(1993) 04 CAL CK 0051

In the Calcutta High Court

Case No : C.R. No. 37 (W) of 1991

Andaman and Nicobar Paper Mills Company Private Limited and Another — APPELLANT

Vs

Lt. Governor and Others — RESPONDENT

Date of Decision : 05-04-1993

Acts Referred:

Andaman and Nicobar Land Revenue and Land Regulations, 1966 — Regulation 159(9), 33, 34, 40
Constitution of India, 1950 — Article 226

Citation : (1993) 2 CALLT 111

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : N.N. Nag., Tapan Kumar Mukherjee, for the Appellant; Hamraj Bahadur, for the Respondent

Judgement

P.K. Mukherjee, J.—This writ petition was moved on behalf of Andaman & Nicobar Paper Mills Company Private Limited and Anr. challenging an order dated November 11, 1991, passed by the Sub-Divisional Officer, South Andaman, in Revenue Case No. 102 of 1987, which has been set out at pages 73 to 99 of the present writ petition.

2. This writ petition was moved before Bhagabati Prasad Banerjee, J. on December 11, 1991, when His Lordship was sitting as the Presiding Judge of the Circuit Bench at Port Blair.

3. Upon hearing Mr. Tapan Kumar Mukherjee, for the Petitioners and Mr. R. Shiv Saroop, Learned Government Pleader for the respondent administration, His Lordship directed that this matter would be disposed of as a contested Application, and passed directions for affidavits accordingly. In the meantime, His Lordship granted stay of operation of the impugned order dated November 11, 1991, which is Annexure ''L'' to the writ petition, referred to hereinabove.

4. Thereafter, the writ petition appeared before Prabir Kumar Majumdar, J. on

January 20, 1992, N. K. Mitra, J. on February 27, 1992 and Susanta Chatterji, J. on June 5, 1992 and lastly the writ petition was taken up for hearing by Susanta Chatterji, J. on January 20, 1993, when in the presence of Mr. Tapankumar Mukherjee for the petitioner, Mr. R. Shiv Saroop for the respondents and Mr. Hamraj Bahadur, for the applicant in the application for addition of party. His Lordship allowed the application for addition of party.

5. Subsequently, on January 25, 1993, the writ petition could not be disposed of by Susanta Chatterji, J. although the matter was heard at length and records were produced by Mr. R. Shiv Saroop, learned Government Pleader, which was inspected by Mr. Tapan Kumar Mukherjee, Learned Advocate for the petitioner, but as Mr. R. Shiv Saroop was not present in court due to his illness, the matter was released, and part heard was. cancelled.

6. Thereafter, the writ petition appeared before Shyamal Kumar Sen, J. on February 16, 1993, when Mr. B. K. Das, learned Advocate took time on behalf of Mr. Tapan Kumar Mukherjee, and the writ petition thereafter was heard by me on March 30, 1993, in the presence of Mr. N. N. Nag, learned Advocate for the respondents Andaman Administration, in place and stead of Mr. R. Shiv Saroop, learned Government Pleader on March 30, 1993, the hearing of the writ petition commenced and was concluded to some extent by Mr. Tapan Kumar Mukherjee, learned Advocate for the petitioner but Mr. N. N. Nag, learned Advocate took some time to go through the brief, as according to him the brief was recently transferred to him by way of mutual arrangement by the learned Government Pleader. Thereafter, the matter was heard on April 2, 1993, when the hearing was concluded, and the Judgment was reserved.

7. The short facts leading to the passing of the impugned order dated November 11, 1991, are as follows :

The vender of the present petitioners, Bhagwan Singh filed an application on November 2, 1981, before the Deputy Commissioner, Andaman, for grant of ''sale permission'' in respect of the land situate at Shippighat under Ferrargunge Tahsil, as he was a licensee, under the old Regulation of 1926. Thereupon, the Deputy Commissioner initiated a Revenue Case No. 366 of 1981 (DCO/81), on the basis of the said application.

On November 7, 1981, on the basis of the order passed by the Deputy Commissioner, Assistant Commissioner, South Andaman, forwarded the application of the applicants to the Tahsildar, Port Blair, for enquiry and submission of report.

