

Chhatu Ram Horil Ram Ltd.

Vs

State of Bihar and Anr

Civil Appeal No. 47 of 1965

(J. C. Shah, V. Ramaswami – I JJ)

31.01.1968

JUDGMENT

SHAH, J. –

On September 30, 1940 the appellant - a private limited Company - obtained a lease from the owners of 3,300 acres of mica bearing land in village Sapahi in the District of Gaya, for a period of fifteen years. Clause 29 of the indenture of lease read as follows :-

"If on the expiry of the term of the thika we executant Nos. 1 and 2, first party, the lessors, desire to let out in thika the thika property or any portion thereof and if any other person wants to take it in thika, then in such circumstances it will be incumbent upon us, executant Nos. 1 and 2 first party, the lessors, to inform about it to executant No. 3, second party, the lessee, first. If on the same terms and stipulations and jama executant No. 3, second party, the lessee, wants to take it in thika then in that case, we executant Nos. 1 and 2, first party, the lessors, shall let it out in thika to him (executant No. 3), and we shall execute a fresh thika deed in respect thereof in favour of executant No. 3, second party, the lessee and executant No. 3, second party, the lessee, shall be competent to get the deed executed."

By virtue of a notification issued under s. 3 of the Bihar Land Reforms Act, 1950, the right of the owners in the lands, vested on June 27, 1953 in the State of Bihar. The appellant Company remained thereafter in occupation under a statutory lease deemed to be granted by the State for the remaining period of the contractual lease. On February 22, 1955, the Company served a notice upon the State exercising the option of renewal granted by cl. 29 of the indenture. On January 6, 1956, the State granted a lease to the appellant of 410 acres out of the lands for 20 years and the remaining area was granted in lease to one Sant Saran Bhadani a director of the appellant Company. In a writ petition moved by one Sudha Devi the lease granted to the appellant Company and Bhadani were set aside by order dated July 5, 1956, of the High Court of Patna, on the ground that in granting fresh leases to the appellant Company and Bhadani the State of Bihar had violated rr. 67 and 68 of the Mineral Concession Rules, 1949.

The appellant Company then instituted in the Court of the Subordinate Judge. Second Grade, Gaya, an action for specific performance of the covenant of renewal in the indenture of lease dated September 30, 1940. The Subordinate Judge dismissed the action holding that by the stipulation in cl. 29 a right of pre-emption and not of renewal was granted to the appellant Company. The High Court of Patna confirmed the decree passed by the Trial Court but on different grounds. The High Court held that the right granted by cl. 29 gave rise to an "encumbrance" which was extinguished

when the interest of the owners in the land vested in the State. With certificate granted by the High Court, this appeal has been preferred by the Company.

A notification under s. 3(1) of the Bihar Land Reforms Act, 1950, on June 27, 1953 was issued in respect of the land of the owners. Section 4 of the Act prescribes the consequences of the publication of the notification under s. 3(1) : it provides, insofar as it is relevant :

"Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification under sub-section (1) of section 3, or sub-section (i) or (2) of section 3A the following consequences shall ensue, namely :

(a) Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, jalkars, hats, bazar, mela and ferries and all other sairati interests as also his interest in all sub-soil including any rights in mines and minerals, whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of a lessee of mines and minerals comprised in such estate or tenure (other than the interests of raiyats and under-raiyats) shall, with effect from the date of vesting, vest absolutely in the State free from all encumbrances and such proprietor or tenure-holder shall cease to have any interests in such estate or tenure, other than the interests expressly saved by or under the provisions of this Act."

The opening words of this clause "Subject to the subsequent provisions of this Chapter" were omitted by Bihar Act 16 of 1959, but that omission has no practical significance in this case. Section 10 of the Act provides :

"(1) Notwithstanding anything contained in this Act, where immediately before the date of vesting of the estate or tenure there is a subsisting lease of mines or minerals comprised in the estate or tenure or any part thereof, the whole or that part of the estate or tenure comprised in such lease shall, with effect from the date of vesting, be deemed to have been leased by the State Government to the holder of the said subsisting lease for the remainder of the term of that lease, and such holder shall be entitled to retain possession of the lease-hold property.

