
(2009) 11 CHH CK 0005
In the Chhattisgarh High Court
Case No : Writ Petition No. 3693 of 1994

Rev. C. Carnilius

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Constitution of India, 1950 — Article 300(A)

Citation : (2010) 2 CGLJ 5

Hon'ble Judges : R.L. Jhanwar, J;Dhirendra Mishra, J

Bench : Full Bench

Advocate : Varunendra Mishar and Sanjay K. Agrawal, for the Appellant; Kishore Bhaduri, A.A.G. for Respondents Nos. 1 and 2, Prashant Mishra and Sanjay K. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Dhirendra Mishra, J.—The Petitioner by the instant petition has prayed for the following relief(s):

7.1 The Respondents No. 1 and 2 be directed to execute lease deed in respect of 44.07 acres of land in favour of the Petitioner Church at Jagdalpur within a specified time;

7.2 That exemplary cost should be awarded in favour of the Petitioner because the Respondent No. 1 and 2 have made the Petitioner to spend huge amount in protecting it's right, which may be quantified to Rs. 1 lac.

2. The Petitioner is the Executive Secretary of the M.P. Regional Conference Methodist Church in India (for brevity "the Church"), Jagdapur. The case of the Petitioner is that it held 68.87 acres of land. This land was a part of the land from grant in the last century from 3.4.1893. 52.34 acres of land was granted for building purposes and 975 acres of land was granted for establishing village and to bring the land under cultivation. Another indenture of lease for 16.27 acres of land was executed by Rani of Bastar Estate on 23.3.1923 in favour of the

Church. A dispute arose between the State Government and the Church regarding renewal of lease of the said land. The Church surrendered 975 acres of land to the State. The Church invested huge amount of Rs. 50 lacs in buildings and other activities over the land and its possession. However, full area of the land was not occupied.

The State Government constructed a road over the Church's land bifurcating the same without consent of the Church. The State/Respondent No. 1 issued a show cause notice to show cause as to why lease of the unoccupied land be not cancelled. The Church also filed a writ petition bearing W.P.M.P. No. 805/82, Superintendent, Methodist Episcopal Church, Jagdalpur v. Collector, Jagdalpur and Ors., which was decided on 30th September, 1988 (Annexure P/1). In the said petition, stand of the Church was that the lands were granted on permanent lease and only the rent could be revised; the Church was a lessee and this fact was accepted by the Collector vide order dated 29.4.1975; and the order of cancellation of lease was in violation of Article 300(A) of the Constitution. Whereas the Respondents contended that the Petitioner did not utilize the leased land area of 69.65 acres for the purposes specified; the Petitioner was in possession of only 54.50 acres of land, which was utilized for building site. The parties to the writ petition entered into negotiation, which resulted into decision that the area marked in red colour in the map of Annexure P/2 be surrendered to the Government, the remaining area would continue to remain with the Petitioner's Church and lease for the remaining area mentioned in the map may be renewed. The above understanding arrived at between the parties was recorded in paragraph-9 of the order of Annexure P/1.

The High Court came to a finding that the Respondents had resumed possession of the land described in Annexure P/2 referred to as Annexure N in W.P.M.P. No. 805/82. The State undertook not to disturb the Petitioner's possession. The Petitioner was required to deliver possession of the vacant land shown in the map of Annexure P/2 in red colour bounded by letters A, B, C, D, E, F and the State, on their part, agreed for renewal of lease of the remaining land shown in Annexure P/2. However, the Respondents have failed to execute lease deed for the remaining 44.07 acres of land. Only short term lease for 30 years was executed for about 10 acres of land only.

3. It is further case of the Petitioner that contempt petition bearing M.C.C. No. 26/90 was filed. The Respondents submitted their reply to the contempt petition vide Annexure P/3. However, when the Respondents did not comply with the assurances given in the contempt petition, another contempt petition M.C.C. 159/91 was filed vide Annexure P/5. In reply to the subsequent contempt petition, it was stated by the State that Annexure P/3 was not a copy of reply to M.C.C. No. 26/09, Annexure P/3 was amended vide amendment application of Annexure R/1, however, Annexure R/1 was never filed before the Court. The Respondents have only executed lease deed for 30 years for total area 10.18 acres and they have failed to execute lease renewal in respect of 44.07 acres of

land, whereas they are bound to carry out the decision in W.P.M.P. No. 805/82 dated 30th September, 1988 and execute the lease deed for the remaining area of 34 acres.

