SUPREME COURT OF INDIA

Gujarat Pottery Works Private Ltd.

Vs.

B. P. Sood

C.A.No.428 of 1964

(K. Subba Rao, C.J.I., M. Hidayatullah, S. M. Sikri, R. S. Bachawat and Raghubar Dayal, JJ.)

03.10.1966

JUDGEMENT

RAGHUBAR DAYAL, J.

(For himself, **K. SUBBA RAO**, **G. J.** and **S. M. SIKRI, J.**):

1. This appeal, by special leave, is against the order, dated January 30, 1962, of the Central Government, under R. 7 of the Mining Leases (Modification of Terms) Rules, 1956, hereinafter called the 1956 rules, on revision against the order, dated September 29, 1960 of the Controller of Mining Leases, under R. 6 of the said rules.

2. It may be mentioned here that respondents Nos. 28 and 27, who were formal parties, died during the pendency of the appeal and an application to bring their legal representatives on record has been rejected.

3. The facts leading to this appeal are as follows. Jairam Jagmal originally held a perpetual lease from Chimanlal Chandulal Jani and others, inamdars and owners of the mineral rights for excavating white clay from the area leased and for taking it away. The lessors entered into an agreement for executing the perpetual lease, on December 2, 1939. They did not however, execute the lease, though possession over the leasehold land had been delivered to the said Jairam Jagmal after the execution of the agreement. Ultimately, the lease was executed on November 3, 1951, in execution of a decree of a civil Court for the specific performance of the agreement to lease.

4. The original lessee, Jairam Jagmal, transferred his right, title and interest in the lease to the appellant in 1954. On September 29, 1960, the Controller of Mines modified the terms of the lease after following the procedure laid down for modifying the lease under the 1956 rules which continued to be in force in view of S. 29 of the Mines and Minerals (Regulation and Development) Act, 1957, hereinafter called the 1957 Act. The modifications were that the period of the lease was reduced to 25 years from December 2, 1939 and further renewal was to be regulated in accordance with the law and rules in force. Dead rent was payable at the rate of Rs. 10 per acre per annum. The lease was made further subject to the rules made or deemed to have been made under Ss. 13 and 18 of the 1957 Act and royalty was to be payable in accordance with S. 9 of that Act.

5. The appellant preferred a revision before the Central Government under R. 7. That was rejected.

6. The correctness of the orders challenged in appeal is questioned on various grounds. The first is that the mining lease in favorer of the appellant is, dated November 3, 1951 and, therefore, is not an 'existing mining lease' as defined in R. 2 (c) of the 1956 rules. The lease was executed on November 3, 1951 in execution of the decree for specific performance. An agreement to lease was, however, executed on December 2, 1939. The question is whether the lease can be said to be granted in 1939 or in 1951. If it was granted in 1951, the contention for the appellant is sound, but if it is held to be granted in 1939, the contention fails and the lease would be liable to modification under the 1956 rules as R. 2 (c) defines an 'existing mining lease' to be a lease which has been granted before October 25, 1949.

7. The granting of lease is different from the formal execution of the lease deed. The Mineral Concession Rules, 1949, made under S. 5 of the 1948 Act and hereinafter referred to as the 1949 rules, deal with the procedure for the grant of mining leases in respect of land in which the minerals belong to Government, under Chap. IV. Rule 27 deals with applications for mining leases. Rule 28A provides that when a mining lease is granted the formal lease shall be executed within six months of the order sanctioning the lease and if no such lease is executed within the aforesaid period, the order sanctioning the lease shall be deemed to have been revoked. It is really the sanctioning of the lease which amounts to the granting of the lease. Execution of the formal lease is only compliance with the legal reguirements to make the grant legally enforceable.

8. Further, the agreement of lease, dates December 2, 1939 was acted upon by the parties and gives all the terms of the lease. It states:

"We have given possession of the land bounded as follows, we execute this (agreement) containing the following terms".

After noting the boundaries, it states:

"The land bearing the above boundaries admeasured about 2 bighas and is 'Kharaba'. Out of this land we hereby give lease' to excavate white clay (Khadi) and to take the same away on the following terms."

This is a clear statement about the giving of the lease of the land for excavating white clay. Term No. 2 deals with royalty to he paid. The various terms thereafter use expressions like leasehold land', 'during the period of this lease', 'after the period of the lease is over', 'any portico of the land leased' and about terminating the lease', etc. Term No. 17 is:

"Pursuant to this agreement, we will execute the proper lease and you will have to incur all the expenses in respect thereof." Term No. 19 is also significant and is:

"In case from this date continuously for three years you do not excavate and thus you do not pay royalty to us, then in that event this Agreement is at an end and this is clearly understood. However, if you do excavate for three years and afterwards you do not again do the worn in the fourth year, then it is clearly understood that the Agreement will continue permanently on your paying to us Rs. 200 (rupees two hundred). However, you excavate in the fourth year, then we are entitled to demand royalty, not the said sum of Rs. 200 but only royalty."

