

REPORTABLE

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

ORIGINAL SUIT No. 11 of 1968

STATE OF ORISSA

... PLAINTIFF

VERSUS

STATE OF ANDHRA PRADESH

... DEFENDANT

JUDGMENT

K. G. BALAKRISHNAN, CJI

1. This is a suit filed under Article 131 of the Constitution of India by the State of Orissa (plaintiff) against the State of Andhra Pradesh (defendant) for a declaration that the Borra Group of villages, also referred to as 'Borra Mutha', form part of the State of Orissa. Admittedly, the group of villages is located within the geographical limits of the State of Andhra Pradesh.

2. The State of Orissa in its plaint has averred that Borra Mutha [hereinafter 'disputed area'] formed part of the Jeypore (Impartible) Estate at the time of the creation of the province of Orissa in 1936 by way of Government of India (Constitution of Orissa) Order, 1936 [hereinafter 'Orissa Order'] and that the said Estate subsequently became part of the modern-day State of Orissa after the abolition of the Zamindari system. The plaintiff has submitted that the Province of Orissa, at the time of its creation, had included the disputed area as contemplated in the First Schedule, Part I, clause 2 (iv) read with Section 3 (1) of the Orissa Order. Albeit, the disputed area is not territorially contiguous with the State of Orissa, yet the plaintiff state claims that it had remained within its administrative jurisdiction when the Province of Orissa was created and later on when the Constitution was enforced. It was also averred in the plaint that the former province of Madras had admitted that the disputed area fell within the administrative jurisdiction of the State of Orissa. The plaintiff has also alleged that since the creation of the State of Andhra (in 1953) and later on after the creation of the State of Andhra Pradesh in 1956, the defendant state has

enforced its own administration over the disputed area. The plaintiff then narrates as to how the defendant's combative approach had compelled the State of Orissa to write a letter (No. 16715, Ref. dated 7-7-1962) to the Central Government so that the latter could persuade the State of Andhra Pradesh to vacate the disputed area. The State of Andhra Pradesh in its reply to the Central Government vide its letter (No. 2504- J/62.8) dated 30-3-1963, expressed its inability to vacate the disputed area by urging that the disputed area legitimately belonged to the State of Andhra Pradesh as per the order of the Andhra Pradesh High Court in Writ Petition No. 539/1957. Accordingly, the Central Government intimated the State of Orissa that it was not in a position to intervene in the matter relating to the disputed area, vide its letter [No. 38 /4/ 62-SR (R)] dated 24-1-1964. According to the plaintiff state, its territorial integrity has been violated by the defendant state which has committed acts of trespass on account of its refusal to vacate the disputed area, thereby impelling the plaintiff to approach this Court under Article 131 of the Constitution. The plaintiff has averred that

the cause of action arose after the formation of the State of Andhra (under Andhra State Act, 1953).

3. As stated earlier, the State of Orissa has filed the present suit under Article 131 of the Constitution seeking relief in the form of a declaration that the State of Andhra Pradesh has committed trespass on its land by interfering in the administration of some of its villages. The plaintiff's prayer is reproduced below:

“(i) A declaration that the area as shown in Annexure “B” including therein the main village Borra with 12 hamlets (Borra Mutha) is a part of the plaintiff's territory and the plaintiff has the right to possess and administer the disputed area in exclusion of the defendant.

ii) A declaration that the defendant is liable to vacate the disputed area.

iii) A decree for eviction of the defendant from all and/or any part of the disputed area as are under illegal possession and administrative control of the defendant and further directing the defendant to vacate the disputed area and return the area to the uninterrupted possession, control and administration of the plaintiff.

iv) The cost of the suit and such further relief which may seem just and proper to this Hon'ble Court and to which

the plaintiff may be found entitled in the circumstances of the case and in the interest of justice.”

4. The defendant (State of Andhra Pradesh) in its written statement has taken the preliminary objection that the prayer sought by the plaintiff does not fall within the scope of the original jurisdiction of this Court as contemplated in Article 131, since that provision limits the jurisdiction by expressly stating that the latter is ‘subject to the other provisions of the Constitution’. In this regard, attention has been drawn to Article 1(2) of the Constitution which provides that the territories of States shall be as specified in the First Schedule to the Constitution. In view of this provision, it has been urged that the territories comprising the State of Orissa have already been specified in Entry No. 10 of the First Schedule to the Constitution and therefore this suit is not maintainable. The defendant has taken the stand that the province of Orissa was constituted under the Orissa Order, issued on 3-03-1936 by His Majesty in exercise of the powers conferred by Section 289 (ii) of the Government of India Act, 1935. Section 3(2) of the Orissa Order had provided that if a boundary dispute arose in respect

