

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on :19.11.2020****Judgment delivered on :07.12.2020****Second Appeal No.195 of 2009**

Dau Ram S/o Punahuram, by caste Satnami, aged about 42 years, resident of Shitlapara, Kanker, District North Bastar, Kanker (CG)

----- Appellant/Plaintiff**Versus**

1. Hifjul Jamil (died) through LR's

1.(a) Kaniy Fatima W/o Late Hifjul Jamil, aged about 70 years,

(b) Shakil Kuraishi S/o Late Hifjul Jamil, aged about 44 years,

(c) Vakil Kuraishi S/o Late Hifjul Jamil, aged about 42 years,

All R/o Shitalapara, Kanker, District-Kanker (CG)

2. Sayyed Usman Ali S/o Rahman Kha Ali, caste Musalman, aged 38 years, resident of Shitla Para, Kanker, District North Bastar, Kanker (CG)

3. State of Chhattisgarh, through Collector, Kanker, District North Bastar, Kanker (CG)

----- Respondents/Defendants**And****Second Appeal No.148 of 2009**

Dau Ram S/o Punahuram, by caste Satnami, aged about 42 years, resident of Shitlapara, Kanker, District North Bastar, Kanker (CG)

----- Appellant/Defendant**Versus**

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----- Plaintiffs

3. State of Chhattisgarh, through Collector, Kanker, District North Bastar, Kanker (CG)

----- Respondents

Mr. Bharat Rajput, Advocate for the Appellant/Plaintiff in SA No.195/2009 and Advocate for the Appellant/ Defendant in SA NO.148/2009

Mr. Vishnu Koshta and Mr. Shobhit Koshta, Advocate for respondent No.2.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. Second Appeal No.195 of 2009 preferred by the appellant/plaintiff was admitted for hearing on 3.7.2020 by formulating the following substantial question of law:-

“Whether both the Courts below were justified in holding that the alleged transfer made by plaintiff Dauram in favour of defendant No.1 Hifjul Jamil on 22/04/1987 is not hit by Section 165(7-b) of Land Revenue Code, 1959 and thereby committed an illegality ?”

2. Second Appeal No.148 of 2009 preferred by the appellant/defendant was admitted for hearing on 24.09.2020 by formulating the following substantial

question of law:-

"Whether both the Courts below are justified in granting decree for declaration of title and permanent injunction in favour of the plaintiffs ignoring the fact that document Ex.P-4 i.e. patta granted by the State Government in favour of defendant No.1 clearly prohibits transfer of suit land by the allottee within ten years from the date of grant of patta without prior permission of the Collector by recording a finding which is perverse to the record ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and nomenclature in the suit before the trial Court].

3. Since both the suits were filed relating to nazul land/suit land, civil suits and first appeals were disposed of by consolidating the suits and appeals and therefore, these two second appeals preferred by Dauram were clubbed and heard together and being disposed of by this common judgment.
4. The suit property relates to Nazul land bearing Sheet No.5B, Plot No.8/1 Layout Plan 35/1, area 431 square feet situated at Shitla Para, Kanker, District Kanker. The said Nazul land was granted on lease to Dauram by the then State of Madhya Pradesh on 13.9.83 pursuant to the order of the Collector dated 20.9.82 (vide Ex.P-4 in Civil Suit No.106A/2004 filed by

Hifjul Jamil and Sayyed Usman) for a period of 30 years commencing from 1.4.1983 to 31.3.2013 with a condition that plaintiff-Dauram in Civil Suit No.24A/2006 will not be entitled to alienate, sub-let or change of use for a period of 10 years without prior permission of the Collector, but Dauram transferred the suit land to Hifjul Jamil by registered sale deed on 22.4.1987 and thereafter the dispute arose between the parties and on account of which, Dauram filed a suit for declaration of title and possession on 7.7.97 stating inter-alia that defendant-Hifjul Jamil by executing false and fabricated sale deed obtained wrongful possession of the suit property, whereas defendant No.1-Hifjul Jamil and defendant No.2-Sayyed Usman filed Civil Suit No.106A/2004 on 3.3.1997 stating that he (Hifjul Jamil) has purchased the suit land by registered sale deed for sale consideration of ₹ 6000/- and came in possession over the suit land and thereafter he has sold the suit property to defendant No.2-Sayyed Usman vide agreement dated 4.7.1988 for cash consideration of ₹ 9500/- and thereafter he constructed pakka house and since then, he is residing in the suit property. Both the suits were clubbed and decided together by common judgment and decree dated 31.7.2006 by the