9. Thus the deed of agreement really granted the lease to Jagmal. It was the mere execution of the proper lease which was put off and the proper formal lease was to be executed later.

10. The actual deed of lease executed in 1951 was executed in pursuance of the aforesaid agreement of lease. This lease deed also says:

"Besides, according to the terms of the said Agreement, within the period of three years from the date of the Agreement, you continue excavating clay from the said land and if you abide by the other terms of the same Agreement, then in that event, you were given right to get from us executed permanent lease."

The terms incorporated in this lease are practically the same as were mentioned in the agreement.

11. We are, therefore, of opinion that the lease in favour of Jagmal was really granted in December 1939 and that the execution of the lease in November 1951 was only to give a formal shape to the lease granted much earlier. The lease in suit, therefore, is a lease which comes within the expression 'existing mining lease' within R. 2 (c) of the 1956 rules.

12. It is next contended for the appellant that the rule contravenes Art. 31 of the Constitution and that Art. 31A (1) (e) does not cover the present case.

13. Sub-s. (2) of S. 7 of the Mines and Minerals (Regulation and Development) Act 1948 (Central Act LIII of 1948), referred to shortly as the 1948 Act, provided that the rules made under sub-s. (1) for the purpose of modifying or altering the terms and conditions of the mining lease will provide for the payment of compensation by the party who would be benefited by the proposed modification or alteration to the party whose rights under the existing lease would thereby be adversely affected and will also provide for the principles on which, the manner in which and the authority by which the said compensation shall be determined. Rules 9 and 10 of the 1956 rules deal with these matters.

14. Rule 9 provides for the payment of compensation to the lessee where the area of an existing mining lease is reduced, the amount of compensation being determined in he manner and in accordance with the principles set out in R. 10. Clause (ii) of sub-r. (2) of R. 10 provides that in determining the compensation payable under the rule, the Controller and the tribunal will have regard to the fact that no compensation shall be payable in respect of the reduction of the period of the lease or any modification in the amount of royalty. It is, therefore, that no compensation had been allowed or had been paid to the appellant for the modification in his lease with respect to the reduction of the period of the lease from perpetuity to 25 years and the royalty being payable in accordance with the provisions of the Act.

15. Article 31A (1) (e) provides:

"Notwithstanding anything contained in Art. 13, no law providing for the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any minerals or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Art. 14, Art. 19 or Art. 31."

It is said that the lease in favour of the appellant is not for the purpose of merely 'winning' the mineral but is for other purposes as well, i.e., for the purpose of 'extracting the mineral and taking it away' and that, therefore, this provision does not cover the case of modification made in this lease. It is urged that 'winning a mineral' means only 'getting at the mineral in order to make the mine workable', and does not include the right to work the mine thereafter and to carry the mineral away.

Reliance for such an interpretation is placed on some English cases. It was held in Lewis v. Fothergill, (1869) 5 Ch A 103, that the expression 'win coal' in the lease in that case meant 'to put the mine in a state in which continuous working can go forward in the ordinary way'. This meaning was adopted in interpreting the expression 'win' in Lord Rokeby v. Elliot, (1878) 9 Ch D 885 at p.689.

16. According to the Shorter Oxford Dictionary, 'to win' has the meanings: (i) to get or extract coal or other mineral from the mine, pit or quarry; (ii) to sink shaft or make excavation so as to reach a seam of coal or vein of ore and prepare it for working.

17. The expression 'to win' interpreted in the English cases was in respect of the context of the expression used in certain leases. The expression 'winning in a Constitutional provision like Art 31A (1) (e) should be given a wider meaning as the Constitution-makers would be using it to cover cases which deal with the obtaining of minerals and in that case that wider meaning would be 'to get or extract the mineral from the mine'. The object of the Constitutional provision was to make the law providing for the extinguishment or modification of a lease, etc, in connection with mineral rights immune from the provisions of Arts. 14, 19 and 31. There could be no logical reason for not to cover the leases which allowed the working of the mines after the minerals in the mines had been won, in the narrow sense, i.e., the making of such arrangements which would allow the working of the mine. Modifying the provisions of any lease merely for making arrangements for the working of the mine could not be effective in making the law free from the requirements of the various minerals in the public interest. Modification of the leases governing the working of the mines could be necessary for the public interest. Section 2 of both the 1948 and the 1957 Acts declared that it was expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent thereinafter provided.

18. We are, therefore, of opinion that the expression 'winning' in Art. 31A (1) (e) be construed to mean 'getting or extracting minerals from the mines and other incidental purposes.

