

Sone Valley Portland Cement Co. Ltd.

Vs

The General Mining Syndicate Pvt. Ltd.

Civil Appeal No. 1250 of 1968

(H.R. Khanna, R.S. Sarkaria, Jaswant Singh JJ)

24.08.1976

JUDGMENT

JASWANT SINGH, J. -

1. This appeal by certificate granted under Article 133(1)(a) and (c) of the Constitution which is directed against the judgment and decree dated March 25, 1968 of the High Court of Calcutta in Appeal 255 of 1963 raises important questions relating to the interpretation of certain provisions of the Bihar Land Reforms Act, 1950 (Act 30 of 1950) (hereinafter referred to as 'the B.L.R. Act') as also of the Mining Leases (Modification of Terms) Rules, 1956 providing for the modification and alteration of terms and conditions of the mining leases granted prior to the commencement of the Mines and Minerals (Regulation and Development) Act, 1948 (Act 53 of 1948) (hereinafter referred to as 'the 1948 Act') and of the Mines and Minerals (Regulation and Development) Act, 1957 (Act 67 of 1957) (hereinafter referred to as 'the 1957 Act') which replaced the 1948 Act on June 1, 1958.

2. The facts and circumstances leading to this appeal are : By an indenture of lease dated July 31, 1927 (hereinafter referred to as the 'head lease'), Raja Bishambharnath Sahi (hereinafter referred to as the 'Raja') who was the sole proprietor of large tracts of land known as the Sonepura estate in pargana Rohtas in the district of Shahbad in Bihar demised certain blocks of land situate in villages Jaintipur, Nimhath, Deodand and Dhanwanti, district Shahbad, together with quarries of limestone (known as Chunhatta Lime Stone Quarries) lying thereunder for a period of 40 years commencing from August 1, 1927, and ending on July 31, 1967 with an option to continue for a further period of 25 years, in consideration of a 'salami and fine' of Rs. 8200 unto Karunaranjan Dutta and Jugalchandra Dutt (hereinafter referred to as 'Dutts'). By the said indenture, the head lessees inter alia undertook to pay to the Raja during the first 15 years of the said period of 40 years of the lease i.e. from August 1, 1927 to July 31, 1942, royalty at the rate of annas -/10/- (ten) = 62 paise for every 100 cubic feet i.e. roughly at 15 1/2 paise per ton of solid limestone, quarried, raised, got, used or taken out from the demised premises and for the remaining 25 years of the lease i.e. from August 1, 1942 to July 31, 1967, royalty at the rate of annas -/15/- (fifteen) = 94 paise instead of annas -/10/- (ten) for every 100 cubic feet i.e. roughly at 24 paise per ton of solid limestone, quarried, raised, got, used or taken out from the demised premises. The aforesaid royalty was made payable quarterly i.e. after every three months on the fixed dates specified in the indenture of lease. The head lessees also undertook to pay yearly rent of annas -/16/- (six) per acre subject to the maximum of Rs. 100 for so much of the surface land as was to be entered upon, used or occupied by them for the purpose of placing, stocking and heaping stones or waste materials and rubbish etc. The lease deed further provided as follows :

That the 'LESSEES' shall be at liberty and competent without obtaining any further

consent of the 'LESSOR' to assign and transfer this lease or sublet or part with the possession of the demised premises or any part thereof to any person, firm or company whether incorporated or otherwise and no mutation fee or nazarana or premium shall be charged by the 'LESSOR' in case of such transfer or subletting for the first time, but in case of subsequent transfer or subletting a fee of rupees five hundred (500) shall be payable to the 'LESSOR' for each such occasion.

If the rents and royalties hereby reserved or any part thereof or any other moneys hereunder payable by the 'LESSEES' to the 'LESSOR' shall remain unpaid for three months after the same shall become due and payable the 'LESSEES' shall pay interest thereon at the rate of twelve (12) per cent per annum calculated from the due date until payment. If the same shall remain unpaid for three years consecutively or if there be any breach of any of the covenants and agreements herein contained and on the part of the 'LESSEE' to be performed and observed then this lease shall be liable to be forfeited under an order of a competent court besides any other relief hereunder and under the law then prevailing.

3. On October 12, 1928, the head lessees i.e. Dutts executed a sub-lease of the aforesaid blocks of land and quarries of limestone for the residue of the period of the aforesaid indenture of lease dated July, 1927 except the last day thereof for a consideration of Rs. 5,000 in favour of the appellant. The appellant undertook to pay to Dutts the same royalty and rent as were payable by Dutts to the Raja during the period of the aforesaid head lease in respect of limestone quarried (except for ballast or building purposes). In addition, the appellant undertook to pay to the head lessees during residue of the first 15 years of the said period of 40 years royalty of annas -/16/- (sixteen) for every 100 cubic feet of solid limestone quarried, raised, got or used or taken out from the demised premises and for the remaining 25 years thereafter of the said period for each such quantity, royalty of annas -/11/- (eleven). The sub-lease gave option to the appellant to make payment to the head lessor directly of royalties in terms of the aforesaid head lease whether the head lessees were to make default or not in making payment of the same. On February 15, 1929, Dutts transferred by a deed of assignment all their rights, title and interest under and by virtue of the aforesaid indenture of head lease and the sub-lease dated October 12, 1928 to the respondent. The appellant had due notice of the said assignment and accepted the respondent as its lessor in place of Dutts.

