SUPREME COURT OF INDIA

Chandradhoja Sahoo

Vs.

State of Orissa

C.A.No.9085 of 2012

(P.Sathasivam and Ranjan Gogoi JJ.)

14.12.2012

JUDGMENT

RANJAN GOGOI, J

1. Leave granted.

2. Both the appeals are directed against two separate but identical orders dated 13.05.2009 passed by the High Court of Orissa whereby the High Court has held that no legal or valid right has accrued to the two appellants under the lease(s) granted in respect of two separate areas of land as claimed by them. As the facts of the two cases are identical, for brevity, reference to the facts in the appeal arising out of S.L.P. (C) No.14618 of 2009 [Chandradhoja Dahu versus State of Orissa and others] would suffice. Similarly, reference to the appellants, hereinafter, is being made in the singular for purpose of clarity.

3. The appellant had instituted a writ petition (W.P.(C) No. 337/2008) before the High Court of Orissa contending that sometime in the year 1979 he, as a landless person, had applied for grant of a lease of government wasteland. On the basis of the aforesaid application W.L. Case No. 71/1979 was registered in the file of the Tehsildar, Bhubaneswar. Notices were duly issued and served and the report of the Amin was called for and considered by the Tehsildar. Thereafter an order dated 26.3.1979 was passed settling the land mentioned below in favour of the appellant for agricultural purposes with the liability to pay rent as a "bagayatdui": "LAND SCHEDULE

MOUZA– Patia, Khata No.493, Plot No.516, Area Ac.1.107 decs 301 Area Ac 0.93 decs.

Ac.2.00 ”

4. Specifically, the appellant had claimed that in the report of the Amin it was mentioned that the settlement operations of village Patia had been completed and in the Record of the Rights of the said village published in the year 1973, plot numbers 516 and 301 have been recorded as “Kanta Jungle”. However, the said land did not find any place in the reservation proceedings. As the land had not been reserved for any specific purpose it was stated in the aforesaid report that the same was surplus land. Furthermore, according to Amin, spot enquiries had revealed that there was no forest growth over the land and therefore the surplus land could be settled for agricultural purposes. Consequently, by the order dated 26.3.1979, settlement of the land was made in favour of the appellant. Thereafter, by order dated 28.5.1979, the Tehsildar had directed for correction of the Record of Rights and issuance of patta in favour of the appellant.

5. As the Record of Rights was not corrected and patta was not issued inspite of the order of the Tehsildar the appellant approached the Tehsildar once again in the year 2004. The Tehsildar called for a detailed report in the matter from the Revenue Inspector. According to the appellant, the report of the Revenue Inspector was submitted on 6.7.2004 specifically mentioning that the Record of Rights had not been corrected and patta had not been issued to the appellant and the other persons mentioned in the report of the Revenue Inspector. On the basis of the report of the Revenue Inspector dated 6.7.2004, the Tehsildar addressed a communication dated 27.8.2004 to the Sub-Collector, Bhubaneshwar, seeking his instructions as to whether the Record of Rights is to be corrected and pattas are to be issued to the concerned persons including the appellant. Despite the above, as no steps were taken in the matter the appellant moved the Board of Revenue seeking appropriate directions. The learned Board by order dated 7.1.2005 directed the Tehsildar to correct the Record of Rights in terms of the order dated 26.3.1979 passed in W.L. Case No. 71 of 1979 within a period of 15 days and, thereafter, report compliance of the action taken.

6. As the order of the Board of Revenue dated 07.01.2005 was also not implemented a Writ Petition i.e. WP(C) No.281 of 2007 was filed by the appellant before the High Court for appropriate directions commanding the respondents therein to give effect to the said order of the Board. The Writ Petition was disposed of by the High Court, at the admission stage, on 26.02.2007 directing the

Tehsildar, Bhubaneswar to forthwith comply with the directions issued by the Board of Revenue by its order dated 07.10.2005.