On November 18, 1981, Tahsildar, Port Blair, reported that the said land was/is situate at Shippighat under Ferrargunge Tahsil, and returned the file.

8. On November 22, 1981, again the said application was forwarded to the Tahsildar, Ferrargunge, for enquiry and report. On December 9, 1981, since the land in question was situate at Shippighat under Ferrargunge Tahsil, a report was

called for from the Revenue Inspector-IIK, and a report was submitted.

On January 5, 1982, the Tahsildar, Ferrargunge Tahsil, after enquiry, recommended for grant of ''sale permission.''

On January 6, 1982, the Assistant Commissioner, South Andaman, before grant of sale permission, directed for issuance of public notice by the Tahsildar, Ferrargunge.

On January 9, 1982, in Revenue Case No. 71/81/1231 Public notice was issued by the Tahsildar, Ferrargunge for grant of sale permission in respect of the land situate at Shippighat under Survey No. 161, area about 4 hectares.

9. On January 12, 1982, on completion of all formalities, on the basis of the recommendation of the Tahsildar, Ferrargunge, and after issuance of public notice, the Deputy Commissioner, Andaman, being respondent No. 3 herein passed an order that "sale permission is, therefore, hereby accorded. Party may also be informed."

10. On January 13, 1982, the office of the Deputy Commissioner, communicated the order passed by the Deputy Commissioner in Revenue Case No. 366(DC)/81 for transfer of land situate at Survey No. 161, area about 4 hectares under Shippighat in Ferrargunge Tahsil, u/s 159(9) of the Andaman and Nicobar Land Revenue and Land Reforms Regulation, 1966, which is set out hereinbekw ;

"159(9). The interest of a licensee of a non-agricultural land shall not be transferable except with the previous permission in writing of the Deputy Commissioner and subject to such terms and conditions as may be specified by him."

11. On February 18, 1982, relying on such ''sale permission,'' Bhagwan Singh, the vender of the present petitioners, transferred the land and executed a sale deed in favour of the present petitioners on payment of consideration money of Rs. 34,000/- and on the basis of valuation certificate issued by the Tahsildar, Ferrargunge Tahsil in Revenue Case No. 22/88, and ''Sale permission'' was deposited with the office of the Sub-Registrar, Port Blair.

12. On February 25, 1982, certified copy of the entry made in the record of rights of the land in question was issued by Patwari, Mangluton. In the record, it was shown that the property is ''uncultivated area'' and class of land is ''waste.''

13. On February 26, 1982, Tashildar, Ferrargunge, issued ''No demand Certificate,'' being No. 19/82, and it was certified that no Government dues was outstanding against the vendor of the petitioners in respect of the said property. On April 10, 1982 Patwari of the Circle, issued a notice of mutation showing (he sale of the property and notice was issued Under Sections 84(1) and 85(4) of the said Regulation read with Rule 135(2) of the Rules.

14. On September 14, 1983, the present petitioners applied before the Sub-Divisional Officer and the Assistant Commissioner, South Andaman, for

conversion of the ''Waste land'' to ''Land for house site,'' and Revenue Case No. 459/83 was initiated.

15. On November 18, 1983, the petitioner filed an application for amendment of the earlier application and instead of house site, it was stated that the conversion of the land was for ''commercial purpose,'' and undertook to pay necessary premium required for such conversion.

16. On the basis of the said application, the case was remanded back to the Tahsildar, Ferrargunge, for submission of "a report," namely, amount of land revenue payable by the petitioner for 4 hectares of land for commercial purpose and amount of premium to be paid for conversion.

17. On December 3, 1983, the case was remanded back to the Assistant Commissioner for further action, and the Tahsildar, Ferrargunge, this time submitted a report that Rs. 48,000/- was to be paid by the petitioners.

18. On December 9, 1983, the Sub-Divisional Officer and Aesistant Commissioner, South Andaman, in Revenue Case No. 459/83 ordered for conversion of the said land on payment of premium of Rs. 48,000/- and such premium was directed to be paid within 60 days with effect from December 9, 1983.

19. On January 12, 1984, the Sub-Divisional Officer, South Andaman, initiated a suo motu proceeding, u/s 151 of the said Regulation of 1966, being Revenue Case No. 42 of 1984, for undertaking development work, without permission, as also for resumption of land.