(2) The terms and conditions of the said lease by the State Government shall mutatis mutandis be the same as the terms and conditions of the subsisting lease referred to in sub-section (1), but with the additional condition that, if in the opinion of the State Government the holder of the lease had not, before the date of the commencement of this Act, done any prospecting or developing work, the State Government shall be entitled at any time before the expiry of one year from the said date to determine the lease by giving three month's notice in writing :

Provided.....

(3).....".

Counsel for the appellant Company contended that cl. 29 created an interest in the demised land in favour of the Company and the State of Bihar as successor-in-title of the original owners took the

land subject to that interest. In the alternative, counsel contended, the Company acquired immediately on execution of the indentures of lease an indefeasible right to obtain renewal and that right was enforceable against the owners and their successors-in-interest alike. We are unable to agree with those contentions. The covenant granting an option of renewal of the lease on the expiry of the period of the lease outstanding is a covenant running with the land : it creates no interest in land. In *The State of Bihar v. Indian Copper Corporation Ltd.* [I.L.R. 38 Pat. 1160] the High Court of Patna held that a clause for renewal of a lease on the expiry of its period has not the effect of a present demise nor does it operate to create an interest in land on the date on which the original lease was executed : a covenant for renewal is not tantamount to an actual demise and therefore "no leasehold interest is created for the renewed term when the original lease is granted." Under the terms of the lease dated September 30, 1940, the appellant Company became entitled to a lease for a period of fifteen years. On the expiry of that period the Company could have enforced their right to get a renewal of the lease for a period of fifteen years against the owners if their interest had not been extinguished. If the owners declined to carry out their obligation, the Company could sue for specific performance and claim a right to remain in possession for a period of fifteen years stipulated in cl. 29. But the provisions of the Bihar Land Reforms Act intervened. By the express terms of s. 4(a) of the Act all the interests of the owners in all sub-soil including any rights in mines and minerals, whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of the lessee of mines and minerals comprised in such estate or tenure became vested in the State with effect from the date of vesting absolutely and free from all encumbrances. Even the interest of the lessees of the mines and minerals comprised in the estate therefore ceased, and all encumbrances on the interest of the owners' estate were extinguished and the State took the estate free from all the rights of the lessees. The original contractual lease came to an end by the operation of s. 4(1)(a) of the Act, and a fresh statutory lease for the remainder of the term of that lease in favour of the lessee came into being under s. 10(1) of the Act.

The appellant Company therefore acquired the rights of a statutory lessee for the period between June 27, 1953 and September 30, 1955, with terms and conditions mutatis mutandis the same as the conditions of the original lease granted by the owners on September 30, 1940. But by virtue of s. 4 that covenant by which the owners had agreed to renew the lease at the option of the lessee being merely of the nature of an encumbrance and not an interest in the land was extinguished, the land vested in the State free from the obligation created by the renewal clause.

We agree with the High Court that "a clause for renewal of the lease at a future date was a limitation imposed upon the lessor. His freedom as an absolute owner was sought to be curtailed by such agreement. It was thus an encumbrance and all encumbrances were wiped out by section 4. Taking all these provisions into consideration, an agreement for renewal of a lease in future cannot be binding upon the State Government after the vesting of the estate".

Counsel for the appellant relied upon r. 40 of the Mineral Concession Rules, 1949, and contended that under the scheme of the Rules a lessee of a mining lease is entitled to at least one renewal. Rule 40, insofar as it is material, provides :

"(1) The period for which a mining lease may be granted shall be 30 years in the case of coal, iron-ore and bauxite for manufacture of aluminium, and 20 years in the case of any other minerals, unless the applicant himself asks for a shorter period. The lease shall be renewable at the option of the lessee, for one or two periods, each not exceeding the duration of the original lease, in the case of iron-ore and bauxite for manufacture of aluminium, and one period not exceeding the duration of the original

lease in the case of other minerals."

But r. 40 has no application. Manifestly, the rule applies to grants made by the Government : it has no application to statutory leases arising by virtue of s. 10 of the Bihar Land Reforms Act. Even assuming that r. 40 applies to such a statutory lease, the duration of the "original lease" may be deemed to be no longer than the period between the date of vesting and September 30, 1955. That period for which renewal may have been claimed has expired many years ago, and recognition of the rights of the appellant Company will be of no practical significance in this appeal.

The appeal fails and is dismissed with costs.

Appeal dismissed.

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