

(2007) 10 OHC CK 0014
In the Orissa High Court

Mesco Kalinga Steel Limited

APPELLANT

Vs

Orissa Industrial Infrastructure Development Corporation and
Others

RESPONDENT

Date of Decision : 30-10-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 105 CLT 149 : (2007) 2 OLR 1021 Supp

Hon'ble Judges : M.M. Das, J;B.P. Das, J

Bench : Division Bench

Judgement

M.M. Das, J.—M/s. MESCO Kalinga Steel Limited (in short, "the MESCO") the Petitioner herein, has approached this Court in the present Writ Petition for a second time, inter alia, challenging the notice dated 4.7.2003 issued by the Opp. Party No. 1-IDCO directing the Petitioner to deposit the balance amount of Rs. 22,84,48, 890.00 and for execution of the lease deed, notice dated 25.7.2003 issued by the IDCO cancelling the deed of delivery and resuming the land back, letter dated 26.9.2003 issued by the IDCO refusing to withdraw the notice of resumption dated 25.7.2003 and the Order Dated 25.2.2004 issued by the IDCO rejecting the Petitioner's representation dated 20.1.2004 pursuant to the order passed by this Court in an earlier Writ Petition.

2. For just appreciation of the case, it is necessary to go into the facts of the case, in brief, which are as follows:

The Government of Orissa being desirous of utilizing its enormous natural resources and in order to promote industrialization of the State, decided to enter into a Memorandum of Understanding with the MESCO group of industries for establishment of a Steel Plant in the name of MESCO Kalinga Steel Ltd. (Petitioner) to be located within the Kalinga Industrial Complex at Duburi in the district of Jajpur. The State Government, accordingly, decided to allot an area of approximately 2500 acres of land to the Petitioner, which would be necessary for putting up the Steel Plant with a proposed capacity of approximately 1.5 million

tones per annum.

The Petitioner's case is that the State Government took a decision to enter into a Memorandum of Understanding for allotment of 2500 acres of land for establishment of the Steel Plant keeping in view the fact that MESCO Group of Industries had already been allotted with the adjacent land, for establishment of a Steel Plant in the name of Mid East Integrated Steels Limited, so as to allow synergy of operation as would be evident from Annexure-2 to the Writ Petition. By letter dated 22.7.1994, the State Government requested the Petitioner to furnish documents with regard to the project for establishing a Steel Plant so as to enable the State Government to invest Rs. 50.00 crores as promoter's equity in MESCO Kalinga Steel Limited vide Annexure-11 to the Writ Petition. Subsequently, in its letter dated 5.1.1995, the State Government in its Department of Steel and Mines intimated the Petitioner that the Government have been pleased to order that the cost of 2500 acres of land amounting to Rs. 25.00 crores at the rate of Rs. 1.00 lakh per acre would be payable by the Petitioner and it will not be treated as equity participation of the State Government in the proposed Steel Plant. In the said letter, it was stipulated that the cost of land is to be paid as mentioned in the revised terms and conditions to be communicated shortly, vide Annexure-3 to the Writ Petition. Pursuant to the aforesaid letter, the State Government in its Department of Steel and Mines by letter dated 2.2.1995 intimated the Petitioner that the State Government has already allotted 2500 acres of land ear-marked for the Petitioner's company at Kalinga Nagar Industrial Complex for establishment of the Steel Plant and as the Government has already withdrawn from participation as equity share holder in the Petitioner-company, the land cost of Rs. 25.00 crores is to be paid by the Petitioner. In the said letter, the Petitioner was also intimated that the IDCO - Opp. Party No. 1 has been advised to hand over 2500 acres of land to the Petitioner for establishment of the Steel Plant on long term lease basis as per the stipulations laid down in the revised terms and conditions issued by the Department of Steel and Mines in its letter dated 2.2.1995 (Annexure-4). The revised terms and conditions in the said letter are general terms and conditions to be imposed on the companies who have availed incentive from the State Government for establishment of Steel Plant, which is evident from Annexure A series to the additional counter affidavit filed by the IDCO.

3. Pursuant to the allotment of 2500 acres of land by the State Government, the Petitioner-company deposited Rs. 1.25 crores with IDCO on 3.4.1995 (Annexure-5). In consequence thereof, the IDCO vide its letter dated 13.6.1996 requested the Petitioner to depute its authorized representative to take over possession of the land measuring Ac. 1756.29 as would be evident from Annexure B to the additional counter affidavit filed by the IDCO. The Petitioner was, thereafter, delivered physical possession of the land measuring Ac.1756.29 through its authorized representative, duly demarcated, from IDCO on 18.6.1996 as has been admitted by the IDCO in paragraph 5 of its additional counter affidavit. After taking possession of the land, the Petitioner claims to have

invested about Rs. 22.00 crores for cutting of rocks, leveling of land, raising boundary wall with height of 10" running into 13.2 kilometers, construction of RCC roof building consisting of 48 rooms thereon, piling work for setting up of Blast Furnace etc. The Petitioner further claims that the said rooms were constructed by it for being used as its site office/administrative office as well as living space for its employees. The Petitioner has pleaded that due to severe slump in the steel market, as the Petitioner-company suffered financial constraints, it could not pay the subsequent instalments towards cost of the land and between 1997-2002, several rounds of discussions took place between the Petitioner-company and the IDCO as well as the State Government with regard to deferment of payment of instalments. The Petitioner having invested huge amount in the said land was under the bona fide belief that they would be required to pay the outstanding arrear instalments in due course along with the interest at the rate of 14.5% as was prescribed in the revised terms and conditions.

