

SUPREME COURT OF INDIA

Indian Metals & Ferro Alloys Ltd.

Vs.

Jagdish Rai Puri

C.A.Nos.7934-7935 of 2004

(Markandey Katju and Aftab Alam JJ.)

03.12.2008

ORDER

1. These Appeals have been filed against the judgment of the Orissa High Court dated 08th October, 2004 passed in Writ Petition Nos.7230 of 2003 and 2551 of 2003.
2. The facts of the case are mentioned in the impugned judgment of the High Court in great detail and we need not refer to the same except where necessary.
3. Heard learned counsel for the parties and perused the record.
4. It appears that there was an agreement to sell in favour of respondent No.1 herein-Jagdish Rai Puri and for specific performance of the same, a suit was filed which was decreed by the High Court in First Appeal No.348 of 1984 on 30.08.1994. In that judgment, it was mentioned that the plaintiff's suit for specific performance of contract of sale is decreed and for executing the sale deed, defendant will seek permission from the State Government, as such permission was required as it was a government land. The land had been granted to the respondent No.2 herein who entered into an agreement to sell the land to respondent no.1 in these appeals.
5. From a perusal of the record, it appears that the said permission was refused by the State Government by its order dated 23.5.2003. Against that order, a writ petition was filed which has been decided by the impugned judgment.
6. We have carefully perused the impugned judgment of the High Court. While agreeing with the High Court that the order dated 23.5.2003 refusing permission was unsustainable, we are of the opinion that the High Court should not have directed the State Government to grant the necessary permission for transfer of the said land in favour of the appellant and should not have directed the opposite party No.1 in the said writ petition to have executed the deed of transfer in favour of the appellant. Instead, the High Court should have remitted the matter to the State Government for deciding the application seeking permission to transfer the said land afresh on relevant considerations.

7. Recently, in Civil Appeal Nos.6387-6390 of 2002 decided on 20th November, 2008 titled Union of India & Another vs. Bilash Chand Jain & Another, this Court held that the High Court cannot itself perform the functions which are to be performed by some other authority. If that authority passed an order which the High Court finds is not sustainable in law, the High Court can set aside the said order and remit the matter to the concerned authority for deciding the same afresh in accordance with law, but the High Court should not take over the function of the authority itself.

8. We reiterate the views given in the aforesaid decision which has referred to the earlier decisions of this Court on the point.

9. Accordingly, we allow these appeals and set aside the impugned judgment of the High Court to the extent indicated above and remit the matter to the State Government which shall decide the application seeking permission to transfer the said land afresh in accordance with law within two months from the date of communication of this order after hearing the parties concerned. No order as to costs.

10. Civil Appeal No.3836/2005 In view of our decision passed today in Civil Appeal Nos.7934-7935 of 2004, as admitted by the learned counsel for respondent No.3 (appellant in Civil Appeal Nos.7934-7935/2004), the direction of the High Court no longer survives and this appeal has become infructuous.

11. Accordingly, the Appeal is dismissed as having become infructuous.