

Shri Sudarshan Mineral Co. Ltd. Bhilwara

Vs

Union of India and Another

Civil Appeal No. 2305 (NCM) of 1969

(K. K. Mathew, P. K. Goswami, N. L. Untwalia JJ)

13.02.1975

JUDGMENT

UNTWALIA, J. -

1. This is a plaintiff's appeal by special leave of this Court from the judgment and decree of the Rajasthan High Court whereby the plaintiff's second appeal from the decision of the first appellate Court was dismissed and the dismissal of its suit was maintained.

2. The facts of the case lie in a narrow compass and may usefully be stated at the outset. The plaintiff was granted a mining lease for mining mica by the erstwhile State of Shahpura for a period of 20 years commencing from August 12, 1941. The area of the lease purported to be 1500 sq. miles. In due course the mining area in question came to form part of the State of Rajasthan. The Mines and Minerals (Regulation and Development) Act, 1957 - hereinafter called the Act - came into force from June 1, 1958. Under Section 6(1) of the Act as it stood at the relevant time the area of a mining lease in the case of mica could not be more than 10 sq. miles and its maximum period could not exceed 20 years as provided in Section 8. Section 16 confers power on the appropriate authority to modify a mining lease granted before October 24, 1949 to bring it in conformity with the Act and the Rules made thereunder. In exercise of this power and in accordance with the Mining Leases (Modification of Terms) Rules, 1956 the Controller of Mica Leases, Nagpur, reduced the mining area of the appellant's lease to 10 sq. miles by his order dated November 20, 1959. As per Rule 10(1)(a) of the said Rules a compensation of Rs. 10 only was fixed by agreement between the parties for reduction of the area, and by the same order the dead rent at the rate of Rs. 8 per acre per annum fixed by the original lease was reduced to Rs. 6 per acre. The period of 20 years of the original lease came to an end on August 11, 1961. The appellant applied to the Government of Rajasthan for renewal of its lease for another 20 years. This was done in accordance with Rule 28 of the Mineral Concession Rules, 1960 - hereinafter called the Rules. The Government of Rajasthan granted the renewal by order dated December 13, 1961 for a period of 20 years with effect from August 12, 1961. The dead rent fixed for the renewed lease was Rs. 20 per hectare which comes to Rs. 8 per acre. The appellant challenged the order of the Government of Rajasthan by filing a revision before the Central Government in accordance with Rule 54 of the Rules. But the revision was dismissed. Thereupon it filed a suit against the Union of India, respondent No. 1 and the State of Rajasthan, respondent No. 2 for a decree of injunction to restrain the defendants from charging dead rent at the rate of Rs. 8 per acre per annum and for a declaration that they are entitled to charge only at the rate of Rs. 6 per acre. The suit was decreed by the trial Court but was dismissed by the first appellate Court. The dismissal was maintained by the High Court in second appeal.

3. Mr. Y. S. Chitlay, learned Counsel for the appellant, pressed the following five points in support

of this appeal :

(1) Under the agreement dated November 20, 1959 the lease was to be governed by the Act and the Rules except in regard to dead rent which was fixed at Rs. 6 per acre.

(2) Under Rule 28 of the Rules, the State Government while renewing the lease had power to reduce the area but no power to increase the dead rent.

(3) Rule 27 does not apply to renewal of a lease.

(4) Clause (c) of sub-rule (1) of Rule 27 is ultra vires as it transgresses the rule-making power under Section 13(2)(g) of the Act.

(5) Rule 27(1)(c) if made applicable to renewal of a mining lease introduces an element of uncertainty and is therefore void.

4. Learned Counsel for the respondents combated the appellant's argument in all respects. In our opinion none of the conditions put forward on behalf of the appellant is fit to be accepted and the appeal must fail.