of the specified territories, then the decision of the Governor General would be final. Therefore, it was contended that since the plaintiff state had not claimed administrative jurisdiction over the disputed area and neither did it assert its claim before the Governor General, no relatable question can be raised after the enforcement of Article 1(2) of the Constitution. Furthermore, it was reasoned that the territories of all the States had been specified in the First Schedule to the Constitution, which made it amply clear that the disputed area fell in the erstwhile Province of Madras, the relevant district of which is now an integral part of the State of Andhra Pradesh. In response to the plaint, it has been reasoned that even if this Court's original jurisdiction under Article 131 were to be assumed, reference must be made to Section 3(2) of the Orissa Order which controls the operation of Section 3(1) of the same which defines and delimits the area to be included in the Province. As a natural corollary to this, if a particular area is outside the external land boundary as described in Part I of the First Schedule to the Orissa Order, it cannot form part of the State of Orissa. It has been contended that the reference to Jeypore

(Impartible) Estate must be construed in view of the fact that the original Zamindari had been included in the Schedule to the Madras Impartible Estate Act II of 1904. The holder of the Estate made subsequent acquisitions which were geographically situated outside the original Zamindari and the holders might not have intended the inclusion of those acquisitions in the original Zamindari. It has also been averred by the defendant that it firmly believes that the disputed area was a subsequent acquisition which was surrounded by another Zamindari and it formed a separate enclave. The defendant has further submitted that its administration of the disputed area has always been lawful and that the plaintiff had never exercised administrative jurisdiction over the disputed area, even before the formation of the State of Andhra in 1953.

5. Based on the pleadings of the parties, the following issues have been framed for adjudication:

Preliminary Issues

- 1) Whether the suit is maintainable under Article 131?
- 2) Whether the suit is maintainable in view of Section 3 (2) and (3) of the Government of India (Constitution of Orissa) Order, 1936?
- 3) Whether the suit is maintainable in the absence of notice under Section 80 CPC?
- 4) Whether the suit is within limitation prescribed by law?

On Merits

- 5) Whether the Disputed Area was within the territories of the Plaintiff state as constituted under the Constitution of India?
- 6) Did the Disputed Area form a part of the Province of Orissa as constituted by the Government of India (Constitution of Orissa) Order, 1936?

- 7) Did the disputed area form a part of the Jeypore (Impartible) Estate originally and subsequently and does it form part of the province of Orissa?
- 8) Did the former Province of Madras and subsequently the State of Madras admit that the disputed area formed part of the plaintiff state?
- 9) Whether the disputed area remained under the administration of the Province of Orissa when the said Province was formed and thereafter the State of Orissa?
- 10) In view of the letter dated 7.7.1962 by the Government of Orissa addressed to the Government of India (Annexure "D" to the Plaint), can the Plaintiff lay any claim at all to the said area after 1950?
- 11) Whether the expression the Jeypore (Impartible) Estate means the Estate as included in the Schedule to Madras Impartible Estate since the latter includes subsequent acquisitions of various properties situated outside the original Estate and in different Districts and Provinces?
- 12) Whether the defendant or its predecessor State or Province has always exercised administrative control over

the disputed area and whether the said area was at all material times treated as if it formed part of the defendant's State?

13) Whether in any event the Defendant has acquired the right to administer the area by adverse possession?

14) Whether the suit is barred either because of waiver or acquiescence on the part of the plaintiff as it did not raise any such dispute under Section 3(3) of the Order under which the Province of Orissa was constituted?

15) Whether the plaintiff is entitled to any relief and if so to what relief?

Re: Issue I

JUDGMENT

6. As noted earlier, the State of Orissa was constituted under the Orissa Order, which came into effect on 1.4.1936. The Borra Group of Villages (i.e. Borra and twelve hamlets) admittedly are not territorially contiguous with the main land of Orissa. The interstate boundary is 11 kilometers away (aerial distance) from Borra and its surrounding villages. This

group of villages is situated within the geographical limits of the State of Andhra Pradesh which earlier formed part of Jeypore (Impartible) Estate, a Zamindari, before the creation of State of Orissa. Part II of the Orissa Order provided the following:

PART II

Definition of Orissa and Date of Separation

3. (1) The Province of Orissa (hereafter in this Order referred to as “Orissa”) shall consist of the areas specified in Part I of the First Schedule to this Order, and accordingly as from the date of the coming into operation of the provisions of sub section (1) of section two hundred and eighty-nine of the Act relating to the formation of the Province of Bihar and Orissa, those areas shall cease to form part of the Province of Bihar and Orissa, the Presidency of Madras and the Central Provinces respectively.

3. (2) The external land boundaries of Orissa shall be as described in Part II of the said schedule.

3. (3) If any question arises with respect to the boundaries as existing at the date of this Order, of any district, Agency, taluk, village, estate, forest or other area referred to in the said Schedule or otherwise with respect to the delimitation of the boundary of Orissa, that question shall be referred to the Governor- General, whose decision thereon shall be final.

