrine of frustration, therefore, cannot apply to completed contracts of lease where possession has already been taken by the lessee under the contract and the lessor has nothing more to do under the contract.

(2) However, a contract of lease may be avoided on the happening of an event as contemplated by the terms of the contract, express or implied. This would not strictly amount to discharge of contract by the application of doctrine of frustration as embodied in section 56, but 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 of Property Act. The avoidance of contract in this case, however, depends on the volition of the party concerned.

(4) If a contract of lease is avoided either by the application of the doctrine of frustration or otherwise, section 65 is certainly applicable, and any person, who has received any advantage under such agreement or contract, is bound to restore it.

Case referred by a Division Bench consisting of Hon'ble Mr. Justice S. S. Dulat, and Hon'ble Mr. Justice Daya Krishan Mahajan on the 4th March, 1960, to a larger Bench for decision of the questions of law involved in the case. The questions of law were answered by the Full

Bench consisting of Hon'ble the Chief Justice Mr. G. D. Khosla, Hon'ble Mr. Justice S. S. Dulat and Hon'ble Mr. Justice Harbans Singh, on the 24th November, 1961 and the case was referred back to the Division Bench for final disposal. The case was finally decided by the Division Bench consisting of Hon'ble Mr. Justice S. S. Dulat and Hon'ble Mr. Justice, A. N. Grover, on the 23rd January, 1962.

Regular First Appeal from the decree of the Court of Shri Diali Ram Puri, Sub-Judge, 1st Class, Barnala, (Tribunal under the Displaced Persons (Debts Adjustment) Act 1951), dated the 15th day of September, 1953, granting the plaintiff a decree for Rs. 4,500 against Shrimati Balwant Kaur and against the estate of Gurdarshan Singh and leaving the parties to bear their own costs.

M. R. SHARMA, ADVOCATE, for the Appellants.

J. N. KAUSHAL, AND D. R. MANCHANDA, ADVOCATES, for the Respondent.

ORDER

G. D. KOHSLA, C.J.—The following two questions have been referred to this Full Bench:— G. D. Khosla, C. J.

(1) Whether the doctrine of frustration applies to a contract of lease of agricultural land ?

(2) If the doctrine of frustration applies to such leases, on whom should the loss fall, i.e., on the lessor or the lessee ?

The circumstances, which have given rise to this reference are briefly as follows: In the year 1947 Gurdarshan Singh minor acting through his guardian and mother, Balwant Kaur, executed a lease-deed in respect of some agricultural property in favour of Bishan Singh. The lease-deed was executed on 8th January, 1947 and was in respect of property which is now part of Pakistan. The lease-deed made mention of the fact that possession of the land had been handed

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over to the lessee, though in point of fact the possession was with the lessor's tenants and the crops of the tenants were at that time standing on the land. The terms of the lease were that it was to commence with effect from *kharif* 1947 and was to last for a period of five years ending with *rabi* 1952. The finding of the Court is that possession was not delivered to the lessee, and in the middle of 1947 partition of the country took place and both lessor and lessee were compelled to leave West Punjab, and so the contract of lease could not be given effect to.

The lessee had paid a sum of Rs. 4,500 and he made an application under section 10 of the Displaced Persons (Debts Adjustment) Act for the recovery of this amount on the ground that the contract of lease had become void and incapable of performance and so the benefit which had accrued to the lessor should be surrendered by him. This matter came up before a Division Bench consisting of my Lords, Dulat and Mahajan JJ. In the course of arguments reliance was placed on a Division Bench decision of this Court in *Court of Wards, etc.*, v. *Raja Dharam Dev Chand*, Regular First Appeals Nos. 143 and 144 of 1952. Dulat and Mahajan JJ. thought that the decision in that case was not correct and so referred the questions set out above for the opinion of the Full Bench.

The lessor's case is that the doctrine of frustration does not apply to leases. This was the opinion exressed by the Division Bench in *Court of Wards etc.*, v. *Raja Dharam Dev Chand* to which a reference has just been made. Reliance was also placed on a Supreme Court decision and a number of English cases. On the other hand, it was argued on behalf of the lessee that the doctrine of frustration prevalent in England does not hold good in India and, in any case, the broad principle of frustration applies to leases and so under section 65 of the Contract Act Bishan Singh is entitled to recover the amount and the loss should fall on the lessor.

