

(2015) 06 CAL CK 0030
In the Calcutta High Court

Case No : Writ Petition No. 052 of 2015 and C.A.N. No. 043 of 2015

Andaman Plantation and Development Corporation Private
Limited and Others

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Citation : (2015) 06 CAL CK 0030

Hon'ble Judges : Aniruddha Bose, J

Bench : Single Bench

Advocate : Partha Sarathi Sengupta, Shyamal Sarkar, B.K. Jian and Jyoti Singh, for the Appellant; Balasubramaniam, Assistant Solicitor General, M. Tabraiz and G. Indira, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Aniruddha Bose, J.—The petitioners before me are an incorporated Company and also a Director and share holder thereof, questioning the legality of two orders, issued by the Deputy Commissioner, South Andaman district on 30th January 2015 rejecting a request made by the first petitioner (the company) for renewal of grant of certain land. The same order also directs the Sub-Divisional officer to take possession of such land. The first petitioner is at present in possession of approximately 1360 acres of land in different parts of the Andaman Islands. Under the applicable Regulation, being the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation 1966 (the 1966 Regulation) the ownership of all land within the Union Territory of Andaman and Nicobar Islands vests in the Government of India. There are four classes of tenants categorized under Section 141 of the said Regulation, through which modes land can be allotted to individuals or firms by the authorities. These are (i) occupancy tenants (ii) non occupancy tenants (iii) Grantees, and (iv) licensees. Grant of land can be made for the purpose of cultivation of different long lived crops and for making construction for the purpose of or in connection with such cultivation.

2. As per section 146 of the 1966 Regulation, the Lieutenant Governor (which post was earlier designated as Chief Commissioner) is the authority for making grant of land. The petitioner No. 1 claims to be in possession of the aforesaid land in different parts of the district of South Andaman in Minnie Bay, Bambooflat, Mithakhari and North Bay.

3. Prior to promulgation of 1966 Regulation, the land relation in these islands was guided by the Andaman and Nicobar Islands Land Tenure Regulation 1926, which also prescribed exclusive ownership of land by the Government of India. The actual instruments on the strength of which the petitioners came into possession of the land however is not before this Court. What has been contended on behalf of the petitioners is that on the basis of an indenture executed on 15th May, 1959 between six individuals, who were the original grantees and the petitioner No. 1, the petitioners' right as grantee of the subject land had crystallized. It has been submitted on behalf of the petitioners that the said six individuals, who had executed the indenture dated 15th May, 1959 were promoters of the company, and on formation of the company, the subject-land was transferred to the latter. The petitioners are claiming that grant was initially made in favour of their predecessors-in-interest in terms of clause 4 of the 1926 Regulation, which was renewed on 10th January, 1956. But the question on the manner in which the grant devolved on the petitioner No. 1 is not required to be examined for the purpose of adjudication of this writ petition, as that issue is not in lis before me in this proceeding. It is however disputed on behalf of the respondents that in 1956 there was renewal of the grant. Their contention is that the grant of 1956 was fresh grant. On conclusion of 30 years, the grant appears to have had been renewed for a further term of thirty years in accordance with Section 146 of the 1966 Regulation. In the instrument of transfer of the land, which was executed on 15th May 1959 (Annexure "P2" to the Writ petition), there is reference of making of grant of 887 acres and 4 Kanals of land by the Chief Commissioner to the first five individuals and the sixth individual representing his two minor daughters and a son. One document, through which renewal is sought to be effected in 1987 has been annexed as "P3" to the writ petition. This document dated 9th April 1987 pertains to the land situated at Minnie Bay and stipulates:--

"The grant of land made on 10.1.1956 is renewed for a further period of 30 (thirty) years with effect from 1.1.1985 under section 146 of the Land Revenue and Land Reforms Regulation, 1966 (2 of 1966) on the existing terms and conditions and subject to the following further modifications:--

"1. The renewal so made is to the extent of a total area of 71.11 hectares comprising Survey No. 1/1 as per record entries of village Minnie Bay, Tahsil Port Blair, District Andaman based upon the actual area as ascertained during the re-survey conducted in 1961-62 and bounded as follows:--

2. The land revenue payable by the grantee is Rs. 2108.40 per annum plus 25% local cess thereon, or at any other rate as may be assessed/fixed from time to

time under the provision of law.