trial Court. The trial Court dismissed the suit filed by Dauram holding that sale deed is valid and genuine document and Dauram has sold the property to Hifjul Jamil, whereas decreed the suit filed by Hifjul Jamil and Sayyed Usman Ali holding that Hifjul Jamil is title-holder of the suit land and restrained Dauram/defendant No.1 therein from interfering with his peaceful possession, against which, Dauram preferred two first appeals being Civil Appeal Nos.33A/2006 and 34A/2006. Both the civil appeals have been dismissed by the first appellate Court subject to modification in the decree of the trial Court that since the suit land has been transferred by Dauram in contravention of the provisions contained in lease deed, therefore, the Government would be at liberty to proceed in accordance with law, against which, two second appeals have been preferred by Dauram, one is in the capacity of the plaintiff and one is in the capacity of defendant No.1 respectively in two suits, in which two substantial questions of law have been formulated, which have been set-out in the opening paragraph of this judgment for sake of completeness.

5. Mr. Bharat Rajput, learned counsel for Dauram, would submit that both the second appeals deserve to be

allowed as the trial Court and the first appellate Court both have committed illegality in holding that the alleged transaction is not hit by Section 165(7-b) of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as 'the Code') and further he was not competent to transfer the suit land in favour of Hifjul Jamil and therefore, no decree for declaration of title could have been granted in terms of Section 34 of the Specific Relief Act, 1963 (hereinafter called as "the Act of 1963") and since the lease period has already expired during the pendency of these second appeals on 31.3.2013, Hifjul Jamil is also not entitled for permanent injunction, as such, both the impugned judgments and decrees deserve to be set-aside.

6. Mr. Shobhit Koshta, learned counsel for respondent-Sayyed Usman, would submit that since the suit land is situated in urban area, therefore, in view of decision of the Madhya Pradesh High Court in the matter of Alidas v. Board of Revenue and others¹, Chapter XII and Section 165(7-b) of the Code would not be applicable. It would be Nazul land in urban area, therefore, both the Courts below are justified in holding that in the instant case, Section 165(7-b) of the Code is not applicable. He would further

¹ AIR 1973 Madhya Pradesh 130

submit that leased property can always be transferred in view of the provisions contained in Section 108 read with Section 111(g) of the Transfer of Property Act, 1882 (hereinafter called as "TP Act"). He would also submit that breach of condition of lease would make the lease voidable in view of decision of the Madhya Pradesh High Court in the matter of Smt.Meenakshi Jain v. State of Madhya Pradesh², therefore, decree for declaration of title and permanent injunction has rightly been granted in his favour by both the Courts below, which is strictly in accordance with law.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

Answer to substantial question of law No.1:-

8. It is not in dispute that the suit property is situated in urban area and it is Nazul land bearing Sheet No.5B, Plot No.8/1, Layout Plan 35/1 area 431 square feet situated at Shitla Para, Kanker, District Kanker.

