

(2010) 03 CHH CK 0009
In the Chhattisgarh High Court
Case No : Civil Suit No. 1-A of 2008

South Eastern Coalfields Limited

APPELLANT

Vs

State of C.G. and Another

RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Chhattisgarh Civil Courts Act, 1958 — Section 23
Civil Procedure Code, 1908 (CPC) — Order 12 Rule 2, Order 12 Rule 2A, Order 23 Rule 3, Order 26 Rule 10 , Order 26 Rule 10(2)
Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 4, 7, 9
Constitution of India, 1950 — Article 227, 300A
Court Fees Act, 1870 — Section 7
Evidence Act, 1872 — Section 58
Local Investigations Rules, 1962 — Rule 2, 3, 6, 9
Madhya Pradesh Land Revenue Code, 1959 — Section 138, 5, 58(2)
Specific Relief Act, 1963 — Section 34

Citation : (2010) 3 CGLJ 64

Hon'ble Judges : Rajeev Gupta, C.J.;T.P. Sharma, J

Bench : Full Bench

Advocate : Ajit Kumar Sinha and O.P. Agrawal, for the Appellant; Deoraj Surana, General, Vinay Harit, D.A.G. for Defendant No. 1, Ravish Agrawal V.K. Munshi, Ashok Trivedi and B.P. Sharma for Defendant No. 2, for the Respondent

Final Decision : Dismissed

Judgement

T.P. Sharma, J.—Present suit is for declaration injunction and for possession of land bearing Khasra Nos. 850/24, 850/27, 850/28, 850/30, 850/31 and 850/32 situate at Village Ratija, after demolition of structure and declaration of lease deed dated 5/7-12-2002 executed by Defendant No. 1 in favour of Defendant No. 2 to be void and not binding on Plaintiff.

2. The case originally instituted and pending for trial before Civil Judge Class-II, Katghora, Distt. Korba, was transferred to this Court vide order dated 29-1-2008 passed by the Supreme Court of India in Transfer Petition (C) No. 813 of 2007.

3. Case of Plaintiff, in brief, is that, the Plaintiff is a Government company and

enterprise of the Union of India. The land shown in the map by its boundary "A" to "F" situated at Village Ratija was acquired by the Central Government under the Coal Bearing Areas (Acquisition and Development) Act, 1957 (for short "the Act") and vested in the Western Coalfields Limited. Vide notification dated 19-4-86 Western Coalfields Limited was divided and the land in question was vested in the South Eastern Coalfields Limited. Settlement of villages was done in the years 1893-94 and 1929-1930. Vide registered sale deed dated 5/7-12-2002, Defendant No. 1, the State, has executed lease deed of Khasra Nos. 850/ 24, 850/27, 850/28, 850/30, 850/31 and 850/32 area 37.91 acres of Village Ratija in favour of Defendant No. 2. Defendant No. 2 has made construction over the land allotted to it. In the matter of T.N. Godavarman Thirumulpad (98) v. Union of India and Ors. (2006) 5 SCC 28. the Apex Court has held that the land in dispute is not forest land.

4. Plaintiff is a Government company and undertaking of the Union of India and under Sections 4 and 7 of the Act, the land situate at Village Ratija, shown in the map attached with the plaint by boundary "A" to "F" was notified for acquisition and after complying the rules prescribed, the land in question along with other lands was acquired vide order dated 19-4-1986 and was vested in Western Coalfields Limited vide order dated 6-6-1986. In the year 1986, Western Coalfields Limited was divided and the suit land along with other lands came to the ownership and possession of the Plaintiff Company. The Plaintiff is in possession of the land since its acquisition. The undivided State of Madhya Pradesh has also confirmed the factum of acquisition and vesting of land in Plaintiff Company vide notification dated 13-2-1987.

5. In the year 1893-94 at the time of settlement, Village Nawagaon Khurd was in existence, but at the time of settlement in the year 1929-1930 Village Nawagaon Khurd was merged in Village Ratija which was adjoining to Village Nawagaon Khurd, thereby independent existence of Village Nawagaon Khurd came to an end in the year 1929-30. Defendant No. 1 the State Government has allotted new Khasra numbers of the land (grass land bearing Khasra Nos. 711, 717 and 594) in dispute as Khasra Nos. 850/24, 850/27, 850/28, 850/30, 850/31 and 850/32. Defendant No. 2 is not competent to allot new numbers, even the State Government has not issued any renumbering parcha. Defendant No. 1 has not complied the procedure prescribed for allotment of new Khasra numbers. Such allotment made by Defendant No. 2 is in violation of Article 300A of the Constitution of India. Defendant No. 2 is a coal bearing company. Defendant No. 1 has allotted the disputed land originally bearing Khasra Nos. 711, 717 and 594 situate at Village Ratija by allotting new Khasra Nos. 850/24, 850/27, 850/28, 850/30, 850/31 and 850/32. to Defendant No. 2 vide registered lease deed dated 5/7-12-2002. Defendant No. 2 has taken illegal possession of the disputed land and has made certain constructions over it. Defendant No. 2 has also cleared the small trees standing over the land. After acquisition of the land and vesting of the land on the Plaintiff Company, Defendant No. 1 was not competent to lease the disputed land to Defendant No. 2 and Defendant No. 2

was not competent to enter into possession of the suit land already owned and possessed by the Plaintiff since 1986. The Plaintiff has filed suit for declaration to the effect that the (disputed land is the land vested in it in accordance with the provisions of the Act. Defendant No. 1 was not competent to lease out the disputed land in favour of Defendant No. 2, the lease deed dated 5/7-12-2002 is without any propriety and is void, not binding upon the Plaintiff for possession of land from Defendant No. 2 after demolition of the structure constructed by the Defendant.

