Union of India

Vs

M/s. Khas Karanapura Colliery Ltd.

Civil Appeal No. 332 of 1965

(R. S. Bachawat, K. S. Hegde JJ)

15.04.1968

JUDGMENT

HEGDE, J.-

In this appeal by certificate the question for decision is whether the High Court of Patna was correct in its conclusion that the notification No. S.O. 2991 issued by the Union Government on October 9, 1963 under s. 4(1) ["4 (1) Whenever it appears to the Central Government that coal is likely to be obtained from land in any locality, it may, by notification in the Official Gazette, give notice of its intention to prospect for coal therein.

#(2) .....(3) .....##

(4) In issuing a notification under this section, the Central Government shall exclude therefrom that portion of any land in which coal mining operations are actually being carried on in conformity with the provisions of any enactment, rule or order for the time being in force or any permises on which any process ancillary to the getting, dressing or preparation for sale of coal obtained as a result of such operations is being carried on are situate."] of the Coal Bearing Areas (Acquisition and Development) Act, 1957, (No. 20 of 1957) - hereinafter called "the Act" is violative of sub-s. (4) of that section.

The facts of the case fall within a narrow compass. The respondent, Khas Karanpura Colliery Limited, took on lease 1401 bighas of land in mouza sale in the district of Hazaribagh as per a registered lease deed of July 8, 1949, for the purpose of winning coal. Thereafter it commenced working the colliery in 1952. Certain seams were opened up. Electric transmission lines were put up, staff quarter, office quarters, houses for labourers, hospital, school etc. were built. For the purpose of despatching the coal, a separate railway track was constructed and a railway siding built. These works were completed long before the impugned notification was issued. Under the notification in question 1200 bighas of land were notified with a view to acquisition, which included areas on which the railway siding, staff quarters, boiler house, houses for labourers etc. were constructed.

The respondent challenged the validity of the said notification in MJC No. 643 of 1964 - an application under Art. 226 of the Constitution - before the High Court. The main contention taken in the writ petition was that the notification in question contravenes sub-s. (4) of s. 4. The High Court accepted that contention and quashed the notification.

The material facts are more or less admitted. Along with its writ petition the respondent produced a

plan of the colliery showing therein the railway track, the railway siding, labour quarters, office premises and various other buildings put up on the land. It had also shown therein the actual places where mining operations were carried on. The correctness of this plan has not been disputed. From that plan it is seen that in a considerable portion of the land notified under s. 4(1) there are premises on which processes ancillary to the getting, dressing or preparation for sale of coal obtained as a result of the mining operation are being carried on. There is also no doubt that if the respondent is deprived of the benefit of those premises it would be difficult, it not impossible for it, to continue to work the colliery.

The High Court has come to the conclusion that in determining the area in which coal mining operations is being actually carried on, one is not to take into consideration merely those spots where actual digging is going on, but also areas which are sufficient to constitute a commercial or economic unit, and if so viewed, the entire leasehold may be justifiably considered as areas on which coal mining operations are actually being carried on. Alternatively, it held that the entire notified area had to be excluded because in parts of that area mining operations are actually being carried on and in the remaining parts there are premises on which processes ancillary to the getting, dressing or preparation for sale of coal obtained as a result of the mining operations are being carried. In other words the entire area is exempt from being notified under s. 4(1) either because it is protected by the first part of s. 4(4) or by its second part. These conclusions were challenged before us. It was urged on behalf of the appellant that the words "any land in which coal mining operations are actually carried on" found in the first part of s. 4(4) do not permit of a liberal interpretation so as to bring in the conception of a commercial or economic unit; they merely mean the actual area where mining is taking place. As regards the alternative conclusion based on the second part of s. 4(4) it was urged that on the pleadings there was no occasion for the High Court to consider whether the requirements of that part are satisfied. In addition, two other contentions were advanced on behalf of the appellant. They are : (i) No relief under Art. 226 should have been given as the respondent was guilty of laches, and (ii) the writ petition was premature. We are in agreement with the High Court that there is no substance in the last two contentions advanced on behalf of the appellant. As seen earlier, the impugned notification was issued on October 9, 1963 and the writ petition was filed on March 23, 1964, well within six months of the date of the notification. This delay is not sufficient to refuse the relief prayed for.

