(2008) 09 OHC CK 0110

In the Orissa High Court

Case No : OJC No. 7 of 2002

Modern Mineral Processing Company (P) Ltd. APPELLANT

Vs

Managing Director, Orissa State Financial Corporation and Others RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Orissa State Financial Corporation Act, 1951 — Section 29, 34, 36(3)
Specific Relief Act, 1963 — Section 6
Transfer of Property Act, 1882 — Section 8

Citation : (2008) 09 OHC CK 0110

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Advocate : Y. Das, N.C. Mohanty, Ramesh Sahu-3 and P.R. Behera, for the Appellant; Ramesh Ch. Rout, (for O.P. No. 1), A. Mukharjee, G. Mukherjee, P. Mukharjee, S. Pattnaik, M.K. Majumdar and A Pradhan, (for O.Ps. 2 and 3), Arun Kumar Mishra, (for O.P. No. 4), S.D. Das H.S. Satpathy, D.R. Bhakta, D.R. Sundaray, N. Bisoi and M. Panda for opp. parties, for the Respondent

Judgement

B.S. Chauhan, C.J.—This writ petition has been filed to complete the sale/ transfer of the Unit in favour of the Petitioner and to quash the allotment of land granted in favour of the opposite party No. 4 vide letter dated 17.10.2001 (AnnEx. -12).

2. The facts and circumstances giving rise to this case are that vide letter dated 5.9.1986 an area measuring Ac. 7.92 decimals, containing 3 plots bearing plot Nos. 123/ A, 130 and 146 was allotted to Orissa State Electronic Development Corporation (hereinafter called the ''Corporation''), out of which the Corporation asked the Industrial Development Corporation of Orissa (IDCO) to hand over possession of Plot No. 123/ A to M/s. Elcomos Electronics Ltd. (hereinafter called ''Elcomos Ltd.''). The said plot was handed over to Elcomos Ltd. on 13.7.1987 and in respect of the same a lease deed was executed on 18.11.1988. The said plot was mortgaged by Elcomos Ltd. on 24.01.1989 in favour of Orissa State

Financial Corporation (hereinafter called ''O.S.F.C.''). As the loan was not paid by the Elcomos Ltd., the plot was attached by O.S.F.C. in exercise of its power u/s 29 of the Orissa State Financial Corporations Act (hereinafter called the ''Act''). The said plot was put to auction on 9.3.1998 and settled in favour of the Petitioner for a consideration of Rs. 180 lakhs with down payment of Rs. 40 lakhs. The balance amount was to be paid within five years in eight half yearly installments. Accordingly, the Petitioner took possession of the entire land and building, plant and machinery, as per the layout plan, on the said plot bearing No. 123/A.

As the deal of the Unit had been made on "as is where is" basis, the Petitioner took possession of the unit as it was on that date. Certain land was lying vacant in the vicinity of the said plot which has been allotted to opposite party No. 4 vide impugned order dated 10.9.2001. As the Respondent No. 4 had been allotted total area of Ac. 1.19 decimals, the vacant land was found only measuring Ac. 1.07 decimals and it was assumed that the land measuring Ac. 0.12 decimals was in possession of the Petitioner. Therefore, the dispute is as to whether Petitioner is in possession of the land excess to what had been sold to it.

3. This writ petition has been filed raising large number of issues, but at the time of submission Mr. Y. Dash, learned Senior Counsel, appearing for the Petitioner has restricted his case to retain the land which the Petitioner has got possession on 18.9.1998.

4. this Court while entertaining the petition has passed the order granting the interim relief to maintain status quo. Shri Das, learned Senior Advocate appearing for the Petitioner has submitted that while making the advertisement dated 28.6.1998, for sale of the unit u/s 29 of the Act (under AnnEx. -1), only the description of land was given by boundaries, No. area had been mentioned therein. Petitioner''s bid was accepted for a sum of Rs. 180 lakhs vide letter dated 23.07.1998 (AnnEx. -3). The said letter also does not mention the area of the plot. The possession letter dated 18.9.1998 (AnnEx. -4) also does not provide for area rather it refers to possession of the land and building, plant and machinery etc. which had been handed over to the Petitioner on "as is where is" basis. None of the Opposite parties 1 to 3 had ever issued any show cause notice or initiated any proceeding under any law for eviction, if the Petitioner was in possession of the excess land. Therefore, the question of allotment of land to the extent of Ac. 0.12 decimals in favour of opposite party No. 4 does not arise. It is further submitted that the land allotted to the Petitioner is a public premises which falls within the definition of public premises in view of the provisions u/s 29 of the Orissa Industrial Infrastructure Development Corporation Act, 1980 (hereinafter called the ''Act, 1980''). Therefore, for eviction, proceedings could have been initiated under the Act, 1980. Even a trespasser cannot be evicted without resorting to the procedure prescribed by law. The authority under the provision of Section 34 of the Act, 1980 is competent to dispossess the Petitioner if it comes to the conclusion that the land in possession remains unutilized and it

