A

MD. HANIF

v.

THE STATE OF ASSAM

September 3, 1969

B [J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

Constitution of India, Art. 226—Jurisdiction of High Court.

The British Crown had leased a land for 99 years and the lease provided for resumption by the Government for public purpose. The appellant had purchased the leasehold rights. When the Deputy Commissioner on behalf of the respondent-State served a notice of resumption on the appellant, he filed a petition under Art. 226 of the Constitution challenging C the validity of the order of resumption on the grounds that the land did not vest in the State, the Deputy Commissioner had no right to issue the notice under the lease, and that the public purpose had not been mentioned in the notice, and so the notice was invalid. The High Court dismissed the petition holding that the case involved disputed questions of title, that the remedy of the appellant was to file a suit and a petition under Art. 226 of the Constitution was not maintainable. In appeal to this D Court, the appellant contended that no disputed questions of title were involved as the title of the appellant as a grantee was not questioned by the State and the question at issue was whether the State was entitled to resume the land by virtue of the lease granted by the British Crown.

HELD : The judgment of the High Court had to be set aside.

The jurisdiction of the High Court under Art. 226 is an extraordinary E jurisdiction vested not for the purpose of declaring private rights of the parties but for the purpose of ensuring that the law of the land is implicitly obeyed and that the various tribunals and public authorities are kept within the limits of their jurisdiction. The remedy provided under Art. 226 is a remedy against the violation of the rights of a citizen by the State or statutory authority. In other words, it is a remedy in public law. [202 C—E]

F In the present case, the appellant was not merely attempting to enforce his contractual right but important constitutional issues were raised on his behalf. [203 B]

State of Orissa v. *Ramchandra*, A.I.R. 1964 S.C. 865, distinguished.

Basappa v. *Nagappa*, [1955] 2 S.C.R. 250, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1378 of G 1966.

Appeal from the judgment and order dated April 22, 1966 of the Assam and Nagaland High Court in Civil Rule No. 35 of 1963.

B. Sen and *P. K. Ghosh*, for the appellant.

Niren De, Attorney-General, Naunit Lal and *S. N. Chaudhury*, for the respondents.

H The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought by certificate from the judgment of the High Court of Assam and Nagaland, dated

April 22, 1966 in Civil Rule No. 35 of 1963 whereby the High Court by a majority judgment dismissed the writ petition filed by the appellant. A

The land in dispute was originally located in the State of Mylliem in the Khasi and Jaintia Hills. This land was leased out in perpetuity to the British Government by Khasi Land-owners Thholyomawrie and U. Mongormawrie by a deed of lease executed on November 4, 1874. On April 1, 1907 the Secretary of State for India on behalf of the British Crown made a settlement of the land with Capt. E. M. Manley for 99 years on a premium of Rs. 716-8-9 and annual revenue of Rs. 35-13-3. The document of lease was executed by the Deputy Commissioner, Khasi and Jaintia Hills. On March 18, 1909 Capt. Manley sold his right and title in the land to Messrs Jamatullah & Sons. Subsequent to the sale Messrs Jamatullah & Sons constructed three houses on the land, known as 'Cedar Lodge', 'Cryptomaria' and 'Eldorado'. The appellant is the successor of Messrs Jamatullah & Sons. Out of the three buildings, the appellant has been living in 'Eldorado' and the other two buildings have been given on rent to the Government of Assam. 'Cryptomaria' is occupied by one of the Ministers of the Government of Assam and 'Cedar Lodge' has been occupied by the offices of the Electricity Board. Clause V of the lease in favour of Capt. Manley reads as follows : B C D

> "If the site, or any part of it, is required for public purposes (including the maintenance or alteration of public aqueducts), it may be resumed by Government. In this case the lessee will be entitled to receive such compensation, calculated according to the spirit of the Land Acquisition Act, as fairly represents the actual value of the land and the buildings upon it. The amount of the compensation shall be determined by the Deputy Commissioner subject to an appeal to the Commissioner." E F

On September 18, 1959 the Deputy Commissioner of Khasi and Jaintia Hills served a notice of resumption on the appellant purporting to exercise the right of the Government under Clause V of the lease. The appellant thereafter moved the High Court of Assam in Civil Rule No. 119 of 1959 challenging the validity of the order of resumption. By a majority the High Court dismissed the writ petition filed by the appellant holding that rights and obligations springing from the contract of lease should be decided by the ordinary civil courts and it is not proper for the High Court to exercise its power under Art. 226 of the Constitution. Soon after the decision of the High Court there was a proposal for a compromise between the parties and the Government agreed to G H