20. On January 16, 1984, the petitioner replied to the said show cause notice and the same was considered by the Sub-Divisional Officer, South Andaman. On January 20, 1984 in Revenue Case No. 459/83, the Assistant Commissioner, South Andaman, considered the case for conversion of the land and observed that since the case u/s 151 was pending, a report was called for. In the said order, it was stated : "that the case for diversion of the land under Survey No. 161, 4 Hectares situate under Ferrargunge Tahsil was under process."

24. By an order dated February 6, 1984, in Revenue case No. 459/83, the Sub-Divisional Officer, South Andaman, being respondent No. 4 ordered that the premium for conversion of the land will not be accepted until the order is confirmed by the Deputy Commissioner.

25. On February 16, 1984, the Sub-Divisional Officer/Assistant Commissioner, South Andaman in Revenue Case No. 42/84 having perused the sale deed and other records ordered for copy of record of entry and map of land from the Tahsildar.

26. On February 23, 1984, the Sub-Divisional Officer, South Andaman, dismissed the proceeding initiated u/s 151(1) in Revenue Case No. 42/84, and in the said order, the Sub-Divisional Officer observed that since the respondent/petitioner

herein was given 60 days time with effect from December 9, 1983, for depositing the premium of Rs. 48,000/- and in anticipation of diversion order, the petitioner started the work of filling up earth, in anticipation of diversion order, and as such the mistake was a bona fide mistake, and the proceeding u/s 151 of the said Regulation for resumption of the land was dropped.

27. On November 14, 1984, the present petitioners moved a writ petition before Ajit Kumar Sengupta, J. in the main land, inter alia, challenging the order directing the petitioners to deposit a premium of Rs. 48,000/- in respect of the said land, and His Lordship was pleased to issue a Rule, being C.R. No. 14583 (W) of 1984, and interim order was granted directing the respondents to dispose of the application of the petitioner company. Subsequently, on the basis of instructions of the learned Advocate, the said Rule has been discharged for non-prosecution,

28. On December 1, 1984, the petitioners filed an application in terms of the order of the High Court for diversion of the land and the said application was filed before the Deputy Commissioner, Andaman.

29. On January 7, 1985, the Deputy Commissioner passed an order on the application dated December 1, 1984, asking the petitioners to file an application before the Sub-Divisional Officer, South Andaman, for diversion of the land, since the Sub-Divisional Officer had the jurisdiction.

30. On February 16, 1985, the petitioners filed an application before the Sub-Divisional Officer, South Andaman, in continuation of the earlier application, since the earlier application for conversion of land was not disposed of.

31. On October 7, 1987, Revenue Case, No. 102/87 was initiated by the Sub-Divisional Officer, on the basis of the application dated September 4, 1987 filed by the petitioners herein. The Tahsildar registered a case, being Revenue Case No. 13/87, and the same was initiated on the basis of the application of the petitioners for conversion and development work.

32. On April 18, 1988, the petitioners preferred an application before the Deputy Commissioner, for diversion of land, and copy of the same was forwarded to the Chief Secretary and all other authorities.

33. By the impugned order dated November 11, 1991, Dharam Pal, Sub-Divisional Officer, South Andaman, dealt with the application filed on behalf of the petitioners by S. K. Mallick, Director of Andaman and Nicobar Paper Mills Company Private Limited, for grant of permission to divert/convert 4 hectares of land under Survey No. 161 classified as Paddy-III situate at Shippighat, under Ferrargunge Tahsil. The case was processed further by the Sub-Divisional Officer, South Andaman and case file was sent to the Deputy Commissioner, Andamans, along with the report of the Sub-Divisional Officer, South Andaman, dated July 9, 1988, vide U.O. No. 3-8/ 88/568. The case file and the connected D.C.''s office file No. 1-17/84-R/Part III on the same subject was received back from District

Office on October 29, 1991 along with the order of the Hon''ble High Court dated August 22, 1991 passed in response to the writ petition filed by the applicant before the Hon''ble Court at Calcutta on April 7, 1989.