7. Thereafter on 25.08.2007 and while Writ Petition No.281 of 2007 was pending, the State of Orissa filed an application before the Board of Revenue for recall of its order dated 07.01.2005. By order dated 12.10.2007 the said application (registered as Misc. Case No.8 of 2007) was entertained and the earlier order of the Board dated 07.10.2005 was suspended. While the matter was so situated the State filed a Letters Patent Appeal (Writ Appeal No.129 of 2007) before the High Court challenging the order dated 26.02.2007 passed in Writ Petition No. 281 of 2007, inter-alia, on the ground that the said order was passed ex-parte in so far as the State is concerned. The aforesaid LPA was disposed of on 25.07.2008 remanding the matter to the learned Single Judge for a de novo consideration after taking into account the stand of the State in the matter. It is at this stage that WP(C)No.337 of 2008 was filed by the appellant challenging the proceedings before the Board of Revenue (Misc. Case No. 8 of 2007) seeking recall of its order dated 07.01.2005. It is in the said Writ Petition that the impugned order has been passed giving rise to the present appeals.

8. We have heard Mr. Ranjit Kumar, Ms. Pinky Anand, Mr. J.K. Das, Mr. Pramod Swarup, learned senior counsels and Mr. Rajdipa Behura, learned counsel on behalf of the contesting parties.

9. The case urged by the appellant before the High Court has already been noticed. We may therefore proceed to take note of the stand taken on behalf of the official respondents before the High Court. In the counter affidavit filed by the Tehsildar, Bhubaneswar it was averred that on receipt of a copy of the order dated 26.02.2007 passed in WP(C)No. 281 of 2007, the Tehsildar, Bhubaneswar, examined the case records of W.L. Case No.71 of 1979. On such examination it was found that the record of the said case including the report of the Amin and the order dated 26.3.1979 passed therein are forged and fabricated. The report dated 06.07.2004 of the Revenue Inspector to the Tehsildar and the communication dated 27.8.2004 of the Tehsildar to the Sub-Collector are claimed to be non- existent. The signatures of the Tehsildar at different places in the record of the proceedings of W.L. Case No.71 of 1979 including those appended below the orders passed, including the orders dated 26.3.1979 and 28.5.1979, are forged and fabricated. The case registered as W.L. Case No.71 of 1979 was entered in the Case Register on 22.1.1979 though W.L. Case Nos. 71-77 of 1979 were already entered in the Register on a previous date i.e. 19.1.1979. No notice was issued to the Gram Pancayat or published by beating of drums. No proper enquiry was conducted

whether the appellant was a landless person so as to be eligible for grant of a lease. In the said affidavit it was further mentioned that though, according to the appellant, the lease was granted by the order of Tehsildar dated 26.03.1979 the case record was not available in the record room of the Tehsil. In fact, according to the official respondents, the appellant had obtained certified copies of the orders in the W.L. Case No.71 of 1979 in the year 2004 i.e. after nearly 25 years of the grant of lease claimed to have been made by the order dated 26.03.1979. It is on the basis of the copies of such orders, obtained belatedly and in highly suspicious circumstances, that the appellant had approached the different forums claiming relief, as already noticed. The above, in substance, was the stand of the State in the writ proceeding before the High Court.

10. In the affidavit filed, alternatively, it was claimed that the plots in question were recorded in the Record of Rights as 'Kanta jungle" which entries would have the effect of bringing the land within the purview of the Orrisa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948 (hereinafter referred to as the Act of 1948). According to the respondents, the land is covered by the definition of 'Communal land' or 'Forest land' under the Act of 1948. The same, therefore, could not have been leased out to any person without the previous sanction of the Collector. Any such transfer after the notified date i.e. 01.04.1996 would be invalid unless such invalidation is saved by the proviso to Section 4 which is not so in the present case. Furthermore, according to the State, the expression "landlord" defined by Section 2(d) of the Act of 1948 is comprehensive enough to include the State.

11. It would thus appear from the stand taken by the State that the claim made by the appellant in the Writ Petition filed before the High Court was resisted on two principal grounds, namely :

> (1) No valid order passed on the basis of an appropriate proceeding in law exists so as to recognize any right in the appellant to the land under the lease claimed; and
>
> (2) The land having been shown as "kanta jungle' in the Record of Rights lease of the said land, even if assumed, is void being contrary to the provisions of the Act of 1948.

