AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 2235 of 2000

1. Power Grid Corporation Of India Ltd., A Government of India Enterprise, Sampritinagar, Uppalwadi, Nagpur, through it's Managing Director

---- Petitioner

Versus

1. State of Madhya Pradesh (Now Chhattisgarh), through Secretary, Revenue Department, Wallabh Bhawan, Bhopal.
2. The Collector, Durg.
3. The Sub Divisional Officer, Land Acquisition Officer, Durg.
4. District Registrar (Registration Department), Durg, Dist. Durg.

---- Respondent

And

WP No. 5259 of 2000

1. National Thermal Power Corpn. Ltd., Korba Super Thermal Power Station, Dist. Korba, through its General Manager

---- Petitioner

Vs

1. State of Madhya Pradesh (Now Chhattisgarh), through Secretary, Revenue Department, Vallabh Bhawan, Bhopal.
2. The Commissioner, Bilaspur Division, Dist. Bilaspur.
3. The Collector, Dist. Korba.
4. District Registrar (Registration), Registration Department, Dist. Bilaspur.
5. Sub Registrar (Registration), Kastghora Tahsil, Dist. Korba.

---- Respondent

Present :- Shri Abhishek Sinha, Advocate for the petitioner in W.P. No.2235 of 2000.

Dr. N.K. Shukla, Senior Advocate with Shri Abhishek Sinha, Advocate for the petitioner in W.P. No.5259 of 2000.

Shri Adhiraj Surana, Dy. Government Advocate for the State.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

07/04/2015

1. Both the petitioners i.e. Power Grid Corporation of India Limited (for short 'Power Grid') and National Thermal Power Corporation Limited (for short 'NTPC') are Public Sector Undertakings. They have preferred the present writ petitions seeking quashment of the orders passed by the State authorities directing them to execute the lease and get it registered in accordance with the provisions of the Registration Act, 1908 (for short 'the Registration Act'). The petitioners have further prayed for restraining the respondents from charging or deducting the amount of registration fees and stamp duty.

2. The petitioner Power Grid has been allotted Government land admeasuring 53.68 acres at Village Janjgiri, R.I. Circle Ahiwara, Tehsil Damdha, District Durg vide communication dated 20.10.1997 on payment of premium of Rs.76,74,545/- and annual rent of Rs.5,75,591/-.

3. The petitioner NTPC has been granted the Government land admeasuring 604.78 acres situated at villages Lata, Sumedha, Kumgari, Pandaripani, Dhanras and Ghorapat, Tehsil Katghora, District Bilaspur (now Korba) vide State Government's letter dated 15/21.01.1998 for construction of second stage of fly ash dam on payment of premium of Rs.2,16,36,155/- and annual rent of Rs.16,21,806/-.

4. After payment of the premium amount and deposit of the annual rent, the petitioners have been handed over possession of the land and both the petitioners have executed the work for which the land has been allotted.

5. By the impugned communications, the State Authorities are insisting that the petitioners should get the lease deed executed and registered in accordance with the provisions of the Registration Act and for that they should make payment of registration fees and stamp duty as required under the law.

6. The issue raised before this Court is whether – (i) the petitioners are beneficiary of a Government grant within the meaning of 'grant' under the Government Grants Act, 1895 (for short 'the GG Act') read with Sections 181 & 182 of the Chhattisgarh Land Revenue Code, 1959 (for short 'the CGLRC'); and (ii) whether the said grant or lease is not compulsorily registerable by virtue of Section 17 (2) (vii) read with Section 90 of the Registration Act ?

7. Petitioners have argued that by virtue of above referred provisions, the respondents are not justified in compelling the petitioners to get the lease deed executed and registered, whereas learned counsel appearing for the State has argued that the land has been granted under the provisions of the Revenue Book Circular and not under the CGLRC, therefore, it is not a 'Government grant' and, as such, it is compulsorily registerable.

8. The GG Act was enacted with an object to explain the Transfer of Property Act, 1882 (for short 'the TP Act') so far as relates to grants from the Government and to remove certain doubts as to the powers of the Government in relation to such grants. The object further states that WHEREAS doubts have arisen as to the extent and operation of the TP Act and as to the power of the Government to improve limitations and restrictions upon grants and other transfers of land made by it or under its authority, and it is expedient to remove such doubts, the Act is enacted.