The first schedule to the Orissa Order described the areas which would constitute the Province of Orissa. The relevant provisions are reproduced below:

First Schedule

Part – I

Areas comprised in the province of Orissa

1. That portion of the Province of Bihar and Orissa which is at the date of this Order known as Orissa division thereof.

2. Areas transferred from the presidency of Madras:-

- (i) The Ganjam Agency Tracts;
- (ii) the following areas in the non- Agency portion of the Ganjam district viz., the taluks of Ghumsur, Aska, Surda, Kodala and Chatrapur and so much of the taluks of Ichapur and Berhampur as lies to the north and west of the line described in part II of this schedule;
- (iii) So much of the Parlakimedi Estate as lies to the north and east of the said line; and
- (iv) The following areas in the Vizagapatam district, that is to say, the Jeypore (Impartible) Estate and so much of the Pottangi Taluk as is not included in that estate.

After the enforcement of the Constitution of India, the territorial extent of the State of Orissa was specified in Entry No. 10 of the First Schedule to the Constitution. The State of Orissa has prayed for a declaration that the main village Borra along with 12 hamlets (Borra Mutha) is a part and parcel of the plaintiff's territory and that the plaintiff has the right to possess and administer the disputed area to the exclusion of the defendant.

7. The defendant, in light of Article 131 and the proviso to the same Article has contended that this Court lacks jurisdiction and the suit is liable to be dismissed on the ground of lack of jurisdiction. Article 131 provides the following:

“131. Original Jurisdiction of the Supreme Court.

– Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute–

(a) ...

(b) ...

(c) between two or more States,

If and in so far the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of the Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.”

(emphasis supplied)

8. The defendant’s objection to the maintainability of the suit under Article 131 is on two grounds. The first objection is that the exercise of original jurisdiction under Article 131 is subject to the other provisions of Constitution, and therefore this Court is barred from adjudicating delicate issues relating to

state boundaries since Article 1(2) read with Entry 10 of the First Schedule to the Constitution conclusively addresses this aspect. The second strand of the objection is that as per Article 3 of the Constitution, only the Union Parliament is competent to increase, diminish or alter the boundaries of any State in the manner provided. In response to this reasoning, the plaintiff has pointed to the contents of the prayer to assert that there is no intention to seek an alteration of boundaries but instead, the prayer simply seeks a declaration from this Court that the disputed area comes within the plaintiff State as contemplated in Entry 10 of Schedule I to the Constitution and that the plaintiff has the right to possess and administer the disputed area to the exclusion of the defendant. The plaintiff has also prayed for a declaration that the defendant is liable to vacate the disputed area. Since plaintiff has not sought any increase, alteration or diminishing of any area but only a declaration that the disputed area comes under the administrative jurisdiction of the plaintiff state, we are inclined to agree with the view that Article 131 itself does not put fetters on this Court to decide this original suit and there

would be no encroachment on the constitutionally sanctioned power of the Parliament to alter state boundaries.

9. In order to decide whether this suit is barred under the proviso to Article 131, we will have to ascertain the basis of the plaintiff's claim and the documents which have been produced in support of the contentions. The plaintiff state, in order to fortify its claim, has relied on a letter exchanged between the Secretary to the Government of Madras and the Chief Secretary of the Government of Orissa (Letter No. 829) dated 02.06.1936 (Referred to in Para 5 of the Complaint, Exhibit 60). The letter was written to communicate to the Government of Orissa that the Araku police station and the villages mentioned in List A (prepared by Government of erstwhile Presidency of Madras) would from that point of time come under the jurisdiction of the Chintapalli circle of the Vizagapatam district in the erstwhile Madras Presidency. In distinction from this, the letter further stated that the villages enumerated in List B (prepared by Government of Madras) would fall under the jurisdiction of the Government of Orissa and accordingly under any police station

which the Orissa government deemed fit. In respect of the correspondence by way of this letter, the operative question for us is whether the said letter comes within the expression 'other similar instrument' which appears in the Proviso to Article 131 of the Constitution. If the correspondence does indeed come within the said expression, this Court cannot decide the present suit on merits. For guidance on how to interpret this expression, we can refer to the observations of this Court in **Sree Mohan Chowdhury v. The Chief Commissioner, Union Territory of Tripura**, [1964] 3 SCR 442, (B.P. Sinha, C.J., at p. 454):

"Is the President's Order in question an "instrument" within the meaning of the section? The General Clauses Act does not define the expression "instrument". Therefore, the expression must be taken to have been used in the sense in which it is generally understood in legal parlance. In Stroud's Judicial Dictionary of Words and Phrases (Third Edition, Volume 2, page 1472), "instrument" is described as follows:

"An 'instrument' is writing, and generally imports a document of a formal legal kind. *Semble*, the word may include an Act of Parliament... (11) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s.2 (xiii), 'instrument' includes deed, will, inclosure, award and Act of Parliament..."