The doctrine of frustration is set out in section 56 of the Contract Act of which the relevant portion runs as follows:—

> "56. An agreement to do an act impossible itself is void.
>
> A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.
>
> * * * *

Section 65 may also be set out here—

> "65. When an agreement is discovered to or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it."

I may observe at the very outset that the case before us could have been decided on the ground that possession of the land was not made over to the lessee. However, as the matter is before us in the form of a reference and the question is likely to arise in other cases of a similar type, we deemed it advisable to hear arguments on the entire case and give our decision on the questions referred to us.

The decision of *Court of Wards' case* was based on certain observations made by their Lordships of the Supreme Court in *Satyabrata Ghose* v. *Mugneeram Bangur and Co. and another* (1). That case, however, dealt with the sale of land and not a lease of land. Their Lordships pointed out the reasons for the English rule that the

(1) 1954 S.C.R. 310

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doctrine of frustration does not apply to sales of land, because under English law as soon as there is a concluded contract, the purchaser in equity becomes the owner of the land subject to obligations to pay the purchase money and the seller holds the land in trust for the purchaser. Before us a number of cases were cited to show that the doctrine of frustration does not apply to leases. The first of these was *Paradine* v. *Jane*, (2). In this case certain premises were let out on rent by a landlord, and during the term of the tenancy a German prince invaded the country and occupied the leased premises. The landlord was able successfully to sue for rent, although frustration was pleaded by the tenant. In *London and Northern Estates Company* v. *Schlesinger* (3), the premises were leased out to an Austrian, and during World War I the Austrian became an alien and so it was impossible for him to live in the flat. The landlord sued for rent and the lessee pleaded frustration, but the decision was given in favour of the landlord on the ground that the lessee could have sublet the premises and the interest in the flat having become vested in the lessee, he remained in possession of it and was not divested of it. In *Whitehall Court, Limited* v. *Ettlinger* (4), two flat were let out for a period of three years. After some time the flats were requisitioned by the military authorities. While the military authorities were in occupation, the term of the lease expired. The tenant had paid rent for the period during which he had remained in occupation and the landlords sued for rent for the balance of the period, i.e., the period during which the military authorities had been in possession. The landlords' suit was decreed and it was held that frustration does not apply where an estate is created by demise as in a lease. The Judges observed that military authorities had said to the tenant that he should pay rent to the landlord and make a claim from them. *Matthey* v. *Curling* (5), was

(2) 82 English Reports 897
(3) (1916) 1 K.B.D. 20
(4) (1920) I K.B.D. 680
(5) (1922) 2 A.C. 180

another case of military entering into occupation of leased premises during the currency of the lease. Before the expiry of the lease the house caught fire and was burnt. The rent for the last quarter was held by the House of Lords to be recoverable. In *Leightons Investment Trust, Limited* v. *Cricklewood Property and Investment Trust, Limited* (6), two plots of land were leased for a period of 99 years to persons who covenanted to build shops on the land. War conditions put an end to all enterprises of private building and so the covenant could not be implemented. When the matter went before a Court, it was held that this was not a commercial contract but a lease and the doctrine of frustration did not apply to demise of real property. This matter went up in appeal to the House of Lords, and Lord Simon in *Cricklewood Property and Investment Trust, Limited* v. *Leighton's Investment Trust, Limited* (7), said that the doctrine of frustration might apply to leases, but in that particular case circumstances did not justify the application of the doctrine of frustration. In the *Court of Wards' case* the facts were that property in Montgomery district, which is now part of Pakistan, was leased out for a period of one year, the period of one year beginning *kharif* 1947 and ending *rabi* 1948. The amount was paid before February, 1947, but owing to the partition of the country the lessee could not make any use of the land. It was held that the doctrine of frustration did not apply to leases, but in that case it was admitted that possession was with the lessee and, in fact, had been with him for some time. On facts, therefore, it was not a case of the contract becoming impossible for performance because possession had already passed to the lessee.