34. The order of the Hon''ble High Court is as follows :-

"Let the petitioner''s application for conversion of the land in regard to S.N. 161 at Sippighat, Ferrargunge Tahsil, South Andaman filed before the appropriate authority be disposed of in accordance with law within a period of six weeks from the date of communication of this ordei upon affording him an opportunity of hearing. The writ application is thus disposed of. There shall be no order as to costs."

35. The Sub-Divisional Officer has recorded that this order was communicated to him on October 29, 1991. On receipt of such order, a fresh report from the Tahsildar, Ferrargunge, was called for.

36. The case was heard on November 4, 1991 and November 6, 1991, and the learned Counsel for the applicant submitted written arguments along with documents. The Sub-Divisional Officer carefully perused the records of the case and the connected file of the Office of the Deputy Commissioner, as also the written arguments and documents filed by the applicant and the Sub-Divisional Officer appears to have recorded that the land in question was initially recorded in the name of Bhagwan Singh, son of Durga Singh.

37. The Sub-Divisional Officer further recorded that the land in question being non-occupancy right (NOR), as per Regulation 159(8) of the said Regulation, the interest of non-occupancy tenant is non-transferable Despite this finally, on the basis of the above mentioned sale deed, the land was mutated in favour of the applicant.

38. The Sub-Divisional Officer further came to the finding that the application dated September 4, 1983, filed by the applicant for grant of permission to divert 4 hectares of agricultural land under Survey No. 161 situate at Shippighat under Ferrargunge Tahsil, was registered as Revenue Case No. 45/83, and the matter was got enquired into and land revenue and premium was got assessed by the Tahsildar, Ferrargunge.

39. The Sub-Divisional Officer came to the conclusion that while the Revenue Case No. 459/83 was still pending under process and the matter subjudice, the applicant started developing the land, and hence, violated the provision of Section 151(1) (a and b) of the said Regulation. Accordingly, the Sub-Divisional Officer started resumption/ejectment proceeding against the applicant u/s 151 of the said Regulation vide Revenue Case No. 42/84.

40. The Sub-Divisional Officer further came to the conclusion that the report referred to in the above-mentioned order pertains to the irregularities committed during the grant of sale permission to Bhagwan Singh in whose favour the land stood recorded earlier. It appears that it was during this time these irregularities

as referred to in paragraph 4, were noticed, and action was being contemplated to correct these errors which was committed during the grant of sale permission.

41. The Sub-Divisional Officer was further of the view that the enquiry report of the then Assistant Commissioner clearly lays down the circumstances under which the then Deputy Commissioner, Andamans was misled by the interested officials, resulting in the issue of the sale permission in question.

42. In conclusion, the Sub-Divisional Officer further held that old conversion, being Revenue Case No. 459/83 which also pertains to the grant of permission about the land has already been disposed of as per existing provisions, and as such, further proceedings of this case may be dropped and all concerned be informed accordingly.

42A. Mr. Japan Kumar Mukherjee, learned Advocate appearing at the final hearing of the writ petition, on behalf of the petitioners, submitted that assuming but not admitting that in granting sale permission, the Deputy Commissioner, Andamans, was misled by some interested officials, the petitioners'' right cannot be taken away by refusing to grant permission for conversion of the land for commercial purpose, in as much as, on the basis of such sale permission, the petitioners purchased the land in terms of a valid sale deed, and have invested huge amount, and acted to their detriment and altered their position, on such basis, and further the petitioners names having been mutated in the record of rights, the purported decision of the Sub-Divisional Officer in respect of the land in question that the petitioners'' right is non-occupancy right (NOR) is nothing but perverse, and cannot be sustained in law.

43. In the next place, Mr. Mukherjee after placing the doctrine of ''promissory estoppel,'' submitted that after a lapse of 8 years, the sale deed having been executed in February 1982, cannot be called in question by a subsequent Sub-Divisional Officer, having concurrent jurisdiction, in disposing of an application u/s 40 of the Regulation. The respondents authorities having granted sale permission in favour of the vendor of the petitioners, the petitioners'' right cannot be treated as ''non-occupancy right'' at such a belated stage.

