State Of Orissa vs Ram Chandra Dev & Anr on 25 November, 1963

Equivalent citations: AIR 1964 SUPREME COURT 685

Bench: P.B. Gajendragadkar, A.K. Sarkar, K.N. Wanchoo, K.C.D. Gupta

CASE NO.:
Appeal (civil) 293-294 of 1959

PETITIONER:
STATE OF ORISSA

RESPONDENT:
RAM CHANDRA DEV & ANR.

DATE OF JUDGMENT: 25/11/1963

BENCH:
P.B. GAJENDRAGADKAR & A.K. SARKAR & K.N. WANCHOO & K.C.D. GUPTA & N.R. AYYANGAR

JUDGMENT:

JUDGMENT 1964 AIR (SC) 685 The Judgment was delivered by : GAJENDRAGADKAR GAJENDRAGADKAR, J. : The short question of law which arises in these two appeals is whether the High Court of Orissa was justified in issuing a writ directing the appellant State of Orissa not to dispossess the two respondents in the two appeals respectively of the 'Maliahs' without their consent otherwise than in due course of law. This question arises in this way. In the High Court six petitions were filed by six ex-Zamindars of Ganjam District respectively under Art. 226 of the Constitution against the appellant. Each one of them alleged that he apprehended danger to his property situated in portions of Ganjam Agency tracts known as Maliahs by threat of executive action. The case set out by these Zamindars was that the Ganjam plains which are partly situated in Orissa and partly in the Andhra State, had been permanently settled with them under the provisions of the Madras Regulations No. XXV of 1802. The Zamindaris thus permanently settled on them have been acquired by the respective Governments of the two States under the provisions of the Estate Abolition Act. Adjacent west of Ganjam plaints lie hilly tracts which are inhabited by aboriginals. These tracts are known as Agency tracts; portions of these tracts were granted to the Zamindars by various Sanads issued by the Governor-in-Council of Fort S. George, Madras, sometime in 1874 and 1875. The areas thus granted by the Sanads were known as Maliahs and the Zamindars to whom the said areas were granted were described as Muthdars of their respective Maliahs. It appears that on Mach 30, 1954, the appellant informed the six respective Muthadars by notices duly served on them that their 'Muthas' would be resumed with effect from that date. The petitioners' contention before the High Court was that they had proprietary interest in the areas granted to them and the appellant had no. right to resume the lands thus granted to them and was not entitled to recover possession from them. It was pleaded in the petitions by the ex-Zamindas that the notices served on them had

intimated to them that the appellant had resumed their interest as Muthadars and that the resumption would take effect from the date of the order. They were also told that the duties and obligations imposed on them by the original Sanads need not be performed by them. The apprehension which the ex-Zamindars felt as a result of these notices gave rise to the six petitions under Art. 226 of the Constitution. They claimed that a writ or other appropriate order or direction should be issued restraining the appellant from taking the action as threatened by the notices issued by it.

2. The appellant resisted these petitions and urged that the applicants, the ex-Zamindars had no. proprietary interests at all in the Maliahs. The said Maliahs had been granted to them by virtue of the office they held under the Sanads and the grant was intended to serve as remuneration for the services rendered by them by virtue of the said office. Thus, the lands were held by the ex-Zamindars on service tenures which were resumable at the will of the appellant. That is why the notices issued by the appellant were perfectly valid and as a result of the resumption of the grants, the ex-Zamindars were not entitled to continue in possession of the areas originally granted to them.

3. It would thus be seen that the main dispute between the parties was in regard to the nature of the grant and the title conferred on the ex- Zamindars by virtue of the said grant. The distinction between grants of land burdened with service, and grants of land made by way of remuneration attaching to the office created by them is well known. In the first category of cases, the grant may not be resumable, while in the second category of cases, with the abolition of the office the land can be resumed. The parties were at issue on the question about the character of the grants under which the predecessors of the ex-Zamindars were originally granted the areas in question.

4. When these petitions were argued before the High Court, the High Court took the view that it was impossible for it to decide the important question of title in writ proceedings under Art. 226. It expressed the opinion, and we think rightly, that such a question of title can be decided only in a properly constituted suit where both parties would get sufficient opportunity to adduce all material evidence bearing on the question in dispute. Having reached this conclusion, the High Court proceeded to examine the narrow question as to whether the ex-Zamindars should be maintained in their possession of the Maliahs until eviction in due course of law, or whether they should be driven to the civil court to establish their right after Government has successfully evicted them by use of force or show of force. In dealing with the petitions on this narrow ground the High Court recognised that the existence of a right is the very foundation of the exercise of its jurisdiction under Art. 226 and it thought that possession of the lands for more than 80 years with the ex-Zamindars afforded evidence of a right which could sustain their petitions under Art.

