

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(CIRCUIT BENCH AT PORT BLAIR)**

Present:

The Hon'ble Justice Ajay Kumar Gupta

SAT 15 of 2024

Shri A. Alagu

Vs.

The Andaman and Nicobar Administration and Others.

For the Appellant : Mr. K.M.B. Jayapal, Adv.

For the Respondents : Ms. Babita Das, Adv.

Heard on : 18.02.2026

Judgment on : 26.02.2026

Ajay Kumar Gupta, J:

1. The instant second appeal is the exception to the judgment and order dated 20.04.2018 passed by the Learned District Judge, Andaman & Nicobar Islands in Title Appeal No. 13 of 2020, thereby affirming the judgment and order dated 27.11.2020 passed by the learned Civil Judge (Senior Division), South Andaman District at Port Blair in Title Suit No. 45 of 2023.

FACTS OF THE CASE

2. The specific case of the Appellant/Plaintiff is that he came to these islands sometime in 1973 and encroached upon a different revenue land being Survey No. 1558/P and 1559 situated at Hoddo Village, measuring an area of 1200 sq.mtrs. and constructed a Semi-Pucca dwelling house thereon. The Tehsildar, Port Blair, initiated a revenue case being RC case no. 96/85 in the year 1985 under section 202 of the Andaman and Nicobar Islands land Revenue and Land Reforms Regulation, 1966 (in Short 'the said Regulation') against him while he was in possession. Finally, an eviction order was passed in year 1985, although he could not be evicted from the actual possession thereof.
3. The revenue authorities issued a license in favour of the plaintiff in respect of survey No.1558 (old, corresponding to new Survey No. 48/9) against an area of 200 sq.mtrs. of land in the year 1988, and also entered his name in the Record of Rights (in Short ROR). It was alleged that the remaining portion of 1000 sq.mtrs. of land under his occupation was not recognised in his favour, although he claims that he continues to be in possession by constructing a permanent structure over there and such than interrupted possession was continued till 2018.
4. In the year 2018, the proceeding was initiated by the Tahsildar under section 202 of the said regulation on the basis of complaint

lodged by some of the residents of the locality against him, alleging illegal construction and doing illegal commercial activities.

5. Finally, the Tahsildar, Port Blair issued an order dated September 29, 2019 under section 202 of the said regulation, thereby directing the plaintiff to remove the illegal occupation over the suit property within October 14, 2019. On receipt of such order, the plaintiff filed an application before the tehsildar thereby expressing his intention to file a suit and prayed for stay of operation of the said order of eviction.
6. Without allowing such prayer, the Tahsildar directed the plaintiff to remove the illegal occupation on or before Number 4, 2019, by order dated October 22, 2019, without adherence of the provision of 202 (8) of the said regulation. According to the petitioner, the defendants are harassing him and trying to do everything from the suit property unauthorizedly; as such, he filed the suit for declaration and permanent injunction restraining the defendants from interfering with his peaceful possession in the suit property.
7. The trial court was pleased to reject the plaint as the suit is barred by the provision of section 34 of the specific relief Act read with section 38 of the said regulation under order VII Rule 11 of the Code of Civil Procedure filed by the defendant in the suit observing therein that all and within the Union territory land are vested absolutely to the government of India. The Tehsildar, being the

Revenue officer, is vested with the jurisdiction to initiate and pass an order of eviction of any encroachment land of the Government. Such power can be exercised as per the regulation 202 of the said regulation, and the same was drawn by the authority for his eviction.

8. The Trial Court further held that the provision of the said regulation, being so, under no circumstances can there be a decree of injunction in any civil Court thereby restraining the administration from evicting any encroacher from any government revenue land, since, such a decree may come in direct conflict with the provisions engrafted in the regulation.
9. Being aggrieved by and dissatisfied with the said rejection of the plaint, the appellant preferred an appeal before the District Judge, Andaman and Nicobar Islands at Port Blair, being Title Appeal No. 13 of 2020. After hearing, the appeal was dismissed on contest on 20.04.2018 without order as to costs. The order dated November 27, 2020, passed in Title suit No. 45 of 2020 by the learned civil Judge, Senior Division, Port Blair, stood affirmed. Hence, this Second appeal.
10. At the time of admission, the division bench of this court framed the following substantial question of law to be decided in this Second appeal are as under:

- a) Does power under section 204 of the Andaman and Nicobar Islands land revenue and land reforms regulations, 1996 apply to a person who occupies beyond the extent of 200 sq. mtrs. of land in an urban area?
- b) Can a plaint be rejected in a summary form under order VII rule 11 of the Code of Civil Procedure when Regulation 38 and Regulation 202 (7) of the Regulations of 1966 permits and unauthorised occupant of urban land to establish a right to the extent of land encroached by him and seek regularisation of the same in his favour?
- c) Is the prayer for declaration made by the appellant in the plaint not maintainable as found by the two courts below?
- d) Does the circular dated August 17, 1987 have the force of law to restrict encroachment and occupation of the government land by a person to 200 Sq. mtrs in an urban area?
- e) Could the courts below arrive at a conclusive finding against the petitioner as regards his claim in the suit in a summary manner under order VII rule 11 of civil procedure without a proper trial on evidence?

SUBMISSIONS ON BEHALF OF THE APPELLANT

- 11. Mr. K.M.B. Jaypal, learned counsel appearing on behalf of the Appellant/Plaintiff submits that the First Appellate Court, without going into the merits of the case came to conclusion that the Trial

Court has rightly rejected the plea though the legal provision of the said regulation with rules framed thereunder recognise the right of encroachers over Government Revenue Land and to establish their such right lawfully by instituting the suit under the provision of regulation 202 (7) of the said regulation with rules framed thereunder.

12. Learned counsel further submitted that the plea of res-judicata cannot be decided in an application filed under order VII rule 11 for rejection of the plea. According to him res- adjudicate is an issue to be decided in trial and cannot be summary decided in an application to reject plea. He has placed reliance of a decision of the Hon'ble Supreme Court passed in the case of ***Pandurangan Vs T.Jayarama Chettiar And Another***¹ to buttress his contention.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

13. Per contra, Ms Das, learned counsel appearing on behalf of the Respondents/Defendant, vociferously argued and submitted that the First Appellate Court examined the facts and law applicable in this regard and did not find any ground warranting interference with the judgment of the Trial Court.

¹ (2025) 10 SCC 279

DISCUSSION, ANALYSIS AND CONCLUSION OF THIS COURT

14. In light of the submissions made by the parties and on perusal of the judgment and decree passed by the First Appellate Court dated 20.04.2018, it appears while considering the judgment of the Trial Court, the First Appellate Court held that the Trial Court has rightly rejected the plaint under Order VII Rule 11 of the Civil procedure code as there is specific bar in the jurisdiction of the Civil Court under Section 204 of the said regulation. When any specific authority given special power to deal with the dispute under special regulation. Section 38 and 202 (6) are also very clear on this issue.
15. It is admitted by the plaintiff that out of 1200 sq. mtrs. of land of Islands being encroached upon by the plaintiff, only 200 sq. mtrs. of land was regularised in his favour in the year 1988, and the remaining 1000 sq. mtrs. of land has not yet been regularised. The appellant also makes it very clear that on twice occasions two separate proceedings were initiated by the Tahsildar ponders section 202 of the said regulation, and thereby and thereunder directed the plaintiff to hand over the property, which is under his unauthorised occupation. One such order was made long back in the year 1985. Even after passing such direction, the plaintiff could not be evicted from the encroached land. Subsequently, the revenue authorities issued a license in favour of the plaintiff in

respect of survey No.1558 (old, corresponding to new Survey No. 48/9) against an area of 200 sq. mtrs. of land in the year 1988, and also entered his name in the Record of Rights (in Short ROR).