6. Case of Defendant No. 1, in brief, put by filing written statement specifically denies the allegations made in the plaint and alleges that Government of India had acquired land in exercise of the powers vested in it. u/s 9 of the Act vide gazette notification dated 11-4-1986 and total 1701.363 hectares (approx.) or 4204.25 acres (approx.) of land including the part of land situated at Village Ratija, Tahsil Katghora, Distt. Bilaspur admeasuring 44.844 hectares (approx.) has been acquired. Defendant No. 2 had applied for allotment of land situated at Village Nawagaon. After following the procedure prescribed and inviting objections including from the Plaintiff, 58.56 acres of land situated at Village Ratija was leased out to Defendant No. 2 by Defendant No. 1 vide registered lease deed dated 5-12-2002. The land leased out by Defendant No. 1 to Defendant No. 2 is not part of the land acquired vide notification dated 11-4-1986. Defendant No. 1 was owner of the land situated at Village Ratija at the time of lease executed in favour of Defendant No. 2. The suit is barred in terms of proviso to Section 34 of the Specific Relief Act, 1963, in absence of any claim of consequential relief. The Plaintiff has not disclosed the cause of action and therefore, suit is also liable to be rejected at its threshold. Dispute as to the nature of land that whether it is forest land or not was the subject matter before the Supreme Court in W.P.(C) No. 202/ 1995 {T.N. Godavarman (2006) 5 SCC 28. (supra)}. The Central Empowered Committee appointed by the Supreme Court has examined the matter in detail and submitted its report before the Supreme Court and on the basis of the said report, the Supreme Court has arrived at a finding that the land in dispute is not forest land, but the petition was disposed off by the Supreme Court without adjudicating the issue of title raised therein by the Plaintiff. The Plaintiff has not valued the suit properly and has undervalued the suit. The map relied upon by the Plaintiff is not correct. The Plaintiff is not entitled for relief of declaration and injunction, and the Plaintiff has not claimed the consequential relief of possession, therefore, the suit for declaration is barred u/s 34 of the Specific Relief Act, 1963.

7. Case of Defendant No. 2, in brief, as marshalled in its written statement, denies the allegations made in the plaint, further pleading that Defendant No. 1 has executed registered lease deed dated 5/7-12-2002 in favour of Defendant No. 2 of land comprising Khasra Nos. 850/30, 850/24, 850/27, 850/28 and 850/32 situate at Village Ratija area about 58.56 acres whereon Defendant No. 2 has established Coal Washery over a portion admeasuring 37.91 acres. Defendant No. 2 is in peaceful possession of land leased to it by the State

Government. Defendant No. 2 has never made any attempt to take peaceful possession of any land belonging to and in actual possession of the Plaintiff. The land allotted to Defendant No. 2 is revenue land and was never recorded as forest land or bada jhad ka jangal. The present suit without the claim of consequential relief of possession in respect of the lease hold land is not maintainable and is liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short "the Code"). The Plaintiff has not correctly valued the plaint. Defendant No. 2 has paid a sum of Rs. 48,74,961/- as advance rent and premium with a further covenant to pay annual rent of Rs. 2,92,296/-. The Plaintiff is required to pay ad valorem Court fees. Defendant No. 2 has further pleaded that even assuming that under the notification dated 9th November, 1986, the Plaintiff was put in peaceful possession of 48.44 hectares of land situate at Village Ratija, but the Plaintiff has never come into actual possession of the land and Defendant No. 1 continued to remain in possession of the land till it was leased out to Defendant No. 2 by registered lease deed dated 5/7-12-2002. The suit is barred by the principle of waiver, acquiescence, res judicata, promissory estoppel, equitable estoppel and is liable to be thrown out on that score alone with exemplary costs. The Plaintiff was obliged to value the relief of possession at Rs. 10,33,49,140/- being 20 times the amount of premium assessed at Rs. 48,74,961/-. Thus, the Plaintiff is required to pay ad valorem Court fees on total value of Rs. 10,33,49,140/-. The suit originally filed before the Civil Judge Class-II was not maintainable before such Court. Defendant No. 2 has also pleaded that the last Revenue Settlement in the un-bifurcated State of M.P. had taken place in the year 1928-29 which is popularly known as Deshmukh Settlement. During the aforesaid Settlement due to accidental omission and or oversight Village Nawagaon Khurd (wherein 58.56 acres of grass land owned by the State Government was situated) had remained un-surveyed and no Khasra number Survey number was allotted to the aforesaid 58.56 acres of grass land. The aforesaid un-surveyed Village Nawagaon Khurd was never a part of Village Ratija and was for the first time merged in Village Ratija during the year 2002 after the aforesaid accidental mistake was detected by the State Government. Before merging Village Nawagaon Khurd in Village Ratija during the year 2002, the Collector Korba had for the first time assigned Khasra Nos. 850/23 to 850/32 to 58.56 acres of land situated in the un-surveyed village Nawagaon Khurd. Nature of land whether the land was forest land or not was subject matter before the Supreme Court in the matter of W.P.(C) No. 202/1995 {T.N. Godavarman (2006) 5 SCC 28. (supra)}. The Supreme Court has appointed Central Empowered Committee which has examined the matter in detail and submitted its report before the Supreme Court and on the basis of the said report, the Supreme Court has arrived at a finding that the land in dispute is not forest land, but the petition was disposed of by the Supreme Court without adjudicating on the issue of title raised therein by the Plaintiff. Defendant No. 2 has prayed for dismissal of the suit with compensatory cost of Rs. 10 lakhs.

8. On the basis of averments of the parties, following issues were framed:

S. No. Issues Finding

1. Whether the land in question, which has been allotted by Defendant No. 1 to Defendant No. 2 vide the registered deed dated 5-12-2002 for setting up the coal washery belongs to the Plaintiff, as the same was already acquired on 9-11-1986 under the Coal Bearing Areas (Acquisition and Development) Act, 1957 and the said land vested in the Western Coal Field Limited on 6-6-1986? Not proved

2. If issue No. 1 is decided in favour of the Plaintiff, whether in that case the Plaintiff is entitled for a decree of cancellation of the registered deed dated 5-12-2002 executed in favour of Defendant No. 2 by Defendant No. 1. NO

3. Whether the Plaintiff is entitled for a decree for possession of the disputed land after demolition of the structure standing thereon? NO

4. Whether the suit is barred by principle of res-judicata? NO

5. Whether the suit has been under valued, if so to what extent? Yes, up to the extent of Rs. 58,48,420/-.

6. Relief. Suit dismissed with cost.

9. Both the parties had led their oral and documentary evidence.

10. The Plaintiff has examined Mr. Rajeev Kumar Jha(P.W. 1), Mr. Kalyan G. Prasad (P.W. 2), Mr. Santosh Kumar Bhargav (P.W. 3), Mr. Jugal Kishore Pandey (P.W. 4) Superintendent (Land Records) and Mr. Vasudev Shriram Kulkarni (P.W. 5). Per contra, Defendant No. 1 has examined Mr. R.S. Vishwakarma (D.W. 1), Mr. Guharam Kanwar (D.W. 2), Mr. Vijay Kumar Anant (D.W. 3), Mr. Chedilal Dewangan (D.W. 4), Mr. A.K, Marbel (D.W. 5), Mr. C.D. Jangde (D.W. 6), Mr. Rajesh Ogre (D.W. 7), Mr. Kalyan Prasad Tiwari (D.W. 8), Mr. Ashok Kumar Maravi (D.W. 9) and Mr. M.K. Gupta (D.W. 10).