12. To appreciate the respective stands of the parties before the High Court it will be useful to notice the definition of 'Communal land' and 'Forest land' as defined in Section 2(a) and (c) of the Act of 1948:

"(a) "Communal land" means –

(i) in relation to estates governed by the Madras Estates Land Act, 1908 (Mad. Act I of 1908), land of the description mentioned in sub- clause (a) or sub-clause (b) of C1. (16) of Sec.3 of that Act; and

(ii) in relation to cases governed by the Orissa Tenancy Act, 1913 (B. O. Act 11 of 1913), lands recorded as gochar, rakshit or sarbasadharan in the record-of-rights or waste lands which are either expressly or impliedly set apart for the common use of the villagers, whether recorded as such in the record-of rights.

x x x x x

(c) "forest land" includes any waste land containing shrubs and trees and any other class of land declared to be forest land by a notification of the [State][1] Government."

13. Certain other significant facts must be taken note of now. It appears that during the pendency of the present appeals, impleadment applications have been filed on behalf of the Orissa Industrial Infrastructure Development Corporation –IDCO, (impleaded as respondent No.6) and one Smt. Malaya (no formal orders for impleadment has been passed). According to the aforesaid respondent No.6 by a Government order dated 24.01.1986 sanction for alienation of Government land to the extent of Ac 707.93 in Patia village under the Bhubneshwar Tehsil had been accorded in favour of the Managing Director, IDCO for establishment of the Chandaka Industrial Nucleus Complex on payment of premium and ground rent. Possession of the said land was already handed over to IDCO on 14.10.1985 and a lease deed bearing No. 1381 dated 05.02.1986 was executed between the Collector, Puri and IDCO in respect of the land for a total consideration of Rs.17,69,825. The aforesaid documents i.e. sanction order dated 24.01.1986; letter of handing over possession dated 04.10.1985 and lease deed No.1381 dated 05.02.1986 have been brought on record by the aforesaid respondent No.6. The schedule of the land mentioned in the said documents would go to show that a part of the land in respect of the which the present claim had been made by the appellant (Khatta No.493 plot No.516) had been allotted to IDCO on the basis of the documents referred to hereinabove. The respondent No.6 further claims that the entire land covered by Plot No.561 allotted to it had been developed and handed over to different units/establishments for starting their respective projects and possession

of such land had also been handed over to such units long back. In fact, the other applicant who had sought impleadment claims to have been allotted a part of the land covered by plot No.516 (Ac 0.500 decimals) located at Industrial Estate, Chandka, Bhubneswar by the IDCO by letter dated 27/29.06.2001.

14. As already noticed two questions had arisen for determination before the High Court on the conspectus of the facts noted above. The first is whether the case record of W.L. Case No. 71 of 1979, including the reports and orders passed therein, are forged and fabricated. The second is assuming the lease as claimed by the appellant to have been granted whether the same is permissible under the provisions of the Act of 1948. The questions posed above not only indicates that the second may be contingent on an answer to the first and, in any case, as discussed hereinafter, there is a fair amount of co-relation between the two questions though the same may appear to be independent of each other.

15. The High Court did not record any specific finding with regard to the allegations of forgery and fabrication of the case record of W.L. Case No. 71 of 1979 and the orders passed therein on the basis of the claims and counter claims raised before it. The conclusion of the High Court that "serious irregularities had been committed while granting the lease about which it was stated in the counter affidavit" and that "it is also revealed from the counter affidavit that before grant of lease no enquiry was ever conducted" indicates a mere passive acceptance of the stand projected by the State without any attempt to verify the correct position on the issue. Infact a reading of the judgment would indicate that the High Court did not go into the first question raised before it in any acceptable manner. Instead, the High Court thought it proper to proceed on the basis that the land in respect of which claims had been made by the appellant is covered by the provisions of the Act of 1948 and the leases granted, as claimed, were void as the conditions precedent for the grant of such leases, as prescribed by the statute, had not been complied with. On the said basis the High court came to the conclusion that no legal right in respect of the land in question can be recognized in the appellant. Accordingly, directions were issued for resumption of the land in question by the State.