may be allotted to other industries. However, in order to take such a recourse the right of effective hearing is available to the allottee. Against such an order the right of appeal u/s 36 (3) of the Act, 1980 is available to such aggrieved person. The competent authority before whom the appeal is to be filed is the Board of Directors which consists the Chairman of the O.S.F.C. and Chairman of ID Company The allotment had been made in favour of the Petitioner by the Board. Therefore, even a part of the land could not have been allotted to Respondent No. 4 without evicting the Petitioner, if it is in possession of the unauthorized land and thus the allotment in favour of Respondent No. 4 to the extent it covers the land of the Petitioner is liable to be quashed.

5. Mr. A. Mishra, Learned Counsel for opposite party No. 4 submits that the Petitioner is in unauthorized possession of certain land which has not been allotted to it. It cannot claim the area more than what had been allotted to its predecessor in interest. In respect of Plot No. 123/A the opposite party-corporation has a right to evict the Petitioner if it is found to be in possession of the land excess to the land sold to it. Opposite party No. 4 could not be given total area of the land allotted to him. The excess land in possession of the Petitioner is to be taken and given to opposite party No. 4. Mr. Mishra submits that the said Respondent had been allotted the area and for the same the possession has not been given. The IDCO is under a legal obligation to make the deficiency of the land good.

6. We have considered the rival submissions made by the parties and perused the record.

7. The case is that Orissa State Electronic Development Corporation Ltd. had been allotted three plots being Plot Nos. 123/A, 130 and 146 on 5.9.1986 and the total area of land was Ac. 7.92 decimals. However, the said three plots were in different locations and they were not in contiguity. Therefore, there is No. confusion as to what could be the area of the said plot. The site plan given by the parties makes it clear that all the three plots situate in different geographical situations. The plot bearing No. 123/B allotted to opposite party Nos. 4 and 5 vide letter dated 10.9.2001 was not in existence on 09.03.1998. Plot No. 123/A was purchased by the Petitioner in an auction on 18.09.1998 and the possession was taken over. Now the question is as to whether the Petitioner is in possession of the land excess to what had been sold to it in the auction sale, which had been settled on "as is where is" basis. The area had not been indicated either in the auction notice, or in the possession letter. The site plan placed under Annex -2 provides the measurements of the plot by all means, however, it has been prepared by the Petitioner and thus cannot be relied upon. In view thereof, two clear factual positions may exist - (1) Petitioner had been handed over the possession of area more than what had been allotted to its predecessors in interest, or (2) the Petitioner had encroached upon the land in Vicinity of the land allotted to it. This is a pure question of fact and the same cannot be adjudicated upon in a writ jurisdiction.

8. So far as the law is concerned, it is settled legal proposition that even a trespasser cannot be dispossessed without following the procedure prescribed by the law. This principle has been considered and approved time and again by the Apex Court (vide Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, ; Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, ; Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, ; and State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, .

9. Undoubtedly, even the trespasser has a right not to be thrown out of the possession forcibly. Even on the assumption that the person has No. right to remain in possession, he can be evicted only by taking recourse to law. (Vide Lallu Yeshwant Singh v. Rao Jagdish Singh and Ors. AIR 1968 SC 620; Ram Rattan and Others Vs. State of Uttar Pradesh, ; Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao, ; and Midnapur Zamindary Company Ltd. v. Naresh Narain Roy AIR 1924 PC 124). Similar view has been taken by the Rajasthan High Court in Mohammed Yunus Vs. Urban Improvement Trust, Jodhpur and Others, .

10. In Nagar Palika, Jind Vs. Jagat Singh, Advocate, , the Apex Court has observed that Section 6 of the Specific Relief Act 1963 is based on the principle that even a trespasser is entitled to protect his possession except against the true owner and purports to protect a person in possession from being dispossessed except in due process of law.

11. The State authorities also cannot dispossess a person by an executive order. The authorities cannot become the law unto themselves. It would be in violation of the rule of law. Government can resume possession only in a manner known to or recognised by law and not otherwise. (Vide Bishan Das and Others Vs. The State of Punjab and Others, ; State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, ; and State of West Bengal and Others Vs. Vishnunarayan and Associates (P) Ltd. and Another, .