44. In support of his contention, Mr. Mukherjee has placed reliance on the single Bench decision of Calcutta High Court in the case of Satyanarayan Banerjee and Others Vs. Charge Officer and A.S.O. Birbhum and Others,

45. In the said case, Anil Kumar Sen, J. (as His Lordship then was delivering the judgment observed that a subsequent Revenue Officer having concurrent jurisdiction in incompetent to reopen the finding of an officer having concurrent jurisdiction, and it is a settled law that the order of concurrent jurisdiction can only be reopened by a superior officer.

46. Mr. Mukherjee submitted that the sale permission was granted u/s 38 read with Section 159(9) of 1966 Regulation in 1982, but no dispute was raised by the heirs and legal representatives of the vendor of the petitioners within the

prescribed period of one year and as such, the petitioner became direct tenant under the State, after "Mutation" of his name.

47. Regarding acquiring right by virtue of mutation, Mr. Mukherjee further relied on a single Bench decision of this Court decided by G.N. Ray, J. (as His Lordship then was) in the case of Panchu Molla v. J.L.R.O. and Ors., reported in 1981(2) CLJ 1 wherein the learned Judge observed that after transfer, the name having been mutated, the petitioner acquired some right of a tenant.

48. This Court cannot also lose sight of an earlier decision of Calcutta High Court in the case of Abdul Haque and Another Vs. State of West Bengal and Others, , wherein D.N. Sinha, J (as His Lordship then was) observed that by reason of acceptance of rent, some sort of "tenancy right" has been created.

49. Mr. N. N. Nag, appearing for the respondents, Andaman Administration, submitted that the writ petitioners'' case is coming under the provision of Section 159(8) , and not u/s 159(9) of the said Regulation of 1966, as the petitioner is holder of "non-occupancy right," and such right cannot be transferred.

Mr. Nag further submitted that the Deputy Commissioner, earlier in the year 1982, had, due to inadvertance allowed the sale permission in favour of the petitioners by Bhagwan Singh.

50. Mr. Nag, submitted that immediately in the year 1983, a proceeding was initiated u/s 151 of the said Regulation for resumption and/ or eviction of the petitioners, and as such, there is no delay in the matter of taking steps.

In the next place, Mr. Nag submitted that the sale deed itself was "void ab intio." and as such, cannot be acted upon.

51. In support of his contention, Mr. Nag has relied on a decision of the Supreme Court in the case of Assistant Custodian, Enemy Property and Ors. v. Brij Kishore Agarwala and Ors., reported in : [1975]2SCR359 wherein, observation of Lord Denning in (1949) 1 K.B. 227 was quoted :

"The illegality of an act is the same whether or not the actor has been misled by an assumption of authority on the part of a government officer, however, high or low in the hierarchy I do not doubt that in criminal proceedings it would be a material factor that the actor had been thus misled if knowledge was a necessary element of the offence, and in any case it would have a bearing on the sentence to be imposed. But that is not the question. The question is whether the character of an act done in face of a statutory prohibition is affected by the fact that it has been induced by a misleading assumption of authority."

52. On the point of promissory estopel, Mr. Nag has relied on a judgment of the Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, wherein the Supreme Court observed as follows :-

"Lastly, a proper reading of the observation of the Court clearly shows that what the Court intended to say was that where the Government owes a duty to the public to act differently, promissory estoppel cannot be invoked to prevent the Government from doing so. This proposition is unexceptionable, because where the Government owes a duty to the public to act in a particular manner, and here obviously duty means a course of conduct enjoined by law, the doctrine of promissory estoppel cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The doctrine of promissory estoppel cannot be applied in teeth of an obligation of liability imposed by law."

53. Mr. Nag further submitted that u/s 33 of the said Regulation, the Revenue authority can review an order for the purpose of satisfying himself as to the legality and propriety of such an order, passed by such officer.

54. Mr. Nag has referred to the statement made in paragraph 5 of the Affidavit-in-opposition, affirmed by Tapan Mondal, Deputy Commissioner, Andaman District, affirmed on July 19, 1992, wherein the said deponent has stated that "The so called sale transaction is fraudulent and void ab initio fraudulently obtained on the basis of forged documents."

55. The said statements have been affirmed as true to the knowledge of the deponent. This Court deprecated such types of affirmation by the Deputy Commissioner, since no particulars of the fraud have been alleged, and no paper in support thereof has been produced. As such, the deponent should not have affirmed paragraph 5 as true to his knowledge. Accordingly, this Court cannot place any reliance on the same, and shows scanty respect for such bold statements.