4. The State/Respondents No. 1 and 2 in its return have averred that the instant petition is based on wrong interpretation of the order of the High Court in W.P.M.P. No. 805/82. The High Court vide its order dated 30.9.1988 held that the matter has already been negotiated and settled down between the parties in terms whereof the lease, whereupon the buildings, belonging to the Church, are standing, was to be executed in favour of the Petitioner and possession of the remaining lands was required to be handed over to the Government and in this view of the matter, the Respondents were directed not to disturb possession of the Petitioner over the land where the said buildings were standing and execute lease deed in favour of the Petitioner in respect of said land i.e. the land where buildings of the Petitioner are standing.

5. In reply to the contempt petition M.C.C. No. 26/90 filed by the Petitioner, it was submitted that it was wrongly mentioned due to typographical error that the land admeasuring 44.07 acres was left in possession of the Petitioner and therefore, an amendment application was moved for correcting the aforesaid figure and instead of the figure "44.07", the correct figure "36.87" was mentioned vide amendment application of Annexure R/1. This fact has been deliberately suppressed by the Petitioner. The area 36.87 acres mentioned in reply is inclusive of the portion of lands adjacent to the building, which was being used for miscellaneous purposes by the user of the buildings, therefore, measurement was again taken, whereupon it revealed that accurate portion of the land, on which buildings of the Church are standing, was only 16.93 acres, which is evident from the document of Annexure R/2. Thus, the Petitioner is only entitled for lease in respect of land admeasuring 16.93 acres, whereupon its buildings are standings.

6. The Petitioner filed another contempt petition M.C.C. No. 159/91. The non-applicants in the said contempt petition filed an application for taking the map on record. The contempt petition was, accordingly, dismissed as not pressed vide Annexure R/5. The Respondent-State has already complied with the order dated 30.9.1988 passed in W.P.M.P. No. 805/82, which would be evident from the document of Annexure R/6 and R/7, by which seven lease deeds for total area of 16.93 acres were executed in favour of the Church and the same was communicated to the Petitioner, however, the Petitioner vide his memo dated 6.1.1998 of Annexure R/8 refused to receive the lease deeds.

7. Respondents No. 3 and 4 in their separate return submitted that on application of the Respondent-Bank, the land admeasuring 17,400 sq.ft was allotted to the State Bank vide order of allotment of Annexure R/3-H on a premium of Rs. 8,74,422/- with annual rent of Rs. 65,584/- and accordingly, the permanent lease of Intra-municipal Nazul for building purposes for 30 years for a consideration of the premium paid by the Bank vide Annexure P/3, was granted.

The land allotted to the Petitioner is the part of the land admeasuring 24.71 acres, possession of which was handed over to the State as per mutual agreement with the Petitioner. Admittedly, the State was not required to renew the lease in respect of the vacant land.

8. In rejoinder to the return filed by the State, the Petitioner has averred that the contempt petition M.C.C. 26/90 was disposed of on the basis of reply (Annexure-P/3) filed by the State. The State/Respondent has neither pleaded nor filed any document to show that the amendment application of Annexure R/1 was allowed and the contemnors were permitted to amend their reply of Annexure P/3. Counsel for the Petitioner did not press the subsequent contempt petition M.C.C. No. 159/91 as the Respondents had filed their reply to that petition also and averred that the direction issued by the High Court have already been complied with. However, in their reply, they did not mention any specific area occupied for which lease deed was renewed.

9. Mr. Varunendra Mishra with Mr. Sanjay K. Agrawal, Learned Counsel for the Petitioner submitted that W.P.M.P. No. 805/82 was finally disposed of by recording the State's undertaking that the Petitioner will not be disturbed in respect of the land, on which its buildings are standing, and the Petitioner shall deliver the possession of vacant land as shown in the map in red colour to Annexure R/1 and for remaining land, the Respondents shall renew the lease in view of Annexure R/1. Annexure P/2 is the copy of map, which was filed in W.P.M.P. No. 805/82 as Annexure R/1. From bare perusal of the map of Annexure P/2, it is clearly revealed that the Petitioner had surrendered the land marked in red colour with total area 24.80 acres, whereas, as per State's undertaking the Petitioner is entitled for renewal of lease in respect of balance of 44.07 acres vide Annexure P/3, which is the State's reply in contempt petition M.C.C. No. 26/90. In para-3 thereof, it has been categorically Stated that the Respondents have taken possession of the vacant land 24.80 acres and left 44.07 acres in possession of the Petitioner and steps to renew lease of 44.07 acres, on which buildings are standing, are in progress.