11. In the present case, issues No. 2 and 3 are consequential in nature and decision on issue No. 1 will substantially govern issues No. 2 and 3.

Finding on issue No. 1

12. Burden to prove this issue relating to right of the Plaintiff over the property in dispute is on the Plaintiff and in discharge of the burden the Plaintiff has adduced oral and documentary evidence. The Plaintiff has sought to prove its case by three modes viz., (1) by adducing oral evidence, of demarcation by local investigation; (2) by deemed admission of pleadings in absence of specific denial of pleadings by the Defendants; and (3) by deemed admission of the documents in absence of specific denial of the notice to admit documents served upon the Defendants by the Plaintiff.

13. In order to prove issue No. 1 which is substantial issue for the decision of this suit, counsel for the Plaintiff has submitted that the part of Khasra Nos. 594, 611 and 616 situate at Village Ratija have been leased out by Defendant No. 1 to

Defendant No. 2 vide lease deed dated 5/7-12-2002 and Defendant No. 2 has dispossessed the Plaintiff from its land to the extent of 37.91 acres leased out by Defendant No. 1 to Defendant No. 2. The factum of dispossession and the area which has been leased out may be proved by demarcation in accordance with the provisions of the Chhattisgarh Land Revenue Code, 1959. At the instance of the Plaintiff, Commission to demarcate the land was issued by Civil Judge Class-II, Katghora, vide writ of commission dated 21-9-2007 (Ex.P-42) and the Director, Land Records, State of Chhattisgarh, Raipur constituted a team for demarcation headed by Mr. J.K. Pandey (P.W. 4). The team so constituted demarcated the land in accordance with the procedure prescribed and has submitted its report to the Director, Land Records who in turn, submitted the Commission report vide Ex.P-40 which has been accepted by the Court. The report of the Commissioner became part of evidence in suit in accordance with the provisions of Rule 10(2) of Order 26 of the Code. The Defendants cross-examined Mr. J.K. Pandey (P.W. 4) who was the team leader of the Committee constituted by Director, Land Records. Mr. J.K. Pandey (P.W. 4) proved the Commission report Ex.P-41 which clearly reveals that the land allotted to Defendant No. 2 by Defendant No. 1 is part and parcel of the land acquired for the Plaintiff under the Act.

14. On the other hand, counsel for Defendants No. 1 and 2 have vehemently opposed the execution of Commission by the person not authorized by the Court, and submitted that the Commissioner appointed by the Court has not executed the Commission, therefore, any report submitted by the person not authorized by the Court carries no legal sanctity and is not admissible in evidence and the said report cannot be treated as evidence in terms of Order 26 Rule 10 of the Code.

15. In the present case, vide writ of Commission dated 21-9-2007 (Ex.P-42), Civil Judge Class-II, Katghora appointed Commissioner, Land Records and Settlement, Raipur and Superintendent, Land Records, Korba for demarcation of the area comprising 37.91 acres situate at Village Ratija bearing Khasra Nos. 584, 611 and 616. After issuance of the writ of Commission, the Director, Land Records, State of Chhattisgarh, Raipur, probably the authority successor-in-office of the Commissioner, Land Records, constituted a team vide Ex.P-43 for demarcation of land in compliance of the order of the Court. Mr. J.K. Pandey (P.W. 4), Superintendent, Land Records, Raipur was appointed as leader of the team and other five officers including Mr. C.D. Jangde, Superintendent, Land Records, Korba who was appointed by the Court along with the Commissioner, Land Records and Settlement, Raipur for local inspection as a member, were also appointed. During the course of local inspection, vide order Ex.P-44, again the Director, Land Records, Raipur has amended Ex.P-43 and four other officers were added in the team. The team submitted its inspection report vide Ex.P-40. Co-Commissioner Superintendent, Land Records, Korba Mr. C.D. Jangde has also submitted his Commission report before Civil Judge Class-II, Katghora vide Ex.P-41.

16. The Commission report submitted by Superintendent, Land Records, Korba vide Ex.P-41 and report of the team constituted by Director, Land Records are one and the same signed by nine officers. The aforesaid Commission report has not been admitted by the Defendants and the Defendants have specifically objected to the Commission report. Provisions relating to issuance of Commission under Order 26 Rule 9 of the Code and evidentiary value of the report under Rule 10 of Order 26 of the Code are as under:

P. Commissions to make local investigations. - In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10. Procedure of Commissioner - (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) Report and depositions to be evidence in suit. - The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record, but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Commissioner may be examined in person. - Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

17. Report and depositions of the Commissioner shall be evidence in the suit and shall form part of record, in accordance with Sub-rule (2) of Rule 10 of Order 26 of the Code, but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

18. In the present case, the Plaintiff himself has examined one of the members and leader of the team Mr. Jugal Kishore Pandey as P.W. 4. The Defendants have cross-examined this witness relating to the manner in which the Commission has been executed and the propriety thereof.

19. Further, in exercise of the powers conferred by Article 227 of the Constitution of India read with Section 23 of the Chhattisgarh Civil Courts Act, 1958, the High

Court has made rules for transaction of business by the Civil Courts. Rules 265 and 266 of the said rules provide for issuance of commission for local inspection. Rule 266 envisages that in appointing a Government official the Court is bound to follow the rules framed by the State Government under Order 26 Rule 9 of the Code. Rules 265 and 266 of the said rules read thus,

265. (1) An order for local investigation should be drawn up by the presiding Judge himself and it should clearly state the points which require elucidation or ascertainment in particular way and why such matter could not be proved or ascertain the ordinary way by producing documents at the proper time and witnesses at the trial. It should also clearly specify the point on which the report of the commissioner is required.

(2) The commissioner should strictly limits his inquiry to and submit his report on the points specified in the commission and should inquire into any other points even at the request of the parties.