The expression is also used to signify a deed interpartes or a charter or a record or other writing of a formal nature. But in the context of the General Clauses Act, it has to be understood as including reference to a formal legal writing like an Order made under a statute or subordinate legislation or any document of a formal character made under constitutional or statutory authority...”

In P. Ramanatha Aiyar, *Law Lexicon*, 2nd edn. (Wadhwa & Co., 1997) at p. 957, the word “instrument” has been defined as:

“a writing as the means of giving formal expression to some act, contract, process, or proceeding as a deed, contract, writ etc. ‘A writing given as the means of creating, securing modifying, or terminating a right or affording evidence; a deed of conveyance, a grant, a patent, an indenture etc. A formal legal writing e.g. a record deed or written instrument. ‘Anything reduced to writing; written instrument, or instrument of writing; more particularly, a document of formal or solemn character.’ *Instrument* is a word most frequently used to denote something reduced to writing, as a means of evidence, and writing as the means of giving formal expression to some act; a writing expressive of some act, contract, process or proceeding; a writing containing any contract or order.”

10. In respect of the letter exchanged between the Secretary to the Government of Madras and the Chief Secretary to the Government of Orissa, it must be noted that the letter simply listed the names of the villages which would fall under the jurisdiction of the Araku police station (which after the creation of the Province of Orissa, remained under the

Chintalapalli circle of Vizagapatam district in the erstwhile Madras Presidency), and those which would fall under the jurisdiction of the then Government of Orissa. After scrutinizing the contents of this letter, we find that it cannot be described as an 'other similar instrument' in the legal sense. The letter merely communicated the intentions of the Madras Government at that point of time and it was not issued under the authority of a legislation or subordinate legislation. Neither can it be described as 'a document of a formal character which was made under constitutional or statutory authority'. In the light of this finding, we hold that the original jurisdiction of this Court is not barred with reference to the proviso of Article 131 of the Constitution. We, therefore, hold this issue of maintainability to be in favour of the plaintiff.

Re: Issue 2

11. With respect to this issue, the defendant has averred in the written statement that under the Orissa Order, the

Governor General was contemplated as the final authority to decide any question with respect to an agency, taluk, village, estate, forest or any area in relation to the delimitation of the boundary of the Province Orissa. In view of the same, it was asserted that this Court will not have jurisdiction to entertain the present suit. On the contrary, the plaintiff avers that after the formation of the Province of Orissa in 1936, it was the Government of Orissa which had exercised jurisdiction over the disputed area since there was no dispute with the erstwhile Madras Presidency. It was further stated that after the abolition of the Jeypore (Impartible) Estate under the Orissa Estates Abolition Act, 1952, it was the Government of Orissa which collected land revenue from these villages. In fact, the plaintiff State has averred that when the Constitution was enforced in 1950, it had control over the disputed area but the situation changed after the formation of the State of Andhra in 1953 which subsequently became part of the State of Andhra Pradesh in 1956. From the viewpoint of the plaintiff State, the defendant state then began transgressing into its legal rights by interfering in the disputed area.

12. The dispute between both the states germinated in 1957, which was well after independence and at that time the position of the Governor General had become obsolete and the Union Parliament was the supreme law making body in the country. The exclusion of judicial scrutiny in the Orissa Order which was notified in the pre-independence period cannot be mechanically carried forward to the post-independence period. Therefore, it is futile to invoke the authority of the Governor General as contemplated under the Orissa Order. Accordingly, Issue 2 will have to be answered in favour of the plaintiff.

Re: Issues 3 & 4

13. These issues can be addressed together since they both pertain to procedural considerations vis-a-vis the maintainability of this original suit before this Court. The defendant has averred that the suit is liable to be dismissed on two procedural grounds, firstly, that no notice was served upon the defendant by the plaintiff as required under section

80 of the Code of Civil Procedure, 1908 [hereinafter 'CPC'] and secondly, that the period of limitation prescribed for obtaining the nature of relief sought by the plaintiff is only three years from the date of accrual of the right, as per Article 58 of the Limitation Act, 1963. The right, if any, accrued to the plaintiff on 01-04-1936, i.e., when the Province of Orissa was constituted. In interpreting the scope of Article 131 of the Constitution in **State of Rajasthan v. Union of India** (1977) 3 SCC 592, Chandrachud, J. [As his Lordship then was] held that the requirement for entertaining a suit under Article 131 is that the suit must involve a question, whether of law or fact, on which the existence or extent of a legal right depends. The purpose of Article 131 is to afford a forum for the resolution of disputes which depend for their decision on the existence or extent of a legal right. In **State of Karnataka v. Union of India** (1977) 4 SCC 608, Chandrachud, J. [as his Lordship then was] held:

“162. The jurisdiction conferred on the Supreme Court by Article 131 of the Constitution should not be tested on the anvil of banal rules which are applied under the Code of Civil Procedure for determining whether a suit is maintainable. Article 131 undoubtedly

confers 'original jurisdiction' on the Supreme Court and the commonest form of a legal proceeding which is tried by a Court in the exercise of its original jurisdiction is a suit. But a constitutional provision, which confers exclusive jurisdiction on this Court to entertain disputes of a certain nature in the exercise of original jurisdiction cannot be equated with a provision conferring a right on a Civil Court to entertain a common suit so as to apply to an original proceeding under Article 131 the canons of a suit which is ordinarily triable under Section 15 of Code of Civil Procedure by the court of the lowest grade competent to try it. Advisedly, the Constitution does not describe the proceeding which may be brought under Article 131 as a 'suit' and significantly, Article 131 uses words and phrases not commonly employed for determining the jurisdiction of a Court of first instance to entertain and try a suit. It does not speak of a 'cause of action', an expression of known and definite legal import in the word of witness actions. Instead, it employs the word 'dispute', which is no part of the elliptical jargon of law. But above all, Article 131 which in a manner of speaking is a self-contained code on matters falling within its purview provides expressly for the condition subject to which an action can lie under it. That condition is expressed by the clause: "if and in so far as the dispute involves any question (whether of law or fact) on which the existence of or extent of a legal right depends." By the very terms of the article, therefore, the sole condition which is required to be satisfied for invoking the original jurisdiction of this Court is that the dispute between the parties referred to in clauses (a) to (c) must involve a question on which the existence or extent of a legal right depends."

Chandrachud J. further had categorically stated:

“163 ...I consider that the Constitution has purposefully conferred on this Court a jurisdiction which is untrammelled by considerations which fetter the jurisdiction of a court of first instance, which entertains and tries suits of a civil nature. The very nature of the dispute arising under Article 131 is different, both in form and substance, from the nature of claims which require adjudication in ordinary suits.”

In support of the same view, P.N. Bhagwati J. [as his Lordship then was] had observed:

“165. A proceeding under Article 131 stands in sharp contrast with an ordinary civil suit. The competition in such a proceeding is between two or more governments- either the one or the other possesses the constitutional power to act.”

In the light of the aforesaid observations, it is evident that the procedural provisions which regulate the admissibility of civil suits before ordinary civil courts do not apply in the strict sense when this Court exercises its original jurisdiction to decide suits between States. Accordingly, Issue 3 and 4 will have to be answered in favour of the plaintiff.

Re: Issues 6, 8, 9 & 10

14. These four issues are taken together since they are interconnected and the fate of the suit largely depends upon the answer to the aforesaid issues. The erstwhile Zamindar of Jeypore was the holder of the Impartible estate of Jeypore as well as the Impartible estates of Madugula and Pachipenta. There is no doubt that all of these estates fell within the territory of the erstwhile Presidency of Madras till 01-04-1936. However, under Section 289(iii) of the Government of India Act, 1935, His Majesty the King Emperor had passed the Orissa Order in 1936 which led to the carving out of the province of Orissa. The Orissa Order had contemplated that the areas constituting the Jeypore estate were to be transferred to the province of Orissa. His Majesty's Council had at the same day (i.e. 3-03-1936) issued the Government of India (Excluded and partially Excluded areas) Order 1936 [hereinafter 'Order-in-Council'] acting under Section 91(1) of the Government of India Act, 1935. Part II of the schedule to the latter Order included the areas that were to be transferred

to Orissa from the Vizagapatam Agency in the erstwhile Madras presidency. The effect of this order was the transfer of Jeypore which included within its ambit the village of Borra, Gatevalsa etc. As noted earlier, the Jeypore estate that was contemplated as part of the State of Orissa was subsequently abolished in accordance with the Orissa Estate Abolition Act, 1952.

15. The plaintiff has submitted that the Order-in-Council had specifically included the whole of the estate of Jeypore in the province of Orissa and that no part of it was intended to be retained in the erstwhile Madras presidency. In support of this contention, reliance has been placed on the words of Section 3 read with Part I of the First Schedule to the Orissa Order. The relevant section provides:-

“(I) The province of Orissa (hereinafter in this Order referred to as (Orissa) shall consist of the areas specified in Part I of the First Schedule to this order, and accordingly as from the date of coming into operation of the provisions of Sub-Section (1) of section two hundred and eighty-nine of the Act relating to the formation of the province of Bihar and Orissa, those areas shall cease to form part of the province of Bihar and Orissa, the

Presidency of Madras and the Central Provinces respectively.”