226. It was urged before the High Court that S. 9 of the Specific Relief Act which affords a speedy and summary remedy to a person in possession who has been dispossessed is not applicable where dispossession of a person in possession is caused by the Central Government or any State Government, for that is the effect of the clear provision in that behalf under S. 9 itself. The High Court, however, was inclined to take the view that the right to recover possession vesting in a person who had been in possession prior to such dispossession which is implicit in S. 9 can be enforced under Art. 226 by a party even against the Central Government or the State Government, and in that

sense, the jurisdiction of the High Court under Art. 226 was not limited in the manner in which the jurisdiction of civil courts is limited under S. 9. The High Court then expressed itself somewhat strongly against the intention of the appellant to recover possession from the ex-Zamindars merely be resuming the grants without taking recourse to a court of law and so, it held that the ex-Zamindars who had moved it under Art. 226 were entitled to an appropriate writ under the said Article. The appellant then moved the High Court for a certificate and it is with the certificate issued by the High Court that it has come to this Court in the present two appeals.

5. Originally, six appeals were brought to this Court Nos. 293-298 of 1959 and they were in respect of the six petitions filed by the ex-Zamindars in the High Court. When this group of 6 appeals came for disposal before this Court on March 20, 1962, the Court was informed that the dispute between the parties in C. A. Nos. 295, 296 and 298 of 1959 had been compromised and the terms of compromise were placed on the record. As a result of this compromise, the three appeals were disposed of by consent. The hearing of C. A. No. 297 of 1959 was adjourned for four weeks and it was directed that the said appeal and appeals Nos. 293 and 294 of 1959 should be placed for hearing thereafter. The Court was then informed that negotiations were proceeding between the parties in regard to the settlement of the said three appeals.

6. On October 10, 1962, the group of three surviving appeals was placed before this Court for hearing. On that date, an order by consent was passed under civil appeal No. 297 of 1959, and so, the said appeal was disposed of by compromise. That left the present two appeals Nos. 293 and 294 of 1959. By consent, an order was passed in these two appeals standing over the hearing of the said appeals for four months without prejudice to the respondents right to sue the appellant in the court of a competent Civil Judge in respect of the properties which are the subject matter of the present proceedings and obtain from such court appropriate reliefs. In accordance with this order, the hearing of the said two appeals was adjourned.

7. At the hearing of the said two appeals on November 18, 1963, Mr. Tatachari for the respondents in the two present appeals stated to the Court that on 16-11-63, the respondent in C. A. No. 294 of 1959 had filed a suit No. 86 of 1963 against the appellant in a civil court of competent jurisdiction, and he also added that negotiations were in progress for the settlement of C. A. No. 293 of 1959. On these grounds, Mr. Tatachari wanted that the hearing of the two appeals should be further adjourned. We have rejected Mr. Tatachari's request for adjournment because we are satisfied that no. useful purpose would be served by granting the respondents any further time. The conduct of the respondents after time was given to them under the consent order delivered by this Court on October 10, 1962 does not justify the present request for further adjournment. That is why we proceeded to hear the appeals on the merits.

8. On the merits, the position is absolutely clear. Under Art. 226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Art. 226 is not confined to cases of illegal invasion of his fundamental rights alone. But though the jurisdiction of the High Court under Art. 226 is wide in that sense, the concluding words of the article clearly

indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Art. 226. The narrow question which falls for our decision in the present appeals is whether the respondents can be said to have proved any legal right in respect of the properties of which they apprehended they would be dispossessed by the appellant.

9. In dealing with this question, it is necessary to recall that the High Court has refused to consider the controversy between the parties on the merits, and so, the respondents would not be entitled to rely on their case that by virtue of the grants made to their predecessors by the State, they have a proprietary interest in the properties in question. If that be so, it is difficult to see what right can be said to have been proved by the respondents to justify the issue of the writ.