According to Indian law, sales of land as also leases are contracts. A few cases, though not on all fours, have some relevance to this question. *Labh Singh* v. *Jamnun and another* (8), a Full

(6) 1943 K.B. 493
(7) 1945 A.C. 221.
(8) A.I.R. 1934 Lah. 853

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Bench case, related to an occupancy tenancy which was alienated by means of a mortgage effected without the consent of the landlords. The mortgage was set aside and the mortgagee was held entitled to sue for the mortgage money because of the provisions of section 65 of the Indian Contract Act. *Babu Raja Mohan Manucha and others* v. *Babu Manzoor Ahmad Khan and others* (9), was another case of a mortgage which was found to be invalid and on this ground the mortgagee was held entitled to relief. The Privy Council observed—

> "The principle underlying S. 65 is that a right to restitution may arise out of the failure of a contract though the right be not itself a matter of contractual obligation."

Dhuramsey Soonderdas and others v. *Ahmedbhai Hubibbhoy* (10), was another case in which the plaintiffs, who were the lessees of two godowns, were held entitled to relief under section 65 of the Contract Act, because the godowns were burnt and destroyed. *Kshitish Chandra Mondal* v. *Shiba Rani Debi and others* (11), was a case in which a thatched shed was letout. The shed was burnt and the lessee put up another structure. It was held that section 108(e) of the Transfer of Property Act was not applicable and no option could have been exercised by the lessee, but the contract was frustrated as section 65 of the Contract Act applied. The Calcutta High Court held that the doctrine of frustration applied to leases. Another Calcutta decision in *Inder Pershad Singh* v. *Campbell* (12), is to the effect that the doctrine of frustration applies to a lease. In *Puthuppally Valiapally and another* v. *Chacko Thomman and another* (13), it was held that the doctrine of frustration applies to leases.

(9) A.I.R. 1943 P.C. 29
(10) I.L.R. 23 Bom. 15
(11) A.I.R. 1950 Cal. 441
(12) I.L.R. 7 Cal. 474
(13) A.I.R. 1956 Trav.—Co.-59

Therefore, there is considerable judicial opinion in favour of the view that doctrine of frustration applies to leases. It is quite clear that the English principles cannot be applied to this country, because a contract for the sale of land as well as a lease remain contracts covered by the Indian Contract Act.

In the present case it is also to be observed that the provisions of section 108(e) of the Transfer of Property Act could not be invoked because the lease in this case relates to agricultural land, and section 117 specifically provides that the provisions of Chapter V do not apply to leases of land for agricultural purposes.

My conclusion, therefore, is that the doctrine of frustration does apply to leases, but even if it does not in terms apply to a contract of lease of agricultural land, the broad principle of frustration of contract applies to leases. The principle of section 65 also applies to leases. With regard to the second question the loss must fall on the lessor, because in theory the estate reverts to him and the lessee is deprived of his rights, whereas the lessor is not.

The matter will now be considered by the Division Bench for disposal in view of the answers given to the questions referred to us.

Dulat, J.

S. S. DULAT, J.—I agree.

Harbans Singh, J.

HARBANS SINGH, J.—The facts of the case, so far as necessary for the decision of this reference, have been stated by my Lord, the Chief Justice. A deed of lease was executed on 8th of January, 1947 by Gurdarshan Singh in respect of some agricultural property, which is now part of Pakistan, in favour of Bishan Singh. The lease was to commence from *Kharif* 1947, that is, 15th of June, 1947, for a period of five years ending with 14th of June, 1952. The lease money, which was fixed as Rs. 4,500, had been paid. After 15th

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of August 1947, on the partition of the country, both the parties migrated to India and the lessee made a claim under section 10 of the Displaced Persons (Debts Adjustment) Act for the recovery of the amount paid by him on the ground that the contract of lease had become void on account of a supervening impossibility occurring after the date of the contract, namely, the partition of the country, and the land remaining in what is now Pakistan. There was a dispute between the parties as to whether possession of the land had been delivered to the lessee at the time of the execution of the lease or at any time thereafter before the partition of the country. Though the lease-deed recited the fact that possession of the land had been handed over to the lessee, yet it was found that in fact crops of the lessor were standing on the land, and furthermore technically the period of the *Kharif* harvest begins from 15th of June, 1947 though operations for preparing the land, which is lying vacant, are generally taken in hand in the month of March. The finding of the Court was that possession had not been delivered to the lessee before the parties had migrated. This finding was challenged in the first appeal filed by the lessor, but no decision was given on this point by the Division Bench before referring the following questions to the Full Bench:—

(1) Whether the doctrine of frustration applies to a contract of lease of agricultural land ?