9. Section 2 of the GG Act provides that nothing contained in the Transfer of Property Act, 1882, shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favour of, any person whomsoever; but every such grant and transfer shall be constructed and take effect as if the said Act had not been passed. Similarly, Section 3 of the GG Act provides that all provisions, restrictions, conditions and limitations over

contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.

10. Section 181 of the CGLRC provides that every person who holds land from the State Government, but does not hold such land as Bhumiswami shall be called a Government lessee in respect of such land, whereas Section 182 provides that such lessee shall hold his land in accordance with the terms and conditions of the grant, which shall be deemed to be a grant within the meaning of the GG Act.

11. Section 17 of the Registration Act makes a provision as to the documents of which registration is compulsory. Clause (d) of sub-section (1) provides that registration of leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent is registerable. Sub-section (2) of Section 17 of the Registration Act provides that nothing in clauses (b) and (c) of sub-section (1) shall apply to (vii) any grant of immovable property by Government. This exception or non-applicability of the provision making registration compulsory has not been extended to any grant of immovable property by the Government concerning leases of immovable property from year to year, or exceeding one year or reserving a yearly rent as provided under clause (d) of sub-section (1) of Section 17 of the Registration Act because this clause is not mentioned in sub-section (2), however, at the same time, Section 90 (1) of the Registration Act provides that nothing contained in the Act

shall be deemed to require, or to have any time required, the registration of any of the following documents or maps, namely:- (a) xxx (b) xxx (c) xxx (d) *sanads, inam*, title-deeds and other documents purporting to be or to evidence grants or assignments by government of land or of any interest in land. Sub-section (2) of Section 90 further provides that all such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

12. The cumulative legal effect of the above referred provisions would unmistakenly conclude that a lease of land where the lessee is not the bhumiswami would be called a Government lessee under Section 181 of the CGLRC and such Government lessee shall be deemed to be holding a grant from the Government within the meaning of the GG Act. The said GG Act provides that TP Act shall not apply to the Government grant.

13. There are two Allahabad High Court judgments **Munshi Lal v. Gopi Ballabh**[1] & **Lala Kishun Chand v. Sheo Dutta**[2] and one Calcutta High Court Judgment in **Secy. of State v. Lal Mohan Choudhury and others**[3] to the effect that Section 2 of the GG Act does not render all the provisions of the TP Act inapplicable to lands held under grant from the Government, but the meaning of the Section is that when the Court is called upon to construe an instrument granting land by the

1 AIR 1914 Allahabad 120

2 AIR 1958 Allahabad 879

3 AIR 1935 Calcutta 746

Government, it shall consider such grant irrespective of the provisions of the TP Act. The said pronouncement is in tandem with the object of the GG Act which provides that the Act has been enacted with an object to explain the Transfer of Property Act, 1882 so far as relates to grants from the Government and to remove certain doubts as to the powers of the Government in relation to such grants.

14. The Supreme Court in **M/s. Hajee S.V.M. Mohamed Jamaludeen Bros and Co. v. Government of Tamilnadu**[4], also it has been held that the effect of Sections 2 & 3 of the GG Act is that terms of any grant or terms of any transfer of land made by a Government would stand insulated from the tentacles of any statutory law. Section 3 places the terms of such grant beyond the reach of any restrictive provision contained in any enacted law or even the equitable principles of justice, equity and good conscience adumbrated by common law if such principles are inconsistent with such terms. The two provisions are so framed as to confer unfettered discretion on the Government to enforce any condition or limitation or restriction in all types of grants made by the Government to any person. In other words, the rights, privileges and obligations of any grantee of the Government would be completely regulated by the terms of the grant, even if such terms are inconsistent with the provisions of any other law.

15. In **The State of U.P. v. Zahoor Ahmad and another**[5] it was held by

---

4 AIR 1997 SC 1368
5 AIR 1973 SC 2520

the Supreme Court that the mere fact that the State is the lessor will not by itself make it a Government grant within the meaning of the Act. Thus, a lease of land for erecting a temporary rice mill cannot be held to be Government grant if there is no evidence in the character of the land or in the making of the lease or in the content of the lease to support the plea that it was a Government grant. In this matter, the Supreme Court has referred the decision of the Allahabad High Court rendered in **Lala Kishun Chand** (supra).