4. The Petitioner was served with a notice dated 4.7.2003 issued by the IDCO, directing it to deposit the balance defaulted amount of Rs. 22,84,48,890.00 towards land cost and statutory dues towards ground rent and cess and to execute the lease deed by 19.7.2003, failing which, the IDCO will be constrained to resume the said land at the cost of the Petitioner and the amount of Rs. 1.25 crores already deposited by the Petitioner will be adjusted towards compensation for use and occupation of the land, vide Annexure-6 to the Writ Petition. The said letter was received by the Petitioner's office at New Delhi on 16.7.2003 as claimed by the Petitioner. The Petitioner further states that as the letter was received at a belated stage, it sought for reasonable time for submitting its reply to the said notice of resumption by its letter dated 17.7.2003 addressed to the IDCO vide Annexure-7. It is alleged that the IDCO instead of affording a fair and reasonable opportunity to the Petitioner, vide its letter dated 25.7.2003 intimated the Petitioner that the deed of delivery of possession given for Ac. 1756.29 of land in Kalinga Nagar Industrial Complex on 18.6.1996 is cancelled and the land is resumed back. It was also stated in the said letter that a sum of Rs. 1.25 crores deposited by the Petitioner stands forfeited being adjusted towards compensation for use and occupation of the land and damages, vide Annexure-8. On receipt of the above letter, the Petitioner submitted a detailed representation on 20.8.2003 making a request to the IDCO to execute the lease deed and allow the Petitioner to clear up the outstanding instalments (Annexure-9). The IDCO replied to the said letter on 26.9.2003 intimating the Petitioner that its request for withdrawal of resumption and execution of lease deed after resumption of the land is unwarranted, unreasonable, untenable under law and bears no meaning (Annexure-10). The Petitioner being aggrieved by the said refusal of IDCO to consider its case, approached this Court in W.P.(C) No. 12857 of 2003 challenging the said decision of the IDCO with regard to resumption of the land. This Court disposed of the said Writ Petition on 15.1.2004 with the following order:

Heard Learned Counsel for the Petitioner as well as Learned Counsel for respective Opposite Parties.

We dispose of this Writ Petition, as proposed by Learned Counsel for both sides, with a direction that within ten days from today the Petitioner shall make an appropriate representation before Opposite Party No. 1 - Orissa Industrial Infrastructure Development Corporation stating therein within how many days and on what terms the balance amount of the lease premium including interest, if any thereon, shall be paid by the Petitioner to Opposite Party No. 1. Opposite Party No. 1 shall dispose of the said representation, after considering the proposal that may be given by the Petitioner. Until such representation is disposed of, Opposite Party No. 1 shall not allot the land in dispute to anybody else.

If the Petitioner is ultimately aggrieved by the final decision of Opposite Party No. 1 that may be taken on the representation of the Petitioner, it shall remain open to the Petitioner to seek appropriate legal remedy in accordance with law.

5. Pursuant to the above order, the Petitioner submitted its representation on 20.1.2004 before the IDCO making a request therein to re-schedule the tenure of payment and to defer the schedule of instalments so as to enable the Petitioner to clear up the outstanding dues within a reasonable time (Annexure-12). Pursuant to the said representation, the Petitioner under Annexure-15 gave offer to clear up the outstanding dues within three years and accordingly, sought for a discussion in that regard with the Managing Director of IDCO. However, the IDCO by its letter dated 6.2.2004 intimated the Petitioner that the proposal of the Petitioner is not acceptable to it and gave the Petitioner a further opportunity to furnish a firm proposal for clearance of all the outstanding dues within a short time (Annexure 16). Again by letter dated 25.2.2004 the Managing Director, IDCO stated that a portion of the land allotted to the Petitioner has already been allotted to M/s. Visa Industries Ltd. and M/s. Jindal Stainless Ltd. vide IDCO's letters dated 7.11.2003 and 11.11.2003 and further, a portion of the land has been ear-marked for developing a Growth Centre by the IDCO. With the above intimation, the representation of the Petitioner was rejected by the IDCO stating the same to be highly unsatisfactory, unconvincing as well as unacceptable (Annexure 17). Being aggrieved by the rejection of its representation under Annexure 17, the Petitioner coming to know that Ac. 280.00 from out of the land allotted to the Petitioner, has already been handed over to M/s. Jindal Stainless Ltd. and M/s. Visa Industries. Ltd. has filed the present Writ Petition confining its claim to Ac.1475.50, which, according to the Petitioner, was done for avoiding dispute and litigation.

