

(1951) 10 SC CK 0009
In the Supreme Court Of India
Case No : Appeal (civil) 300-304 of 1951

The State of Orissa

APPELLANT

Vs

Madan Gopal Rungta

RESPONDENT

Date of Decision : 25-10-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1952 SC 12 : (1952) 18 CLT 45 : (1951) 2 MLJ 645 : (1952) 1 SCR 28

Hon'ble Judges : Harilal Jekisundas Kania, C.J.; S. K. Das, J.; N. Chandrasekhara Aiyar, J.; M. Patanjali Sastri, J.; B. K. Mukherjea, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Kania, C.J.—These are five companion appeals from the judgment of the High Court at Orissa, delivered on five petitions filed by the respondent in each of the appeal, to obtain from the Court a writ of mandamus and/or directions under article 226 of the Constitution of India.

2. Each of the respondents alleged that between 1941 and 1947 he had agreed to take from the Ruler of Keonjhar a mining lease and had entered into possession of the area. Some of the petitioner alleged that they had spent money on the development of the mines and installed machinery to work the same. It is however common ground that there was no registered lease in favour of any of the respondents before 1947. On the 14th December, 1947, the Ruler of Keonjhar entered into a merger agreement with the Dominion of India and as from the 1st January, 1948, the State was merged in the Dominion of India. After signing the merger agreement the Ruler gave registered leases on the 27th December, 1947, to the respondents in these appeals. In pursuance of the exercise of the powers conferred on the Government of Orissa by section 4 of the Extra Provincial Jurisdiction Act 1949, read with Notification No. 172/1B dated 23rd March, 1948, of the Government of India, the Government of Orissa issued

a notification dated the 8th of June, 1949, declaring, inter alia the said leases to be void and not binding on it. This annulment was made expressly on the ground that these commitments were not reasonable and bona fides. Thereafter, the respondents, along with others approached the Orissa Government to give them leases and the State Government gave them temporary permits to work the mines in November, 1949. On the 3rd July, 1951, however they passed an order cancelling the temporary permits and direction the respondents to remove their assets appertaining to the respective mines within a fortnight. The respondents thereupon filled the petitions before the Orissa High Court purling for writs or direction in the nature of mandamus against the State of Orissa directing them to withdraw the notices dated the 8th of June and 3rd of July, 1951 and to forbear from acting upon or giving effect to the same.

3. The Court, after noticing the reviled contentions of the parties and rejecting the contention that the State of Orissa had cancelled the permits and were attempting to take possession as an acted of States, posed the question "whether the law of annulment relied upon by the State was applicable to the mining leases granted to the petitioners, or in the alternative, whether the state had any right in law to cancel the leases before the period mentioned therein." Referring to the contention of the State founded on the acceptance by the respondents of the temporary permits and the estoppel arising therefrom, Ray C.J. in his judgment stated as follows : "In determining the validity of this contention (relating to the temporary permit and estoppel arising therefrom) the circumstances under which these applications were made and the legal implications of such applications and the permissions granted under them will have to be considered. It is remote from our intention to express any opinion in this summary proceeding as to the respective merits of the rival contention. I am however satisfied that in the context of events and in the logic of circumstances attending thereto, there is a case to be tried." He next considered the scope of the writ of mandamus and came to the conclusion that "at the movement" the respondents had no alternative legal remedy, equally convenient, beneficial and effectual because the respondents could not file a suit till after the expiry of the period of sixty days required for the purpose u/s 80 of the CPC and he thought that unless protected by the Court in the meanwhile the respondents would undergo irreparable and irremediable loss of possession of the mining leases involving a huge waste of labour, machinery and other resource of equipments of immense value hardly capable of being remedied by payments of money as compensation. The Bench therefore passed an order dated 2nd August, 1951, as follows :- "We direct that till three months from today or one week after the institution of their (respondents') contemplated suit, whichever is earlier, the Government of the State of Orissa should refrain from disturbing the petitioners possession over the mining areas in question and the thereafter this order will cease to have effect." They gave further direction as to how the mines were to be worked during the aforesaid period. Towards the end of the judgment it was to the limited extent indicated above." Narasimham J. stated. "In the result, the

petitions are allowed in part agreed with the order set out in the judgment of the Chief Justice although his judgment shows the concordance to be very halting. He stated that although he was reluctant to exercise powers under article 226 because the present respondents could file a suit, yet as in view of section 80 of the CPC there would be an unavoidable delay resulting in irreparable loss to the respondents he agreed that the order should be passed as mentioned in the judgment of the Chief Justice.