3. The renewal does not cover the following land, tenancy rights in which have been surrendered to the government by the Grantee with effect from the date on which possession is taken over by the Government:-

Land measuring 12.4 hectares comprising survey No. 1/2 of the said village.

4. The grant shall be subject to AN LR and LR Regulation, 1966 and rules made thereunder.

5. No further renewal of this grant would be made."

No other renewal document has been shown to me by the learned counsel for the petitioners in course of hearing but it has been submitted on behalf of the petitioners that annexure "P3" was cited as an example and there are similar documents pertaining to land situated in other locations, forming part of the original grant, showing such renewal.

4. Section 146 of the 1966 Regulation specifies:--

"146. The Chief Commissioner may, on such terms and subject to such conditions as he thinks fit:--

(i) make to any person, for the cultivation of coconuts, coffee, rubber and other long lived crops and for the construction of buildings and works to be used for the purpose of, or in connection with, such cultivation, a grant of land for any period not exceeding thirty years with an option for renewal for a like period:

Provided that for the cultivation of rubber crop a longer period may be specified by the Chief Commissioner with the approval of the Government:

(ii) grant a license in writing to any person to occupy any land to such extent and for such purposes as may be prescribed."

5. The Andaman and Nicobar Islands Land Revenue and Land Reforms Rules, 1968 was framed in terms of Section 210 (1) of the 1966 Regulation for the purpose of carrying into effect the provisions of the said Regulation. Clause 164 of the said Rules prescribes Form "AF" in which grant is to be made and this form also stipulates eight conditions which would guide such grant, with provision for incorporating specific particulars in relation to individual grants. Condition No. 7 of Form AF provides:--

"In the event of any dispute or difference arising between the grantee and the Government of matters relating the terms and conditions of the grant the matter shall be decided by the Chief Commissioner and his decision thereon shall be final and binding on the grantee."

6. The origin of the dispute involved in this proceeding relates to the question as to whether the renewal in 1987 constituted fresh grant or not. This issue has been raised in a suit instituted by the petitioner No. 1, which has been registered

as Title Suit No. 169 of 2014 in the Court of learned Civil Judge (Senior Division) at Port Blair, South Andaman District. In that suit, the Union of India, the Lieutenant Governor, the Deputy Commissioner (South Andaman) and Tehsildars of two Tehsils in which the subject-land is situated have been impleaded as defendants. This writ petition, however, is not concerned with determination of that question. Irrespective of the fact as to whether the communication of 1987 was fresh grant or renewal, the thirty year period specified in the said document has lapsed on 31st December, 2014. The petitioner No. 1 had made an application in the form of a letter before the Deputy Commissioner for renewal of the grant treating the grant made in the year 1956 to be fresh grant. Thereafter, the two orders were passed by the Deputy Commissioner, South Andaman District on 30th January, 2015, the first order being numbered 100 and the second one carrying the number 101. The order No. 100 relates to the land forming subject matter of the grant in Mithakhari, Bambooflat and North Bay villages, which are under Ferrargunj Tehsil and the order No. 101 relates to land located in Minnie Bay village under the Port Blair Tehsil. These two orders are almost identically worded and I shall refer to the order No. 100 only while dealing with the petitioners' case to avoid repetition. In this order, it has been inter-alia observed and directed:--

"And whereas the instant case the matter has been decided by the Chief Commissioner i.e. Hon'ble Lt. Governor, A&N Islands for resumption and taking over the possession of the grant land in respect of the Andaman Plantation and development corporation Pvt. Ltd. vide Administration's letter No. 34-683/2007-Rev Dt. 07th January, 2015 according approval of the Hon'ble Lt. Governor, A and N Islands. As such the request of the applicant for renewal of grant cannot be acceded to.

