

1951

October 25.

THE STATE OF ORISSA

v.

MADAN GOPAL RUNGTA.

THE STATE OF ORISSA

v.

ARJUN LADHA.

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MALCOLM ANGUS TULLOCK.

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MOHD. SERAJUDDIN AND OTHERS.

THE STATE OF ORISSA

v.

S. LAL

[HARILAL KANIA C. J., PATANJALI SASTRI,
MUKHERJEA, DAS AND CHANDRASEKHARA AIYAR JJ.]

Constitution of India, Art. 226—Writs granting mere interim relief pending institution of civil suit without deciding rights of parties—Legality

The High Court cannot make a direction under Art. 226 of the Constitution for the purpose of granting interim relief only pending the institution of a suit merely because the suit could not be instituted until after the expiry of 60 days from the date of a notice under Sec. 80 of the Civil Procedure Code and in the meanwhile, unless protected by the Court the applicant may suffer irreparable loss.

Even though writs can be issued under Art. 226 for purposes other than the enforcement of fundamental rights, the concluding words of the article have to be read in the context of what precedes the same, and the existence of a right is the foundation of the exercise of jurisdiction of the Court under this article.

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 a suit or proceeding.

CIVIL APPELLATE JURISDICTION : Cases Nos. 300 to 304 of 1951.

Appeals under Art. 132(1) of the Constitution of India from a judgment dated 2nd August, 1951, of the High Court of Judicature at Orissa (Ray C. J. and Narasimham J.) in Miscellaneous Judicial Cases Nos. 126, 127, 128, 129 and 130 of 1951.

M. C. Setalvad, Attorney-General for India (*G. N. Joshi*, with him) for the appellant in all the appeals.

N. C. Chatterjee (*H. J. Umrigar* and *A. N. Roy*, with him) for the respondent in Case No. 300 of 1951.

Roshan Lal for the respondent in Cases Nos. 301 and 304.

N. C. Chatterjee (*A. N. Roy*, with him) for the respondent in Case No. 302 of 1951.

N. C. Chatterjee (*A. N. Roy*, and *A. N. Sinha*, with him) for the respondent in Case No. 300 of 1951.

1951. October 25. The Judgment of the Court was delivered by

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 appeals, to obtain from the Court a writ of *mandamus* and/or directions under article 226 of the Constitution of India.

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 petitioners 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

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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 fide*. 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 directed the respondents to remove their assets appertaining to the respective mines within a fortnight. The respondents thereupon filed the petitions before the Orissa High Court praying for writs or directions 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.

The Court, after noticing the rival 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 act of State, 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 contentions. 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 moment" 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 under section 80 of the Civil Procedure Code 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 resources 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 that thereafter this order will cease to have effect." They gave further directions 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 concurrence to be very halting. He stated that although he was reluctant to exercise the powers under article 226 because the present respondents could file a suit, yet as in view of section 80 of the Civil Procedure Code 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.

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Towards the end of his judgment he stated as follows:—
“It should however be clearly emphasized that the observations contained in this judgment should not be taken as pre-judging any question which may arise for the consideration of the Civil Court in the event of the petitioners filing a 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 questions as to whether the petitioners have a *prima facie* case for trial or whether such a suit is maintainable or whether 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 observations 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.”

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 passed the following order on the 15th of October: “These five appeals are allowed and the order of the High Court is set aside in each case. As the High Court 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 give 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."

The language of the Article shows that the issuing of writs or directions by the Court is not founded only on its decision that a right of the aggrieved party under Part III of the Constitution (Fundamental Rights) has been infringed. It can also issue writs or give similar directions 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 right 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 decided nothing at all in respect of the rights of the parties. Indeed they have expressly stated that their observations should not in any way be considered as deciding any of the rights or contentions of the parties raised in the petitions. The whole judgment shows that because of the requirement of section 80 of the Civil Procedure Code the present respondents could not file a suit against the Government for at least sixty days, the

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respondent's position should not in the interval be disturbed and accordingly the Court gave the directions 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 thereof in abeyance 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 directions embody 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 orders the petitions 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.

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 directions 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

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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 circumvent the provisions of section 80 of the Civil Procedure Code, and in our 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 a 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 of *mandamus* or any other directions 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 226 does not permit such an action. On that short ground the judgement of the Orissa High Court under appeal cannot be upheld.

Appeals allowed.

Agent for the appellant in all the appeals: *P. A. Mehta.*

Agent for the respondent in Case No. 300 : *S. P. Varma.*

Agent for the respondent in Cases Nos. 301 and 304 : *Ganpat Rai.*

Agent for the respondent in Cases Nos. 302 and 303 : *P. K. Chatterjee.*