In support of the contention that the petition was premature, Dr. Syed Mohemmed, learned counsel for the appellant, urged that the respondent has no real grievance yet, as only a notification under s. 4(1) had been issued; further proceedings are yet to take place, and the respondent can be aggrieved only when a notification under section 7 ["7. (1) If the Central Government is satisfied that coal is obtainable in the whole or any part of the land notified under sub-section (1) of section 4, it may, within a period of two years from the date of the said notification or within such further period not exceeding one year in the aggreate as the Central Government may specify in this behalf, by notification in the Official Gazette, give notice of its intention to acquire the whole or any part of the land or of any rights in or over such land, as the case may be.

(2) If no notice to acquire the land or any rights in or over such land is given under sub-section (1) within the period allowed thereunder, the notification issued under sub-section (1) of section 4 shall cease to have effect on the expiration of three years from the date thereof."] is issued. We think that this contention is misconceived. As soon as the notification under s. 4(1) was issued, in view of s. 5 ["5. On the issue of a notification under sub-section (1) of section 4 in respect of any land -

(a) any prospecting licence which authorises any person to prospet for coal or any

other mineral in the land shall cease to have effect; and

(b) any mining lease in so far as it authorises the lessee or any person claiming through him to undertake any operation in the land, cease to have effect for so long as the notification under that sub-section is in force."] the mining lease granted in favour of the respondent ceased to have effect for so long as that notification was in force. The effect of that notification was to require the respondent to bring to a halt all his operations in the area notified till action was taken under s. 7 or till the period prescribed in that section came to an end. Hence it cannot denied that the respondent was seriously aggrieved by the impugned notification.

This takes us to the remaining two contentions noticed earlier. It was strenuously argued by Dr. Syed Mohammed that s. 4(1) empowers the Government to notify all lands excepting those in which coal mining operations are actually being carried on; the notification in question has excluded 201 bighas in which mining was actually carried on; hence there is nothing illegal in that notification. He wanted us to construe the words "any land in which coal mining operations are being actually carried" strictly. The High Court has rejected this contention after taking into consideration the purposes of the Act, its preamble and the various provisions therein. But we have not thought it necessary to go into that controversy as in our opinion the impugned notification definitely violates the second limb of s. 4(4) and hence it is invalid. It covers land on which amongst other buildings, railway siding, boiler-rooms, office room, fan house and air shaft premises are situate. It cannot be denied that in these premises processes ancillary to the getting, dressing or preparation for sale of coal obtained as a result of the mining operations are being carried on. This conclusion of ours is resisted on the plea that in the writ petition no specific case is pleaded under the second part of sub-s. (4) of s. 4 and therefore it is not open for us to consider that aspect of the case. We are unable to accept this contention. It is true that the pleadings on this point are rather vague; but all the facts necessary for determining that question are before the court. That aspect of the case appears to have been fully argued before the High Court without any objection. The High Court has considered and decided that question. Hence the appellant cannot now be permitted to contend that for want of necessary pleadings that question cannot be gone into. If areas in which those premises are situate could not have been notified under s. 4(1) - as in our judgment they could not have been - it is not for us to decide whether any of the other areas included in the lease-hold could have been notified; we cannot make out a new notification for the appellant.

One other contention was vaguely touched at the hearing of the appeal, and that was that though there are ten seams in the colliery only four seams are at present worked after obtaining the necessary permission, the remaining six seams are not yet opened up for the working; hence those seams cannot be said to have been worked on the date of the notification. Mr. A. K. Sen, learned counsel for the respondent, urged that all the ten seams were being worked in conformity with the provision of law. According to him, once permission is obtained for grading the coal in a seam and he says that such permission had been obtained in respect of all the seams, in law it means that those seams are being actually worked. We need not go into this question in view of our earlier conclusion. At the hearing reference was made to the decision of this Court in Messrs. Burrakur Coal Co. Ltd. v. Union of India [[1962] 1 S.C.R. 44.]. The rule laid down in that case does not bear on any of the issues arising for decision in this appeal.

For the reasons mentioned above, this appeal fails and is dismissed with costs.

Appealed dismissed.##

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