Now therefore, the applications of the grantee dated 23/12/2014 is, therefore considered and rejected. The Sub-Divisional Officer, South Andaman District is hereby directed to take over the physical possession of the above grant land immediately, correct the land records accordingly and to furnish compliance.

Let the plain copy of the order be served upon to the Sub-Divisional officer, South Andaman, Tehsildar, Ferrar Gunj and the applicant Andaman Plantation and Development Corporation Pvt. Ltd."

7. In this writ petition, these two orders have been assailed by the petitioners primarily on two grounds. The first ground is violation of the principles of natural justice as no opportunity of hearing was given to the petitioners before the orders were passed and in the orders, the Deputy Commissioner placed reliance upon various facts and policy decision which were not made available to the petitioners. The second ground on which the aforesaid orders are assailed is that the these orders were passed on external dictat, at the instance of the Lieutenant Governor, and the said orders were not an independent decision of the Deputy Commissioner. It has also been submitted in course of hearing on behalf of the petitioners that the Deputy Commissioner had no jurisdiction to

decide on the question of grant as under Section 146 of the 1966 Regulation, it is the Lieutenant Governor who is sole authority to adjudicate on this question. In the writ petition, several other grounds have been taken but before me submissions were made on these three points only.

8. Mr. Sengupta, learned senior counsel appearing for the petitioners relied on three decisions of this court in the cases of Karamchand Thapar and Bros (Coal Sales) Ltd. and Another Vs. Union of India (UOI) and Others, (2008) 3 CHN 998 , Major General Arun Roye Vs. Union of India (UOI) and Others, (2006) 3 CALLT 276 : (2006) 2 CALLT 526 , Damodar Valley corporation and Anr. v. Rajesh Kumar and Ors. [(2010) 1CHN 60] in support of his submissions that principles of natural justice was breached by the Deputy Commissioner in passing the aforesaid two orders. The first two judgements are on the point that the petitioners ought to have been heard before the orders were issued. The case of Damodar Vally Corporation (supra) is on the point that the petitioners ought to have been given chance to deal with the materials relied upon by the Deputy Commissioner. Arguing that the decision making authority under a statute has to take a decision applying his own mind and not at the instance of an outsider or even superior authority, Mr. Sengupta referred to the decisions of the Supreme Court in the cases of State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, AIR 1989 SC 997 : (1989) 1 JT 118 : (1989) 1 SCALE 106 : (1989) 2 SCC 505 : (1989) 1 SCR 176 : (1989) 1 UJ 474 and State of M.P. and Others Vs. Sanjay Nagayach and Others, (2013) 6 AD 185 : AIR 2013 SC 1921 : (2013) 178 CompCas 502 : (2013) 4 CompLJ 30 : (2013) 8 JT 339 : (2013) 7 SCALE 354 : (2013) 7 SCC 25 : (2013) AIRSCW 2832 : (2013) 4 Supreme 10 . On the question of necessity on the part of the decision making authority to apply his own mind, reliance was placed on another Supreme Court judgement in the case of Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others, (2010) 9 JT 362 : (2010) 9 SCC 496 : (2010) 10 SCR 1070 : (2010) 8 UJ 4022 .