In reply of Annexure P/5 to M.C.C. No. 159/91, the State has contended that an application for amendment of reply was filed in M.C.C. No. 26/90 and Annexure R/1 is the copy of the application for amendment. In the said application, it has been contended that the actual area in possession of the Petitioner is 36.86 acres and not 44.07 acres. The stand taken by the State is contrary to the order passed in W.P.M.P. No. 805/82 and inconsistent with their own stands taken in contempt petitions M.C.C. No. 26/90 and 159/91. The stand of the State that the Petitioner is entitled only for renewal of lease, on which its buildings are standing, is illogical and absurd as the school consists of various buildings, Church, residential quarters, High School, Primary School, Middle School and Hostel. The school has its own playground, which is a statutory requirement, therefore, if all the open lands surrounding the buildings of the Petitioner are taken over by the State Government, the buildings would become landlocked and

rendered completely useless. Dismissal of the contempt petition does not preclude the Petitioner from raising grievances which remained unredressed despite filing of contempt petition.

10. Reliance is placed on the judgment in the matter of Commissioner, Karnataka Housing Board v. C. Muddaiah (2007) 7 SCC 689.

11. On the other hand, Mr. Kishore Bhaduri, learned Addl. Advocate General for the State would argue that the instant petition is barred by the doctrine of res judicata as the dispute between the same parties has been conclusively decided in the earlier writ petition W.P.M.P. No. 805/82 and secondly, as per order of the High Court of MP passed in the above petition, the Petitioner is entitled for lease of the land, whereupon buildings are standing. The instant petition is misconceived as according to the Petitioner, the petition has already been disposed of vide order dated 30th September, 1988 by the MP High Court and this petition has been filed for compliance of the earlier order passed by the High Court as the Petitioner is not aggrieved by any fresh adverse order to the interest of Petitioner.

12. Mr. Prashant Mishra, learned Sr. Advocate with Mr. Sanjay K. Agrawal, counsel for Respondents No. 3 and 4 would submit that the land allotted to the Respondent-Bank forms part of the land, possession of which was handed over to the State Government as per mutual agreement. Since the Petitioner has not challenged the order of allotment passed by the State Government in favour of the Bank, no relief could be granted against the Respondent-Bank. Since M.C.C. No. 159/91 arising out of the order passed in W.P.M.P. No. 805/82 was dismissed as not pressed, the instant petition is not maintainable in law and hit by the principles of res judicata.

13. Reliance is placed on the judgment in the matters of State of Haryana and others Vs. K.N. Dutt, .

14. We have heard Learned Counsel for the parties and perused the pleadings of the respective parties including the documents available on record.

15. Learned Counsel for the Respondents have challenged the maintainability of this petition on the ground that earlier petition between the same parties has been disposed of on merits. The contempt petition filed by the Petitioner has been finally disposed of as not pressed after reply of the Respondents and thus, subsequent petition for direction for compliance of the order dated 30.9.1988 passed in W.P.M.P. No. 805/82, is hit by res judicata.

16. In State of Haryana and others Vs. K.N. Dutt, , in a writ petition, the Division Bench of the High Court directed the Respondents-State to release the Petitioner therein all pensionary benefits to which he was entitled under the rules. The Petitioner initiated contempt proceedings for non-compliance of the direction of the High Court. Learned Single Judge dismissed the contempt petition with an observation that the proposition of law is well settled that recovery of the

government dues from a superannuated employee can be made from gratuity. The Respondent-State Was in its competence to deduct the government dues from the gratuity of the Petitioner. The balance of the amount has been disbursed to the Petitioner after deduction of the dues and thus, the Court's order dated 21.11.1990 has been duly complied with.