A drop the resumption proceedings on certain terms and conditions. But it was alleged that the appellant did not comply with the terms and conditions of the compromise proposal and a fresh order of resumption was, therefore, made by the Government on March 15, 1963 and a sum of Rs. 59,965/- was determined as compensation payable to the appellant. The notice of resumption dated
B March 15, 1963 is the following effect :

"ORDERS OF THE GOVERNMENT OF ASSAM
REVENUE (SETTLEMENT) DEPARTMENT

SETTLEMENT BRANCH

Dated Shillong the 15th March
C

WHEREAS a plot of land in Shillong measuring more or less 4.77 acres within the boundaries specified in the Schedule below was originally leased by the Secretary of State for India to Captain E. M. Manley by a deed of lease dated 9-12-1907 and mutated in the
D name of Sri Md. Haniff of Police Bazar, Shillong subject to the terms and conditions specified in the said deed of lease :

AND WHEREAS the Governor of Assam is satisfied that it is necessary to resume the aforesaid plot of land with houses standing thereon for providing suit-
E able accommodation to the Government Offices and the Minister of Government, which are hereby declared to be a public purpose.

Now, therefore, in exercise of powers conferred by by Clause V of the afore-mentioned deed of lease, the
F Governor of Assam is pleased to resume the said plot of land and to direct the Deputy Commissioner United K. J. Hills to summarily re-enter and take possession of the said plot of land on giving 7 days' notice in writing to the lessee and thereafter pay such compensation, as may be payable in accordance with the provisions of clause V of the deed of lease or any other clause or
G clauses, as may be found applicable.

SCHEDULE

North : The public aqueduct running alongside the Jowai Road and nulla running from the aqueduct
H into the Umshyrpi River near the Lachaumiere Estate

South, East and West : The Umashyrpi River".

The forwarding note of the Deputy Commissioner reads as follows :

L 14/7/2/62/24
dt. 22-3-63

Shri Md. Haniff,
Police Bazar, Shillong

Sub : Resumption of properties known as Cryptomaria, Eldorado and Cedar Lodge in Shillong.

I am to forward herewith a copy of order by the Government of Assam for resumption of Cryptomaria, Eldorado and Cedar Lodge properties for public purpose and to state that as ordered therein, possession of the land along with buildings and improvements made thereon, if any, will be taken over by me on the expiry of the period of 7 (seven) days from the date of receipt of this notice.

Sd. Illegible
Deputy Commissioner

You are offered an amount of Rs. 5,09,965.00 (Rupees five lakhs, nine thousand, nine hundred and sixtyfive) only being the total cost of resumption in respect of the abovementioned properties and the said amount will be paid to you within 31-3-63."

The appellant thereafter filed another writ petition No. 35 of 1963 in the Assam High Court challenging the validity of the order of resumption on the ground that the land did not vest in the State of Assam and the Deputy Commissioner had no right to issue a notice under Cl. V of the lease. It was also said that the public purpose had not been mentioned in the notice itself and, therefore, the notice was invalid. In the counter-affidavit the respondent contended that the petition was barred by the principle of *res judicata* in view of the previous judgment of the High Court dated February 26, 1960. It was urged that in any event a petition under Art. 226 of the Constitution was not competent. It was said that the property had been resumed lawfully in terms of Cl. V of the lease and the Government of Assam was competent to resume the land and the Deputy Commissioner was competent to issue a notice of resumption and the compensation offered was the proper compensation under the terms of the lease. On April 22, 1966 the High Court dismissed the writ petition of the appellant holding that the case involved disputed questions of title, that the remedy of the appellant was to file a suit

in a civil court and a petition under Art. 226 of the Constitution was not maintainable.