Now it must be noted that Part I of the First Schedule to the Orissa Order defines the area which constituted the province of Orissa. Clause 2 (iv) of this part states that the following areas in the Vizagapatnam district, that is to say, the Jeypore (Impartible) Estate and so much of the Pottangi taluk as is not included in that estate, are comprised in the province of Orissa. On the basis of the language extracted above, it was asserted that the whole of the Jeypore (Impartible) Estate had been transferred to the then newly formed province of Orissa and that no part of the same had been left in the territories that are now part of the State of Andhra Pradesh. However, such an interpretation would be overlooking Section 3(2) of the Orissa order as well as Part II of the First Schedule to the same. Section 3(2) contemplates how to define the land boundaries of Orissa. Those boundaries are described in part II of the First schedule to the Orissa Order. As contemplated by Section 3(2) and part II of the first schedule, a map was prepared by the Government of India as also by the erstwhile

Presidency of Madras. Undoubtedly, a look at the map establishes that the villages in dispute are not territorially contiguous with the bounds of the State of Orissa. They are situated at some distance from the inter-state boundary and it would be quite untenable to declare them as coming within the plaintiff state's territory.

16. However, the plaintiff has relied on two cases to argue that a departure can be made from the norm of territorial continuity. Reference has been made to the examples of the Sankara Tract, which is an enclave of the State of Madhya Pradesh that is physically located within the State of Orissa as well as the Union Territory of Pondicherry which includes a few enclaves that are located at a considerable physical distance from each other. However, these two examples relate to some specific historical considerations and these cannot be equated with the dispute before us. The example of Sankara Tract is distinguishable from the present case since this tract was earlier part of Sarangarh, an erstwhile Princely State which acceded to the Union of India on 1-1-1948. The

absorption of the Sankara Tract in the State of Madhya Pradesh can hence be traced back to an instrument of accession, which is a circumstance inviting considerations that are entirely different from those before us in the present suit. Furthermore, it must be noted that the Union Territory of Pondicherry comprises of areas which were earlier governed by the French government and under a special agreement with the French Government, Pondicherry was merged with the Union of India. This Court therefore cannot examine the validity of such an agreement in view of the proviso to Article 131, primarily because the same was an outcome of political negotiations. The general rule is that the extent of a province should be based on the principle of territorial continuity.

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17. The plaintiff has denied the averment of the defendant on this point by asserting that the Orissa Order did not exclude or preclude the inclusion of any territory not having a contiguous land connection with the main territory. In support of this contention, the plaintiff has relied on Letter No. 829, dated 02-06-1936 sent by the Secretary of the Government of

Madras to the Chief Secretary of the Government of Orissa, which stated that the villages mentioned in List B (Prepared by Government of Madras) would fall within the administrative jurisdiction of the province of Orissa. However, the defendant has strongly refuted this claim by submitting that the above-mentioned letter was eclipsed and substituted by Government Order Modification [G.O.M.] No. 2751 issued by the Home (A) Department, Dated 17-10-1936, by which the State of Madras had endorsed the contents of another Letter No. 2752, dated 14-10-1936 which declared that the Borra group of villages (shown as item 7 in List B in Letter No. 829, dated 02-06-1936) would remain in the State of Madras. The defendant has strongly urged that in view of Letter No. 2753, dated 14-10-1936, all the villages shown in List B (except Chatuva) had remained in the State of Madras and subsequently became part of the State of Andhra in 1953 and the successor State of Andhra Pradesh in 1956.

18. We should give due importance to the fact that the plaintiff State had admitted in Letter No. 1671, dated 07-07-1962, sent

by the Chief Secretary, Government of Orissa to the Secretary, Ministry of Home Affairs, Government of India (Exh.1) that the disputed area was outside the external land boundary of the State of Orissa. The letter stated:

“...But the external boundary of the Orissa province as defined in the First Schedule of the order being inconsistent with the enumeration of the areas indicated in Part- II, the resultant effect was that the “Borra Mutha” which was a part of the Impartible estate of Jeypore, remained in Madras province (now in Andhra Pradesh) and continues to be administered as part of it right up to date...”

Furthermore, while taking into account the operation of the Orissa Order of 1936, the letter had stated:

“...this Government feels that the mere fact that in the map of Orissa prepared in pursuance of the above order, this area was not shown by mistake, cannot take away the legal claim of this State, and therefore the Government of India are requested to advice the Andhra Pradesh Government to restore the ‘Borra Muttah’ to Government of Orissa sine it forms a part of Orissa in accordance with the Constitution of Orissa Order, 1936...”

As noted earlier, the Government of India acted on this letter and wrote a letter to the Government of Andhra Pradesh, vide Letter No. F. 38/4/62- SR-RI (dated 16-8-1962), to which the

Government of Andhra Pradesh sent a reply, vide Letter No. 2504-J/62.8 (dated 30-03-1963), (Exh. 3) wherein it was stated:

“Ever since 1936 this area has been under the continuous management and administration successively of Madras, Andhra and Andhra Pradesh Govts. and the Orissa Government has never in the past exercised any jurisdiction or control over the area.”