56. In reply to the aforesaid submissions, Mr. Mukherjee submitted that u/s 34 of the Regulation, such review of the earlier order can only be made within 90 days of the date of the order, which admittedly, has not been done, in the present case.

57. Mr. Mukherjee further submitted that Andaman Administration is equally bound by the decision even if, any decision has been taken by mistake, to follow the same, and such mistake having been allowed to be continued for a period of 8 years, cannot be allowed to be corrected under the garb of correction mistake, as observed by the Supreme Court in the case of The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another, .

58. In this connection, Mr. Mukherjee has also relied on a single Bench judgment delivered by me following the judgment of Nayagarh''s case (supra), in the case of Manindra Chandra Nandi v. State of West Bengal, reported in 1985(11) CHN 386 wherein this Court held that the order of confirmation having been made under mistake and allowed to the perpetuated for 6 years, the respondent authorities cannot "de-confirm" the petitioner on the ground of correction of mistake.

59. Reliance was also placed by Mr. Mukherjee on an unreported judgment delivered by me on November 15, 1991 in C.R. No. 13 (W) of 1991 [P.J. Joseph

v. Assistant Commissioner (s) and 7 Ors.], wherein inter alia, it has been held that an authority below the rank of Deputy Commissioner cannot assail the order of the Deputy Commissioner.

60. Mr. Mukherjee submitted that in the present case, the resumption proceeding initiated u/s 151(1) of the said Regulation was dropped by the Sub-Divisional Officer, Andaman, by order dated April, 23, 1984.

61. Mr. Mukherjee further submitted that on December 9, 1983, the Sub-Divisional Officer and Assistant Commissioner, South Andaman, ordered in Revenue case No 459/83 for conversion of the said land on payment of premium of Rs. 48,000/-.

62. In conclusion, Mr. Mukherjee submitted that the Sub-Divisional Officer cannot challenge the order of the Deputy Commissioner, a "Superior Officer," in a proceeding u/s 40 of the Regulation and not being a Civil Court of competent jurisdiction, cannot annul the valid registered deed, and the alleged fraud, if any, cannot be decided and/or adjudicated in the said proceedings and cannot be agitated by merely filing an affidavit, without disclosing the same in the impugned order.

63. After having heard the submissions of both the parties at length, and after going through the relevant records, I am of the view that the impugned order passed by the Sub-Divisional Officer, South Andaman, in Revenue case No. 102 of 1987, dated November 11, 1991, cannot be sustained in law and is accordingly set aside.

The writ petition, therefore, is entitled to succeed, and the prayers made therein are entitled to be allowed.

64. The order passed by the Sub-Divisional Officer, South Andaman dated November 11, 1991, being the respondent No. 4 in Revenue Case No. 102 of 1987, rejecting the application of the petitioners for grant of conversion of the land for "commercial purpose" u/s 40 of the said Regulation, is set aside, by issue of appropriate writ in the nature of Certiorari.

65. The respondents are further directed "to grant" permission for conversion of the said land of the area of about 4 hectares situated at Sippighat, Ferrargunge Tahsil, Survey No. 161, on receipt of Rs. 48,000/- as premium, as fixed by the respondent administration.

66. The respondents are further directed not to treat the petitioner as having non-occupancy right (NOR) in respect of the said land, in terms of Section 159(8) of the said Regulation.

67. Time to deposit the premium of Rs. 48,000/- by the petitioners is extended for a further period of two months from communication of this order, and the respondents are directed to accept the same.

68. The respondent Administration will be obliged to pass formal order of

conversion of the land on acceptance of the deposit of Rs. 48,000/- in accordance with the directions contained in this judgment, within a period of fortnight thereof.

69. The writ petition is allowed to the extent, indicated above.

There will be no order as to cost.

Let plain copy of this order countersigned by the Assistant Registrar (Court), be given to the learned Advocates of the parties, on usual undertaking.

70. Prayer for stay of operation of this judgment, made by Mr. N. N. Nag, learned Advocate for Andaman Administration, is considered and refused, as this Court has given two months time to deposit the sum of Rs. 48,000/-.