On behalf of the appellant Mr. B. Sen stressed the argument that there was no disputed question of title involved in this case. The title of the appellant as a grantee was not questioned on behalf of the respondent. The only question at issue is whether the respondent was entitled to resume the land by virtue of Cl. V of the lease dated April 1, 1907 by the Secretary of State for India in favour of Capt. Manley. In our opinion there is justification for the argument put forward on behalf of the appellant. On behalf of the respondent, however, the Attorney General referred to the decision of this Court in *State of Orissa* v. *Ramchandra*(1). The material facts of that case are not parallel to those of the present case. The question at issue in that case was whether the Maliahs having been granted by the ex-Zamindars by virtue of the office they held under sanads and whether the grant was intended to serve as remuneration for services rendered by them by virtue of the said office. The case of the State of Orissa was that the land was held by the ex-Zamindars on service tenures which were resumable at the will of the grantor. The contention of the ex-Zamindars was that they had proprietary rights in the Maliahs and the State of Orissa had no right to resume the lands granted to them and were not entitled to recover possession from them. It would thus be seen that the main dispute of the parties was in regard to the nature of the grant. The distinction between grants of land burdened with service and grants of land made by way of remuneration attaching to the office created by them is well known. In the first category of cases, the grant may not be resumable while in the second category of cases, with the abolition of the office the land can be resumed. The parties in that case were at issue on the question about the character of the grants under which the predecessors of the ex-Zamindars were originally granted the areas in question. The material facts in the present case are quite different. The title of the appellant as lessee under the lease executed by the Secretary of State for India on December 19, 1907 is not disputed and the High Court had, therefore, no justification in dismissing the writ petition of the appellant *in limine* on the ground that a disputed question of title was involved. It is also not right to contend that the appellant was trying to enforce a mere contractual right by way of a writ petition under Art. 226 of the Constitution. Several important issues of public law have been raised on behalf of the appellant. In the first place it was argued that the State of Assam had no right to resume the property in dispute under Cl. V of the lease dated December 19, 1907 because the right of the British Government in respect of the lease has not devolved on or vested in the State of

(1) A.I.R. 1964 S.C. 685.

Assam under the relevant constitutional provision. It was contended that even on the assumption that the right of the British Government under the lease of 1907 had devolved on the State of Assam the latter could only enforce its rights under the contract of lease and had no power to forcibly turn out the appellant from the property by mere executive action. It was stressed on behalf of the appellant that the Executive authorities can only act in pursuance of the power given to them by law and cannot interfere with the liberty or property of the subject except on condition that they can support the legality of their action before a court of law. It cannot be urged, therefore, that the appellant was merely attempting to enforce a contractual right by taking recourse to the machinery provided by Art. 226 of the Constitution.

It is true that the jurisdiction of the High Court under Art. 226 is an extraordinary jurisdiction vested in the High Court not for the purpose of declaring the private rights of the parties but for the purpose of ensuring that the law of the land is implicitly obeyed and that the various tribunals and public authorities are kept within the limits of their jurisdiction. In other words, the jurisdiction of the High Court under Art. 226 is a supervisory jurisdiction, a jurisdiction meant to supervise the work of the tribunals and public authorities and to see that they act within the limits of their respective jurisdiction. In a proceeding under Art. 226 the High Court is not concerned merely with the determination of the private rights of the parties; the only object of such a proceeding under Art. 226 is to ensure that the law of the land is implicitly obeyed and that various authorities and tribunals act within the limits of their respective jurisdiction. Article 226 states that the High Court shall have power to issue to any person or authority, including in appropriate cases any Government, directions, orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari.* All these writs are known in English law as prerogative writs, the reason being that they are specially associated with the King's name. These writs were always granted for the protection of public interest and primarily by the Court of the King's Bench. As a matter of history the Court of the King's Bench was held to be *coram rege ipso* and was required to perform quasi-governmental functions. The theory of the English law is that the King himself superintends the due course of justice through his own Court —preventing cases of usurpation of jurisdiction and insisting on vindication of public rights and protecting the liberty of the subjects by speedy and summary interposition. That is the theory of the English law and as pointed out by this Court in *Basappa* v. *Nagappa*(1) our Constitution makers have borrowed the concep-

(1) [1955] 2 S.C.R. 250.

A tion of prerogative writs from the English law and the essential principles relating to such prerogative writs are applicable in Indian law. It is obvious that the remedy provided under Art. 226 is a remedy against the violation of the rights of a citizen by the State or statutory authority. In other words, it is a remedy in public law. But as already pointed out the appellant in the B present case is not merely attempting to enforce his contractual right but important constitutional issues have been raised on behalf of he appellant.

For these reasons we hold that this appeal should be allowed and the judgment of the High Court dated April 22, 1966 in Civil Rule No. 30 of 1966 should be set aside and the case should C be remanded to the High Court to be dealt with and disposed of in accordance with law. It is desirable that the High Court should implead the Union of India as respondent to the writ petition. It is also desirable that the High Court should give an opportunity to the parties to file further affidavits before finally disposing of the writ petition. The parties will bear their own D costs upto this stage.

Y.P. *Appeal allowed.*