(b) If the doctrine of frustration applies to such leases, on whom should the loss fall, that is, on the lessor or the lessee ?

I had the privilege of going through the judgment proposed to be delivered by my Lord, the Chief Justice, and I respectfully agree that this case could have been decided on the ground that possession of the land had not been made over to the lessee. The finding of the trial Court is that possession of the land had not been delivered. If

this finding is upheld, then obviously the lessor did not perform his part of the contract, and after partition of the country he cannot possibly put the lessee in possession and thus perform his part of the agreement, and consequently the lessee can ask for the refund of the amount paid by him on the short ground that there has been complete failure of consideration. The contract was still executory and not completed, and, as the lessor is not in a position to put the lessee in possession because of an impossibility, the agreement can also be said to have become void as contemplated under section 56 of the Contract Act. The two questions referred to the Full Bench, therefore, have to be answered on the assumption that possession had in fact been delivered, at any rate, on or about 15th of June, 1947, that is, in the beginning of the *Kharif* 1947, as contemplated by the lease agreement, and that the lessee remained in possession of the land till he migrated after the partition of the country. If possession had been transferred, it is obvious that the lessor had done all that was required to be done by him under the Act and the lessee rights, which do amount to an estate in land, had passed to the lessee. My Lord, the Chief Justice is of the view that even in such a case the doctrine of frustration, as embodied in section 56 of the Contract Act, would be applicable and the lessee would be entitled to have the contract declared void and under section 65 of the Act get the refund of the lease money paid by him. With great respect, I find myself unable to wholly agree with this conclusion.

This matter was considered by a Division Bench, of which I was a member, in *Court of Wards Dada Siba Estate* v. *Raja Dharam Dev Chand* (Regular First Appeal No. 143 of 1952). In that case the lease was only for one year and the finding was that possession had already been taken before the partition of the country. In these circumstances, it was held that the doctrine of frustration, as embodied in section 56 of the Contract Act, did not apply. The doctrine of

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frustration, which term is not used in the Indian Contract Act, under the English Law operates to execuse 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, paragraph 320). This doctrine of frustration thus incorporates two different aspects of the discharge of a contract—one being based on the implied intention of the parties and the other based on the happening of some supervening illegality or impossibility. This doctrine is given statutory recognition in India and so far as we are concerned we can look primarily to the law as embodied in sections 32 and 56, Indian Contract Act, 1872. It was so observed by Fazal Ali, J. in *Ganga Saran* v. *Firm Ram Charan* (14), Mukherjea, J. (as he then was) in *Satyabrata* v. *Mugneeram* (15), dealt with this matter and the relevant portion of the head-note (b) is as follows :—

> "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

(14) A.I.R. 1952 S.C. 9
(15) A.I.R. 1954 S.C. 44

the contract itself and such cases would be outside the purview of section 56 altogether. They would be dealt with under section 32".

The question whether under the English Common Law the doctrine of frustration applies to contracts of lease or not was exhaustively dealt with by the House of Lords in *Cricklewood Property and Investment Trust, Limited* v. *Leighton's Investment Trust, Limited* (7). Lord Russel and Lord Goddard were definitely of the view that the doctrine of frustration cannot apply to leases because a contract of lease creates an estate in immovable property. Viscount Simon L. C. and Lord Wright, however, were not prepared to go to the length of saying that the doctrine could not ever apply, though they agreed that generally speaking the doctrine was inapplicable and that it was only in rare and exceptional circumstances that the doctrine would apply. The rare and exceptional circumstances alluded to by Viscount Simon L. C. at page 229 of the report are as follows:—

(1) Some vast convulsion of nature swallowed up the property altogether, or buried it in the depths of the sea; or

(2) if the lease is expressed to be for the purpose of building, and legislation were subsequently passed which permanently prohibited private building in the area or dedicated it as an open space for ever.