16. Later, a second proceeding was initiated on the basis of complaint lodged by the local residents regarding his illegal occupation and illegal commercial activities, and direction was passed in the year 2019 for his eviction from the other portion of land under his occupation. It is, therefore, admittedly clear from the averments made in the plaint that the plaintiff is in occupation of 1000 sq.mtrs of land beyond regularisation, which has not yet been regularised in his favour under any of the schemes of the Andaman & Nicobar Administration.
17. There is a specific bar against having more than 200 sq.mtrs. per family if the land is used for construction of dwelling unit in Urban Area under circular dated August 17, 1987 have the force of law to restrict encroachment and occupation of the government land by a person in an urban area, and therefore, the plaintiff was allowed to have 200 sq. mtrs. by regularising in his favour and same was also recorded in ROR and the remaining 1000 sq. mtrs encroached land cannot be regularised.
18. This Court has carefully perused regulation 202 (6) of the said regulation and finds that in case any dispute arises with regard to the eviction or ejectment of encroached government revenue land,

the power is vested in the Deputy Commissioner, who has the authority to decide the issue relating to encroachment. The Deputy Commissioner may, if satisfied that the work was constructed under a bonafide mistake and that the land can be allowed to remain in the possession of such person without any serious detriment to public purpose, condone the encroachment under such terms as he may deem fit but case in hand is entirely different.

19. The court would further like to refer to the appropriate regulations/sections for the sake of convenience and a better understanding of the legal position.

Regulation 28 of the said Regulation reads as follows:

28. (1) Save as otherwise provided in this Regulation, an appeal shall lie from every original order passed under this Regulation of the rules made thereunder
 - (a) if such order is passed by any revenue officer subordinate to the Sub Divisional Officer, whether or not the officer passing the order is invested with the powers of the Deputy Commissioner, to the Sub Divisional Officer;
 - (b) if such order is passed by the Sub Divisional Officer, whether or not invested with the powers of the Deputy Commissioner, to the Deputy Commissioner;
 - (c) if such order is passed by any revenue officer subordinate to the Settlement Officer, to the Settlement Officer;
 - (d) if such order is passed by a Deputy Commissioner, whether exercising the powers of Deputy Commissioner or Settlement Officer during the currency of the term of any settlement, to the Chief Commissioner;

(e) if such order is passed by a Settlement Officer, whether exercising the powers of Settlement Officer or the powers of a Deputy Commissioner in connection with any settlement operation, to the Settlement Commissioner. Persons by whom appearances and applications may be made before and to revenue officers 9 No appeal against certain orders Limitations of appeals

(2) A second appeal shall lie against any order passed in first appeal

(i) by the Sub Divisional Officer or the Deputy Commissioner or the Settlement Commissioner, to the Chief Commissioner

(ii) by the Settlement Officer, to the Settlement Commissioner.

(3) An order passed in review varying or reversing any order shall be appealable in like manner as the original order.

Regulation 38 of the said Regulation reads as follows:

38. (1) All land in the Union territory of the Andaman and Nicobar Islands is vested absolutely in the Government, and, save as provided by or under this Regulation, no person shall be deemed to have acquired any property therein or any right to or over the same by occupation, prescription or conveyance or in any other manner what so ever except by a conveyance executed by, or under the authority of, the Government.

(2) The right to all trees, brushwood, jungles or other natural product wherever growing, except in so far as the same may be the property of any person, vests in the Government and such trees, brushwood, jungles or other natural product shall be preserved or disposed of in such manner as may be prescribed keeping in view the interests of the people the area with regard to the user of the natural products.

(3) All such trees which have been planted and reared by, or under the orders, or at the expense, of the Government and all trees which have been planted and reared at the expense of any

local authority by the side of any road belonging to the Government, shall vest in the Government.

(4) Where a dispute arises in respect of any right under subsection (1) or subsection (2) or subsection (3) such dispute shall be decided by the Deputy Commissioner.

(5) Any person aggrieved by any order passed under subsection (4) may institute a civil suit to contest the validity of the order within a period of one year from the date of such order.

(6) Where a civil suit has been instituted under subsection (5) against any order, such order shall not be subject to appeal or revision under this Regulation.

