

MUNICIPAL CORPORATION OF THE
CITY OF JABALPUR

1962

April 16.

v.

STATE OF MADHYA PRADESH

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N.
WANCHOO, N. RAJAGOPALA AYYANGAR and
T. L. VENKATARAMA AIYAR, JJ.)*Pleading—Strict adherence necessary—Amendment must be formally made—Petitioner pleading transfer by State Government—Counsel for respondent conceding transfer by Central Government—Duty of Court.*

Acting under s. 38 (1) (f) of the C. P. Municipalities Act 1922, the Provincial Government, with the sanction of the Government of India, transferred certain Nazul Lands to the Municipal Committee to be used for the purposes of a garden. The 1922 Act was repealed by the City of Jabalpur Corporation Act, 1948, which replaced the Municipal Committee by the Jabalpur Corporation. Under s. 81 of the Corporation Act the State Government issued a notification notifying that a portion of this land needed for making a road "stood divested from the Corporation. The Corporation filed a writ petition before the High Court challenging the notification. On a concession made by the counsel for the State that the transfer of the land had been made by the Central Government the High Court held that the notification could not be sustained under s. 81 which was applicable only to transfers made by the State Government. But the High Court sustained the notification under s. 38 of the repealed 1922 Act, relying upon the saving in s. 3 (1) of the Corporation Act.

Held, that the transfer of the land in fact had been made by the State (Provincial) Government and the notification was fully justified by the provisions of s. 81 of the Corporation Act. There was no basis on which the High Court could have based its assumption that the transfer was by the Central Government. The allegations in the writ petition proceeded on the basis that the transfer was by the State Government. On the pleadings the appellant ought not to have been permitted to put forward a case that the State Government was not the transferor of the property. To confine a party to his pleadings particularly in respect of facts, is dictated not merely by the need for orderliness but for avoiding surprise to the other party. Save in exceptional cases, parties should be held strictly to their pleadings, and if there is need to amend them, the Court should insist on formal amendments being affected.

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In the present case, on the terms of the order transferring the land it was clear that the transfer was made by the Provincial Government.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 212 of 1962.

Appeal by special leave from the judgment and order dated February 3, 1961, of the Madhya Pradesh High Court in M. P. No. 139 of 1960.

N. C. Chatterjee and *D. N. Mukherjee*, for appellants.

B. Sen and *I. N. Shroff*, for respondent No. 1.

B. P. Maheshwari, for respondent No. 2.

1962. April 16. The Judgment of the Court was delivered by

Ayyangar J.

AYYANGAR, J.—By a communication dated April 5, 1930, from the Secretary to the Government of the Central Provinces addressed to the Commissioner Jabalpur Division, certain Nazul land was made available to the Municipal Committee of Jabalpur. In this letter the Secretary stated :

“I am directed by the Governor in Council with the previous sanction of the Government of India to communicate the following orders of the Government of the Central Provinces :—

Under Section 38(1)(f) of the Central Provinces Municipalities Act, 1922, Government is pleased to transfer to the Municipal Committee, Jabulpore, free of premium and ground rent nazul land measuring of the Jabulpore town. The land shall vest in the Municipal Committee subject to the following conditions :

(1) The land shall be used only for the purpose of a garden and no part of it

shall be used for any other purpose without the previous sanction of the Local Government.

(2) If condition 1 is broken the land shall be liable to be divested under section 38(2) and resumed by Government and no compensation whatsoever shall be payable to the Municipal Committee upon such resumption.

(3) If the land is resumed by Government for any Government purpose the provisions of Section 38(3) will apply."

Sub-sections (2) & (3) of s. 38 referred to ran :

"38.(2) The State Government may, by notification, direct that any property which has vested in the committee shall cease to be so vested, and thereupon the property specified in the notification shall cease to be so vested and the State Government may pass such orders as it thinks fit regarding the disposal and management of such property.

(3) Where any immovable property is transferred, otherwise than by sales, by the State Government to a committee, for public purpose, it shall be deemed to be a condition of such transfer, unless specially provided to the contrary, that, should the property be at any time resumed by the Government, the compensation payable therefor shall notwithstanding any thing to the contrary in the Land Acquisition Act, 1894 (I of 1894), in no case exceed the amount, if any, paid to the Government for the transfer, together with the cost or the present value, whichever shall be less, of any buildings created or other works executed on the land by the committee."

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The land thus obtained was being used by the Municipal Committee in accordance with the condition of the transfer as a public garden.

The Central Provinces & Berar Municipalities Act, 1922. was repealed by the City of Jabalpur Corporation Act, 1948 (M. P. III of 1950). Under this later enactment the Municipal Committee was substituted by the Jabalpur Corporation, the appellant before us and all properties—movable and immovable—which were previously vested in the Municipal Committee were transferred to and vested in the Corporation (vide s. 71 of the Jabalpur Corporation Act), and by reason of the vesting, the appellant was in enjoyment of the transferred property.