9. The respondents were represented before me by Mr. Balasubramaniam, learned Assistant Solicitor General assisted by Mr. Tabraiz, learned counsel. The case of the respondents is that in view of the decisions of the Supreme Court in the cases of Smt. Ratan Kaur Vs. Union of India and others, AIR 1997 SC 2723 : (1997) 6 JT 21 : (1997) 4 SCALE 313 : (1997) 10 SCC 61 : (1997) 1 SCR 48 Supp : (1997) AIRSCW 2695 : (1997) 6 Supreme 46 The Lt. Governor and Others Vs. Shiv Chander More and Others, (2008) 1 CLT 88 : (2008) 5 JT 448 : (2008) 6 SCALE 422 : (2008) 4 SCC 690 : (2008) AIRSCW 4743 and the second judgement in the case of Shiv Chander More and Ors. (arising out of S.L.P (c) No. 8702 of 2011 dated 7th March 2014), on completion of 60 years of grant it is impermissible for the Administration to extend a grant in favour of any person or firm. The petitioners sought to distinguish the ratio of these decisions contending that in 1987, fresh grant was made with effect from 1st January 1985, and the petitioners were only seeking renewal. But that question has not been argued before me in this proceeding and I am not determining the question as to the

nature of the grant. There is conflicting stand of the petitioners and respondents on this point. The petitioners contend that the 1987 renewal was wrongly worded, and it should be treated to be fresh grant whereas the respondents' case is that the grant was made in the year 1956, and it had lapsed on 31st December 2014, after renewal was formally made on 9th April 1987. The decision of the Supreme Court in the case of Union of India and another Vs. M/s. Jesus Sales Corporation, (1996) 3 AD 497 : AIR 1996 SC 1509 : (1996) 55 ECC 51 : (1996) 64 ECR 169 : (1996) 83 ELT 486 : (1996) 3 JT 597 : (1996) 3 SCALE 103 : (1996) 4 SCC 69 : (1996) 3 SCR 894 : (1996) 2 UJ 409 was referred to on behalf of the respondents to contend that the manner in which principles of natural justice would require compliance would vary from case to case, depending on factual context of individual cases.

10. As regards the two impugned orders, stand of the respondents is that the two orders were not passed in any adjudicatory proceeding but by these orders, the Deputy Commissioner only conveyed to the petitioner No. 1 the decision of the Lieutenant Governor to resume the land from possession of the petitioners. No formal provision prescribing the procedure for resumption of possession of land in cases of lapsed grant was cited before me in course of hearing by the learned counsel for the respondents. It was their case, however, that on expiry of the term, the Government of India in the capacity of owner of the land is entitled to repossess the land from the persons whose tenure of grant had lapsed.

11. The respondents have contested the writ petition by filing affidavit in opposition. There are certain other affidavits filed by the parties as also an application of the respondents for vacating the interim order on record. But I do not consider it necessary to refer to these applications or affidavits in detail. Learned counsel for the parties have confined their submissions on the limited questions referred to in the earlier part of this judgement, and for addressing the issues raised on behalf of the parties, detailed analysis of contents of these affidavits or applications are not necessary. What has been primarily highlighted before me on behalf of the respondents is that the petitioner No. 1 has no right to continue to remain in possession of the land after 31st December, 2014 and the Administration representing the Government of India was entitled to embark upon the resumption process. In course of hearing, records were produced before me, mainly comprising of departmental notes, whose introduction was objected to by Mr. Sengupta, on the ground that these records were not referred to in any of the affidavits filed on behalf of the respondents. But, since these records directly relate to the dispute involved, I chose to take cognizance of these records, upon directing the respondents to make available to the petitioners those parts of the records on which reliance was being placed by them.

12. Referring to these records, it was submitted by Mr. Balasubramaniam that what was contained in the orders impugned was really recordal of decision of the Lieutenant Governor to start the resumption process. I find from the records that