6. On 4.3.2005, this Court while hearing the Writ Petition on the question of admission, directed issuance of notice to the Opp. Parties 1 and 2 and for maintenance of status quo with regard to possession over the land in question by the parties. Thereafter, the present Writ Petition was listed on various dates and the interim order of status quo was continuing. On 16.8.2005, when the matter

was again listed before this Court, the same was adjourned for six weeks and the interim Order Dated 4.3.2005 directing maintenance of status quo was extended till the next date. On 22.8.2005 the Petitioner submitted a fresh representation before the IDCO with a proposal for payment of the outstanding instalments within ninety days and requested the IDCO authorities to consider the Petitioner's proposal (Annexure-24). During pendency of the Writ Petition, the Petitioner moved this Court for a direction that pending disposal of the Writ Petition, its representation under Annexure-24 may be directed to be considered by the IDCO. Accordingly, this Court by its Order Dated 8.9.2005, directed the IDCO to consider the aforesaid representation of the Petitioner and dispose of the same within one month. The Managing Director of the IDCO by his Order Dated 7.10.2005 rejected the representation of the Petitioner mentioning therein that further portions of the land has, in the meanwhile, been allotted to M/s. Jindal Stainless Ltd. and M/s. Visa Industries Ltd. and the balance land of Ac. 825.68 has been ear-marked for Growth Centre and no land is available for which it is not possible for IDCO to accept the offer of the Petitioner (Annexure-26). On 15.12.2005, when the matter was again listed, an adjournment was sought for by the IDCO and accordingly, the case was adjourned for one week and the interim order passed earlier was directed to continue. However, the application dated 20.4.2005 is pending which was filed by the IDCO for vacating the interim order. It is alleged by the Petitioner that taking undue advantage of the fact that no specific order was passed by this Court on 8.9.2005 extending the interim order of status quo, the IDCO proceeded to allot further land in favour of M/s. Jindal Stainless Limited measuring Ac. 530.00 and in favour of M/s. Visa Industries Limited measuring Ac. 120.00 for their expansion from out of the Petitioner's balance land, the above extent of lands were delivered to the aforementioned companies on 20.10.2005 and 22.10.2005 respectively. Subsequently, M/s. Jindal Stainless Limited and M/s. Visa Industries Ltd. filed applications for intervention in the matter and they have been allowed to intervene in this Writ Petition and have been arrayed as Opp. Parties 3 and 4 respectively.

7. Counter affidavits, rejoinder affidavits and additional counter affidavits have been filed by the respective parties.

8. Mr. S.C. Parija, Learned Counsel for the Petitioner contended that land measuring Ac. 1756.29 as per orders of the State Government dated 5.1.1995 and 2.2.1995 under Annexures-3 and 4 to the Writ Petition, were allotted in favour of the Petitioner and the Petitioner having deposited Rs. 1.25 crores, physical possession of the said land was handed over to the Petitioner by IDCO under their letter dated 13.6.1996 (Annexure-B to the additional counter affidavit of IDCO). Thus, admittedly, the Petitioner having taken physical possession of the land in question on 18.6.1996 and having invested huge amount of about Rs. 22.00 crores for construction and development of the said land, question of unilateral resumption of land by the IDCO does not arise. Such resumption is not only unjust and improper, but also cannot be held to be legally

valid. Mr. Parija further contended that prior to filing of the present Writ Petition, an area of Ac. 280.00 was handed over to the Opp. Parties 3 and 4 by the IDCO leaving the balance land measuring Ac. 1475.50. During the pendency of the Writ Petition, when the order of status quo was not specifically extended, the IDCO has allotted further land of Ac. 530.00 in favour of the Opp. Party No. 3 and Ac. 120.00 in favour of the Opp. Party No. 4 and handed over possession of the same to the said Opp. Parties on 20.10.2005 and 22.10.2005 respectively. The Petitioner, however, continues to be in possession over the balance land measuring Ac. 825.68 and the Opp. Parties 1 and 2 being the IDCO, have not produced any document to show as to how and when they took physical possession of the entire land. He has also raised the question that the transfer of land in favour of Opp. Parties 3 and 4, being admittedly during the pendency of this Writ Petition, is hit by principles of lis pendency and such transfer cannot bestow exclusive right on the Opp. Parties 3 and 4 over the said land, but will be subject to the final result of the Writ Petition. Though Mr. Parija vehemently argued that the transfer of the portions of the land during pendency of the Writ Petition in favour of Opp. Parties 3 and 4 is highly improper and illegal, specially when, the petition filed by the IDCO for vacation of the interim Order Dated 4.3.2005 was pending, but he submitted that even conceding that such transfer is valid, the Petitioner is entitled to retain the balance land measuring Ac. 825.68. It was argued by him that admittedly, there was no communication or demand from the IDCO regarding payment of the arrear dues since the date of allotment of the land and handing over possession to the Petitioner except the only communication made in October, 1997 with regard to execution of the lease deed, as would be seen from Annexures "C and "D" to the additional counter affidavit filed by the IDCO, but the notice of resumption was suddenly issued, after about six years, on 4.7.2003 annexed as Annexure-6 and the order of resumption dated 25.7.2003 under Annexure-8. According to Mr. Parija, there being no deed of delivery of possession executed by IDCO in favour of the Petitioner, the question of cancellation of the same as mentioned in the order of resumption dated 25.7.2003 (Annexure 8) does not arise and the allotment of land made in favour of the Petitioner having not been cancelled either by the IDCO or by the State Government, even till date, the order of resumption by the IDCO cannot be sustained. He further raised a question with regard to the conduct of the Opp. Parties 1 and 2 in not disclosing before this Court when the previous Writ Petition (W.P.(C) No. 12857 of 2003) was disposed of on 15.1.2004 that by that date, land measuring Ac. 280.00 had already been allotted to the Opp. Parties 3 and 4 which amounts to concealment of material facts and playing fraud on this Court, thereby abusing the process of law, as the entire extent of land was not available to be considered when the order was passed by this Court on-15.1.2004 on consent of parties. He, therefore, submitted that the orders passed by the Managing Director, IDCO on 25.2.2004 (Annexure-17) and 7.10.2005 (Annexure-26) amount to an eyewash as the entire extent of land allotted to the Petitioner was not available to be considered. The Petitioner has further made out a case that the clause of repayment enumerated in the revised

terms and conditions of the State Government in its letter dated 25.1.1995 provides for payment of defaulted instalment with interest at the rate of 14.5% per annum on such: defaulted: amount and as the Petitioner was ready and willing to pay the defaulted amount with interest and, other charges, there was no justification for the IDCO in declining to accept the offer made by the Petitioner and not allowing reasonable time to the Petitioner to clear up the arrear dues.

