

2023 LiveLaw (SC) 713 : 2023 INSC 753

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

J.B. PARDIWALA; J., S.V.N. BHATTI; J.

AUGUST 22, 2023.

CIVIL APPEAL NO. 5151 OF 2023 (@ S.L.P.(C) No. 14949 of 2018)

**CHAIRMAN-CUM-MANAGING DIRECTOR, INDUSTRIAL INFRASTRUCTURE
DEVELOPMENT CORPORATION OF ORISSA, IDCO TOWER, JANAPATH,
BHUBANESWAR, DISTRICT KHURDA, ODISHA**

versus

LATE SURGEON VICE ADMIRAL GP PANDA THROUGH HIS LEGAL HEIRS AND OTHERS

Land Dispute - The serious objection of the State against impugned Judgment is that the High Court has decided disputed questions of facts. After perusing the Judgment, the High Court recorded a finding not by deciding a fact in issue on title, identity, or entitlement but from the record and admitted documents. The solitary ground raised against the impugned Judgment, therefore, deserves to be rejected. (Para 12.2)

WITH CIVIL APPEAL NO. 5152 OF 2023 (@ SLP (C) No. 20490 of 2018) WITH CIVIL APPEAL NO. 5153 OF 2023 (@ SLP (C) No.17857 OF 2023 @ D.NO. 26693 OF 2018)

For Appellant(s) Petitioner-in-person Mr. Subhasish Mohanty, AOR Mr. Sandeep Devashish Das, AOR

For Respondent(s) Caveator-in-person, AOR Mr. Subhasish Mohanty, AOR Mr. Sandeep Devashish Das, AOR Mr. Mahesh Agarwal, Adv. Mr. Ankur Saigal, Adv. Mr. Rohan Talwar, Adv. Ms. Deepsikha Mishra, Adv. Mr. E. C. Agrawala, AOR

J U D G M E N T

S.V.N. BHATTI, J.

1. The Appeals arise from the Judgment dated 24.01.2018 in Writ Petition (Civil) No. 9988 of 2006 on the file of High Court of Orissa, Cuttack. The respondents in the Writ Petition are the appellants in S.L.P.(C) No. 14949 of 2018 and S.L.P.(C) No. 20490 of 2018. The D.No.26693 of 2018 is at the instance of the Writ Petitioner. The High Court, through the Judgment dated 24.01.2018, firstly held that the land admeasuring acres 4.800 decimals, leased out to original petitioner Shri GP Panda has been properly identified. The High Court also held that initiating resumption proceedings in Resumption Case No. 1 of 2006 by the Tehsildar, Bhubaneswar, is illegal. Hence, the substantive reliefs against the Judgment or claim in the Appeals filed by the respondents in the Writ Petition.

2. One Surgeon, Vice Admiral GP Panda, filed Writ Petition against the State of Orissa and three others. Pending Writ Petition, Industrial Infrastructure Development Corporation of Orissa (for short, 'IDCO') was impleaded as Respondent No.5.

3. The Writ Prayers, in effect, are directed against the respondents not to interfere with the lawful possession and enjoyment of the Writ Petitioner over an extent of acres 4.800 decimals in Plot No. 1288 under Khata 420, village Pathargadia (for short, 'petition land') and restrain the continuation of R.C. No. 1 of 2006 initiated by Tehsildar, Bhubaneswar / Appellant No.8 herein. The dispute, in fact, or the enforceable right claimed by the petitioner could be appreciated by taking note of the following admitted circumstances and also by considering the disputed facts.

4. Surgeon Vice Admiral Ganesh Prasad Panda applied for allotment of Government land under an existing policy enabling the assignment of Government land to the armed

personnel who have participated on the frontline of the North-East Border in the Indo-China war. Surgeon Vice Admiral Ganesh Prasad Panda was an Ex-Army personnel who satisfied the criterion for assignment of Government land to Ex-Defence personnel. The credentials and the applicability of the eligibility criteria for the assignment of Government land to the armed personnel who participated in the Indo-China war were examined by the Home Department of the State. Through Communication, District Office, vide 60990/S/4/350 dated 19.04.1979, it was accepted that the said Surgeon Vice Admiral Ganesh Prasad Panda was eligible for assignment of Government land under the Policy in vogue. The Tehsildar, Bhubaneswar, in W.L. Case No. 1686 of 1979, on 07.05.1981, settled the petition land in favour of Surgeon Vice Admiral Ganesh Prasad Panda. The land was identified with the sketch. The consequence of the settlement, one can infer, is possession of settled land was made over to Surgeon Vice Admiral Ganesh Prasad Panda.