16. The present lease being a yearly lease, reserving yearly rent without mentioning the term of lease, the same would be compulsorily registerable under Section 17 (1) (d) of the Registration Act, as the exception or exemption under Section 17 (2) has not been extended to the leases under Section 17 (1) (d), however, at the same time Section 90 of the Registration Act creates another category of document which are exempted from the registration. The said provision reads thus;

> **90. Exemption of certain documents executed by or in favour of government.--**(1) Nothing contained in this Act or in the Indian Registration Act, 1877, or in the Indian Registration Act, 1871, or in any Act thereby repealed, shall be deemed to require, or to have any time required, the registration of any of the following documents or maps, namely:-
>
> > (a) documents issued, received or attested by any officer engaged in making a settlement or revision or settlement of land-revenue, and which form part of the records of such settlement; or

> (b) documents and maps issued, received or authenticated by any officer engaged on behalf of government in making or revising the survey of any land, and which form part of the record of such survey; or
>
> (c) documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village records; or
>
> **1. *sanads, inam*, title-deeds and other documents purporting to be or to evidence grants or assignments by government of land or of any interest in land; or**
>
> (e) notice given under section 74 or section 76 of the Bombay Land-Revenue Code, 1879, or relinquishment of occupancy by occupants, or of alienated land by holders of such land.
>
> (2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

17. A reading of the above quoted provision contained in Section 90 of the Registration Act, makes it explicit that any document evidencing grant or assignments by Government of land or of any interest in land is not required to be registered and that for the purposes of Sections 48 & 49 of the Registration Act, or such documents be deemed to have been and to be registered in accordance with the provision of the Registration Act.

18. Thus, the legal effect is unambiguous and is not capable of deriving more than one meaning. For a documents to be covered within

Section 90 (1) (d), the only thing to be determined is whether such document evidences any grant or assignment by the Government. As earlier stated, by virtue of Sections 181 & 182 of the CGLRC the subject allotment is deemed to be treated as Government grant within the meaning of the GG Act. Thus, the document is covered within the meaning of GG Act and, as such, is entitled to the exemption under Section 90 of the Registration Act.

19. Although under Section 17 of the Registration Act the registration of leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent is registerable, yet Section 90 of the Registration Act, which exempts certain documents from compulsory registration commences with a *non obstante* clause and, thus, the same has overriding effect.

20. In **State (NCT of Delhi) v. Sanjay[6],** at para 63, the Supreme Court has held that 'it is well known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.'

21. The Supreme Court in **State (NCT of Delhi) v. Narender**[7], at para 15, held thus :

> 15. In the present case, the legislature has used a non obstante clause not only in Section 59 but also in Section 61 of the Act. As is well settled, a non obstante

6 (2014) 9 SCC 772
7 (2014) 13 SCC 100

> clause is a legislative device to give effect to the enacting part of the section in case of conflict over the provisions mentioned in the non obstante clause. Hence, Sections 451, 452 and 457 of the Code must yield to the .provisions of the Act and there is no escape from the conclusion that the Magistrate or for that matter the High Court, while dealing with the case of seizure of vehicle under the Act, has any power to pass an order dealing with the interim custody of the vehicle on security or its release thereof.

22. In reaching to the above conclusion, this Court is fortified in its view by the law laid down by the Madhya Pradesh High Court in **Ramnarayan Triyoginarayan Trivedi and others v. State of Madhya Pradesh and others**[8] and **The State of Madhya Pradesh v. Jhankar Singh**[9].

23. For the foregoing, both the writ petitions are allowed. The communications sent by the State Government authorities to the petitioners directing them to deposit registration fees & stamp duty and for registration of the documents are quashed.

24. There shall be no order asto costs.

J U D G E

Gowri

8 AIR 1962 MP 93
9 AIR 1973 MP 274

HEAD NOTE

Allotment of Govt. land is Govt. Grant u/S 181/182 of LR Code & GG Act, thus, not compulsorily registerable by virtue of S.90 of the Registration Act.

150

HIGH COURT OF CHHATTISGARH : BILASPUR

Writ Petition No.2235 of 2000

PETITIONER — Power Grid Corporation of India Ltd.

Versus

RESPONDENTS — State of Madhya Pradesh (Now Chhattisgarh) & others

And

Writ Petition No.5259 of 2000

PETITIONER — National Thermal Power Corpn. Ltd.

Versus

RESPONDENTS — State of Madhya Pradesh (Now Chhattisgarh) & others

Post for pronouncement of orders on the ____ day of April, 2015

J u d g e
-4-2015