9. To conclude his argument Mr. Parija submitted that in the set of facts as it exists as on today, to cut short the litigation between the parties, the Petitioner intends to confine its claim to the balance land measuring Ac. 825.658 and is ready and willing to clear up the entire dues with regard to the cost of the said land for the aforesaid balance area together with interest at the rate of 14.5% per annum as per the revised terms and conditions imposed by the State Government on 25.1.1995 in Annexure-A series to the additional counter affidavit of the IDCO. The Petitioner is also willing to pay other Government dues by more than rent and cess within one month from the date of the order passed by this Court.

10. In view of such concession, Mr. Parija claims that the order of resumption dated 25.7.2003 (Annexure-8) to the extent of balance land Ac. 825.68 is liable to be quashed and the IDCO should be directed to execute the lease deed in favour of the Petitioner-company for the said balance land on receipt of the arrear dues. The Petitioner also undertakes to complete the construction and commence functioning of the Steel Plant within three years hence, i.e., by the end of 2010.

11. Mr. J. Patnaik, Learned senior Counsel appearing for the IDCO, on the contrary, submitted that even if there is no formal grant of lease by execution of any lease deed, the allotment made in favour of the Petitioner and the delivery of possession of land measuring Ac, 1756.29 does not bestow any legal right or title on the Petitioner to file the present Writ Petition. Mr. Patnaik attempted to make out a case that the allotment and delivery of possession of the land to the Petitioner was a grant under the Government Grants Act, which is reassemble at the will of the Grantor and, therefore, such resumption cannot be challenged under Article 226 of the Constitution. In support of his contention, Mr. Patnaik relied upon the decision in the cases of State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo, , Md. Serajuddin Vs. State of Orissa, and The State of Orissa Vs. Madan Gopal Rungta, . The second question raised by Mr. Patnaik was that the allotment made in favour of the Petitioner being in the nature of a contract, no judicial review is permissible and in this regard, he relied upon the decision in the case of Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, . Mr. Patnaik further contended that the decision taken by the IDCO being in public interest, the same cannot be subjected to judicial review and this Court while exercising the power under Article 226 of the Constitution does not sit in appeal on such administrative or policy decision of

the Government. In support of his contention, he relied upon the decisions in the cases of Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another, and State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo, . It was further contended by Mr. Patnaik that the action taken by the IDCO for resumption of the land allotted to the Petitioner is a policy decision in the public interest and the same cannot be challenged in a Writ Petition. In support of his contention, he relied upon the decision in the case of Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others, . With regard to re-entry into the land, Mr. Patnaik submitted that though the IDCO's right of resumption or re-entry is not prescribed under the IDCO Act, such right has been exercised by them as per Clauses 18 and 29 of the revised terms and conditions imposed by the State Government in their letter dated 25.1.1995. Mr. Patnaik contended that the interim order of this Court dated 4.3.2005 having not been subsequently extended on 8.9.2005, impugned action handing over possession of the land measuring Ac. 650.00 in favour of the Opp. Parties 3 and 4 during pendency of the Writ Petition is not in violation of any interim order passed by this Court.

12. Mr. S. Pal, Learned Counsel appearing for the Jindal Stainless Ltd. Opp. Party No. 3 contended that in the earlier Writ Petition filed by the Petitioner which was disposed of on 15.1.2004 even though the Petitioner was entitled to raise all the questions as have been raised in the present Writ Petition, he having not done so and the said Writ Petition having been disposed of by the order directing disposal of the representation of the Petitioner by the IDCO, the present Writ Petition is hit by the principles of res judicata and/or constructive res judicata. He further contended that the Petitioner's representation during the pendency of the Writ Petition having been rejected by the IDCO on 7.10.2005 under Annexure 26 and the same having not been challenged by the Petitioner, the Petitioner will not be entitled to any relief in the present Writ Petition with regard to the said order of rejection. It was argued by Mr. Pal that possession of the land allotted to the Petitioner and its subsequent dispossession cannot be adjudicated in a Writ Petition under Article 226 of the Constitution inasmuch as the Petitioner had no legal right to occupy the land in question after the order of resumption. It was further contended that as the Writ Petition contains disputed questions of facts, the same cannot be adjudicated under Article 226 of the Constitution of India.

13. Mr. Mukherjee, Learned Counsel appearing on behalf of VISA Industries Ltd.-Opp. Party No. 4, raised a preliminary objection with regard to maintainability of the Writ Petition on the ground that the Petitioner company did not exist at the time of signing of the Memorandum of Understanding on 4.5.2004 which admittedly was entered into by the State Government with MESCO Group of Industries and therefore, the present Petitioner cannot maintain the Writ Petition or claim any benefit thereunder. The other plea taken by the Opp. Party No. 4 was that there being no lease deed executed by the IDCO in favour of the Petitioner and the Petitioner having been in possession of the land in question not pursuant to any such lease deed or agreement, it is not open for the Petitioner to question the resumption of land made by the IDCO.