After passing of the above order, the Petitioner filed a writ petition and prayed for a declaration that the deduction of government dues is illegal and ultra vires. Allowing the writ petition, the Division Bench directed the State to refund the amount deducted from the Petitioner's gratuity.

The Hon''ble Supreme Court allowing the appeal of the State held that the High Court in a contempt petition in the year 1991 finally decided that the government dues can be deducted from the gratuity payable to a superannuated employee. After deduction of the dues from gratuity payable, the balance has been disbursed to the Petitioner and the order passed by the Court in writ petition has been fully complied with. The above order has attained finality as it was not taken in appeal before any forum. Thus, the order binds the parties thereto. In the subsequent writ petition, the above fact was totally ignored by the Division Bench and accordingly, the Hon''ble Supreme Court allowed the appeal of the State and set aside the order of the Division Bench.

17. In C. Muddaiah (2007) 7 SCC 689, in a writ petition filed by the Petitioner the learned Single Judge of the High Court directed the Board to assign seniority of the Petitioner by placing him above Respondents No. 2 to 34 therein and to grant other consequential benefits to him. The writ appeal against the above order was dismissed. SLP filed before the Supreme Court was also dismissed. The order of the Single Judge became final. Since the consequential benefits were not extended to the Petitioner, he filed contempt petitions in respect thereof, but the same were dismissed. The Petitioner thereafter filed a substantive petition contending that though order was passed in the earlier writ petition regarding reassignment of his seniority and payment of consequential benefits, arrears of salary to which he was entitled, the same were not paid to him. A prayer was made that the Board be directed to extend monetary benefits as per the judgment rendered in the earlier litigation. The Single Judge dismissed the writ petition. In writ appeal, the Division Bench allowed the claim of the Petitioner. Thereafter, the Board went in appeal.

The Hon''ble Supreme Court rejecting the contention of the Board that the order of the Single Judge made in the earlier litigation has been complied with and the Board had paid all consequential benefits to the Petitioner, to which he was entitled in law, and further rejecting the plea that in view of dismissal of the contempt petition, it was not open to the Petitioner to contend that that there was noncompliance of order passed by the Court and fresh petition for such relief was not maintainable, held that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of law, is not complied with or is ignored, there will be an end of the

rule of law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a spacious plea that no such directions could have been issued by the Court. Upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice.

18. In the present case also, in reply to M.C.C. No. 26/90 of Annexure P/3, the Respondents stated that the State has taken possession of 24.30 acres of land and have left 44.07 acres in possession of the Petitioner as shown in Annexure N; steps to renew the lease over 44.07 acres, on which buildings are standing, are in progress and within a month renewal orders may be passed and thus, the petition was dismissed accordingly. In subsequent contempt petition M.C.C. No. 159/91, the Respondents in their reply (Annexure P/5) stated that the reply filed in M.C.C. No. 26/90 was amended; renewal of the lease has already been done by the Respondents and despite notice to the Petitioner, so far none has appeared to sign and obtain the lease deed and make necessary payments towards the land etc. Copy of the renewed lease deed was also filed. Thereafter, the contempt petition was dismissed as not pressed vide Annexure R/5. There is no specific order of the High Court that the Respondent-State has executed lease deed in compliance of its order of Annexure R/1 and the order has been complied with. Therefore, relying upon the judgment in C. Muddaiah (2007) 7 SCC 689, we hold that the instant petition is maintainable.

19. In W.P.M.P. No. 805/82, the High Court after referring to the stand of the respective parties in para-9, observed thus:

9. Having heard the Learned Counsel for the Petitioner Shri Abhay Sapre and the learned Dy. Advocate General, Shri Anoop Choudhary for the Respondents, we find that according to para 12 of the return and Annexure R/1 dated 17.9.1985, during the course of legal proceedings said to be pending before the Commissioner, besides in this Court, there were negotiations on 7.2.1985 between the Collector, Jagdalpur and Mr. Samuel Larippa on behalf of the Methodist Church and the Church had taken a decision that the area marked in red colour in the map annexed to Annexure R/1 be surrendered to the Government. The remaining area would continue to remain with the Petitioner-Church and lease for the remaining area mentioned in the map may be renewed.