on 23rd December, 2014 a note was initiated by the Deputy Commissioner for obtaining approval from the Lieutenant Governor for resumption and taking over the possession of the subject-land. In this note, the stand of the respondents, which was reflected in the impugned orders about shortage or nonavailability of land in these islands and the policy decision of the Administration not to let out any fresh Government land on grant has been referred to. This Note appears to have been seen by the authorities at different levels of the administrative hierarchy, as is evident from the numbers of signatures of different officials appearing on the body thereof. There are initials of the Lieutenant Governor on the note, which appears to be the endorsement of the Lieutenant Governor made on 2nd January 2015 for resuming and taking over possession of the subject-land. According to Mr. Balasubramaniam, this is the administrative practice through which approval is given by the Lieutenant Governor on any matter in which he is required to give his approval or endorsement, and such approval or endorsement can be treated to be the decision of the Lieutenant Governor exercising his independent power to take decision in this regard. On this reasoning, Mr. Balasubramaniam also sought to negate the argument of the petitioners that the impugned orders were being passed by the Deputy Commissioner on external dictat. According to the learned counsel for the respondents, the said orders contain approval of the Lieutenant Governor for starting the resumption process.

13. The impugned orders, however are styled as orders passed in an adjudicatory proceeding. The Deputy Commissioner is also designated as Revenue Court for determining certain revenue related disputes and the covering letter of the impugned orders originate from the Court of the Deputy Commissioner, district of South Andaman. There are numbers allocated to these orders starting with the letters "R.C." which I am apprised by the learned counsel for the petitioners, implies "Revenue case". But Mr. Balasubramaniam wanted this Court to ignore the labels on the foreheads of the orders and urged me to treat the order in its substance, as recordal of initiation of the resumption process of the land in question. According to the respondents, these were administrative orders communicating the decision of the Lieutenant Governor.

14. In the event these orders were passed in an adjudicatory proceeding, I would have quashed these impugned orders straightway as there was admittedly no prior notice of initiation of any such proceeding. In fact, there is no indication as to what led to registering of the cases. But, even if I proceed on the basis that this was mere communication of an administrative decision there is one part of these two orders which contain directions not meeting the requirement of law. The directives contained in the orders can be divided into two parts. The first part contains the decision of Lieutenant Governor for resumption and taking over possession of the land on the basis of a letter of the Administration dated 7th January, 2015. The petitioners contend that this letter was not sent to them, but that factor is not of much significance at this stage of this proceeding, having regard to the scope of the dispute. The second part of the order is a directive on

the Sub-Divisional Officer, South Andaman district to take over physical possession of the land in question, correct the land records and furnish compliance. So far as the first part of the directive is concerned, the issue involved pertaining to that part is intricately linked to the suit which has been instituted by the petitioner No. 1. It was however urged on behalf of the respondents that the said suit is not maintainable in view of Section 204 of the 1966 Regulation, which excludes jurisdiction of civil courts with respect to any matter arising under and provided for under the Regulation. The respondents' case is that in terms of the condition No. 7 of the prescribed form of the grant, a dispute of that nature can only be decided by the Lieutenant Governor. But, that question the respondents would have to raise before the appropriate forum.

15. On the question of initiation of steps for resumption of the land, I do not find any major flaw in the decision making process. The Regulation is silent on the manner in which decision shall be taken by the Lieutenant Governor to start the process of resumption. The steps to be taken for obtaining physical possession, however, is guided by statutory provisions, to which I shall refer to later in this judgement. But to start the recovery process also, the authorities would have to take administrative decision and such power is implicit in the Regulation of 1966. In the event, the authorities are proceeding on the basis that the grant has lapsed because of efflux of time, no specific notice would be required to be given determining the grant, before taking decision on initiation of process of resumption at the administrative level. On this point, Mr. Balasubramaniam had relied on the Constitution Bench decision of the Supreme Court in the case of V. Dhanapal Chettiar Vs. Yesodai Ammal, AIR 1979 SC 1745 : (1979) 4 SCC 214 : (1980) 1 SCR 334 , and argued that on lapse of the grant on efflux of time, a landlord could exercise his right of re-entry. But in my opinion, exercise of such power, particularly when the owner of the land is the Government of India, has to be in terms of statutory provisions, following the due process of law.