14. The last submission of Mr. Mukherjee is that the IDCO having allotted the land to the Opp. Party No. 4 and delivered possession thereof to it over which the Opp. Party No. 4 has already commenced its industries, it having taken the land in good faith for consideration, the same should not be interfered with by this Court in the present Writ Petition.

15. The questions, which arise on consideration of the pleadings of the respective parties, are addressed as hereunder:

16. Whether the present Writ Petition is barred by the principles of res judicata as contended by the Opp. Party No. 3?

Addressing ourselves to the aforesaid questions, we find that the Petitioner, though previously filed a Writ Petition, being W.P. (C) No. 12857 of 2003, the said Writ Petition was disposed of by this Court on 15.1.2004 with the order already quoted above. In the said Order Dated 15.1.2004, this Court without entering into the dispute raised between the parties, on consent of the Learned Counsel for both sides, disposed of the said Writ Petition with a direction that the Petitioner shall make an appropriate representation before the IDCO within ten days stating therein as to within how many days and on what terms the balance amount of the lease premium including the interest, if any, shall be paid by the Petitioner to the IDCO and the IDCO shall dispose of the said representation after considering the proposal given by the Petitioner. This Court further directed that till disposal of the representation, the IDCO shall not allot the land in dispute to any body else. The Petitioner was also granted liberty to seek appropriate legal remedy in accordance with law if it is ultimately aggrieved by the decision of the IDCO.

The law relating to applicability of the principle of res judicata/constructive res-judicata is no more res-integra. Fundamental rule of the principle of res judicata is that if between the same parties, a lis/any issue has been finally adjudicated by a competent Court of law, the said lis/issue cannot be re-adjudicated in a subsequent proceeding and will be barred by the principle of res-judicata.

In the instant case, as already stated, nothing was decided in the previous Writ Petition, being W.P. (C) No. 12857 of 2003, filed by the Petitioner. Rather, on concession of the parties, the said Writ Petition was disposed of granting liberty to the Petitioner to make a representation before the IDCO. We are, therefore, of the view that the principle of res judicata/constructive res judicata has no application to the facts of the present case.

17. Whether the question with regard to resumption of the land can be determined in an application under Article 226 of the Constitution? And, whether the reliefs as claimed" can be moulded, if ultimately, the Petitioner is found to be entitled to some relief in the Writ Petition?

It is an admitted case of the parties that the Government allotted initially Ac.2500.00 extent of land to the Petitioner-company and directed the IDCO to

hand over possession of the same. Consequent thereto, the IDCO delivered possession of the land to an extent of Ac. 1756.29 to the Petitioner-company. The Petitioner also deposited a sum of Rs. 1.25 crores. Though initially, the State Government agreed to lease out the above land by way of equity participation, but subsequently changed its decision and prescribed that the Petitioner-company shall have to pay the premium for the said land at the rate of Rs. 1.00 lakh per acre on the stipulations laid down by the Government. By letter dated 25.1.1995 of the Department of Steel and Mines, the modified terms and conditions to be imposed on the companies, who have availed incentive from the State Government for establishment of Steel Plants were stipulated. It is also admitted by the Opp. Party No. 1 that possession of the land measuring Ac.1756.29 was duly delivered to the Petitioner-company. The Petitioner-company claims to have invested about Rs. 22.00 crores on the said land towards development of the land and constructing 48 rooms and the boundary wall to a certain extent etc. In the previous Writ Petition filed by the Petitioner, specific direction was issued by this Court that if the Petitioner files the representation within the stipulated time with regard to payment of the arrear amount, the IDCO shall dispose it of within the period prescribed and in the event, the Petitioner is still aggrieved, it can avail appropriate legal remedy.

The representation of the Petitioner having been rejected, the Petitioner has filed the present Writ Petition. In view of such development, it cannot be contended that the question of resumption of land by the IDCO cannot be the subject-matter of an application under Article 226 of the Constitution. This view of ours is further fortified on account of the facts of the case being admitted by the parties.

The Opp. Parties objected to the nature of the prayer made in the Writ Petition submitting that the prayer as made in the Writ Petition cannot be granted by this Court in an application under Article 226 of the Constitution.

The Petitioner, in the present Writ Petition, has prayed for quashing the orders/ letters/notices under Annexures-6, 8, 10 and 17 and has further prayed for a declaration by deciding that the Petitioner has acquired full title to hold the property in question for a period of 99 years from the date of its possession and that the IDCO has lost its title to the said land having the only remedy to recover the balance amount by filing a civil suit.

With regard to the first part of the prayer, by which, the Annexures-6, 8, 10 and 17 have been sought to be quashed, this Court is of the view that the said prayer can be granted to the Petitioner, if it is found entitled to the same. No doubt, the second part of the prayer with regard to declaration of the title of the Petitioner cannot be granted in a Writ Petition. Even accepting that the prayer made in the present Writ Petition is not happily worded, it is now well settled that if the Writ Court comes to a finding that the Petitioner is entitled to a relief, the same can be moulded to do complete and effective justice to the party. The Courts have taken liberal view on this point and instances are many, where even though, the Petitioner did not make a specific prayer for a particular relief, but the Court

finding that the Petitioner is entitled to such relief, granted the same. In the case of Sri Justice S.K. Ray Vs. State of Orissa and Others, , the Supreme Court while considering this point held as follows:

A Writ Petition which is filed under Article 226 of the Constitution sets out the facts and the claims arising thereto. May be, in a given case, the reliefs set forth may not clearly set out the reliefs arising out of the facts and circumstances of the case. However, the Courts always have the power to mould the reliefs and grant the same.