4.1 The District Collector, Bhubaneswar, noticing an alleged infringement/illegality in the instant assignment, had taken up Revision Case No. 59 of 1982 against the Assignment Order dated 07.05.1981. On 13.01.1983 (Annexure-P2), the District Magistrate, Bhubaneswar, dismissed the Revision Petition. The first petitioner claimed to be in continuous and uninterrupted possession of petition land. In 1989, as is evident from the record, the Writ Petitioner got the assigned property surveyed, settled, and specifically got earmarked with boundaries. The petition land consists of an extent of acres 4.800 decimals in Plot Number 1288 out of the total extent of 52.470 acres. The Writ Petitioner claims to have bought the petition land under cultivation and, later on, converted the petition land into a farmhouse. The petitioner claimed actual enjoyment of the petition property.

5. The State addressed a letter dated 03.04.2001 (Annexure-P3) to the Tehsildar, informing that State identified a patch of Government land measuring 52.470 acres in Pathargadia under Bhubaneswar Tehsil, adjacent to Infocity. The State desired Tehsildar to process the alienation proposal of land identified by IDCO expeditiously. From the record, it appears that the alienation of land in favour of IDCO commenced on the request of IDCO of identified land but not after verifying whether Government land claimed by the State is free from encumbrances and available for assignment.

5.1 On 17.02.2005, Collector approved the allocation of acres 42.870 decimals in Plot No.1288 being Khata No. 420, in Pathargadia, in favour of the State. IDCO alleges that the Subordinate Officers of the District Administration interfered with the possession, demolished the existing structures, and threatened to dispossess IDCO from the petition land. The averment in the Counter Affidavit of Respondent Nos. 1 to 4/LRs herein dated 13.11.2006 evidences the state of affairs on possession or enjoyment. Still, there is prevarication in the thinking of Respondent Nos. 1 to 4 and without cancelling or repossessing the settled land claims to have sold in favour of the State. The averment in the said Counter Affidavit on possession reads thus:

“It is humbly submitted that the Plot No. 1288 of Mouza Pathargadia of an area of 42 acres 870 decimals has been leased out/allotted in favour of IDCO in W.L.Case No.34 of 2004 and, at present, IDCO is in lawful possession over the said area. Out of the same plot, an area of 4.800 decimals was allotted in favour of the petitioner for agricultural purpose. Since, the petitioner did not use the allotted land for the purpose it was sanctioned, resumption proceeding has been initiated against the petitioner vide Resumption Case No.1 of 2006.”

The above averment reiterates allotment of Government land, possession of the IDCO, and initiation of resumption proceedings for alleged breach of assignment condition.

6. On 20.03.2006, a Show Cause Notice under Section 3(B) of Orissa Government Land Settlement Act, 1962 was issued to IDCO proposing to resume petition land on the ground of alleged violation of conditions of the grant. In the year 2016, Surgeon Vice Admiral Ganesh Prasad Panda died and his Legal Representatives (LRs) were brought on record. The LR's are continuing the litigation. The alienation, confirmation, etc., formalities in favour of IDCO, were completed by the District Administration on 14.02.2006. Thereafter, a Notice proposing to resume petition land, was issued. The above narrative discloses that the High Court has considered the prayers not by entertaining a finding on a disputed question of fact but on the material on record.

7. IDCO's case is that the settlement of the petition land has been under the Government Grants Act, 1865. The settlement does not specify a condition for performance by IDCO and a consequence warranting resumption for not performing the condition. The High Court, on examination within the discretionary jurisdiction under Article 226 of the Constitution of India, recorded findings available from the record. The High Court examined the record, nature of the grant in favour of IDCO, initiation of Revision against the Assignment Order, and recorded the finding in favour of IDCO. The disputed question is, what are the conditions the assignee breached, or what are the conditions violated by the assignee warranting resumption after two and a half decades of assignment.