Exh. 3 also cited the order of the Andhra Pradesh High Court in W.P. No. 539/1957, wherein it had been declared that a map was prepared at the time of the promulgation of the Orissa Order, which clearly indicated that the disputed area fell within the territory of the erstwhile Madras Presidency. Subsequently, the Government of India, vide its Letter No. 38/4/62-SR(R), [Exh. 2] sent a reply to the Government of Orissa after taking into account the contents of the letter sent by the Government of Andhra Pradesh, the relevant extracts of which are as follows:

“The letter shows that the area claimed by the Orissa Government being well within the adjoining state could not have been intended to form part of Orissa and that the intention is borne out by the description of external land boundaries of Orissa in part II of the First

Schedule read with para 3 (2) of the Government of India (Constitution of Orissa) Order, 1936. In view of this, the Government of India regret their inability to advise the Andhra Pradesh Government to transfer the Borra Muttah area to Orissa.”

After examining Section 3 of the Orissa Order along with the First Schedule to the same and perusing the correspondence exchanged between Government of Orissa, Government of India and Government of Andhra Pradesh, we find the contentious issues to be in favour of the defendant.

Re: Issue 5

19. In view of what has been stated by us while answering Issues 6, 8, 9 and 10, this issue does not need any further consideration and this issue is accordingly answered in favour of the defendant.

Re: Issues 7, 11 and 12

20. These issues have to be answered on the basis of the assertions made in the plaint, written statement as well as the rejoinder to the written statement. The defendant has averred

that the reference to the Jeypore (Impartible) Estate as mentioned in the First Schedule to the Orissa Order should be construed as one to the ancient Zamindari which had been included in the Schedule to the Madras Impartible Estate Act II of 1904. The defendant has submitted that the holders of the Jeypore (Impartible) Estate had made subsequent acquisitions of various properties including land and buildings whose locations were at some distance from the original Zamindari. Some of these subsequent acquisitions were in different districts and provinces and therefore it cannot be said with certainty that the holder intended to integrate such acquisitions with the original Zamindari. According to the defendant, there is reasonable cause to believe that the disputed area was one such subsequent acquisition. The disputed area had earlier formed an enclave which was surrounded by another Zamindari. Proceeding with this reasoning, the defendant has submitted that the Order-in-Council had only intended that the original Zamindari of Jeypore (Impartible) Estate would fall under the administrative control of the State of Orissa. The intent of the Order-in-

Council, as maintained by the defendant at that time, was accepted by both the governments, i.e. State of Orissa as well as the erstwhile Presidency of Madras. The defendant has further made the case that the plaintiff had never exercised any type of jurisdiction over the disputed area and that the available records demonstrate that the disputed area had been part of a taluk which was in turn a part of the erstwhile Madras Presidency and therefore, at the time of the enforcement of the Constitution, the disputed area did not fall within the territories of the State of Orissa as contemplated in Entry 10 of Schedule I to the Constitution. Hence, it was urged that when the State of Andhra was formed in 1953, the disputed area became part of the same.

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21. On the other hand, the plaintiff in rejoinder has contended that the disputed area formed part of the Jeypore (Impartible) Estate as contemplated in the Schedule to the Madras Impartible Estate Act (II of 1904). The plaintiff has denied that the disputed area was a subsequent acquisition by the holder of the said Estate. The plaintiff has also asserted that it had

never considered the disputed area to be under the jurisdiction of the Madras Presidency. In support of this contention, it was submitted that the disputed area had remained under the revenue jurisdiction of the Jeypore (Impartible) Estate till the abolition of the Estate by way of a State legislation in 1952. The plaintiff has also relied on a report compiled by the East India Company in 1784 in which it was noted that the disputed area came within the Zamindari and that the Zamindar of Jeypore used to collect annual revenue of 25 rupees from the disputed area. It was further stated that in 1893, the Maharaja of Jeypore had gifted the Borra village to the Pujari of Borra. The plaintiff has thus argued that the claims of the defendant are contrary to the documents which are in its possession and knowledge.

22. It is of course the refusal of the defendant to concede the disputed area to the plaintiff which gave rise to the cause of action in the present suit. The plaintiff seeks administrative control over the disputed area since it alleges that the defendant has committed trespass by interfering with the

administration of the disputed area after 1953 and more particularly after 1957. The fact that the disputed area was part of the Jeypore (Impartible) Estate before the notification of the Orissa Order has not been contested by the defendant. However, the plaintiff has failed to establish that it had governed the disputed area prior to the constitution of the State of Andhra in 1953, especially in light of the fact that the disputed area is located at a considerable distance from the inter-state boundary. The documents relied upon by the plaintiff do not convince us that the plaintiff had exercised administrative jurisdiction over the disputed area, since the same is surrounded by villages that have undeniably been under the administrative control of the State of Andhra Pradesh. In fact, the plaintiff has admitted that till the abolition of the Jeypore Estate, it was not the State of Orissa but the Zamindari which had collected land revenue from the disputed area. A plain reading of Part I and II of the Orissa Order along with the First Schedule to the same, leads us to conclude that the Order-in-Council did not intend to include the disputed area within the administrative control of the

State of Orissa. The three issues are answered accordingly.