A hostel or boarding-house of a public institution—the Hitkarni Mahavidyalaya had been located in a building constructed to the north of the Public Garden maintained by the Corporation. A public road ran to the south of the Public Garden and as there was not a proper and convenient access from the Boarding-house to the public road, the authorities of the Mahavidyalaya approached the State Government to obtain for them a narrow strip of land about 20 ft. wide at the eastern extremity of the Public Garden for the purpose of laying a public road which would provide this access. The Government considered this request reasonable and forwarded this request of the Mahavidyalaya, with a covering letter of their own dated April 28, 1959, to the Corporation for being complied with. The request however was not acceded to and thereafter on February 11, 1960, the Government of Madhya Pradesh issued a notification under s. 81 of the Jabalpur Corporation Act notifying that the strip of land needed for making a road measuring 3, 940 sq. ft. "stood divested" from the Corporation. Section 81 runs in these terms ;

“81. The Provincial Government may resume any immovable property, transferred to the Corporation by itself or by any local authority, where such property is required for a public purpose, without payment of any compensation other than the amount paid by the Corporation for such transfer and the market value at the date of resumption of any buildings or works subsequently erected or executed thereon by the Corporation with the intention that such buildings or works should be permanent :

Provided that compensation need not be paid for buildings or works constructed or erected in contravention of the terms of the transfer.”

(The expression ‘Provincial Government’ was amended so as to read ‘State Government’ by the Adaptation of Laws Order).

Complaining that this notification was illegal and beyond the jurisdiction of the State Government the Jabalpur Corporation moved the High Court of Madhya Pradesh for relief under Art. 826 of the Constitution praying for the issue of the writ of *mandamus* quashing the notification of the government as without jurisdiction and forbidding the enforcement of that order. This was opposed both by the State of Madhya Pradesh as well as the Hitkarini Sabha and the learned Judges dismissed this petition. An application for a certificate of fitness for appeal to this Court filed by the Corporation was also dismissed and thereafter the present appeal has been filed by special leave obtained under Art. 136 of the Constitution.

The submission of Mr. Chatterji—learned Counsel for the appellant—was naturally directed to showing that the reasoning adopted by the learned Judges of the High Court was erroneous. The

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reasoning was briefly as follows: The learned Judges assumed, accepting a submission made on behalf of the appellant Corporation during the arguments on the writ petition, that the authority which effected the transfer of the property to the Municipal Committee of Jabalpur by the order which we have set out as the opening of this judgment was not the Government of Central Provinces & Berar but the Central Government. Starting from this premise, they concluded that the notification could not be sustained under the terms of s. 81. Section 81, it will be seen, empowers the State Government to resume immovable property transferred to the Corporation by *itself* when such property is required for a public purpose. If the property in question had been transferred by the Central Government, the argument ran that s. 81 was inapplicable. It should be added that both in the basic assumption that it was the Central and not the Local Government the predecessor of the State Government that had effected the transfer, as well as in the further consequence that the exercise of the power under s. 81 of the Corporation Act was ineffective, the learned Judges were aided by concessions accepting the correctness of this position which appear to have been made by the Deputy Advocate-General who represented the State before them. We shall have occasion to refer to this aspect later. Meanwhile to proceed with the reasoning of the learned Judges, s. 81 being assumed not to be available to sustain the impugned notification, the learned Counsel for the State appears to have relied on the provisions of s. 38 of the Act of 1922 as enabling the State Government to resume the land, and this notwithstanding that by the Jabalpur Corporation Act III of 1950 the entirety of the C. P. & Berar Municipalities Act of 1922 including s. 38 had been expressly repealed. The learned Judges considered that this was possible by

reason of a saving contained in s. 3 (1) of the Jabalpur Corporation Act which reads:

“3. (1) All debts and obligations incurred, all contracts entered into with and all matters and things engaged to be done by, or for, the Municipality of Jubbulpore, before this Act comes into force shall be deemed to have been incurred, entered into with or engaged to be done by, or for, the Corporation as constituted under this Act.”

Mr. Chatterji—learned Counsel for the appellant-Corporation submitted to us that the learned Judges of the High Court had wrongly applied the saving in s. 3 (1) of Act III of 1940 to sustain the resumption of land under the impugned notification. He consider, however, that in view of our conclusion that the impugned notification fell clearly within the power vested in State Government under s. 81 of the Jabalpur Corporation Act, it is not necessary to pronounce upon the correctness of the submissions made to us on the construction of s. 3 (1) of that Act.

There could not be any dispute that if the authority that had transferred the property covered by the impugned notification, to the Municipal Committee of Jabalpur was the Government of Central Provinces & Berar, the right of the successor-Government viz., the State Government of Madhya Pradesh to take over the land from the Corporation for the purpose of forming a public road would manifestly be within their power under s. 81. That the Corporation of Jabalpur was the successor-in-title to the Municipal Committee of Jabalpur and that the property which was vested in the Municipal Committee of Jabalpur was transferred to and became vested in the appellant-Corporation under s. 71 of the Jabalpur Corporation Act, were never in dispute and indeed formed the

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very basis of the appellant's petition to the High Court. If any particular property had vested in the Municipal Committee subject to its being divested in particular contingencies, that the property in the hands of the Corporation would be held subject to the same obligations or disabilities could also not be in controversy. Nor could it be contested that the making of a public road is "a public purpose" for which land may be resumed by the State under s. 81. What we desire to point out is that if the State of Madhya Pradesh was or must be deemed to have been the transferer of the property under the communication dated April 5, 1930, the validity of the notification under s. 81 could not be challenged.