Regulation 204 of the said regulation reads as follows:

“No suit or other proceeding shall unless otherwise expressly provided in this regulation, lie or be instituted in any civil Court with the respect of any matter arising on the provided for by this regulation”

Regulation 202 of the said Regulation reads as follows:

202. (1) Any person who unauthorisedly takes or remains in possession of any unoccupied land or abadi may be summarily ejected by order of the Tehsildar and any crop which may be standing on the land and any building or other work which he may have constructed thereon, if not removed by him within such times as the Tehsildar may fix, shall be liable to forfeiture.

(2) Any property forfeited under subsection (1) shall be disposed of in such manner as the Tehsildar may direct and the cost of removal of any crop, building or other work and of all works necessarily to restore the land to its original condition shall be recoverable from such person as an arrear of land revenue.

(3) Such person shall, subject to the provisions of subsection (5), also be liable, at the discretion of the Tehsildar, to a fine which may extend to two hundred and fifty rupees.’

(4) The Tehsildar may apply the whole or any part of the fine imposed under sub section (3) to compensate persons who may, in his opinion, have suffered loss or injury from such unauthorized occupation.

(5) If any case, the Tehsildar considers that circumstances of the case warrant imposition of a fine exceeding two hundred and fifty rupees he may refer the case to the Sub Divisional Officer who shall then, after giving the party concerned an opportunity of being heard, pass such orders in respect of fine as he may deem fit.

(6) If any person ordered to be ejected under subsection (1) has constructed any work of a permanent nature under a bonafide mistake, he may apply to the Deputy Commissioner for condonation of the encroachment and the Deputy Commissioner may, if satisfied that the work was constructed in under a bonafide mistake and that the land can be allowed to remain in the possession of such person without any serious detriment to public purpose, condone the encroachment under such terms as he may deem fit.

(7) No order made under subsection (1) shall prevent any person from establishing his rights in a civil court.

(8) If notice of an intention to institute a suit is delivered to the Tehsildar, he shall desist from carrying out his order under subsection (1) for a period of three months, and if such suit is filed within such period, he shall stay his proceedings pending the decision of the civil court.

Section 34 of the Specific Act reads as follows:

Discretion of court as to declaration of status or right. —Any person entitled to any legal character, or to

any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation. —A trustee of property is a “person interested to deny” a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

20. Upon careful perusal of regulation 204 of the said regulation, it appears that the regulation expressly bars the judicial civil court unless otherwise expressly provided in this regulation, lie or be instituted in any civil Court with the respect of any matter arising on the provided for by this regulation. In the present suit, the dispute as regard to the encroachment of more than 200 Sq.mtrs and its regularisation comes within the purview of the said regulation, 1966. A person cannot claim for regularisation beyond

200 Sq.mtrs as it is strictly prohibited under the regulation and Government circular.

21. Other provisions stipulated herein above are also clear and explicit on the issues involved in the present appeal.
22. Admittedly the Appellant had encroached Government revenue land beyond the permissible unit i.e. 1200 Sq. Mtrs. Out of which, the 200 Sq.mtrs was regularised in favour of the Appellant and recorded his name in ROR but the Appellant tries to regularised further admittedly encroached Government revenue land more than 200 Sq. Mtrs is not at all permissible under the Government regulation, rules and/or circular.
23. Civil Suit against such order of ejectment of the encroacher of the Government revenue land is not at all maintainable and same is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure Code. If the encroachment of Government revenue land had been within the permissible limit, then the appellant would have right to establish his right in a Civil Court otherwise there is appropriate authority for his redressal of his relief under the Regulation.
24. The judgment relied upon by the Learned counsel of the appellant is not at all applicable in the present case as the case in hand is totally different.

25. Consequently, the appellant has failed to satisfy any of the aforesaid substantial question of law. This court is of view that there is no other substantial question of law involved to be decided in the present case as such there is no merit in the instant second appeal.
26. Consequently, the appeal being **SAT 15 of 2024** stands dismissed.
27. Connected application, if any, is also dismissed.
28. Concurrent findings of the Court's below is hereby affirmed.
29. There shall, however, be no order as to costs.
30. Registry is directed to send down a copy of this judgment and order together with Trial Court record to the Learned Trial Court for information.
31. All parties shall act on a server copy of the judgment and order obtained from the official website of High Court.
32. Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Ajay Kumar Gupta, J.)