18. Whether the Memorandum of Understanding dated 4.5.1995 entered into between the State Government and MESCO Group of Industries before incorporation of the Petitioner-Company can be held to be valid?

Now coming to the question raised by the O.P. No. 4 that the MOU signed by the State of Orissa with the MESCO Group of Companies was entered into prior to incorporation of the Petitioner-company and, therefore, no right can flow from the said MOU in favour of the Petitioner, as we find that the facts of the Government allotting the land in favour of the Petitioner and directing the IDCO to deliver possession of the same and further, deciding not to have any equity participation in the Petitioner-company and asking the Petitioner-company to pay the premium for the said land on certain stipulations, leaves no scope for the parties to raise a contention that the MOU was executed prior to incorporation of the Petitioner-company. The contention of Mr. Mukherjee with regard to the above, even if held to be factually correct, the same cannot debar the Petitioner from claiming the reliefs as it is the case of neither the Petitioner nor the IDCO that the Petitioner's MOU is an invalid document.

In view of the above, we are not inclined to enter into the question as to whether the said MOU can be held to be a validly executed legal documents.

19. Whether the allotment of the land in favour of the Petitioner by the IDCO is a Government Grant?

Mr. J. Patnaik, Learned Counsel for the IDCO raised a question that the land allotted in favour of the Petitioner-company was a Government Grant and, therefore, resumption of the same cannot be questioned in a Writ Petition as well as the provisions of the Transfer of Property Act will not be applicable to the same.

As already stated above, Mr. Patnaik relied upon the decisions in the case of State of Orissa v. Ramchandra Dev (supra) and Md. Serajuddin (supra). However, it is seen that the decision in the case of Md. Serajuddin (supra) was over ruled by a Full Bench of this Court in the case of Raisahab Chandanmull Indrakumar Private Ltd. Vs. State of Orissa and Others, . In the said case, the Full Bench of this Court relied upon the decision in the case of State of Orissa v. Ramchandra Dev" (supra) and came to hold that the mining lease in question, which was involved in the said case, was not a Government Grant and, hence, it does not

come within the purview of Government Grants Act, 1895. This Court further held that law respects possession even if there is no title to support it and it will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a Court. No person can be allowed to become a Judge in his own cause. While holding thus, the Full Bench also came to the conclusion that such disputes can be entertained in a Writ Petition under Article 226 of the Constitution. The Supreme Court, in the case of *The State of U.P. Vs. Zahoor Ahmad and Another*, , while dealing with a similar question where a land was leased out for erecting a temporary rice mill, in paragraphs-11, 12 and 13 thereof, held as follows:

11. An example of a Government grant within the meaning of the Government Grants Act occurs in the decision in *Jnanendra Nath Nanda and Others Vs. Jadu Nath Banerji and Others*, .

Two leases of two lots were granted by the Sunderban Commissioner on behalf of the Secretary of State. The lands comprised in the lots were waste lands of the Government. The waste lands of the Sunderbans were not the property of any subject. The Sunderbans were a vast impenetrable forest. It was the property of the East India Company. It later on vested in the Crown in those days by virtue of an Imperial statute. The history of the legislation showed that grants of Sunderbans lands which were vested in the Crown at that time were Crown Grants within the meaning of the Crown Grants Act as it then stood.

12. On the other hand, there is an illustration of what is not a Government grant within the meaning of the Government Grants Act. The decision in *Secretary of State for India in Secy. of State Vs. Lal Mohan Choudhury and Others*, furnishes that illustration. The Government in that case granted lease in respect of Khas Mahallands. The lease of Khas Mahal was held not to fall within the category of grants as contemplated in the then Crown Grants Act.

13. The lease in the present case was for the purpose of erecting a temporary rice mill and for no other purpose. The mere fact that the State is the lessor will not by itself make it a Government grant within the meaning of the Government Grants Act. There is no evidence in the present case in the character of the land or in the making of the lease or in the content of the lease to support the plea on behalf of the State that it was a grant within the meaning of the Government Grants Act.

It is, therefore, clear from the facts of the present case that the land allotted in favour of the Petitioner pursuant to a decision of the Government by the IDCO cannot be said to be a Government Grant.

20. Whether the action of the IDCO in resuming the land allotted in favour of the Petitioner can be subjected to judicial review?

Mr. Patnaik, Learned senior Counsel for the IDCO relying upon the decision in the case of *Kerala State Electricity Board and another* (supra) contended that the

allotment made in favour of the Petitioner being in the nature of a contract, the same cannot be judicially reviewed. He further contended that the Opp. Party took an administrative decision in public interest which also cannot be the subject-matter of a Writ Petition being a policy decision of the Government.

21. It is naive to state that law is now well settled that even in contractual matters and matters relating to grant of lease and resumption of land, the power of judicial review of a writ Court is not restricted. It is also well settled that the State or an instrumentality of the State cannot interfere with the rights of a citizen, unless it is in accordance with the rule of law which authorizes them to do so. The extraordinary jurisdiction under Article 226 of the Constitution exercised by the High Courts are for ensuring that rule of law prevails and no Tribunals or public authorities exceed their limit of jurisdiction while taking a decision (See *Bishan Das and Others Vs. The State of Punjab and Others*, and *Mohammed Hanif Vs. The State of Assam*,). It is also well settled that if a decision of a public authority or an instrumentality of the State or the State, suffers from arbitrariness and discrimination contrary to rules of fair play and natural justice, such decision can be interfered with by the exercise of the extraordinary power under Article 226 of the Constitution.