Note. - It should be remembered that the court has no power to delegate to the commissioner the trial and determination of any issue in the case between the parties.

266. A commission for local investigation may be issued to a pleader or a Government official or to a private individual as the circumstances of the case may require. In appointing a Government official the court is bound to follow the rules framed by the State Government under Order XXVI, Rule 9, CPC Code.

Note. - See Appendix I for the rules framed by the State Government. These rules are not reproduced by the High Court under these rules, hence they are given at the end as "APPENDIX I for facility of reference.

20. Counsel for the Defendants have specifically objected that Civil Judge Class-II, Katghora has issued writ of Commission to the Commissioner, Land Records and Settlement, Raipur and the Superintendent, Land Records, Korba vide order Ex.P-42, but not to others and has also formulated the terms of investigation. Ex.P-40, the Commission report, does not bear the signature of the Commissioner, Land Records and Settlement, Raipur or its successor-in-Office the Director, Land Records and Co-Commissioner, Superintendent, Land Records, Korba has not independently executed the Commission, he was one of the members of the Committee constituted by the Director, Land Records. Commission reports Exs.P-40 and P-41 are one and the same. The Superintendent, Land Records, Korba has submitted Commission report Ex.P-41, but it was not executed by him alone or by him along with the Director, Land Records. The report reveals that nine members of the team have prepared the Commission report. The Commission appointed for investigation by the Courts was not competent to delegate the work to other persons or other officers, but the Director, Land Records has delegated the execution of Commission to other authorities which completely vitiates the proceeding and the Commission report so submitted is not the report submitted by the Commission appointed by the

Court. Therefore, the Commission report does not carry evidentiary value and it cannot form part of the evidence or the record. Apart from the alleged evidence of the Commission report, the Plaintiff has not adduced any evidence in support.

21. Also, in exercise of the powers conferred by the proviso to Rule 9 of Order 26 of the Code, the State Government has promulgated the Chhattisgarh Commissions for Local Investigations Rules, 1962 (for short the Rules) as to the persons to whom commissions for local investigation shall issue. Clause (c) of Rule 2 of the Rules defines Revenue Officer which reads as follows:

Revenue Officer" means a Tahsildar and Naib-Tahsildar and includes Revenue Inspector Measurer and Patwari.

22. The procedure relating to issuance of Commission to Revenue Officer: has been prescribed in Rules 3 to 6 under Chapter II of the Rules. Chapter III of the Rules relates to Officers other than Revenue Officer to whom commission may be issued.

23. In the present case, Commission has been issued to the Commissioner, Land Records & Settlement, Raipur and the Superintendent, Land Records, Korba vide Ex.P-42. Although both the officers are Revenue Officers under the Chhattisgarh Land Revenue Code, 1959, but these officers are not included in the definition of "Revenue Officer" under Rule 2(c) of the Rules, however, Commission has been issued in accordance with Chapter III of the Rules. Rule 9 of the Rules provides that the commission shall be issued to officer through the Head of the office under whom he is working or if he himself is the head of the office, then through the officer to whom he is subordinate. The Rules do not provide delegation of power to other officers by constituting a committee or by other mode.

24. Counsel for Defendant No. 1 argued placing reliance in the matter of Shamanna Setty v. B.L. Channegowda 2007 (5) KLJ 494 in which the High Court of Karnataka. has held that when warrant of commission is issued in the name of one officer, then he cannot delegate his power to his subordinate without the permission of the Court and delegation of work to other officer amounts to inherent defect in execution of warrant and report submitted by the officer other than the Commissioner appointed by the Court is without jurisdiction. Its para 5 reads as follows:

5. Having heard the learned Counsel for the parties, the only point to be considered is whether the Trial Court is justified in accepting the report of C.W. 3 -Narayana, even though he was not the Commissioner appointed in the case and whether the by the Court under Order 26, Rule 10 of Code of Civil Procedure, has got power to delegate his power to another person. The facts of this case are not disputed. This Court while allowing the RFA has permitted the Plaintiff to file an application for appointment of surveyor as a Commissioner. In obedience to the directions of this Court, the Plaintiff filed an application for appointment of the Commissioner. Accordingly the Court allowed the application; appointing the ADLR, Bangalore, as Commissioner. But unfortunately the ADLR, Bangalore Sub-

Division instead of executing the warrant has directed the Supervisor C.W. 3 Narayana to execute the same. Accordingly the Supervisor has executed the warrant and at the time of execution of the warrant the Appellants have opposed for execution of the warrant by a Supervisor on the ground that he is not the authority to execute a warrant. Still the warrant has been executed by him. The report by C.W. 3 has been forwarded to the Court by the ADLR who has been examined as C.W. 2. It is not doubt true that if the ADLR is not well versed with the Commission work, without the permission of the Court he cannot delegate his powers calling upon his subordinate to execute the warrant. The Trial Court without considering this aspect of the matter by accepting the report of C.W. 3 has decreed the suit. Therefore, this Court is of the opinion that there was inherent defect in execution of warrant by C.W. 3 as he was not the Commissioner appointed by the Court. Whatever may be the experience or expertise of C.W. 3 in execution of the work, even if his and report is perfect the same could not have been accepted by the Trial Court in view of the admission of C.W. 2, the Asst. Director of Land Records. According to C.W. 2 Commission work is executed by C.W. 3 and therefore this Court is of the opinion that under Order 26, Rule 9 of Code of Civil Procedure, if a person is appointed by the Court as a Commissioner for local inspection, he cannot delegate the said work to any other person as it is the right of the Court alone and if such person has executed the warrant, the report cannot be relied upon by any Court as the execution of the warrant itself is without jurisdiction. Therefore the judgment and decree of the Trial Court is to be set aside.

25. Counsel for Defendant No. 2 argued that in the matter of Damodaran Vs. Karimba Plantations Co. Ltd. and Others, the High Court of Kerala has held that where the Court directed the Commissioner to prepare a map of a location,

but the map is not actually prepared by the Commissioner but by another, the procedure is unauthorized. Para 3 of the judgment reads as follows:

(3) Before considering the evidence for the purpose of locating Karvazhi Thodu, it is necessary to observe that the plan Ext C1 produced by the Commissioner is not of much help. It was not actually prepared by the Commissioner but by P.W. 2. This procedure was wholly unauthorised because the court directed the Commissioner to prepare the plan and he was not to get the plan prepared by somebody else. Ext. C1 as it was originally produced did not indicate the location of the thodu as pointed out by the Defendants.