After observing thus in para-10, it has been further observed that on 6.7.1982, it was ordered that the Respondents will not disturb the possession of the Petitioner until further orders over the property shown in Annexure D/2, except the agricultural land shown by numbers "3" and "2", which are bounded by thick green lines. Referring to Annexure N filed with the rejoinder, it is mentioned that from Sheet No. 67, Plot No. 1, an area of 24.71 acres, possession was resumed by the Respondent-State. It is only after this that Annexure R/1 dated 17.9.1985 was given by the Superintendent, Methodist Church, Jagdalpur as described above. The Respondents, therefore, have specifically stated that the Petitioner

will not be disturbed with regard to the land, on which buildings are standing and as the other lands have been surrendered, the Petitioner is estopped from challenging that possession.

In para-11 while disposing of the petition as infructuous, it has been directed that as the State has resumed possession of the land described in Annexure N dated 15.1.1985 and the State's undertaking that the Petitioner will not be disturbed with regard to the land, on which its buildings are standing, the Petitioner shall deliver possession of the vacant land as shown in the map in red colour to Annexure R/1 and for the remaining land, the Respondents shall renew lease in view of Annexure R/1.

20. From bare perusal of the document of Annexure P/2, which is copy of the document of Annexure R/1 filed in W.P.M.P. No. 805/82, it is clear that possession of the vacant land as shown in the map to Annexure R/1 and marked as 1, 2 and 3 was to be delivered to the State. The details of the land to be vested with the State Government, which is marked as 1, 2 and 3 in the map, have been given in the map. The area to be vested with the State Government is 24.80 acres whereas description of the land of the Petitioner is separately marked as 1 and 2 and the area has been given as 44.07 acres. The order of the High Court mentions that the State has given undertaking that the Petitioner will not be disturbed with regard to the land, on which its buildings are standing, the Petitioner shall deliver possession of the vacant land as shown in the map in red colour to Annexure R/1 and for the remaining land the Respondent-State shall renew the lease in view of Annexure R/1. The undertaking given by the State is further fortified from their reply submitted in M.C.C. No. 26/90, in which also it has been stated that steps for renewal of lease with respect to 44.07 acres of land are in progress and the same shall be completed within a month. Though the State has tried to resile from this stand by filing an application for amendment in the said reply to substitute the figure 44.07 acre from 36.87 acres vide amendment application of Annexure R/1. However, there is nothing on record to show that the Respondent-State was permitted to amend their reply. The Respondent-State has, later on, further resiled from its earlier stand and now, it has been stated that the actual area of the land over which Petitioner's buildings are standing, is only 16.39 acres as per Annexure R/2 and the Petitioner is entitled for lease in respect of the land admeasuring 16.93 acres, whereupon buildings are standing.

21. From the order dated 30.9.1988 (Annexure P/1), it is evident that on the basis of mutual settlement between the parties, the map of Annexure R/1 was prepared and it was agreed upon between the parties that the Petitioner shall deliver possession of the vacant land marked in the map of Annexure R/1 and possession of the Petitioner over the remaining land in the said map over which buildings are standing, shall not be disturbed and the State shall renew the lease for the remaining land as per Annexure R/1. The terms of settlement between the parties reduced in the map of Annexure R/1 and recorded in the order by the

High Court and directions issued thereafter, have to be obeyed and implemented without any reservation. It is not open to the Respondent-State to contend that the Petitioner is only entitled to renewal of lease of land admeasuring 16.93 acres, over which its buildings are standing, in view of the specific direction that after delivering possession of the land marked in Annexure R/1, the State shall renew lease for the remaining land, over which buildings are standing.

22. Since the land allotted to Respondents No. 3 and 4 by Respondents No. 1 and 2/State is a part of the land, possession of which was resumed by the State as per mutual settlement with the Petitioner and this fact has not been disputed either in the writ petition or during the course of argument before this Court, right of Respondents No. 3 and 4 on the basis of allotment of the land in their favour by the State would not be affected by this order.

23. For the aforesaid discussions, the instant petition is allowed. Respondents No. 1 and 2/State are directed to execute lease deed in respect of 44.07 acres of land in favour of the Petitioner-Church, Jagdalpur within a period of eight weeks from the date of receipt/production of copy of this order. The petition is allowed with cost quantified at Rs. 25,000/-.