It may be mentioned here that so far as Indian law is concerned, the exceptional case of convulsion etc., is fully provided for under clause (e) of section 108 of the Transfer of Property Act. In *Satyabrata's case* this matter was referred to at page 49 of the report as follows:—

"It is true that in England the judicial opinion generally expressed is that the doctrine of frustration does not operate

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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..... 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 observations of the Supreme Court underlined by me above make it clear that even in India this doctrine of frustration cannot apply so as to destroy an estate in land which has already come into being. This would go to show that if under a contract of lease, a lessee goes into possession of the land demised and the lessor has nothing more to do on his part under the contract, there accrues in favour of the lessee a right in the land though the same is less than the ownership rights. This estate, which has come into being in his favour, cannot be affected by application of the doctrine of frustration as embodied in section 56 of the Indian Contract Act. No doubt if any one of the events, as given in clause (e) of section 108 of the Transfer of Property Act, comes into being, it would be open to the lessee to avoid the contract. That, however, is not the same thing as the contract becoming void by application of the doctrine of frustration because, as was pointed out by the learned Law Lords in *Cricklewood Property and Investment Trust Limited's case* if the doctrine of frustration applies, the contract becomes void automatically from the date of the supervening impossibility and does not depend on the volition of either party. On behalf of the lessee the learned counsel made reference to a number of decided cases which, according to him, support the proposition that the doctrine of frustration, as embodied in section 56 of the Indian Contract Act, is fully applicable to contracts of lease.

Inder Pershad Singh v. *Campbell* (12), is the first one of such cases relied upon. This is, however, not a case of contract of lease at all. There the plaintiff himself was the owner of 4 Bighas of land in village K and a sub-lessee of another 16½ Bighas of land in village R. He entered into an agreement with the defendant by which he undertook to grow indigo for the defendant in these 20½ Bighas for a period of nine years and was paid a fixed sum of money per Bigha. After some time on account of non-payment of rent by the head lessee, from whom the plaintiff had taken a sublease, the original proprietor of the land took back the possession of the land in village R and a suit was brought by the plaintiff for a declaration that his contract to grow indigo *qua* 16½ Bighas stood cancelled because of the impossibility 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 and the defendant was entitled to refund of the money paid to the plaintiff *qua* the 16½ Bighas for the remaining period. This was certainly not a case of lease being created in favour of the defendant and a purely contractual obligation was created to which the doctrine of frustration was certainly applicable.

The next case is *Kshitish Chandra Mondal* v. *Shiba Rani Debi and others* (11). This was certainly a case of lease. A thatched room, which had been taken on lease, was destroyed by fire and the tenant did not treat the lease at an end and himself erected a new thatched house on the site. It was observed by the learned Single Judge of the Calcutta High Court that the doctrine of frustration applied to the lease and consequently, due to the destruction of the original thatched room, which had been let, the contract became impossible of performance. However, these observations are more or less in the nature of *obiter dicta* because 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

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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."

In *Valiapally* v. *C. Thomman* (13), lease of land for agricultural purposes was given for three years. In the second year unprecedented floods not only destroyed the standing crops but made it impossible to raise the second crop during that year. The suit having been brought by the landlord for the recovery of the rent, the same was resisted on the ground that it became impossible for the lessee to raise any crop due to the floods. The learned Judge felt that in view of the stipulation to pay the rent for each of the three years separately at the end of each year, the agreement must be treated as a separate agreement in respect of each year, and though it was observed by the learned Judge that the mere fact that the lease was more than a mere contract, would not render the doctrine of frustration as inapplicable to lease transactions, yet the decision was given on the basis of the application of clause (e) of section 108 of the Transfer of Property Act. Thus the decision being based on the provisions of section 108(e) Transfer of Property Act, the observations that the doctrine of frustration is applicable even to leases, are *obiter dicta*. It is also to be noted that the observation of their Lordships of the Supreme Court in *Satyabrata's case* that this doctrine was inapplicable to cases where an estate was created, was not even referred.