The Commissioner was asked later to show their location and it was only at that stage that E2 and E3 were marked in Ext. C1. P.W. 2 who prepared Ext.C1 also prepared the plan Ext. A44 which was filed along with the plaint. As to how far P.W. 2 was prepared to help the Plaintiffs can be seen from the fact that he categorically stated that there were no streams at the places indicated by the Defendants. P.W. 1, the Head-Clerk, of the Plaintiffs' estate however admitted with some reluctance the existence of streams at the place marked E2 and E3.

In his chief examination he stated that E2 and E3 were "varichals" and that only chalks where water will flow in summer and winter are called thodus. In cross-examination he stated that Vellachals and thodus are the same. Though the expression used at that stage was "Vellachal" as distinct from Varichal, he admitted later that E2 and E3 were Vellachals which means streams or thodus. He deposed "Vellachal E2 and E3 marked in Ext. C1 exists". Thus though P.W. 1 finally admitted the existence of the thodus marked E2 and E3, P.W. 2 was not only prepared to mark the same in Ext. C1 but he was ready to state on oath that there were no thodus at those places. The deposition of P.W. 2 shows that he cannot be relied upon. At first he said

I prepared a sketch from the spot. I prepared the plan from my house. The sketch is still with me". Before the Chief-examination ended he added

Ext-C1 was drawn by me. I have written the names. On the first day I was not ready to go with the Commissioner. On the third day I went. The Commissioner was then there. The Commissioner had prepared a sketch with the assistance of Amsom Menon by the time I reach there. With the sketch I inspected the properties once more. The sketch was found to be correct. Ext.C1 was drawn to the sketch handed over to me.

Thus it is not clear whether Ext.C1 was prepared on the basis of the sketch prepared by P.W. 2 or the Commissioner. Neither the sketch prepared by the Commissioner nor the one prepared by P. W.2 has been produced in the case. P.W. 2 admitted that E2 and E3 were drawn in Ext.C1 by him. This was after the plan was remitted back to the commissioner. However, he admitted that he did not go to the spot with the Commissioner after the plan was remitted for rectification.

The facts stated above show that no reliance can be placed on the fact that these streams were not shown in Ext.C1 when it was first prepared. The dimensions of the streams shown by the Plaintiff and the Defendants as marked in Ext.C1 also cannot be taken as correctly indicating their actual dimensions. We make this observation because it was argued on behalf of the Appellant that Karvazhi thodu marked E in Ext. C1 is bigger in size than those shown by the Defendants and that the bigger stream was likely to have been mentioned as the boundary.

In the above cited case, the High Court of Kerala has held that the work authorized to Commissioner cannot be executed by another officer.

26. While dealing with same question in the matter of Onkar Prasad and Anr. v. Manju Devi and Ors. 2009 (III) MPJR CG 133. this Court has held that Tehsildar appointed as Commissioner for local investigation cannot entrust local investigation to Revenue Inspector without permission of Court.

27. Admittedly, in the present case, vide writ of Commission dated 21-9-2007 (Ex.P-42), the Commissioner, Land Records and Settlement, Raipur and the Superintendent, Land Records, Korba were appointed Commissioners for local

inspection by the Court. The Commission report Ex.P-40 and another copy of the Commission report submitted by one of the Commissioners i.e. the Superintendent, Land Records, Korba reveal that the Commission was executed by nine officers including the Superintendent, Land Records, Korba.

28. Mr. Jugal Kishore Randey (P.W. 4) - team leader of the Committee constituted by the Director, Land Records, has deposed that after team for execution of Commission was constituted, he along with other members of the team executed the Commission. Defendant No. 1 examined Mr. C.D. Jangde (D.W. 6) who deposed in para 9 (a) of his evidence that he has signed on the Commission, reports dated 15-11-2007 Exs.P-40 and P-41 and he was also member of the team headed by Mr. J.K. Pandey. He has specifically admitted in para 9 (a) of his evidence that he has signed on the Commission report without reading the report.

29. Evidence of Mr. J.K. Pandey (P.W. 4) and Mr. C.D. Jangde (D.W. 6) reveal that the Commission has not been executed by Mr. C.D. Jangde (D.W. 6) - Superintendent, Land Records, Korba or the Commissioner, Land Records and Settlement, Raipur jointly or independently, but the Commission has been executed by a team of nine members headed by Mr. J.K. Pandey (P.W. 4), constituted by the Director, Land Records. Record of the Court and Commission report clearly reveal that both the Commissioners appointed by the Court have not obtained any permission from the Court for constitution of a team or delegation of the task. Also the Court has not authorized the team constituted by the Director, Land Records, for local inspection. The Court has not issued commission to the alleged nine officers in accordance with Rule 9 of the Rules.

30. As held in the matters of Shamanna 2007 (5) KLJ 494 (supra) and Damodaran Vs. Karimba Plantations Co. Ltd. and Others, , any map prepared by the person other than the Commissioner appointed by the Court or delegation of the work of Commission to subordinate without permission of the Court is without jurisdiction, the report so submitted is also without jurisdiction and same cannot be relied upon by the Court.

31. In the present case, the land situated at Village Ratija has been allotted to the Plaintiff. According to the claim of the Plaintiff, Village Nawagaon was not in existence at the time of acquisition of land under the Act as Village Nawagaon was merged in Village Ratija, but Defendant No. 1 after renumbering the land has leased out Khasra Nos. 850/30, 850/24, 850/31, 850/27, 850/28 and 850/32 measuring 37.91 acres of Village Ratija to Defendant No. 2 vide registered lease deed dated 5/7-12-2002. Vide notification dated 19-4-1996, out of 1033.917 hectares of land of Village Ratija, only 48.844 hectares of land was acquired under the Act. The lease executed in favour of Defendant No. 2 by Defendant No. 1 reveals that only 37.91 acres of land was leased out to Defendant No. 2. Only part of land of Village Ratija was acquired under the Act for the Plaintiff and part of land was leased out by Defendant No. 1 to Defendant No. 2. Burden to prove the fact that the land leased out by Defendant No. 1 to Defendant No. 2 was the part of land acquired for the Plaintiff under the Act, is

on the Plaintiff.