10. It is somewhat remarkable that a similar problem had been posed for the decision of this Court in 1952 by a similar order passed by the Orissa High Court itself. In State of Orissa v. Madan Gopal Rungta, 1952 SCR 28 : 1952 AIR(SC) 12) mining leases granted by the Ruler of Keonjhar between 1941 and 1947 had been terminated by the Orissa Government and the grantees had been given temporary permits to work the mines in 1949. Thereafter, the said temporary permits were cancelled and the grantees were directed to remove their estates appertaining to the respective mines within a fortnight. As a result of this order passed against them, the grantees moved the High Court under Art. 226 and the High Court under Art. 226 and the High Court issued a writ of mandamus restraining the Government of Orissa from interfering with the possession of the grantees in regard to the mines in question. This writ was issued to enable the grantees to file a suit after notice under S. 80 C. P. C. The order directed the Government of Orissa not to disturb the possession of the grantees till three months from the date of the order, or one week after the institution of the grantees' contemplated suit, whichever is earlier. On the happening of the event there contemplated, the orders were to cease to be operative. In dealing with the validity of these orders, this Court observed that it was outside the jurisdiction of the High Court under Art. 226 to issue a writ solely for the purpose of granting an interim relief to the party who moved the High Court under Art. 226. It is in that connection that this Court observed that an interim relief can be granted only in aid of and as auxiliary to the main relief which may be available to the party on final determination of his rights in a suit or proceedings under Art. , 226. It would thus be noticed that when the Orissa High Court purported to issue a writ under Art. 226 in favour of the grantees of the mining leases issued in their favour by the Ruler of Keonjhar and gave them adequate relief by issuing a writ without deciding the question of title, this Court corrected the error and set aside the High Court's orders. In our opinion, what the High Court has done in the present cases is substantially similar to what had been done in the case of Madan Gopal Rungta, 1952 SCR 28 : 1952 AIR(SC) 12).

11. As we have already observed, the High Court did not embark upon the enquiry as to title in the present proceedings, because that is a question which may be appropriately tried in a regular suit. In proceeding to issue a writ in favour of the respondents, the High Court, however, appears to have assumed that the appellant was not entitled to seek to recover possession of the properties after resuming the grants in question. Whether or not the grants in question are resumable, and if they

are, whether or not the appellant can recover possession without filing a suit, are questions on which we propose to express no. opinion in the present appeals. Ordinarily, where property has been granted by the State on conditions which make the grant resumable, after resumption it is the grantee who moves the Court for appropriate relief, and that proceeds on the basis that the grantor State which has reserved to itself the right to resume may, after exercising its right, seek to recover possession of the property without filing a suit. But apart from this aspect of the matter, it is difficult to see how the High Court was justified in issuing the writ in the present appeals the inevitable consequence of which would be that the respondents would remain in possession of the property until the appellant files a suit against them; and that, in our opinion, would not be justified unless questions of title are determined and it is held that the appellant must file a suit before the respondents can be dispossessed. It appears that in issuing the writ in favour of the respondents, the High Court failed to appreciate the legal effect of its conclusion that questions of title cannot be tried in writ proceedings. Once it is held that the question of title cannot be determined, it follows that no. right can be postulated in favour of the respondents on the basis of which a writ can be issued in their favour under Art. 226.

12. Mr. Tatachari, however, has contended that the right on which the petitions of the respondents are founded is a right flowing from the respondents continuous possession of the properties for many years, and he argues that if such a right is proved, the High Court would be justified in issuing a writ protecting that right. This argument is clearly fallacious. Mere possession of the property for however long a period it may be, will not clothe the possessor with any legal right if it is shown that the possession is under a grant from the State which is resumable. Such long possession may give him a legal right to protect his possession against third parties, but as between the State and the grantee, possession of the grantee under a resumable grant cannot be said to confer any right on the grantee which would justify a claim for a writ under Art. 226 where the grant has been resumed. In dealing with this argument, we have assumed without deciding that though a suit under S. 9 of the Specific relief Act would have been incompetent against the appellant, a similar relief can be claimed by the respondents against the appellant under Art. 226. Even on that assumption, no. right can be claimed by the respondents merely on the ground of their possession, unless their right to remain in possession is established against the appellant, and this can be done if the grant is held to be not resumable.

13. In support of his argument, Mr. Tatachari has referred us to three decisions in which appropriate relief was granted to the party in possession where his possession was sought to be disturbed by executive action-Kistareddy v. Commissioner of City Police, Hyderabad, 1952 AIR(Hyd) 36; Mohinder Singh v. State of Pepsu AIR 1955, Pepsu 60 and Mrs. C. N. Lloyd v. District Council, United Khasi and Jaintia Hills. AIR 1960 Assam,

131. It appears that in all these cases, the question which the High Courts purported to decide was whether a person admittedly in possession can be dispossessed by executive action when such executive action is not founded on any law, and the decision proceeded on the provisions of Art. 31 (1) of the Constitution. We do not wish to examine the question which these decisions have considered, because, in our opinion, possession of the respondents cannot be said to constitute any right against the appellant, having regard to the fact that the properties in question originally

belonged to the appellant and had been granted by the appellant to the predecessors of the respondents, unless the effect of the terms of the grants is duly determined. That being so we must hold that the High Court was in error in issuing a writ against the appellant and in favour of the respondents in the writ petitions from which the two appeals arose.

14. The two appeals are accordingly allowed, and the orders issued by the High Court are set aside with costs throughout. One set of costs.