12. Undoubtedly, the property in dispute is a public premises in view of the provision of Section 29 of the Act, 1980 and it is always open to the Corporation or IDCO to initiate a proceeding under the said provision for eviction of the Petitioner, if it is found to be in possession of the land excess to what has been sold to it. More so, even if it is found that the Petitioner is not in possession of excess land allotted to it but a part thereof remained unutilised, the provision of Act, 1980 permits the authorities to take back the possession of the extra land and allot it to someone else.

13. It is submitted that when there is discrepancy in the boundary and other description of the immovable property, the boundary prevails.

In Ramabhadra Naidu v. Kadiriyasami Naicker AIR 1922 PC 251, the Privy Council examined a case where in a sale certificate, land mortgaged by a party had also been included. The question of discrepancy of the contents of sale certificate and other documents arose before the Council. It was held that if there was No. ambiguity in the words of a sale certificate, object of the sale certificate would be defeated if it was possible to change its plain meaning by making reference to documents on the basis of which decree had been passed. The Privy Council held that certificates of sale was document of title which ought not to be lightly regarded or loosely construed and except in clear cases a purchaser could not to be harassed in his possession by disputes arising years after the purchase.

14. In Sheodhyan Singh and Others Vs. Musammat Sanichara Kuer and Others, the Apex Court held that conflict between the boundary and Khata number and plot number if exists, the description of boundary would prevail. The judgment of the Calcutta High Court in Gossain Das Kundu v. Mrittunjoy Agnan Sardar (1913) 18 CW 541 was considered. The logic behind it, is that boundary provides for full identity of the plot though there may be mis description in Khata number etc. That is merely an irregularity.

15. In Dinabandhu Sethi and Ors. v. s. Chintamoni Sahu and Ors. AIR 1971 Ori. 215, this Court considered the provision of Section 8 of the Transfer of Property Act, 1882 and held that in order to establish the identity of the land sold, the normal rule is that the description of the plot or survey number yields to the boundary when there is discrepancy between the two and this is only when the true intention of the parties at the time of sale is not known.

16. In Dhobei Behera v. Nabaghana Senapati and Anr. 1973 (2) C.W.R. 1255, a similar view has been reiterated by this Court and held that where there is a mistake in the description of the land sold under a sale deed, to ascertain the land actually sold the boundary of the land given in the sale deed is very often given preference to the description of the land by survey numbers. The Court held that this is not an abstract position of law which has to be applied in all cases. It cannot be said that where other evidence on record and circumstances disclosed in the case are more decisive, they have to be ignored, because they are in consistent with the aforesaid position in law.

17. In Smt. Rajani Routray Vs. Smt. Kamal Kumari Dei and Another, ; and Collector Koraput and Anr. v. Sahukar Gurumurty 2008 (II) CLR 132, this Court held that, if there is a conflict between plot numbers and boundaries as boundaries given are definite and firm, the boundaries would prevail. The land indicated within the boundaries should be considered to be the subject matter of the deed.

18. Thus in view of the above, the law can be summarised that the intention of the parties must be determined as what was the area, number of plots, which has been subject matter of sale and it can be ascertained by different evidence available for the parties in order to identify a particular property and in case there is any discrepancy, the boundary will prevail.

19. At this instance, Shri Y. Das, appearing for the Petitioner submits that the Petitioner needs the extra land for extension of its establishment and in case it is

found in possession of the extra land, i.e. the land excess to what had been sold to it, it is ready to pay consideration for the same. On the other hand, Shri Mishra, Learned Counsel appearing for opposite party Nos. 4 and 5 has submitted that in case the said opposite parties do not get the land to the extent they were allotted, his clients would be happy if the amount is refunded proportionately with interest.

20. Shri Mukherjee, Learned Counsel appearing for the Corporation has submitted that in case the Petitioner and the Respondent Nos. 4 and 5 make their applications for the aforesaid purpose, the same shall be considered and decided in accordance with law. He further assures that Petitioner shall not be evicted without resorting the procedure prescribed by law.

21. In view of the above, the Corporation shall examine as to what was the exact area of land sold to the Petitioner and in case it is found to be in possession of the excess land, his application for allotment of the same for currently prevailing rate shall be considered in accordance with law and in case it is decided to not allot the same, the Petitioner will be evicted only by following the procedure prescribed by law. In case Respondent Nos. 4 and 5 make an application for refund of the amount proportionately, it may be considered and the refund be made along with interest expeditiously. With the aforesaid observations and direction, the writ petition is disposed of.

B.N. Mahapatra, J.

22. I agree.