32. Identification of land is of vital importance in the present case. In the present case, the land was not surrounded by boundaries. In case of land surrounded by boundaries, as held by the Supreme Court in the matter of Subhaga and Others Vs. Shobha and Others, . land can be identified on the basis of boundaries and in such a situation, survey of adjacent land would not be necessary.

33. In case of land not surrounded by metes and bounds, the fact that the land leased out was the part of land acquired for the Plaintiff may be proved by demarcation of land by expert authorities and for proving such fact at the instance of the Plaintiff, the Court has issued Commission for local inspection, but the Commissioner so appointed has not investigated/inspected/demarcated the land and one Commissioner out the two has constituted a team for execution of Commission and delegated the work of Commission without permission of the Court. The Commission report submitted by the officers to whom the work has been delegated by one of the Commissioners without permission is without jurisdiction and is of no use. Therefore, the Commission report, in the present case, is of no help for proving issue No. 1.

34. In addition to oral and documentary evidence, the Plaintiff has tried to prove the aforesaid issue on the basis of deemed admission in absence of specific denial of the pleadings relating to right, title & possession of the suit land in terms of Order 8 Rule 5 of the Code.

35. Counsel for the Plaintiff has submitted that the Defendants were under obligation to admit or deny the pleadings of the Plaintiff specifically, but the Defendants have not denied the allegations made in the plaint specifically or by necessary implication, therefore, in absence of any specific denial by the Defendants, pleadings of the Plaintiff shall be taken to be admitted in accordance with Rule 5 of Order 8 of the Code.

36. In support of the contention, counsel for the Plaintiff has placed reliance in the matter of Gautam Sarup Vs. Leela Jetly and Others, in which the Apex Court has held that an admission made in a pleading is not to be treated in the same manner as an admission in a document. An admission made by a party to the lis is admissible against him propria vigors.

37. On the other hand, counsel for the Defendants have specifically submitted that they have specifically denied the allegations made in the plaint by necessary implication, therefore, no part of the pleadings made in the plaint by the Plaintiff shall be deemed to be admitted under Rule 5 of Order 8 of the Code.

38. The Plaintiff has alleged in para 2 of plaint that how the Plaintiff became owner and came into possession of the land vide notification dated 19-4-1986. Acquisition of the land has not been denied by the Defendants. Even acquisition of land under the Act is not in dispute in this case. The Plaintiff has alleged in para 6 of plaint that the suit land is a part of Khasra Nos. 594, 611 and 616

situate at Village Ratija. Defendant No. 1 has denied the allegation in its para wise reply at para 2 and has pleaded that the suit property does not form part of the areas acquired in terms of notification dated 11-4-1986. Para 2 of Defendant No. 1 's written statement reads as follows:

2-6. That in reply to the contents of paras 2-6 of the Plaint, the answering Defendant refers to and relies upon the averments made hereinabove and reiterates that the area comprised in the suit property does not form part of the areas acquired in terms of Notification dated 11.4.1986 issued under the Coal Bearing (Acquisition and Development) Act, 1957 and as such, the question of its ownership in favour of the Plaintiff does not arise. The Plaintiff has never been in possession of the same and all averments in that behalf are vehemently denied. The suit property vests solely and exclusively in the answering Defendant and has since then been allotted to Defendant No. 2 for establishment of a coal washer. The alleged ownership claims of the Plaintiff are thus false, bogus and misplaced and the Plaintiff is not entitled to the reliefs prayed for.

39. Defendant No. 2 has also denied the allegation made in para 6 of the plaint. Para 6 of the written statement of Defendant No. 2 reads as follows:

Save and except that the answering Defendant has established a coal washer over a portion of land admeasuring 37.91 acres comprised in Khasranos. 850/30, 850/24, 850/31; 850/27, 850/28 and 850/32 situated at village Ratija, having acquired title to the said 37.91 acres of land under a registered lease deed dated 5th December 2002 executed by the State of C.G. through the Chhattisgarh State Industrial Development corporation (CSIDC) in favour of the answering Defendant, the rest of the averments made in this para are specifically and categorically denied and the Plaintiff is put to strict proof of the same. The map annexed to the Plaint is false and manipulated and had been got prepared by the Plaintiff with a clandestine design to lay a false claim against both the Defendants.

40. The Plaintiff has not described the suit land in terms of Rule 3 of Order 7 of the Code. Defendants No. 1 and 2 have specifically denied the allegations made in para 6 of the plaint. In absence of any pleading including specific denial of pleading the Court may pronounce judgment on the basis of the facts contained in the plaint under Sub-rule (2) of Rule 5 of Order 8 of the Code. Sub-rule (1) of Rule 5 of Order 8 of the Code prescribes that the parties are required to deny the allegation of the plaint by specific averment or by necessary implication, or stated to be not admitted. As held by the Apex Court in the matter of Gautam Sarup Vs. Leela Jetly and Others, , an admission made by a party to the lis is admissible against him proprio vigore. But in the present case, both the Defendants have specifically denied the allegation made in para 6 of the plaint. This is not the case in which the Defendants have not denied the material allegation in plaint forming the subject matter of the case. Though the Defendants have not denied the allegation relating to acquisition of land under the Act which was not the subject matter of this suit, therefore, this ground is

not available to the Plaintiff.

41. The Plaintiff has claimed decree on the ground of admission of claim by not replying the notice to admit documents served upon the Defendants under Order 12 Rule 2 of the Code. Rules 2 and 2 A of Order 12 of the Code read as follows:

2. Notice to admit documents. - Either party may call upon the other party to admit, within seven days from the date of service of the notice any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

2A. Document to be deemed to be admitted if not denied after service of notice to admit documents. - (1) Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability:

Provided that the Court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.

(2) Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.

42. Rule 2A of Order 12 of the Code reveals that if the document which a party is called upon to admit is not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, it shall be deemed to be admitted except as against a person under any disability. By notice to admit documents, the Plaintiff has called upon the Defendants to admit the following documents:

(A) Reported submitted by superintendent of land records to collector Korba having a reference in the letter, written by collector Korba to the secretary department of revenue on 27/06/08.

(B) Report of Revenue inspector for having a reference in the letter written by collector Korba to the secretary department of revenue on 27/06/08.

(C) Letter written by collector Korba to the secretary department of revenue bearing No. 6689/land allotment/08 dated 27-06-08.

(D) Documents relating to the action taken by the State Government on the above letter.

