M/s. Khan Saheb M. Hassanji & Sons

Vs

State of Madhya Pradesh

Civil Appeal No. 645/1961

(CJI P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

19.11.1962

JUDGMENT

SINHA, C.J. –

This appeal on a certificate granted by the High Court of Madhya Pradesh at Jabalpur on April 16, 1958, under Art. 133 of the Constitution, is directed against the judgment and decree of that Court in First Appeal No. 181 of 1962, reversing those of the Additional District Judge, Chindwara, in Civil Suit No. 3-A of 1951, decide on September 25, 1952, by which the trial Court had decreed the plaintiffs' claim for Rs. 40865/- and interest.

It is necessary to state the following facts in order to bring out the points in controversy between the parties. One Haji Syed Zahiruddin of Bhopal held a mining lease - Ex. P-2 - dated May 29, 1923 in respect of 189-76 acres of land in the district of Chindwara, for extracting coal. The appellants took an assignment of that lease by Ex. Pl dated September 4, 1940. There were coal bearing areas adjacent to the area covered by the lease aforesaid. The appellants were anxious to acquire those adjacent collieries from their respective owners. The transfers in favour of the appellants could not take place without the sanction of the State Government. After protracted correspondence and negotiations, the Government agreed to grant the necessary sanction to the transfer of those adjacent lands to the appellants subject to the condition that they took a consolidated lease in respect of the whole additional area at an enhanced rate of royalty. The appellants entered into an agreement with the Government on January 11, 1949 (Ex. P3) by which the rate of royalty payable to Government was raised from Rs. 5/- to Rs. 10/- per ton. Though no formal lease deed was executed, the appellants worked the mines with the permission of the Government during the period October 27, 1947 to June 30, 1949. In respect of the coal thus extracted, the appellants paid to the Government the sum of Rs. 40865/-, including interest, by way of royalty. The plaintiffs paid the aforesaid sum under protest in February-March, 1960.

The plaintiffs commenced the present action in February 1951, for a declaration that they were not bound by the terms of the agreement dated January 11, 1949, aforesaid and that, therefore, they were not liable to pay to Government any sum in excess of that fixed by the lease of 1923, and by the lease of January 21, 1944, in respect of lands transferred to them. They also claimed an injunction against the defendant, the State of Madhya Pradesh, which was the sole defendant, now respondent. There was also a prayer for refund of the said amount of Rs. 40865/- plus interest amounting to Rs. 1985/- from the date of payment of those several sums aggregating to Rs. 40865/-. Interest pendente lite and future interest at 6 per cent on the decretal amount was also claimed.

The contentions raised on behalf of the plaintiffs in support of their claim were that the agreement

aforesaid was void as it was in contravention of r. 50 of the Mining Rules of 1913, as also that the same was in contravention of s. 4 of the Mines and Minerals (Regulation and Development) Act (XIII of 1948). It was also contended that a representation was made by the Government in the correspondence that passed between the parties that Government was going to adopt a new policy in respect of mining leases, including grant of leases at enhanced royalty. The agreement, the plaintiffs further asserted, had been entered into under the influence of that misrepresentation and was, therefore, not enforceable against them.

The suit was contested by the Government on the ground that the Mineral Rules of 1913 had no binding effect after the Constitution Act of 1935, so far as the Provinces were concerned; those Rules were mere department instructions for the guidance of subordinate officers of the Government; and that the Government was free make its own bargain in respect of fresh leases. It was also contended that the Mines and Minerals (Regulation and Development) Act of 1948, read with the Rules made thereunder, did not apply to the leases in question as these Rules came into force later. The Government also denied that there was any misrepresentation made by Government to the plaintiffs, though it was true that Government had intended to promulgate fresh rules which envisage revised scales of royalty, but which ultimately did not materialise. It was, therefore, contended that the plaintiffs had no cause of action for the reliefs claimed in the plaint.

The learned Additional District Judge, Chindwara, by his judgment and decree dated September 25, 1952, decreed the suit with costs holding that the plaintiffs were entitled to the declaration sought by them, as also to the consequential relief of refund of the amount paid by them under protest, as aforesaid, namely, the sum of Rs. 40865/- together with the sum of Rs. 992/8/- on account of interest at 3% per annum up to the date of the suit, as also interest pendente lite up to the date of realisation at the same rate of 3%.

On appeal by the defendant, the state of Madhya Pradesh, the High Court reversed the judgment and decree passed by the trial Court and passed a decree dismissing the suit with costs throughout. The High Court held that the Government was not bound by the Rules of 1913, which had no statutory force, and that the Rules of 1949 made under the Act of 1948 aforesaid did not apply to the transaction in question, because they had no retrospective operation. The High Court also held that there was no misrepresentation by the Government and that the plaintiff were anxious to enter into the agreement in order to start their mining operations to take advantage of the High market in respect of coal, and that they entered into the agreement with their eyes open and without any vitiating influence. The appellants applied for and obtained the necessary certificate from the High Court. That is how the matter is before us.