8. The learned Counsel, Shri Subhasish Mohanty, appearing for State, and learned Senior Counsel, Shri Jana Kalyan Das, appearing for IDCO, argued with considerable force that the High Court, in the exercise of its jurisdiction under Article 226 of the Constitution of India, without reference to trial, recorded findings on disputed questions of fact. It is argued that entertaining a Writ Petition and adjudicating the dispute of the nature, as the present, would be beyond the jurisdiction of the High Court under Article 226 of the Constitution of India. The High Court, through the impugned Judgment, also decides the property's identity when there is a contest by the State and IDCO. Party-in-person replies that once the grant in favour of Vice Admiral Ganesh Prasad Panda is accepted, the said admission in law would take within its fold identification of plot, delivering of actual and vacant possession to the assignee, i.e., Vice Admiral Ganesh Prasad Panda. Therefore, the identification of petition land by the High Court is on the very documents issued by the official respondents. Thus, the Writ Court did not liberally entertain the discretionary jurisdiction to adjudicate disputed questions of fact.

9. We have taken note of rival submissions and perused the record.

10. The State and IDCO are invoking the jurisdiction of this Court under Article 136 of the Constitution of India. They must make out that the needs of justice demand interference by the Supreme Court having plenary jurisdiction against the impugned Judgment (See Arunachalam v. P.S.R. Sadhanantham and another¹).

11. Independent of the findings recorded by the High Court, it needs to be borne in mind the view taken by this Court in State of Uttar Pradesh and others v. Maharaja Dharmender Prasad Singh and others² on the power of re-entry by the lessor.

12. Let us examine, firstly, the chronology stated in the preceding paragraphs. The total extent of land in Plot No. 1288 is 52 acres, 470 decimals. On 07.05.1981, IDCO was assigned, in Plot Number 1288, agricultural land admeasuring acres 4.800 decimals. By

¹ (1979) 2 SCC 297/AIR 1979 SCC 1284)

² (1989) 2 SCC 505

issuing the Resumption Notice, the Tahsildar admitted Writ Petitioner's possession of the petition land. It is evident from the record that even before initiating proceedings for recovery, the possession of allotted land of an extent of acres 42.870 decimals is stated to have been given to IDCO by the State. It is also not clear whether the assignment in any manner overlaps with the petition land assigned to Vice Admiral Ganesh Prasad Panda. The State assumed the power of re-entry of the land settled on a higher pedestal and that the resumption of land in favour of the State as automatic.

12.1 The above observation is necessary for, firstly, if we assume that the land alienated to IDCO is different or distinct, then, interference with possession of petition land is arbitrary and illegal. Secondly, if the extent viz. petition land and land settled in favour of IDCO, then, without dispossessing the petitioner(s), in the manner known to law, the settlement in favour of IDCO, by including petition land, is illegal and unconstitutional.

12.2 The law on the power of re-entry is fairly wellsettled. The re-entry without reference to the law, in the facts and circumstances of this case, has been rightly held in favour of the Writ Petitioners. The serious objection of the State against impugned Judgment is that the High Court has decided disputed questions of facts. After perusing the Judgment, we consider that the High Court recorded a finding not by deciding a fact in issue on title, identity, or entitlement but from the record and admitted documents.

The solitary ground raised against the impugned Judgment, therefore, deserves to be rejected. The answer of the High Court on Points 1 and 2 is available, and the method adopted by the respondent-State for dispossessing or attempting to dispossess the first petitioner is unconstitutional and illegal. The State ought not to approbate and reprobate on the possession of Vice Admiral Ganesh Prasad Panda of petition land.

13. Though the impugned Order in Civil Appeal no. 5153 of 2023 (@ SLP (C) No.17857 of 2023 @ D.No. 26693 of 2018) filed by the LRs of Vice Admiral Ganesh Prasad Panda is substantially in their favour, still the Appeal is filed raising a few grounds. The Appeal, in our considered view, need not have been filed and even if it is filed, we are of the view that re-examination of those prayers by this Court, particularly, keeping in view the findings recorded while dismissing the Appeals filed by the State and IDCO, we see no reason to entertain the Appeal.

14. We do not see merit in the Appeals and are accordingly dismissed. No orders on costs.