

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).21509/2010

(From the judgement and order dated 05/02/2010 in of The HIGH COURT OF ORISSA AT CUTTACK)

RSA No. 101/2006

SHYAMALIKA DAS

Petitioner(s)

VERSUS

GEN.MANAGER,GRIDCO & ANR

Respondent(s)

Date: 20/09/2010 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. Ashok K. Panda, Sr. Adv.
Mr. Rutwik Panda,Adv.

For Respondent(s) Mr. Raj Kumar Mehta,Adv.
Mr. Antaryami Upadhyay, Adv.
Mr. Lakhi Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted. Heard.

In terms of the signed order, we allow this appeal, set aside the order of the High Court and remand the matter back to the High Court for disposal of the Second Appeal in accordance with law, with reference to section 100 of the Code. On the facts and circumstances, we request the High Court to dispose of the matter expeditiously.

(Ravi P. Verma)
Court Master

(M.S. Negi)
Court Master

[Signed reportable order is placed on the file]

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8181 OF 2010
[Arising out of SLP(C) No.21509/2010]

SHYAMALIKA DAS

.....APPELLANT

Versus

GENERAL MANAGER, GRIDCO & ANR.

.....RESPONDENTS

O R D E R

Leave granted. Heard.

2. The appellant claims to be the owner of a residential plot measuring 10 cents. The respondents (earlier GRIDCO, now Orissa Power Transmission Corporation Ltd.) while laying and erecting Budhipadar - Bolangir 220 KV Line, has erected Tower No.54D for drawing high tension transmission lines in the appellant's property. The appellant objected to the erection on the ground that the entire homestead land would be rendered useless. According to the respondents, only one of the four legs of the tower is fixed in one extremity end of the plaintiff's property and they are willing to compensate the appellant in this behalf. Respondents deny that appellant's land is a residential plot.

3. The appellant filed a suit for a permanent injunction in the year 2002 to restrain the respondents from interfering with her possession and the said suit was decreed on 25.2.2004 restraining the respondents from interfering with appellant's possession of the suit property. The appeal filed by the respondents was dismissed on 23.12.2005. The second appeal filed by the respondents was allowed by the High Court in part, by the impugned judgment dated 5.2.2010. The High Court permitted the respondents to draw the electricity transmission line over the appellant's land as per its project scheme and declared that the appellant will be entitled to Rs.1,75,000/- as compensation, for raising the high tension tower over the appellant's land. The High Court has further directed that respondents will not acquire any title over the appellant's land except to maintain the tower and the area below the tower. Aggrieved by the said decision, the applicant has filed this appeal by special leave inter alia contending that the High Court has acted beyond its jurisdiction under section 100 of the Code of Civil Procedure (for short 'the

Code') by erroneously purporting to exercise power under sections 89 and 151 of the Code.

4. The High Court rendered a rather peculiar judgment, which is neither on merits of the matter, nor based on any settlement reached by the parties. Nor did it assign any reasons for interfering with the concurrent findings arrived at by the trial court and first appellate court.

After referring to the facts and the provisions of section 89 of the Code, the High Court held :

"In the facts of this case, where the court is required to weigh the individual interest of the plaintiff vis-à-vis the general public interest for getting electricity supply, the learned court below should have come to the finding that the balance of convenience weigh in favour of the appellant- defendant in drawing the transmission line for supply of electricity from Budhipadar to Bolangir and the loss to be sustained by the plaintiff can be compensated in money value which is the cardinal principle prescribed under section 38 of the Specific Relief Act under which the suit for permanent injunction was filed.

Keeping the above aspects of the case in view, it would have been apt for the court to find ways and means to see that public inconvenience is avoided while protecting the interest of the plaintiff. For the above, aid may be drawn from section 89 of the Code of Civil Procedure.

It would be apt to state here that it is by now well settled that no legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law, which are necessary for proper discharge of functions and duties imposed upon them by law.

Thus, applying the inherent power under section 151 CPC along with the provisions of section 89 CPC in consideration of the nature of dispute involved in this appeal, without referring the matter for a settlement out of court, this Court takes up the matter to find out a via media for deciding the case finally and orders that on the appellant paying a sum of Rs.1,75,000/- as compensation for raising High Tension Tower over the land of the respondent, to the respondent, they shall be permitted to draw the transmission line of 220 KV over the land of the respondent as per the scheme. ..."

5. The learned Single Judge misconstrued the scope of section 89 of the Code and the nature of the powers of a

court under sections 89 and 151 of the Code. Section 89 merely enables the court to refer the subject matter of the suit to either of the following alternative dispute resolution processes : (a) arbitration; (b) conciliation; (c) judicial settlement; (d) lok adalat; and (e) mediation. Arbitration is an adjudicatory process. The four other processes are non-adjudicatory dispute resolution processes. In a non-adjudicatory process (conciliation or mediation or lok adalat or judicial settlement), there is no 'decision' but there can only be a settlement by mutual consent of the parties. Where there are no negotiations for a settlement and where the parties do not arrive at a settlement, there cannot obviously be an order by the court rendering a decision in exercise of power under section 89 of the Code. [See : generally Afcons Infrastructure Ltd vs. Cherian Varkey Construction Company Pvt Ltd - 2010 (7) SCALE 293).

6. We may usefully refer to the following observations made by this Court in State of Punjab vs. Jalour Singh - (2008) 2 SCC 660 made with reference to lok adalat which will equally apply to the other forms of non-adjudicatory dispute resolution process :

"It is evident from the said provisions that Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and put its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the subject matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by principles of justice, equity, fair play. When the LSA Act refers to 'determination' by the Lok Adalat and 'award' by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory

determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The 'award' of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat."

7. In this case, the decision of the High Court is neither in the exercise of its judicial power to decide the lis before it, nor as a consequence of the learned Single Judge acting as a facilitator (that is as a Conciliator or Mediator or Lok Adalat) enabling the parties to arrive at a settlement. Nor was any 'judicial settlement' attempted or arrived at. There were no negotiations between the parties and no settlement between the parties. What the court has assumed is a jurisdiction, which is an extraordinary amalgamation of imagined judicial and conciliatory power, unknown to the system of law which is followed in Indian Courts. The High Court has heard the parties and rendered a judgment where the decision is not based either on any judicial reasoning or any settlement between the parties but based on what the learned Judge considered as a just and expeditious solution to the dispute under section 89 read with section 151 of the Code. Neither section 89 or section 151 of the Code authorizes or enables the court to pass such an order.

8. As noticed above, the suit was for a permanent injunction. In such a suit, the court cannot issue a direction permitting the respondents to erect the tower and direct respondents to pay compensation of Rs.1,75,000/-, without such questions being in issue and without any material being placed before it by either parties. The enthusiasm of the learned Single Judge to

render quick justice has persuaded him to overlook the provisions of law and assume non-existing powers under sections 89 and 151 of the Code.

9. In view of the above, we allow this appeal, set aside the order of the High Court and remand the matter back to the High Court for disposal of the Second Appeal in accordance with law, with reference to section 100 of the Code. On the facts and circumstances, we request the High Court to dispose of the matter expeditiously.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
September 20, 2010.

.....J.
(H.L. GOKHALE)