22. We are, therefore, of the view that the action of the IDCO in resuming the land in favour of the Petitioner can be judicially reviewed by this Court by exercise of its power under Article 226 of the Constitution.

23. Since we have dealt with the various contentions raised by the parties, as above, now it would be appropriate to address the most vital question involved in the present Writ Petition. The said question is as to whether the action of the IDCO in resuming the land allotted to the Petitioner and subsequently possession delivered, can be sustained in law? While considering this question, we take note of the fact that the Petitioner has conceded that it would limit its claim to the balance of Ac. 825.68 which remains after some portion of the land originally allotted to the Petitioner has been leased out in favour of the Opp. Parties 3 and 4. We also take note of the fact that the Petitioner has undertaken that in the event the balance land is leased out to it, the Petitioner would pay the cost of the said land together with interest " 14.5% per annum as per revised terms and conditions stipulated in the letter dated 25.1.1995 under Annexure-A series to the additional counter affidavit of the IDCO and shall also pay any other Government dues like ground rent and cess etc. within one month from the date of the order. The Petitioner has also undertaken that in the event the land is leased out to it on payment of the above consideration amount, it would complete the construction and commission of the Steel Plant by the end of 2010.

24. To appreciate the contention of the respective parties on the above question, it would be worthwhile to note that though stipulations were made by the Government of Orissa, which are common to all lessees of industrial areas to whom land is leased out by the IDCO, but in fact, no lease deed has been executed between the Petitioner and the IDCO. Be that as it may, since at the

time of initial allotment of the land certain terms/stipulations were made with regard to the condition of lease which were subsequently modified by the State Government by their letter dated 25.1.1995, in our considered view, the IDCO and the Petitioner would be both governed by the said terms which were stipulated at the time of allotment of the land and subsequently modified by the Government of Orissa in its Department of Steel and Mines in their letter dated 25.1.1995. In the said letter, Clause 2 of the terms provides as follows:

The lessee shall pay the balance outstanding cost of Rs...together with a simple interest of 12% per annum only and payable consecutively as per schedule of payment indicated hereunder.

The first instalment shall become due on.... In case of default in payment of instalment by the lessee, interest " 14.5% per annum on the defaulted amount for the defaulting period shall be charged. All payments made by the lessee shall be first adjusted towards levies, rents and taxes outstanding, then towards interest outstanding and the balance, if any, towards principal outstanding.

25. A term was also provided in the said letter with regard to the condition when a lessee becomes liable to be evicted, which reads as follows:

Notwithstanding anything hereinbefore contained where the lessee has become liable to be evicted or is evicted from the demised property under any of the foregoing conditions, the lessor may in its discretion continue the allotted property in the occupation of the lessee on payment of fine by the lessee as may be decided by the lessor and in such case this Agreement shall have effect as if there had been no eviction of the lessee.

Clause-33 of the said terms stipulates as follows:

That if the lessee does not utilize within a reasonable period only portion of the demised property for the purpose for which it was allotted and the Lessor is satisfied that the lessee can continue to utilize the portion of the demised property used by it even if the unutilized part thereof is resumed, the lessor may make an order declaring resumption of such unutilized portion of land and payment of compensation to the lessee in accordance with the provisions of the Orissa Industrial Infrastructure Development Corporation Act, 1980 and the rules/regulations made thereunder.

It has been specifically provided therein that the lessee shall be abiding by the provisions of the Orissa Industrial Infrastructure Development Corporation Act, 1980 and the rules/regulations made thereunder. The aforementioned Act does not provide for resumption for re-entry over a lease hold land. It has been contended by Mr. Patnaik, Learned Counsel for the IDCO that even though there is no provision under the above Act for resumption of the land, the right under Clauses 18 and 29 of the terms mentioned in the above letter dated 25.1.1995 has been exercised by the IDCO. The said Clause 18 of the said letter dated 25.1.1995 reserves the rights of the lessor, of re-entry, in case, a lessee fails to

pay the amount as stipulated for three months from the date when it falls due, even if no demand is raised, or if there is breach or non-observance of any of the conditions or covenants contained in the lease deed. The Clause 29 relates to a situation after expiry of the lease period.

26. In the instant case, however, we find that no lease deed was executed between the Petitioner and the State Government and, hence, the aforementioned Clauses-18 and 29 will not be applicable in case of the Petitioner, there being no formal lease agreement executed. Even if it is accepted that Clause 18 of the said terms applies to the Petitioner, it would be seen that the said Clause 18 provides that on failure of the lessee to remedy the breach within three months of the notice in writing given by the lessor, the agreement shall be deemed to have been terminated and then only the lessor may notwithstanding the waiver of any previous causes of action or rights or remedy of reentry and without prejudice to any such rights or remedy of the lessor for recovery of the dues under the lease, enter upon the demised property and re-possess the same as if the demised property had not been leased out. It is, therefore, clear from the above that before re-entry, a notice of three months is provided which was required to be given by the IDCO to the Petitioner. It was only on 4.7.2003 under Annexure-6 to the Writ Petition, the IDCO gave a notice to the Petitioner to deposit the balance amount by 19.7.2003 failing which the land shall be resumed. Under Annexure-7 to the Writ Petition, the Petitioner requested for one month time. On 25.7.2007, under Annexure-8 to the Writ Petition, the IDCO declined to grant further time for payment of the land cost with interest and execution of the lease deed. The IDCO also intimated to the Petitioner that the possession of the land constituting an area of Ac.1756.29 delivered on 18.6.1996 was cancelled and the land was resumed back. It, therefore, transpires that the IDCO itself did not adhere to the terms stipulated in Clause 18 of the above letter dated 25.1.1995, since no notice of three months, as stipulated therein, was issued to the Petitioner.