43. In the present case, the Defendants have not replied to the notice to admit

documents served upon them, but they have argued, that, otherwise they have denied Plaintiff's right and title over the property and have specifically claimed that Defendant No. 1 is owner of the property and has leased out the property to Defendant No. 2. This is specific denial by the Defendants in their pleadings, therefore, the Plaintiff is not entitled for judgment and decree on admission under Rule 2 of Order 12 of the Code.

44. Counsel for the Defendants have further submitted that during the course of negotiation for compromise the Plaintiff has served notice to admit documents upon the Defendants, therefore, even if the same is not replied, it will not amount to admission of documents under the provisions of Rule 2A of Order 12 of the Code.

45. On the other hand, in order to disprove this issue, Defendant No. 1 has adduced oral evidence and both the Defendants have argued that they deny the allegations relating to vesting of the disputed land on the Central Government on 6-6-1986. They have further argued that they have specifically denied in their written statements the fact that the Plaintiff was under obligation to plead and describe the disputed land in accordance with Rule 3 of Order 7 of the Code, but the Plaintiff has not specified the disputed land in the plaint to identify the suit land. In absence of such pleading, the suit is liable to be dismissed in its inception.

46. The present suit is for declaration, permanent injunction and possession of the suit land. The Plaintiff has pleaded in para 6 of the plaint that the land in dispute has been described in detail in the map annexed by red colour and the land dispute is a part of Khasra Nos. 594,611 and 616 situate at Village Ratija. Para 6 of the plaint reads as follows:

48. The allegation made in the plaint clearly reveals that since 1929-30 Village Nawagaon Khurd and its lands were not in existence, Defendant No. 1 has illegally leased out the land owned and possessed by the Plaintiff after giving new Khasra numbers bearing viz., 850/24, 850/27, 850/28, 850/31 and 850/32 which are part of the land of Village Ratija bearing Khasra Nos. 594,611 and 616. Complete lands of Khasra Nos. 594, 611 and 616 situate at Village Ratija have not been leased out by Defendant No. 1 to Defendant No. 2 after providing new numbers, but according to the pleading of the Plaintiff, part of the aforesaid lands were leased out by Defendant No. 1 in favour of Defendant No. 2. In these circumstances, the Plaintiff was under obligation to give complete description of the land and in case it is part of bigger chunk of land, the Plaintiff had to mention the boundaries of the land to identify the suit land in accordance with Rule 3 of Order 7 of the Code, but the Plaintiff has not specified the suit land and even the Plaintiff has not mentioned in the plaint the total area of the suit land.

49. In order to prove issue No. 1 the Plaintiff has adduced oral and documentary evidence. This is a suit for declaration, injunction and possession of the land assessed for payment of revenue to the Government. Although the Plaintiff has

not described the land, its area and boundaries, unless the land is demarcated in accordance with the provisions of the Chhattisgarh Land Revenue Code, 1959, it is difficult to hold that which part of the land is in possession of which party, and it can only be determined by local investigations by Commissions under Order 26 Rule 9 of the Code and the Rules made thereunder. In exercise of the proviso to Rule 9 of Order 26 of the Code, the State Government has made rule as to the persons to whom the Commission shall be issued.

50. The Plaintiff has placed reliance to discharge his burden to prove issue No. 1, on the second set of documents which is the second set of evidence. The Plaintiff has called upon the Defendants to admit the documents under Order 12 Rule 2 of the Code. The Plaintiff has called upon the Defendants to admit four documents. Document No. 1 is related to the report submitted by the Superintendent, Land Records to the Collector, Korba. Document No. 2 relates to report of the Revenue Inspector. Document No. 3 is letter written by the Collector Korba to the Secretary, Department of Revenue. Document No. 4 is relating to action taken by the State Government on the above letters.

51. The first two documents have been referred in letter No. 6689 dated 27-6-2008 written by the Collector, Korba to the Secretary, Department of Revenue, Raipur which reveals that this letter has been written by the Collector to the Revenue Department on the subject "Compromise application under Order 23 Rule 3 read with Section 151 of the Code" and in furtherance of compromise: between the parties, the Collector has written letter to the Secretary, Revenue, in which virtually, the Collector has not submitted any opinion. In the present: proceeding, the parties were negotiating for compromise and adjournment was granted for that purpose from 4-8-2008 till 21-7-2009. This document clearly reveals that it has been prepared with a view to compound the case. The Defendants have not admitted these documents by filing their reply.

52. Counsel for the Plaintiff argued that in absence of denial of notice to admit documents, the documents shall be deemed to be admitted under Rule 2A of Order 12 of the Code.

53. On the other hand, counsel for the Defendants submitted that these documents have been prepared for compromise and were never intended to support the case of the Plaintiff. Even otherwise, both the Defendants have specifically denied that the suit land does not form part of the land acquired for the Plaintiff which is denied by necessary implication in the pleadings therefore in absence of any specific reply of notice, the documents cannot be deemed to be admitted.

54. Counsel for Defendant No. 2 placed reliance in the matters of Kuar Nageshar Sahai v. Shiam Bahadur and Ors. AIR 1922 Oudh 231 . Shibcharan Das Vs. (Firm) Gulabchand Chhotey Lal, . Smt. Surjit Kaur v. Gurcharan Singh AIR 1973 Punjab and Haryana 18 and Sri Bauribandhu Mohanty and Another Vs. Sri Suresh Chandra Mohanty and Others, . in which it has been held that admission during

the course of negotiation. should not be allowed to be used as evidence against the person and such admission is not of much value Counsel for Defendant No. 2 further placed reliance in the: matter of Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, . in which the Apex Court has held that admissions, if true and clear, are by far the best proof of the facts admitted. Relevant portion of para 27 of the: judgment reads thus,

... Admissions, if true and clear are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible u/s 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.

55. In the present case, both the Defendants have specifically denied the allegation made in the plaint that the land leased out by Defendant No. 1 to Defendant No. 2 does not form part of the land acquired for the Plaintiff. The Defendants have denied the contents of the documents by necessary implication made in their pleadings.

56. As held by the Apex Court in the matter of Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, , the Defendants herein have not filed any reply of the notice served upon them by the Plaintiff under Order 12 Rule 2 of the Code during the course of negotiation, therefore, in absence of specific reply or denial of documents, the documents would not be deemed to be admitted under Rule 2A of Order 12 of the Code and it would not amount to true and clear admission.

