

A INDIAN CHARGE CHROME LTD.
v.
JAGDISH RAI PURI & OTHER
(Civil Appeal Nos. 7934-7935 of 2005)

B DECEMBER 3, 2008

[MARKANDEY KATJU AND AFTAB ALAM, JJ.]

Constitution of India, 1950:

C *Article 226 – Writ jurisdiction – Exercise of – High Court in writ petition directing State Government to accord permission to grantee of land to execute sale deed in favour of plaintiff-decree-holder in a suit for specific performance of contract of sale – HELD: High Court in writ petition should not have directed the State Government to grant necessary permission for transfer of land in favour of plaintiff and should not have directed defendant to have executed deed of transfer in favour of plaintiff – Judgment of the High Court set aside – Matter remitted to State Government to decide afresh the application seeking permission to transfer the land.*

E *Union of India & Another vs. Bilash Chand Jain & Another Civil Appeal Nos. 6387-6390 of 2002 decided on 20th November, 2008 reiterated.*

F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7934-7935 of 2004.

From the final Order dated 8.10.2004 of the High Court of Orissa at Cuttack in W.P. (C) Nos. 7230 and 2551 of 2003.

WITH

G C.A. No. 3836 of 2005

Vinod A. Bobde, Anuradha Dutt, B. Vijayalakshimi Menon, Ekta Kapil, Kuber Dewan, Rana Mukherjee, Siddharth Gautam (for Goodwill Indeevar), Janaranjan Das, Swetaketu Mishra,

H 1176

INDIAN CHARGE CHROME LTD v. JAGDISH RAI PURI & 1177
ORS.

Kedar Nath Tripathy, H.P. Sahu and C.R. Panda (for Abhishth Kumar) for the appearing parties. A

The following Order of the Court was delivered :

ORDER

1. These Appeals have been filed against the judgment of the Orissa High Court dated 08th October, 2004 passed in Writ Petition Nos.7230 of 2003 and 2551 of 2003. B

2. The facts of the case are mentioned in the impugned judgment of the High Court in great detail and we need not refer to the same except where necessary. C

3. Heard learned counsel for the parties and perused the record.

4. It appears that there was an agreement to sell in favour of respondent No.1 herein-Jagdish Rai Puri and for specific performance of the same, a suit was filed which was decreed by the High Court in First Appeal No.348 of 1984 on 30.08.1994. In that judgment, it was mentioned that the plaintiff's suit for specific performance of contract of sale is decreed and for executing the sale deed, defendant will seek permission from the State Government, as such permission was required as it was a government land. The land had been granted to the respondent No.2 herein who entered into an agreement to sell the land to respondent no.1 in these appeals. D E

5. From a perusal of the record, it appears that the said permission was refused by the State Government by its order dated 23.5.2003. Against that order, a writ petition was filed which has been decided by the impugned judgment. F

6. We have carefully perused the impugned judgment of the High Court. While agreeing with the High Court that the order dated 23.5.2003 refusing permission was unsustainable, we are of the opinion that the High Court should not have directed the State Government to grant the necessary permission for transfer of the said land in favour of the appellant and should not have directed the opposite party No.1 in the said writ petition G H

A to have executed the deed of transfer in favour of the appellant. Instead, the High Court should have remitted the matter to the State Government for deciding the application seeking permission to transfer the said land afresh on relevant considerations.

B 7. Recently, in Civil Appeal Nos.6387-6390 of 2002
decided on 20th November, 2008 titled *Union of India &
C Another vs. Bilash Chand Jain & Another*, this Court held that
the High Court cannot itself perform the functions which are to
be performed by some other authority. If that authority passed
an order which the High Court finds is not sustainable in law,
the High Court can set aside the said order and remit the matter
to the concerned authority for deciding the same afresh in
accordance with law, but the High Court should not take over
the function of the authority itself.

D 8. We reiterate the views given in the aforesaid decision
which has referred to the earlier decisions of this Court on the
point.

E 9. Accordingly, we allow these appeals and set aside the
impugned judgment of the High Court to the extent indicated
above and remit the matter to the State Government which shall
decide the application seeking permission to transfer the said
land afresh in accordance with law within two months from the
date of communication of this order after hearing the parties
concerned. No order as to costs.

F **Civil Appeal No.3836/2005**

G 10. In view of our decision passed today in Civil Appeal
Nos.7934-7935 of 2004, as admitted by the learned counsel
for respondent No.3 (appellant in Civil Appeal Nos.7934-7935/
2004), the direction of the High Court no longer survives and
this appeal has become infructuous.

11. Accordingly, the Appeal is dismissed as having
become infructuous.

H R.P.

Appeal dismissed.