9. The question as to whether Section 165(7-b) contained in Chapter XII of the Code applies to Nazul land in urban area is no longer res-integra and it has

² AIR 1998 Madhya Pradesh 78

already been authoritatively adjudicated by the High Court of Madhya Pradesh in the matter of Alidas (supra), in which it has been clearly held that Section 165(7-b) which contained in Chapter XII of the Code is not applicable in urban area and held as under:-

"12. As such, the said Act is applicable to the property of aboriginals, who are members of the scheduled tribes and who have property in the rural areas. Any property in the urban area is specifically excluded from the operation of the said Act. It was for the first time when the M. P. Land Revenue Code, 1954, was enacted, which came into force with effect from 1-10-1955, that Chapter 8 of the said Code was enacted regarding assessment and re-assessment of land in urban areas. As such, there can be no doubt that Chapter 8 of the said Code would govern the lands situated in urban areas. The M. P. Land Revenue Code, 1954, was subsequently repealed by the M. P. Land Revenue Code, 1959, which also made similar provisions. Chapter 7 of the 1959 Code provides for revenue survey and settlement in non-urban areas; while Chapter 8 of the 1959 Code makes provisions for assessment and re-assessment of land in urban areas. As such, there can be no doubt that Chapter 8 of the M. P. Land Revenue Code, 1959, will be applicable to lands situated in urban areas. But it is not possible to accept the contention of the learned counsel for the respondents that the other Chapters of the M. P. Land Revenue Code, 1959, will be applicable to Nazul lands situated in urban areas. As such, we are clearly of the opinion that Section 165 of the M. P. Land Revenue Code, 1959, which forms part of Chapter 12 of the Code, would not be applicable to Nazul lands in urban areas. We may observe that Section 157 of the Code, which is the first Section in Chapter 12, lays down that there shall be only one class of tenure-holders of lands held from the State to be known as Bhumiswami. But it does not mean that the provisions of Chapter 12 in

their entirety can be made applicable to such plot proprietors of Nazul land in urban areas, who are also known as Bhumiswamis."

- 10.** In view of principle of law laid down by the High Court of Madhya Pradesh in Alidas (supra), it cannot be held that Section 165(7-b) of the Code would be applicable to Nazul land situated in urban areas as in the present case, as such, the argument deserves to be rejected as the suit land is Nazul land situated at Kanker (urban area) and in Nazul land, provision of Section 165(7-b) of the Code is not attracted, as such, both the Courts below are justified in holding that the transaction is not hit by Section 165(7-b) of the Code.

Answer to substantial question of law No.2:-

- 11.** Dauram (plaintiff in Civil Suit No.24A/2006) was granted lease of Nazul land i.e., 40 square meter for construction of building vide Ex.P-4 (Civil Suit No.106A/2004) and the lease deed was executed between erstwhile State of Madhya Pradesh and Dauram on 13.9.1983 for a period of 30 years commencing from 1.4.1983 to 31.3.2013 with express condition that Dauram will not alienate/sub-lease the said land within a period of 10 years from the date of construction without prior permission of the Collector. However, said Dauram-plaintiff after

constructing small house on the said land within 10 years on 22.4.87 vide Ex.P-1C alienated the said leased land in favour of defendant No.1-Hifjul Jamil and said to have delivered the peaceful possession of the said land and Hifjul Jamil said to be parted the possession to Sayyed Usman on 4.7.1982 and since then, Sayyed Usman is in possession of the said land. Hifjul Jamil and Sayyed Usman claimed declaration of title and permanent injunction on the basis of sale deed (Ex.P-1C) and eventually that was granted by the trial Court in Civil Suit No.106A/2004 and affirmed by the first appellate Court, which has been challenged by lessee - Dauram in this second appeal.

12. Mr.Shobhit Koshta, learned counsel for respondent No.2/purchaser, has vehemently pressed in service the provisions contained in Section 108 and 111(g) of the TP Act by contending that violation of condition of lease would make the alienation voidable and as such, lessor (State Government in this case) is only a person entitled to proceed against Hifjul and another. However, the decree passed in their favour by the trial Court and duly affirmed by the first appellate Court cannot be interfered with.

13. Lease is admittedly granted by the then State of Madhya Pradesh in favour of Dauram vide Ex.P-4 in

Civil Suit No.106A/2004. The question, would be, whether the Transfer of Property Act, 1882 would apply to such lease or the Government Grants Act, 1895 would apply ?