5. As is well settled the power to make rules for regulating the grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith is to be found in sub-section (1) of Section 13. Sub-section (2) merely illustrates the nature of the power. It does not restrict the general power under sub-section (1). Even under clause (g) of sub-section (2) in particular the Rules may provide the terms on which and the conditions subject to which any mining lease may be granted or renewed. Sub-rule (1) of Rule 27 requires every mining lease to be subjected to the conditions enumerated in clauses (a) to (n) and such conditions have got to be incorporated in every mining lease. The conditions enumerated in clauses (a) to (o) of sub-rule (2) are optional and a mining lease may contain such other conditions as the State Government may deem necessary in regard to them. Rule 27(1)(c) reads as follows :

The lessee shall pay for every year, except the first year of the lease, such yearly dead rent within the limits specified in Schedule IV as may be fixed from time to time by the State Government and if the lease permits the working of more than one mineral in the same area, the State Government may charge separate dead rent in respect of each mineral :

Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral whichever be higher in amount but not both.

There is no element of uncertainty in the rule either in regard to the grant of fresh lease or in respect of the renewal. The yearly dead rent to be fixed from time to time by the State Government cannot exceed the limit specified in Chapter IV. The maximum limit is therefore certain. To provide for payment of dead rent at a specified rate subject to variation within the limit specified in Schedule IV, is a term which cannot be said to be void on account of uncertainty, nor is it beyond the rule-making power conferred on the Central Government under Section 13 of the Act. The fourth and fifth points urged on behalf of the appellant therefore fail.

6. Rule 27(1) makes it incumbent to subject every mining lease to the conditions enumerated in that sub-rule. The renewal of lease cannot be outside Rule 27(1). A lease granted under the Rules and

the renewal made thereunder will not occasion any difficulty at all in the application of the conditions enumerated in sub-rule (1) to both. But the scope for argument in this case arose because the original lease was granted in 1941 by the erstwhile State. The modifications were made in the year 1959 in accordance with the Act of 1957 and the Mining Lease (Modification of Terms) Rules, 1956. The Rules of 1960 were then not in existence. The question which deserves careful consideration, therefore, is - whether there is any substance in either of the first or second points urged on behalf of the appellant.

7. The Controller of Mica-leases prepared a note and passed a final order on November 20, 1959 recording the modifications of the terms of the mining lease dated August 12, 1941 specifically stating therein that the said lease was for 20 years "without a renewal clause". After providing that "dead rent shall be payable at the rate of Rs. 6 per acre per annum", it was mentioned :

The following clause shall be deemed to be inserted in the lease deed and shall form part thereof :

Except for the modifications made by this order, the lease shall be subject to the Rules made or deemed to have been made under Sections 13 and 18 of the Mines and Minerals (Regulation and Development) Act, 1957 (No. 67 of 1957).

8. It was submitted on behalf of the appellant that when renewal of the lease was granted under Rule 28 of the Rules then the State Government was bound to act upon and incorporate the new clause inserted in the original lease by order dated November 20, 1959. In other words, it was contended that the renewed lease had to be granted on the same terms and conditions. No term and condition could be varied while granting the renewal of the lease except in regard to the reduction of the area in accordance with sub-rule (5) of Rule 28. That being so, the argument stressed was that in view of the new clause operation of Rule 27(1) (c) was excluded in regard to the dead rent, it was not payable at any rate different from Rs. 6 per acre. In our judgment the argument though attractive is not fruitful. If in the original lease there would have been a renewal clause giving a right to the lessee to have the renewal of the lease for another period of 20 years at its option one could probably say that the renewal had to be on the same terms and conditions. In that event the new clause inserted in the original lease by order dated November 20, 1959 could possibly be said to override the mandatory requirement of Rule 27(1)(c). But in absence of such a right of renewal to the lessee the said clause was operative and effective only during the period of the original lease, i.e. upto August 11, 1961. The lease renewed thereafter was a renewal of the original lease in one sense and a fresh lease in another. While granting a fresh lease the governmental authority has no power to relax the mandatory requirement of sub-rule (1) of Rule 27 of the Rules. By agreement it cannot take the conditions of the lease out of the said provision. It is, therefore, clear on the facts and in the circumstances of this case that while granting the renewal of the lease, the authority was neither bound nor empowered to incorporate a condition in the lease against clause (c) of Rule 27(1). The demand of dead rent at Rs. 20 per hectare, i.e. R. 8 per acre was within the limits specified in Schedule IV of the Rules and there was no infirmity in it.

9. For the reasons stated above we find no merit in this appeal. It is accordingly dismissed with cost.

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