16. In this case, in the second part of the directive, the Deputy Commissioner has directed the Sub-Divisional Officer, South Andaman district to take over physical possession of the land. I enquired from Mr. Balasubramaniam what are the legal provisions which authorizes such direct intervention of the Sub-Divisional Officer to obtain physical possession of the land even after lapse of grant. He submitted that the Administration has the choice of taking recourse to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or section 24 of the Regulation. So far as the Section 24 of the Regulation is concerned, Mr. Sengupta sought to contend that this provision has no applicability in a case of this nature. But, in the absence of the Administration having exercised their choice of taking recourse to a particular mode of recovery procedure, I do not find it necessary to adjudicate that question in advance in this judgement. Admitted position is that the provisions of the 1971 Act has not been invoked as yet by the Administration. The procedure under Section 24 of the 1966 Regulation also contemplates service of notice on the person in possession of land, before physically removing such person. No such notice

appears to have been issued and no case has been made out on behalf of the respondents either that they have commenced the process for recovery under Section 24 of the 1966 Regulation. In my opinion, just on the ground of lapse of the grant, the Administration cannot exercise their power for forcible re-entry. The case reported in *V. Dhanapal Chettiar Vs. Yesodai Ammal*, AIR 1979 SC 1745 : (1979) 4 SCC 214 : (1980) 1 SCR 334 is not an authority for that proposition. Recourse would have to be taken to the provisions of the statute for removing a grantee on lapse of the grant, if the grantee does not surrender possession of the land forming subject-matter of grant.

17. In the event a notice is issued in terms of Section 24 of the Regulation, it would be for the petitioners to contest the validity thereof, if they are so advised. But in any event the Deputy Commissioner does not have power under the Regulation to direct the Sub-Divisional Officer to obtain physical possession of the land without issue of notice in the manner prescribed in Section 24 of the Regulation. In such circumstances, I quash the directive contained in the two orders, issued upon the Sub-Divisional Officer to take over physical possession of the land, since condition precedent for taking physical possession of the land has not been fulfilled. The Administration however shall have the power and authority to commence the resumption process, in the manner permissible under the law so far the land in possession of the petitioners is concerned.

18. On the question of rejection of the application of the petitioner for renewal of grant of land, I find from the annexure P-7 of the writ petition that such application was made before the Deputy Commissioner, South Andaman district. Admitted position is that the Lieutenant Governor is the authority to determine or decide on that question. Learned counsel for both the parties concurred on this point. The application for renewal was thus made to an authority who has no power to deal with such application, and rejection was also made by that authority. No material has been shown before me which would have revealed that the Lieutenant Governor had taken the decision to reject the application of the petitioner No. 1. Such rejection thus would be of no consequence so far as the dispute involved in this writ petition is concerned. In any event, the petitioners have instituted a suit in which one of the reliefs claimed is mandatory injunction upon the defendants therein requiring them to renew the grant. Thus, I refrain from making any comment on entitlement of the petitioners for obtaining renewal of the grant. It would be for the appropriate forum to decide as to whether the renewal made in the year 1987 with effect from 1st January 1985 was in reality a fresh grant or it was mere renewal of a grant. As regards the ratio of the decisions cited on behalf of the petitioners, having regard to the stand taken by Mr. Balasubramaniam, I do not think it would be necessary to deal with these decisions individually. So far as the authorities cited by the learned counsel for the respondents are concerned, these decisions relate to the merit of the case on the aspect of power of the authorities to recover possession of the land from the petitioners. I am not deciding that question in this judgement. Accordingly, I am not dealing with these decisions also in detail in

this judgement.

19. So far as the validity of the two orders are concerned, I have already quashed that part of the order which directed recovery of possession of the land by the Sub-Divisional Officer. As regards the rest of the orders, same shall be treated to be communication of stand of the respondents on the subject dispute.

20. The writ petition shall stand disposed of in the above terms. The application being CAN No. 043 of 2015 filed by the respondents shall also stand disposed of. The interim order already passed in this matter shall also stand dissolved having regard to my finding and directions contained in this judgement.

21. There shall be no order as to costs.