In this Court it was strenuously argued on behalf of the appellants that the Rules of 1913 were in terms imperative and had statutory force which bound the State Government, and that any lease or agreement entered into between the parties in violation of the terms of these Rules would be wholly void. It is contended on behalf of the appellants, that the Government was not entitled to recover the amount at the higher rate of royalty from the plaintiffs, and that their suit was well-founded in law. But it was argued on behalf of the respondent that those rules were promulgated by the Governor-General in Council, under the sanction of the Secretary of State for India in Council, and as such they were binding on the officials of the Government as departmental instructions, but were not binding on the Government itself. In our opinion, this contention is well-founded. Rule 1, which runs as follows, itself makes it clear that the Government concerned may make an exception to the general rule laid down in the rule :

> "1. No license to prospect for minerals or lease of mines and minerals can be granted by any Local Government otherwise than in accordance with these rules, except with the previous sanction of the Secretary of State for India in Council, or with that of the Governor-General in Council under any general or special authority which he may have received in this behalf from the Secretary of State in Council."

The general rule is that the Rules have to be followed by the officials of the Government in the matter of granting licences to prospect for minerals, or leases of mines and minerals. But exception may be made with the previous sanction of the rule making authorities aforesaid. This position continued in law until the Government of India Act of 1935 came into operation. As a result of the constitutional changes effected by that Act, the Secretary of State and the Governor-General had to be substituted by the Governor with effect from April 1, 1937. Form that date it would be the Governor who would be empowered to make the exceptions to the general rule laid down. In this case, it is clear from Ex. P. 3 - the agreement dated January 11, 1949 - that the Governor was in the position of the lessor. Hence, even if we assume that the Rules had statutory force and applied to the instant case, the Governor having been the grantor of the lease it must be presumed that he decided that the revised terms were in the interest of the State, and therefore, the revised terms of the lease were binding on the parties. Though in opening the appellants' case their counsel was vehement in the assertion that the Rules of 1913 were statutory, he was unable to point out the statutory source of it. Ultimately, he had to concede that the Rules were not statutory. That being so, there is no force in the contention that the agreement of January 11, 1949 (Ex. P. 3.) was void.

In this connection it is necessary to consider the alternative ground of attack based on the provisions of the Act of 1948 and the Rules made thereunder. The Act came into force on September 8, 1948, and the Rules, called the Mineral Concession Rules, 1949, were promulgated under s. 5 of the Act. But these Rules came into effect on October 25, 1949. These rules apparently have no retrospective effect. Section 4 of the Act is as under :

> "No mining lease shall be granted after the commencement of this Act except in accordance with the rules made under this Act."

Hence, any mining lease granted on or after October 25, 1949 will have to conform to the Rules aforesaid. But the agreement in question was the result of negotiations between the parties, extending over several years and was finalised in January 1949. The appellants, with the permission of the Government, carried on mining operations on the terms insisted upon by the Government, and for the period for which the royalty was realised from the appellants there were no such Rules in existence, which could be said to have been contravened. Hence, we are not concerned with the effect of the Rules which were promulgated in 1949 and came into effect, as already stated, on October 25, 1949. We need not, therefore, stop to consider what the legal position would have been if an agreement like the one before us were questioned with reference to its operation on and after October 25, 1949.

The only other ground on which the enforce-ability of the terms of the agreement has been questioned is that there was a misrepresentation by Government to the effect that it was going to enhance the rate of royalty all round, and that it was under the influence of that belief that the appellants entered into the agreement in question. It is a little difficult to appreciate this ground of attach. The agreement is not questioned on the ground that there was any undue influence or coercion exercised by the grantor in insisting upon the more onerous terms under the agreement. As pointed out by the High Court, the appellants were in a hurry to take the additional area and work

the coal mines on terms which were mutually agreed between the parties. It was not alleged that there was any mutual mistake which could be said to have vitiated the agreement. But simply because the draft amendment to the Mining Rules published for inviting objections from the public on July 12, 1947 (vide Ex. D13) was not finalised would not afford any cause of action to the plaintiffs. They, with their eyes open and after thoroughly discussing the matter between themselves and the Government, had entered into those terms of agreement. Those terms may be more onerous than any other lease granted to other lessees, but that would not vitiate the contract between them.

There was a faint attempt made on behalf of the appellants to put their objections on a constitutional basis. It was contended that the terms imposed upon the appellants by the State would amount to deprivation of property without the authority of law. It is manifest that this ground of attack is wholly devoid of any force because the State has not deprived them of any property. What they have paid to the Government was realisable under the terms of the contract, which on the findings recorded above is not vitiated. Under the agreement which we hold to be enforceable, the defendant may have struck a hard bargain but that cannot be brought under the prohibition of Art. 31(1) of the Constitution, even assuming that the Constitution applied to the transaction in question.

As all the grounds of attack urged in support of the appeal fail, it is hereby directed that the appeal be dismissed with costs.

Appeal dismissed.

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