19. Our attention has been drawn to the use of the word 'winning' along with other expressions necessary for the proper working of a mine in the Acts and Rules, and it is urged that the word 'winning' has been there used in a narrow sense. In the context of the Acts and Rules, the Legislature or the rule-making authority had to use all possible expressions for the purposes of the mining leases so that all conceivable types of mining leases could be covered by the provisions of the enactment and the rules. 'Mining lease', according to S. 3, C1. (d) of the 1948 Act, means a lease granted for the purpose of searching for, winning, working, getting, making merchantable, carrying away or disposing of minerals or for the purposes connected therewith and includes an exploring or a prospecting license. The definition is very comprehensive and is with the object indicated earlier.

20. It is significant to notice that the expression 'mine', according to C1. (b) of S 3, means any excavation for the purpose of searching for or obtaining minerals. Here the word 'obtain' is used to cover the various processes necessary to get the mineral and would include the processes covered by the expressions 'winning', 'working', getting', etc.

21. 'Mining lease', according to R. 3 (i) of the 1949 rules, means a lease to mine, quarry, bore, dig and search for, win, work and carry away any mineral specified therein. This definition of the 'mining lease' does not cover all the purposes mentioned in S. 3 (d) of the 1948 Act. The definition deals with such matters which are covered by the rules, as a 'mining lease' is defined for the purposes of the rules.

22. Rule 41 (1) (ii) of the 1949 rules reads :

"If any mineral not specified in the lease is discovered in the leased area he shall not win and dispose of such mineral without obtaining a lease therefor....."

It is clear that the word 'win' here includes the getting of the mineral as it is only thereafter that the lessee can dispose of it.

23. Section 3 (c) of the 1957 Act defines 'mining lease' to mean a lease granted for the purpose of undertaking mining operations and includes a sub-lease granted for mining operations.

24. It follows that the various definitions in the Act or in the rules referred to above are for a limited purpose and that the word 'winning' or 'win' does not always have the same content, and that, therefore, they cannot be any guide for construing the word 'winning' in the Constitutional provision of Art. 31A (1) (e).

25. We, therefore, hold that the lease in suit is a lease for the purpose of winning coal and comes within Art. 31A (1) (e) of the Constitution and that, therefore, the rules for the modification of any rights acquiring under this lease cannot be deemed to be void on the ground that they take away the rights conferred by Arts. 14, 19 or 31 of the Constitution.

26. It has been contended that the 1956 rules which came into effect on September 15, 1956 were made before the enactment of the Constitution VII Amendment Act, 1956 and were, therefore, void as till then the Central Legislature could enact with respect to acquiring of property for Union purposes only and not for State purposes. The VII Amendment came into force on November 1, 1956. This Amendment deleted entries Nos. 33 of List I and 36 of List II which dealt with acquisition and requisition of property and the Central Legislature could legislate in this regard for the purpose of the Union only. The Amendment Act substituted an entry for Item 42 of List III. The substituted entry was 'acquisition and requisitioning of property.'

27. Besides these entries, Entry No. 54 of List I was 'Regulation of mines and mineral development to the extent to which such regulation and development under the control of the union is declared by Parliament by law to be expedient in the public interest'. The 1956 rules were made in connection with the regulation of mines and for the development of minerals and the Central Legislature was competent to provide for the making of such rules by the 1948 Act. The rules do not come within the field of acquisition and requisitioning of property. We do not consider this contention for the appellant to be sound.

28. It has been contended that the Legislature was not competent to make a law providing for the property of an individual to be given to another and that, therefore, the 1956 rules were void. The objection really is that the modifications made to the appellant's lease benefit the lessors, the owners of the minerals leased and a law providing for benefiting the lessors who were private persons at the expense of the lessees, the appellant, contravenes Art. 14 of the Constitution inasmuch as the rules deny equal protection of laws and equality before the law by treating similarly situated persons, viz., the lessors and the lessees, differently. The contention is not open to the appellant in view of Art. 31A (1) (e). Further, the modifications have not been made to benefit the owners. They have been made in the public interest. It is only incidental that the lessors may get some advantage. It may be mentioned here that the lessors too were not agreeable to the proposed modifications and had raised objections before the Controller.

29. It has also been contended that the 1956 rules were ultra vires the 1948 Act and, therefore, could not continue after the enactment of the 1957 Act as only valid rules could continue under S. 29 of the 1957 Act. Even if the rules were not consistent with the provisions of the 1948 Act and were therefore, void, we do not agree that they could not have continued after the enforcement of the 1957 Act. Section 29 reads

"All rules made or purporting to have been made under the Mines and Minerals (Regulation and Development) Act, 1948, shall, in so far as they relate to matters for which provision is made in this Act and are not inconsistent therewith, be deemed to have been made under this Act as if this Act had been in force on the date on which such rules were made and shall continue in force unless and until they are superseded by any rules made under this Act."