16. It has already been indicated in the earlier part of this order that the two questions that arose before the High Court may not be independent of each other and infact the answer to the second question may be contingent on an effective resolution of the first. Having given our anxious consideration to the matter we are of the view that the manner in which the High Court had proceeded to decide the writ petition, namely, by an inconclusive and vague determination of the first issue

and instead, by attempting to answer the second is not only unacceptable but certain fundamental errors are inherent and, therefore, writ large in the said approach, to which area we must now travel.

17. The publication of the Record of Rights of Mouza Patia Village in the year 1973 showing the land covered by plot No. 516 and 301 as "Kanta jungle" was noticed in the report of the Amin submitted to the Tehsildar. However, in the said report, it was mentioned that there was no forest growth over the land and also that the aforesaid land did not find any place in the reservation proceedings. It was also reported that the land, not having been reserved for any specific purpose, was surplus land available for settlement for agricultural purposes. Pursuant to the said report the Tehsildar by order dated 26.3.1979 granted settlement of the land in favour of the appellant and on 28.5.1979, on expiry of the appeal period, it was directed that the Record of Rights be corrected and patta be issued in favour of the appellant. In the record of proceedings of W.L. Case No.71 of 1979, it is also recorded that the aforesaid orders were passed by the Tehsildar upon due service of notice. The State contended that the aforesaid facts are wholly non-existent and the reports mentioned and orders issued in connection with W.L. Case No.71 of 1979 are forged and fabricated. In fact, according to the State, the entire claim of the appellant was based on non-existent facts conceived in fraud and deceit and there was no case registered as W.L. Case No.71 of 1979 in respect of the plot Nos. 516 and 301. If the version put forth by the appellant is correct, the outcome/decision on the second issue before the High Court would have certainly stood answered in his favour inasmuch as in such a situation the question of applicability of the Act of 1948 would not arise. If the answer to the said question was, however, to be adverse to the appellant and in favour of the State, the appellant would not be entitled to any relief from the Court on a more fundamental principle than what the second question had raised inasmuch as in that event the principle that "fraud and justice never dwell together" would come into play. The elaborate discussions on the said principle of law inMeghmala vs. G.Narasimha Reddy[2] made by one of us (Sathasivam,J.) may be remembered at this stage with abundant profit. Besides, the additional facts now made available to the court on behalf of the IDCO namely, that a part of the land covered by plot Nos. 516 and 301 had been alienated in favour of IDCO under the provisions of the Orissa Land Settlement Act would require a closer examination of the question as to how such an alienation could have been made in favour of the IDCO if the land was recorded as "Kanta Jungle in the Record of Rights published in the year, 1973.

18. The discussions that have preceded reasonably lead to the conclusion that the approach of the High Court in attempting to resolve the conflict between the

parties suffer from a fundamental error which would justify a correction. The High Court ought not to have split up the two questions as if they were independent of each other and on that basis ought not to have proceeded to determine the second question without recording acceptable findings on all aspects connected with the first. The extracts from the order of the High Court made above discloses mere acceptance of the version of the State as disclosed in the counter affidavit filed without any attempt to enter into the core questions that the conflicting claims of the parties had thrown up. If required, the High Court could have entrusted the required exercise to be performed by a Court Appointed Committee. In any event, such a Committee had been constituted by the High Court by its very same order to look into other such cases of grant of leases under the Act of 1948.

19. We also deem it necessary to reiterate herein a fundamental principle of law that all courts whose orders are not final and appealable, should take notice of. All such courts should decide the lis before it on all issues as may be raised by the parties though in its comprehension the same can be decided on a single or any given issue without going into the other questions raised or that may have arisen. Such a course of action is necessary to enable the next court in the hierarchy to bring the proceeding before it to a full and complete conclusion instead of causing a remand of the matter for a decision on the issue(s) that may have been left undetermined as has happened in the present case. The above may provide a small solution to the inevitable delays that occur in rendering the final verdict in a given case.

20. In the light of what has been discussed and the conclusions reached by us we are of the view that in the present case the order of the High Court should receive our interference and the matter should be remanded to the High Court for a de novo decision which may be rendered as expeditiously as possible. Accordingly, we set aside the order dated 13.05.2009 of the High Court and allow these appeals as indicated above.

[1] Subs, by the Adaptation of Laws Order, 1950, for “Provincial”. [2] (2010) 8 SCC 383