57. For the foregoing reasons, the Defendants cannot be said to have admitted the pleadings of the Plaintiff. Mere absence of specific reply of the notice served upon them by the Plaintiff under Order 12 Rule 2 of the Code would not amount to deemed admission. Evidence adduced on behalf of the Plaintiff relating to identity of land by demarcation alleged to have been made by the Commission is without jurisdiction, therefore, same cannot be treated as evidence in terms of Order 26 Rule 10 of the Code. In absence of any evidence to prove issue No. 1 finding on issue No. 1 is not proved.

Finding on issues No. 2 and 3

58. Issues No. 2 and 3 are consequential issues and in absence of positive finding on issue No. 1 the Plaintiff is not entitled for decree of cancellation of the registered deed or possession of the land. Therefore, issues No. 2 and 3 are decided as negative.

Finding on issue No. 4

59. This issue has been framed on the basis of averments of the Defendants that in the light of the report of the CEC accepted by the Apex Court in the matter of T.N. Godavarman (2006) 5 SCC 28 (supra), the present suit is barred by the principle of res judicata.

60. In the matter of T.N. Godavarman (2006) 5 SCC 28 (supra), the Apex Court has accepted the report of the CEC only to the extent that the disputed land does not form part of forest land. The Apex Court has specifically held in T.N. Godavarman's case 1, that the dispute in respect of the title is not a matter in issue before the Apex Court, therefore, the Apex Court has not examined this issue. Paras 40 and 41 of the said judgment read thus,

40. In view of the aforesaid discussion, even on facts we find no substance in the plea that the land allotted to Maruti is forest land. Accordingly, we accept the recommendations of CEC as contained in the second and third reports. As already noted, the dispute in respect of the title is not a matter in issue before us. Thus, we have not examined this issue.

41. In conclusion, we dismiss the applications filed by Deepak Agarwal with costs. The applicant has abused the process of law and deserves to be sternly dealt with. Enormous judicial time has been wasted which could have been used for deciding other cases. It has also resulted in CEC and others incurring huge expenses and their wastage of time as well. In this view, we quantify costs at Rs. 1,00,000 payable by the applicant Deepak Agarwal to CEC. The costs, if not deposited with CEC within four weeks, shall be executable as a decree. The amount of cost shall be utilized for preservation of forests in the State of Chhattisgarh. The SLP and others applications are also disposed of in terms of this judgment.

61. In the light of the findings of the Apex Court in the matter of T.N. Godavarman (2006) 5 SCC 28 (supra), issue No. 4 is also decided in negative.

Finding on issue No. 5

62. Issue No. 5 is based on the additional allegation of the Defendants relating to valuation of the suit property. Plaintiff has valued the plaint for the purpose of declaration at Rs. 300/- for the purpose of permanent injunction at Rs. 300/-; 20 times of land revenue Rs. 1,500/- for the purpose of possession; Rs. 10,000/- for demolition of structure; and has paid total court fees of Rs. 1,150/-. Pleadings relating to valuation and court fees are as follows:

11. ? ? 300/ - ? ? ? , ? ? ? ? 100/ - ? ? ? | ? ? 300/- ? ? , ? ? ? 100/- ? ? |
? ? ? 20 ? 1500/- ? ? ? 10000/- ? , ? ? ? ? ? : 150/- ? ? 1000/- ? ? |

63. Defendant No. 1 has executed registered lease deed in favour of Defendant No. 2. Amount of annual lease has been mentioned in para 2 of the lease deed as Rs. 2,92,496/-. The term "land revenue" has been defined in Section 58(2) of the Chhattisgarh Land Revenue Code, 1959. Section 58 of the Chhattisgarh Land

Revenue Code, 1959 reads as follows:

55. Liability of land to payment of land revenue. - (1) All land, to whatever purpose applied and wherever situate, is liable to the payment of revenue to the State Government, except such land as has been wholly exempted from such liability by special grant of or contract with the State Government or under the provisions of any law or rule for the time being in force.

(2) Such revenue is called "land revenue"; and that term includes all moneys payable to the State Government for land, notwithstanding that such moneys may be described as premium, rent lease money, quit-rent or in any other manner in any enactment rule contract or deed.

64. Land revenue includes all moneys payable to the State Government for land notwithstanding that such moneys may be described as premium, rent lease money quit-rent or in any other manner in any enactment rule contract or deed. Lessee is liable to pay land revenue in accordance with the provisions of Section 138 of the Chhattisgarh Land Revenue Code, 1959. Section 138 of the Chhattisgarh Land Revenue Code, 1959 reads as follows:

755. Responsibility for payment of land revenue. - (1) The following person shall be primarily liable for the payment of the land revenue assessed on a holding.

(a) in a Bhumiswami's holding the Bhumiswami;

(b) in a holding consisting of land leased by the State Government the lessee thereof.

(2) When there are more than one Bhumiswami or lessee in a holding, all such Bhumiswamis or lessees, as the case may be, shall be jointly and severally liable to the payment of the land revenue on such holding.

65. Joint reading of Sections 58 and 138 of the Chhattisgarh Land Revenue Code, 1959 shows that monthly rent of lease under the lease deed is land revenue. According to Section 7(v) of the Court Fees Act, 1870, in case of possession of land assessed to land revenue or land revenue is payable in respect of such land, twenty times of the land revenue shall be the value of the land for the purpose of valuation of the suit. In the present case, the Plaintiff has valued the suit for possession at Rs. 1,500/- on the basis of twenty times of revenue. Lease deed shows that annual land revenue of the land is Rs. 2,92,496/-. Therefore, the Plaintiff was under obligation to value the suit as twenty times of such land revenue i.e. $2,92,496 \times 20 = \text{Rs. } 58,49,920/-$ and to pay the Court fees on the aforesaid amount, but the Plaintiff has not valued the suit on the basis of land revenue payable on the land leased out to Defendant No. 2 by Defendant No. 1. The Plaintiff has grossly undervalued the suit. Consequently, issue No. 5 is decided as positive. The Plaintiff is required to value the suit for possession at Rs. 58,49,920/-.

Finding on issue No. 6 - Relief

66. For the foregoing reasons and on the basis of findings on issues No. 1 to 5, the Plaintiff is not entitled for any relief against the Defendants.

67. In the result, the suit is liable to be dismissed and it is hereby dismissed. The Plaintiff shall bear its own costs and costs of the Defendants.

68. Advocate fees as per schedule.

69. Decree be drawn accordingly.