The effect of this section is that the rules which were made or purported to have been made under the 1948 Act in respect of matters for which rules could be made under the 1957 Act would be deemed to have been made under the 1957 Act as if that Act had been in force on the date on which such rules were made and would continue in force. The Act of 1957 in a way is deemed to have been in force when the modification rules were framed in 1956. The 1956 rules would be deemed to be framed under the 1957 Act and, therefore, their validity and continuity depends on the provisions of the 1957 Act and not of the 1948 Act.

30. In this connection we may refer to the case reported as Abdul Majid v. P. R. Nayak, AIR 1951 Bom 440. In that case S. 58 of Act XXXI of 1950 repealed Ordinance No. XXVII of 1948 and provided as follows:

"The repeal by this Act of the Administration of Evacuee Property Ordinance, 1949 (XXVII of 1949) shall not affect the previous operation thereof, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under that Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action was taken."

Section 58 was construed thus:

"The language used in S. 58 is both striking and significant. It does not merely provide that the orders passed under the Ordinance shall be deemed to be orders passed under the Act but it provides that the orders passed under the Ordinance shall be deemed to be orders under this Act as if this Act were in force on the day on which certain things were done or action was taken. Therefore, the object of this section is, as it were, to antedate this Act so as to bring it into force on the day on which a particular order was passed which is being challenged. In other words, the validity of an order its to be judged not with reference to the Ordinance under which it was passed, but with reference to the Act subsequently passed by Parliament."

The rules have not been challenged to be ultra vires the 1957 Act in the instant case.

31. It follows that the Controller was competent to modify the terms of the lease in favour of the appellant in order to bring it into conformity with the provisions of the 1957 Act and the rules made under S. 13 thereof.

32. The only other question to be dealt with now is whether the Controller was justified in limiting the period of the lease to 25 years from December 2, 1939. Sub-s. (1) of S. 8 of the 1957 Act reads:

"The period for which a mining lease may be granted shall not:-

(a) in the case of coal, iron ore or bauxite exceed thirty years; and

(b) in the case of any other mineral, exceed twenty years."

The lease in suit is for excavating white clay and, therefore, a mining lease for this purpose is not to exceed 20 years. The question raised is that this period of 20 years for the purpose of the lease to be modified should run from the date the 1957 Act came into force and not from the original date of the lease.

33. We agree with this contention. The period of the lease is to be brought in conformity with the provisions of the Act for future and the period for which a lease can be granted is not to exceed 20 years. The Act is concerned for the regulation of mines subsequent to its enactment and has nothing to take into consideration with what has taken place earlier. As a new lease is granted after the enforcement of the Act and can run upto 20 years, there is no reason why the term of an existing lease for mining be not so modified as to make it run upto 20 years after the enforcement of the Act. We therefore accept the contention for the appellant and hold that the Controller was in error in limiting the period of the lease to 25 years from December 2, 1939. The period of the lease could be limited to a period of 20 years commencing from June 1, 1958, the date notified as the date on which the 1957 Act came into force.

34. We therefore allow the appeal and modify the order of the Central Government dated January 30, 1962 and the order of the Controller dated September 29, 1960 to the effect that the period of the lease shall be 20 years counting from June 1, 1958, when the Act of 1957 came into force and that its renewal would be regulated in accordance with the law and rules in force when it falls due. The appeal with respect to the other modifications of the lease will stand dismissed.

35. In the circumstances of the case, we direct the parties to bear their own costs.

36. **BACHAWAT, J.** (For himself and **HIDAYATULLAH J.**): Counsel for the appellant submitted that the agreement dated December 2, 1939 is not a lease and cannot be modified. We are unable to accept this contention. The document, though in form an agreement to lease, finally ascertained the terms of the lease gave the lessee right to exclusive possession immediately and operated as a present demise. Counsel submitted that in view of the instrument of lease dated November 3, 1951, there was an implied surrender of the lease, if any, created by the document dated December 2, 1939. There is no force in this contention. The lease dated November 3, 1951 was not granted in accordance with the Rules made under the Mines and Minerals (Regulation and Development) Act, 1948 and by S. 4(2) of that Act was void and of no effect. The lease dated December 2, 1939 is the only subsisting lease and could properly be modified by the Controller.

37. The lease was for excavating white clay. In order to bring it in conformity with the Act and the Rules, its period could be cut down to 20 years from December 2, 1939. Actually, the Controller cut down the period to 25 years from December 2, 1939. The appellant can have no just grievance against this order.

38. The appeal is dismissed with costs.

Order accordingly.

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