14. The Government Grants Act, 1895 has been enacted to explain the Transfer of Property Act so far as it relates to grant from Government. Section 2 of the Government Grants Act, 1895 (hereinafter called as 'Grants Act') provides that the Transfer of Property Act, 1882, not to apply to Government grants which states as under:-

"2. Transfer of Property Act, 1882, not to apply to Government grants.-Nothing in the Transfer of Property Act, 1882, contained 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 construed and take effect as if the said Act had not been passed."

Similarly, Section 3 of the Grants Act provides the Government grants to take effect according to their tenor, which states as under:-

"3. Government grants to take effect according to their tenor.-All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and the effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding."

15. In the matter of M/s. Hajee S.V.M. Mohamed

Jamaludeen Bros and Co. v. Govt. of T.N.³ the Supreme Court has held that the word "grant" has not been defined in the Act of 1895, but held that the lease of the land granted by the Government is covered by protection envisaged by Section 2 and 3 of the Act of 1895. It was observed as under:-

"14. It is true that the word "grant" is not defined in the Grants Act but it is quite evident that the word has been used in the Act in its etimological sense and, therefore, it should get its widest import. In Black's Law Dictionary, the word "Grant" is shown to have the meanings (i) to bestow; to confer upon someone other than the person or entity which makes the grant; (ii) to give or present as a right or privilege. (Fifth Edn., Page 629).

15. The definition of licence in Section 52 of the Indian Easements Act denotes that it is the grant of a right made by the grantor. Section 53 and Section 54 of the said Act also refer unequivocally to the grant of licence. Thus without a "grant" in the general sense no licence can be created.

16. In Mohsin Ali Vs. State of M.P. [1975 (2) SCC 122 : (AIR 1975 SC 1518)], this Court said that "in the widest sense grant may comprehend everything that is granted or passed from one to another by deed. But commonly the term is applied to rights created or transferred by the Crown e.g. grants of pensions, patents, charters, franchise (See Earl Jowtt's Dictionary of English Law)."

17. The word "grant" used in the Grants Act could, therefore envelop within it everything granted by the government to any person. Thus, the licence which appellant obtained by virtue of the agreement would undoubtedly fall within the ambit of "grant" envisaged in the Grants Act. "

16. In the matter of Pradeep Oil Corporation v. Municipal Corporation of Delhi and Anr.⁴ the Supreme Court has held that the Government Grants Act being special statute would prevail over general statute i.e. T.P. Act and rights & obligation of parties would be governed by terms of provisions of Government Grants Act, 1895 whereunder Govt. would be entitled to impose limitations and restrictions upon grants and other transfer made by it or under its authority. It was observed as under:-

"17. In the present case grant has been made by the President of India in terms of Section 2 of the Government Grants Act, 1895 and the Transfer of Property Act, 1882 may have little bearing in the instant case. The former, i.e. the Government Grants Act, 1895 being a special statute would prevail over the general statute, i.e. the Transfer of Property Act, 1882. Accordingly, the rights and obligations of the parties would be governed by the terms of the provisions of Government Grants Act, 1895 whereunder the Government is entitled to impose limitations and restrictions upon the grants and other transfer made by it or under its authority."

17. In the matter of The State of U.P. v. Zahoor Ahmad and another⁵ the Supreme Court has held that under Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit. It was observed as under:-

4 AIR 2011 SC 1869

5 AIR 1973 SC 2520

"16. Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of sections 2 and 3 of the Government Grants is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has unfettered discretion to impose any conditions, limitations, or restrictions in its grants, and the right, privileges and obligations of the grantee would be regulated according to the terms of the grant, notwithstanding any provisions of any statutory or common law."