In *Dhuramsey Soonderdas and others* v. *Ahmedbhai Hubibbhoy* (10), the plaintiffs were

lessees of the two godowns which were burnt and destroyed for no fault of the lessees. This case was decided on the application of clause (e) of section 108 of the Transfer of Property Act. The godowns got burnt on 30th of October, 1896. Relief, however was given from payment of rent from the date the lessees gave notice. This is what is observed by the learned Judge at page 19 of the report:—

> "I have, therefore, no doubt as to clause (e) of head A of section 108 of the Transfer of Property Act (IV of 1882) applying, and thus plaintiffs as lessees had the option of treating the lease as void. They exercised their option by their letter of 17th November, 1896, when they asked for a refund of a proportionate amount of rent. In my opinion they cannot treat the lease as void from the date of the fire (30th October), They were bound to give notice to the lessor, and this they in effect did by their letter of 17th November,"

In this case it is obvious that the doctrine of frustration, as embodied in section 56 of the Indian Contract Act, was not applied. If that doctrine were applicable, there was no occasion for any notice or exercise of option by the lessees. The contract would automatically have become void due to a supervening impossibility. The contract was held to be void only on the exercise of the option by the lessees and as soon as it was avoided section 65 of the Indian Contract Act came into play entitling the lessees to relief for the rent for the subsequent period.

Labh Singh v. *Jamnun and another* (8), was cited as an authority for the proposition that even mortgages were treated as contracts to which section 56 of the Contract Act was applicable. The question whether section 56 was aplicable to a contract creating mortgagee rights, was not in

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issue at all. It was a case of mortgage of occupancy rights by a tenant without landlord's consent which was avoided under section 60 of the Punjab Tenancy Act. All that was decided by the Full Bench was that if once a contract is avoided, section 65 came into operation and the transferee could claim the refund of the consideration from the transferor. The same comments apply to *Babu Raja Mohan Manucha and others* v. *Babu Manzoor Ahmad Khan and others* (9). The decision given by their Lordships of the Privy Council was only to the effect that if a mortgage became void for any reason, the relief under section 65 could be claimed. With that proposition of law there can be no quarrel.

In view of the above, therefore, I find that there is not even a single clear decided case in favour of the view that the doctrine of frustration is applicable to the completed contracts of lease. As has been observed by Mukherjea, J. in *Satyabrata's case*, so far as Indian Courts are concerned, law of frustration has been incorporated in sections 32 and 56 of the Indian Contract Act and Courts cannot go beyond them on analogy of principles of English Common Law or otherwise. The only cases where relief can be had by a lessee, who under the contract of lease has entered into possession, for any event making it impossible for him to enjoy the property would be under clause (e) of section 108 of the Transfer of Property Act. No doubt, Chapter V of the Transfer of Property Act, which includes section 108(e), does not apply to leases of land for agricultural purposes except in so far as the State Government may by notification declare; yet, so far as our State is concerned, the Transfer of Property Act, as such is not applicable and Courts apply the principles of the Transfer of Property Act on the basis of justice, equity, and good conscience, and consequently relief can be given on the principles, as embodied in clause (e) of section 108, Transfer of Property Act.

My answers, therefore, to the two questions referred to the Full Bench are as follows:—

(1) (a) Section 56 of the Contract Act embodies a positive rule of law relating to

the doctrine of frustration and this section must be treated as exhaustive so far as it goes. The doctrine of frustration, as embodied in this section, 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. This doctrine of frustration, therefore, cannot apply to completed contracts of lease where possession has already been taken by the lessee under the contract and the lessor has nothing more to do under the contract.

(b) However, a contract of lease may be avoided on the happening of an event as contemplated by the terms of the contract, express or implied. This would not strictly amount to discharge of contract by the application of doctrine of frustration as embodied in section 56 but amounts to construction of the document and discharge of the same under the provisions of section 32 of the Contract Act.

(c) 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 of Property Act. The avoidance of contract in this case, however, depends on the volition of the party concerned.

(2) So far as question No. 2 is concerned, if a contract of lease is avoided either by the application of the doctrine of frustration or otherwise, section 65 is certainly applicable, and any person, who has received any advantage under such agreement or contract, is bound to restore it.

B.R.T.