As we have pointed out earlier, the learned Judges proceeded, however on the assumption that it was not the Government of C. P. & Berar but the Central Government that was the transferer of the land in question. There was, however, no basis upon which the learned Judges could have rested this assumption. In the first place, in the writ petition by which the appellant-Corporation challenged the validity of the notification it did not deny the fact that it was the Government of C. P. & Berar that had effected the transfer, and, in fact, the allegations in the petition proceeded on the basis that it was the State Government that had done so but the contention raised was that on a proper construction of s. 81 it applied only to transfers made after the Jubbulpore Corporation Act, 1948 came into force—an untenable contention which has not been persisted in.

The question as to who a transferer is obviously a question of fact or at best a mixed question of law and fact and when a party in a writ petition does not allege any such fact, it stands to reason that he ought not to be permitted to travel beyond the facts stated,

at the stage of the arguments. To confine a party to his pleadings, particularly to his allegations as regards facts is dictated not merely by the need for orderliness in these proceedings but for avoiding surprise to the other party and consequent injustice resulting therefrom. Save in exceptional cases, parties should be held strictly to their pleadings and if owing to discovery of new matter or grounds, there is need to add to or modify the allegations either in the petition or in the counter-affidavit, the Court should insist on formal amendments being effected, for this would enable each party to state its case with precision and definiteness and the other side would have a proper opportunity to know this case and meet it with appropriate defences. This salutary rule was not adhered to in this case, and the departure from the pleadings which the appellant was permitted to adopt during the course of its arguments before the High Court has led to injustice because thereby the Counsel for the State who was apparently not prepared to meet an argument not raised in the petition, made submissions at the spur of the moment which were not justified by the true state of affairs. In our opinion, on the allegations made in the petition by the appellant Corporation it ought not to have been permitted to put forward a case that the State Government was not the transferor of the property and the learned Judges of the High Court should have proceeded on the basis of the pleadings in the case.

Apart from this question of pleading, we consider that there is no merit in the contention even otherwise. We have already set out the terms by which the transfer of the land was communicated to the Municipal Committee. The preamble recites that is what being communicated is the order of the Government of the Central Provinces. The words

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of conveyance are in the second paragraph and they read:

“Under section 38(1)(f) of the Central Provinces Municipalities Act, 1922 *Government is pleased to transfer to the Municipal Committee.....*”

The expression “Government” here obviously, in the context, means the Government of the Central Provinces. Paragraph 2 which specifies what should happen if the condition on which the land has been granted should be broken, states:

“The land shall be liable to be divested under s. 38 (2) and *resumed by Government*”

“Government” here again obviously is the Government of the Central Provinces a construction reinforced if one looked at the sub-section referred to. Further, in Condition 3 which speaks of what was to happen if the land was resumed by Government for any Government purpose the reference to “Government” again is to the “State Government”. On the terms of the document therefore it was the Government of the Central Provinces that made the grant—the predecessor of the State Government. We find therefore that there is no factual foundation for the submission which was apparently made before the High Court that the transfer in the present case was by the Central Government. No doubt, the communication refers to the fact that previous to making the grant the Government of C. P. & Berar had obtained the approval of the Central Government, but that was merely a matter of administrative arrangement between the Central and Local Governments which is totally irrelevant for determining the identity of the Government which made the grant. Besides, the corporation having accepted the grant from the State Government was obviously estopped from contending that

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the land of which it continued in possession under that grant was not one by the State Government or that the State Government had not the authority to make the grant. If such contention is both not open to the Corporation and not tenable on the merits, it would follow that the impugned notification was fully justified by the provisions under s. 81 of the Jabalpur Corporation Act.

We therefore hold that the impugned notification was valid, though for reasons very different from those on which its validity was sustained by the learned Judges of the High Court. The appeal fails and is dismissed. In view however of the concession made by the respondent before the High Court which misled the learned Judges we consider it proper to direct that each party should bear its costs throughout.

Appeal dismissed.

THE CHIEF COMMISSIONER, AJMER

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*Cinematograph Films—Indigenous films—Cultural films—
Exhibition of—Condition of license—Notification—Vires of—
Cinematograph Act, 1952 (Act. 37 of 1952), s. 12(4).*

The respondent was an exhibitor of films in a public cinema theatre. Under the powers conferred by s. 12(4) of the Cinematograph Act a notification was issued which among other things provided that a certain percentage of "approved film" should be shown at every performance and that films produced in India and certified by the Central