Re: Issues 13 and 14

23. The aforesaid issues need not be answered in detail since we have already resolved that the proceedings in an original suit under Article 131 of the Constitution are entirely distinguishable from ordinary civil suits. An observation of Y.V. Chandrachud J., [As His Lordship then was] in **State of Karnataka v. Union of India** (1977) 4 SCC 608, may amply clarify the position:

“165. In a civil suit the plaintiff has to succeed on the strength of his own title, not on the weakness of his adversary because the defendant may be a rank trespasser and yet he can lawfully hold on to his possession against the whole world except the true owner. If the plaintiff is not the true owner, his suit must fail. A proceeding under Article 131 stands in sharp contrast with an ordinary civil suit. The competition in such a proceeding is between two or more governments - either the one or the other possesses the constitutional power to act.”

The issues are answered accordingly.

Re: Issue 15

24. After examining the averments and contentions advanced on behalf of both the parties, we do not deem it fit to grant the declaration sought by the plaintiff. Consequently the prayer of the plaintiff is unsustainable and liable to be dismissed without any other relief.

25. The plaintiff has failed to establish before us that it had exercised administrative control over the disputed area after the creation of Orissa in 1936. The defendant has produced documents before us which entail that it is the State of Andhra Pradesh and its predecessor states which have been exercising the administrative jurisdiction over the disputed area. The defendant has also demonstrated that all the villages that are part of the Borra Group, lie within the Ananthagiri Mandal of the present-day Vishakhapatnam District (Exhibits. E; K/1; Q; R). The villages which comprise the disputed area are listed below:

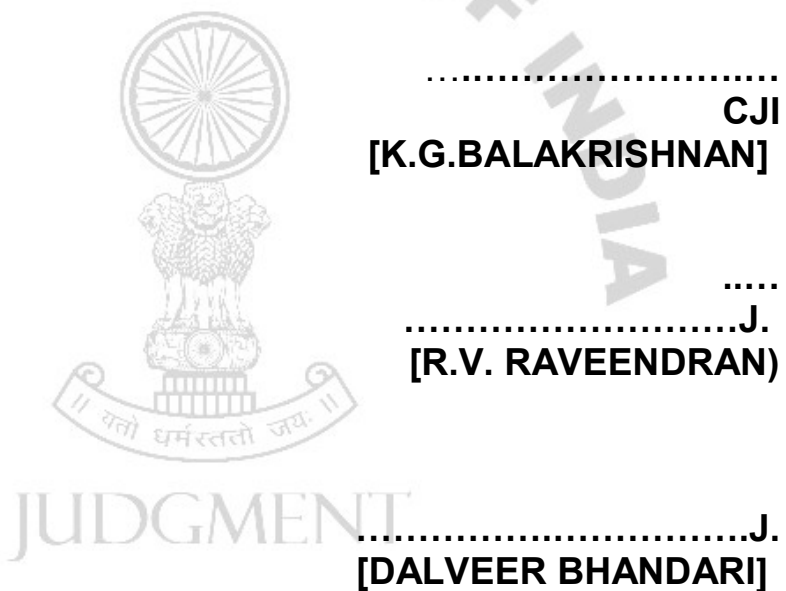
1. Borra- Getuvalasa
2. Ninimamidi

3. Pedduru
4. Pooluguda
5. Bitrabeda
6. Dekkapuram
7. Kuntiyasimidi
8. Eguvamamidi valsa
9. Koyitiguda
10. Liddangi
11. Jeerugedda
12. Bisiaguda
13. Bodilibodi

26. The Orissa Order of 1936 did not intend to allocate the disputed area to the State of Orissa, even though it had been acquired by the Zamindar of the Jeypore (Impartible) Estate at a certain stage. After the formation of the province of Orissa, the disputed area was part of the Vizagapatam District of the erstwhile Madras Presidency and despite the contrary claims of the plaintiff, the disputed area was notified as part of the Srungavarapukota assembly constituency in the State of

Andhra Pradesh. It is also pertinent to note that the plaintiff could not establish that the inhabitants of the disputed area recognize Oriya as their first language.

27. Therefore, in the light of these findings and considerations, we reject the prayer of plaintiff and the suit is dismissed accordingly. There will be no order as to costs.



New Delhi
May 5, 2010