4. Towards the end of his judgment he stated as follows :-

"It should however be clearly emphasized that the observations contained in this judgments should not be take as pre-judging any question which may arise for the consideration of the Civil Court in the events of the petitioners filing as regular suit and seeking interim relief from that Court by way of temporary injunction, appointment of receiver or otherwise. If such an application is made, the question as to whether the petitioners have a prima facie case for trial or whether such a suit is maintainable or weathers the balance of convenience requires that they should be permitted to remain in possession of the leasehold property till the termination of the suit and other allied matters should all be dealt with by the Court concerned without being influenced in any way by the observations contained in this judgment. Those observation have been made for the limited purpose of granting temporary relief under article 226 and are not intended to embarrass either party or the Court in future litigation."

5. It appears that thereafter an application was made to stay the operation of this order to enable the Government of Orissa to appeal against the order of the 2nd of August. The same judges on the 6th of August stayed the operation of the order for fifteen days and observed as follows :- "The effect of the order (of 2nd August, 1951) is that except giving them (respondents in these appeals) some interim measure of relief for the period during which the petitioners were without remedy, we were not inclined to accept the petition and issue a writ in the nature of mandamus, as prayed for." The State of Orissa has come on appeal to us and after hearing the arguments on both sides we came to the conclusion that the order of the High Court could not be sustained. We accordingly passes the following order on the 15th of October : "these fives appeals are allowed and the order of the High Court is set aside in each case. As the High Courts has passed no other orders on the petitions and indeed has stated that the Court was not prepared to pass any other orders on the petitions, the petitions stand dismissed. The respondents will pay the costs of the appeals. We shall gives our reasons later on." our reasons are these :

Article 226 of the Constitution of India runs as follows :-

226. (1) "Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any government, within those territories directions, orders or writs, including writs in the nature of

habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by part III and for any other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32."

6. The language of the Article shows that the issuing of writs or direction by the courts is not founded only on its decision that was right of the aggrieved party under Part III of the Constitution (Fundamental Rights) has been infringed. It can also issue writs or give similar direction for any other purpose. The concluding words of article 226 have to be read in the context of what precedes the same. Therefore the existence of the rights is the foundation of the exercise of jurisdiction of the Court under this Article. The judgment of the Orissa High Court under appeal, however, shows that the Judges have divided nothing at all in respect of the rights of the parties. Indeed they have expressly stated that their observation should not in any way be considered as deciding any of the right or contentions of the parties raised in the petitions. The whole judgment shows that because of the requirement of section 80 of the Civil Procedures Code the present respondents could not file a suit against the Government for at least sixty days, the respondents position should not in the interval be disturbed and accordingly the Court gave the derivations in its order of the 2nd of August 1951. If there was any doubt about the nature of the relief desired to be granted by the order of 2nd August the same Judges have made it perfectly clear by their order of the 6th of August, wherein they have stated that except for these directions they were not prepared to make any other order on the petitions. The result therefore is that while the Judges declined to investigate and pronounce on the rights of the parties and expressly kept the determination there of in abalones in the suit proposed to be filed by the present respondents, they gave directions for interim relief till such suit was filed. It must be noted that with the passing of the order of the 2nd August, 1951 containing directions in the nature of interim relief the petitions were completely disposed of and have not been kept pending for disposal. Those direction somebody therefore the final order passed by the Court on these petitions. A preliminary objection was raised about the maintainability of the appeals on the ground that no final orders were passed on the petitions. That objection must fail in view of the fact that with these order the passions were disposed of finally and nothing further remained to be done in respect of the petitions. The fact that the operation of the order is limited to three months or a week after the filing of the intended suit does not prevent the order from being final.

7. On behalf of the appellant it was urged that the Court had no jurisdiction to pass such orders under article 226 under the circumstances of the case. This is not a case where the Court before finally disposing of a petition under article 226 gave directions in the nature of interim relief for the purpose of maintaining the status quo. The question which we have to determine is whether direction in the

nature of interim relief only could be granted under article 226, when the Court expressly stated that it refrained from determining the rights of the parties on which a writ of mandamus or directions of a like nature could be issued. In our opinion, article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to convert the provisions of section 80 of the Civil Procedure Code, and in your opinion that is not within the scope of article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ mandamus or any other direction of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under article 226 of the Constitution. In our opinion, the language of article does not permit such an action. On that short ground the judgment of the Orissa High Court under appeal cannot be upheld.

8. Appeals allowed.