27. It is contended by Mr. J. Patnaik, Learned Senior Counsel for the IDCO that though the possession of the land in question was delivered to the Petitioner as per the decision of the Government, but since the Petitioner failed to pay the amount as stipulated for the land in question and consequently failed to enter into the lease agreement, for the purpose of public interest, this vast area of industrial land having been kept unutilized by the Petitioner, the IDCO rightly resumed the land and took over portion of the properties, which have been allotted to the Opp. Parties 3 and 4. A vital question, therefore, arises as to whether in the facts and circumstances of the case, the IDCO, which is an instrumentality of the State, could have taken possession or for that matter could have re-entered into the land without taking recourse to the established principles of law. It would be profitable to refer to the decision in the case of State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, . From the facts of the said case, it is revealed that the Respondents-lessees challenged the cancellation of lease passed by the State Government

before the High Court. The Writ Petitions were allowed and the order of cancellation of lease was quashed. The other area of controversy was with regard to the permission granted by the Lucknow Development Authority in favour Respondents-lessees to develop the leasehold property by erecting thereon a multi-storied building. The High Court in the Writ Petition also quashed the order of the Development Authority by which the permission to build the multi-storied building granted earlier was sought to be revoked. It was argued before the Supreme Court on behalf of the Respondents that great hardship and injustice would be occasioned to the Respondents if the State Government, on self assumed and self-assessed validity of its own action of cancellation of the lease, attempts at and succeeds in, a resumption of possession extra judicially by physical force. The Supreme Court placing reliance on an earlier decision in the case of Bishan Das and Others Vs. The State of Punjab and Others, held that a lessor, with the best of title, has no right to resume possession extrajudicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression "re-entry" in the lease-deed does not authorize extrajudicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a "legal pedigree". The Supreme Court further held in the facts of the said case that there is no question of the Government thinking of appropriating to itself an extra judicial right of re-entry. Possession can be resumed by the Government only in a manner known to or recognized by law. It cannot resume possession otherwise than in accordance with law.

28. Applying the ratio of the aforementioned decision in the case of State of U.P. and Ors. (supra) to the facts of the present case, we find that, it being an admitted case that the land in question was allotted in favour of the Petitioner and thereafter pursuant to the decision of the State Government, possession of land measuring Ac. 1756.29 was handed over to the Petitioner by no stretch of imagination, it can be held that the possession of the Petitioner over the said property amounted to possession of trespasser/encroacher, even if, the Petitioner did not adhere to the schedule of payment towards the cost of the land. We may state here that if a person/juristic person is in actual possession of the land even as a trespasser or encroacher, the real owner cannot evict such trespasser/encroacher by extra judicial methods upon use of force. The true owner in such a case has to take recourse to such procedure as recognized by law for evicting him/it. It is more so when the owner is the State or an instrumentality of the State as has been held by the Supreme Court that State or instrumentality of the State should have a "legal pedigree". It is unknown to the canons of law that the State will forcibly evict, even an encroacher, from the

land belonging to the Government, without taking recourse to the procedures of law. In the instant case, admittedly, nothing of such manner has been done in dispossessing the Petitioner from a portion of the land, possession of which was delivered to it and in allotting such land in favour of Opp. Parties 3 and 4.

29. However, the Petitioner itself has conceded that it will have no claim over the properties out of the land Ac. 1756.29, which has already been allotted and delivered to Opp. Parties 3 and 4 and has undertaken that it will pay the balance arrear together with interest " 14.5% per annum as per Clause-2 of the stipulations in the letter dated 25.1.1995 along with other Government dues within one month from the date of the order and will complete the construction and commission of Steel Plant by the end of 2010. Considering the above action on the part of the IDCO which is neither in conformity with the terms as stipulated in the letter dated 25.1.1995 nor in accordance with the Industrial Infrastructure Development Corporation Act and is also contrary to the settled position of law, while quashing the letters under Annexures-5, 6, 8, 10 and 17 as well as the rejection of the representation of the Petitioner during pendency of the Writ Petition which has been subsequently annexed as Annexure-26 to the Writ Petition, we direct the IDCO to calculate the balance amount payable towards the land cost along with simple rate of interest at the rate of 14.5% per annum and intimate the Petitioner within a period of two weeks from today. The IDCO shall also include the other Government dues like ground rent and cess in the amount payable by the Petitioner. On receipt of the above calculated amount, the Petitioner shall deposit the said amount in toto within a period of one month from the date of receipt of such calculation. Upon depositing the said amount, the IDCO and the Petitioner shall enter into a lease agreement with regard to the balance land of Ac. 825.68 and the Petitioner will be permitted to complete the construction of the Steel Plant thereon which it shall commission by the end of the year 2010.

B.P. Das, J.

30. I agree. J