18. In the matter of Murlidhar Jalan (since deceased)

by L.Rs., v. State of Meghalaya and others⁶ the Supreme Court has held that when a perpetual lease granted by the Government for 99 years was not renewed after expiry, the relationship as tenant and landlord stood terminated and party concerned is not entitled for declaration that he is land-holder and after termination of lease, his possession is of trespasser. It was observed as under:-

"3....We find no force in the contention. It is an admitted position that renewal was not granted. Thereby, the previous lease stood expired and the relationship as tenant and landlord came to be terminated. He accepted the title of the Government; thus thereafter, he continued to be in possession as a trespasser. It is true that a lower level officer accepted the rent; and recognition was obviously made on a mistaken impression that the land was required for a public purpose; but on the basis thereof, it cannot be construed that the title of the appellant was confirmed by the conduct of the Government. Accordingly, the declaration of title as land-holder cannot be granted. The

High Court, therefore, was right in refusing to grant the relief. It is not a case of taking possession without due process of law. The possession only continues to a facet of the facts. Apart from that there is no other documentary evidence on the basis of which it could be concluded that the title of the Government is defeated by acceptance of the rent or by requisition of the property by mistaken act on the part of the Government."

- 19.** In the matter of Ganjhu Upendra Singh v. Ganjhu Meghnath Singh⁷ the Division Bench of Patna High Court while dealing with crown grant clearly held that when a crown grant contains a prohibition against alienation of estate, that prohibition must take effect in accordance with its term. It was observed as under:-

"When a Crown grant contains a prohibition against alienation of estate, that prohibition must take effect in accordance with its term. The rule in such case is that the measure of liability to involuntary alienation is the power of voluntary transfer. The latter is taken away from the holder of statute so far as sale or attempted sale of property is concerned and exercise of it is rendered void. Full ownership is cut-down and holder's power of alienation is restricted to the profit accruing during his lifetime. Hence the creditor can proceed only against the profits and not by tenure itself."

- 20.** Reverting to the facts of the present case, in light of legal position noticed hereinabove, it is quite vivid that lease of Dauram was only Government grant and is covered by protection envisaged in Sections 2 and 3 of the Government Grants Act. The

⁷ AIR 1939 Patna 598

lease deed (Ex.P-4) stipulates a condition that the lessee shall not alienate/sub-lease the said land within 10 years from the date of construction of building on the lease land without prior permission of the Collector, but it was transferred by Dauram in favour of Hifjul Jamil and thereafter Hifjul Jamil said to be parted the possession to Sayyed Usaman. Such an alienation would void. Even otherwise, during pendency of this second appeal, the lease period has already been expired on 31.3.2013 and it was not brought on record that the lease has ever been extended at the instance of Dauram or Hifjul or others, as such, following the decision of the Supreme Court in the matter of Murlidhar Jalan (supra), Hifjul Jamil and another (plaintiffs of Civil Suit No.106A/2004) are not entitled for declaration of title in their favour as the lease period has come to an end during the pendency of this second appeal.

21. The next question would be whether Hifjul and another are entitled for permanent injunction ?

22. The Supreme Court in the matter of Premji Ratansey Shah and others v. Union of India and others⁸ has held that issuance of order of injunction is absolutely a discretionary and equitable relief. It

⁸ (1994) 5 SCC 547

was further held that injunction is a personal right under Section 41(j) of the Specific Relief Act, 1963; the plaintiff must have personal interest in the matter. The interest of right not shown to be in existence, cannot be protected by injunction. It was observed as under:-

"5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner."

23. In the instant case, the possession, if any, of Hifjul and another who claimed permanent injunction is pursuant to void sale in contravention of restrictive condition in Government grant vide Ex.P-4 and his possession would be of trespasser as lease granted to Dauram has already come to an end, as such, he has no right to property and his possession being of trespasser, which is unlawful, he would not be entitled for permanent injunction to restrain the defendants particularly to State to proceed further.

24. In view of above analysis, Second Appeal No.195/2009 filed by Dauram is dismissed, however,

Second Appeal No.148/2009 filed by Dauram questioning the judgment and decree of the first appellate Court by which decree for declaration of title and permanent injunction was affirmed by the first appellate Court is partly allowed and consequently, the judgment and decree of the first appellate Court is set-aside and the suits filed by both the parties are dismissed. However, as directed by the first appellate Court, it is open to the State Government to proceed in accordance with law with regard to the leased property. Both the substantial questions of law are answered accordingly leaving the parties to bear their own cost(s).

25. A appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-