

SUPREME COURT OF INDIA

Fali Firoz Shah Bomanji

Vs.

State of Maharashtra

(A.P. Mishra and D.P. Mohapatra JJ.)

13.04.2000

ORDER

A.P. MISRA, J.

1. Leave granted.
2. Heard learned Counsel for the parties.
3. The Appellant has challenged the order of the High Court dated 4th August, 1998 dismissing the writ petition filed by the Appellant rejecting the claim of the Appellant that he is the title holder of the land in question, which is the subject matter of acquisition proceedings under Section 126 of the Monopolies & Restrictive Trade Practices Act_ read with Section 6 of the Acquisition Act.
4. The issue for consideration is whether Appellant have any right to claim benefit under the Circular dated 9.2.1988 issued by the Government. This circular gave an offer to the holder of the land in case they surrender 65% of their land free of any encumbrances with absolute title, then the Government would permit such holder to utilize 35% of that land for development as per the scheme. The Appellant case is, he agreed with all such terms and conditions and is fully qualified in terms of the said circular. The submission for the Appellant is that the High Court did not examined either the circular of the lease under which Appellant is assigned and recorded the finding without disclosing any plausible reason against the Appellant. On the other hand, the learned Counsel for the Respondent submits that as the Appellant does not have any title over the land, hence the High Court has rightly examined the matter and concluded against the Appellant.
5. Neither it is necessary nor we want to enter into the merits of the contentions raised by the learned Counsel for the parties. We find that the High Court, without properly scrutinizing the materials for adjudicating and without recording any reason, dismissed the writ petition. Before concluding it was necessary to examine the terms of lease deed and assignment if any. The finding that lease deed is for a definite period is stoutly denied. As we have said we would not like to enter into this realm. But we find there is non application of mind and hence the order has to be set aside.
6. Accordingly, the case is sent back to the High Court for it to examine the contentions of the parties with reference to the lease deed, assignments etc. We accordingly set aside the judgment and order dated 4th August, passed by the High Court and direct the High Court to reconsider the

contentions of the parties and dispose them of in accordance with law.

7. We make it clear that any observation made either in the impugned judgment of the High Court or made by us in setting aside the same is without prejudice to the Tights of the parties.

8. The appeal is accordingly allowed. No order as to costs.