4. On September 8, 1948, the Central Legislature passed the 1948 Act under Entry 36 of List I of Seventh Schedule to the Government of India Act, 1935. Section 5 of the Act empowered the Central Government to make rules for regulating the grant of mining leases or for prohibiting the grant of such lease in respect of any mineral or in any area. Section 7 of the Act empowered the Central Government to make rules for the purpose of modifying or altering the terms and conditions of any existing mining lease granted prior to the commencement of the Act, so as to bring such lease into conformity with the rules made under Section 5. In exercise of the powers conferred on it by Section 5 of the Act, the Central Government made the Mineral Concession Rules, 1949. Both the 1948 Act and the Mineral Concession Rules, 1949, came into force on October 25, 1949. The provisions of the Mineral Concession Rules, 1949, did not apply to leases or sub-leases granted prior to October 25, 1949.

5. On September 25, 1950, the B.L.R. Act came into force. This Act as apparent from its preamble was enacted for the purpose of transference to the State of the interests of the proprietors and tenure holders in land and of mortgagees and lessees of such interests including interest in mines and minerals etc. Sections 3 and 3A of the B.L.R. Act which dealt with vesting of estates or tenures in the State provided as follows :

3. (1) The State Government may from time to time, by notification declare that the estates or tenures of a proprietor or tenure-holder, specified in the notification have passed to and become vested in the State . . . . .

3-A. (1) Without prejudice to the provision in the last preceding section, the State Government may, at any time, by notification, declare that the intermediary interests of all intermediaries in the whole of the State have passed to and become vested in the State.

(2) It shall be lawful for the State Government, if it so thinks fit, to issue, from time to time, a notification of the nature mentioned in sub-section (1) in respect of the intermediary interests situate in a part of the State specified in the notification and, on the publication of such notification, all intermediary interests situate in such part of the State shall have passed to and become vested in the State ....

6. On November 14, 1951, the estate of Sonepura belonging to the Raja passed to and became vested in the State of Bihar by virtue of notification 83 IR/ZAN dated November 6, 1951 issued by the Governor of Bihar in exercise of the power conferred on him by sub-section (1) of the abovequoted Section 3 of the B.L.R. Act.

7. On January 1, 1956, the Governor of Bihar issued notification EVII-102/56-ILR reading as under :

No. EVII-102/56-ILR : Whereas a proclamation announcing the intention of the State Government to take over all the intermediary interests in the district of Shahabad, Patna, Saran, Muzaffarpur, Bhagalpur, Santhal Parganas, Ranchi, Singhbhum. Manbhum and excluding Manbhum Sadar Sub-Division was published under notification No. 4381 LR dated the 18th August, 1955, as required by sub-section (1) of Section 3(B) of Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950).

Now, therefore, in exercise of the powers conferred by sub-section (2) of Section 3A of the said Act, the Governor of Bihar is pleased to declare that all such intermediary interests in the said districts (excluding Manbhum Sadar Sub-Division) have passed to and become vested in the State with effect from the date of this Notification.

8. On September 4, 1956, the Government of India made rules under Section 7 of the 1948 Act for modifying or altering the terms and conditions of the existing leases, being Mining Leases (Modification of Terms) Rules, 1956. Clause (c) of Rule 2 of the Rules defined "existing mining lease" as meaning a mining lease granted before October 25, 1948 and subsisting at the commencement of the 1956 Rules but not including any such lease in respect of (i) natural gas, (ii) petroleum, (iii) coal, or (iv) any minor mineral within the meaning of clause (c) of Section 3 of the Act.

9. The 1948 Act was replaced by the 1957 Act which came into force on June 1, 1958. Section 9 of the 1957 Act provided as follows :

9. Royalties in respect of mining leases. - (1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed by him from the leased area after such commencement, at the rate for the being specified in the Second

Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed by him from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.

(3) The Central Government may, by notification in the Official Gazette amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification :

Provided that the Central Government shall not -

(a) fix the rate of royalty in respect of any mineral so as to exceed so as to exceed twenty per cent of the sale price of the mineral at the pit's head, or

(b) enhance the rate of royalty in respect of any mineral more than once during any period of four years.

10. This section was amended in 1972 by Act 56 of 1972. The amended section in so far as it is relevant for our purpose runs as follows :

9. (1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.

##(2A) \* \* \* \* \*##

(3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification :

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of four years.

11. Section 29 of the Act provided for the effective continuance of the rules made or purporting to have been made under the 1948 Act in so far as they related to matters provided for in the former Act and were not inconsistent therewith.

12. By the Bihar Amendment Ordinance 3 of 1964 which was subsequently replaced by the Bihar

Land Reforms (Amendment) Act (Bihar Act 4 of 1965), the B.L.R. Act was amended by introduction of Section 10-A which runs as follows :

10-A. Vesting of interest of lessee of mines or minerals which is subject to a sub-lease. - (1) The interest of every lessee of mines or minerals which is subject to a sub-lease shall, with effect from such date as may be notified in this behalf by the State Government in the Official Gazette, vest in the State and thereafter the sub-lessee whose lease is not subject to any further sub-lease shall hold his leases directly under the State Government and the provisions of sub-sections (2) and (4) of Section 10 shall, 'mutatis mutandis' apply to his lease.

(2) No sub-lessee of mines or minerals holding under a lessee whose interest vests in the State Government under sub-section (1) shall be entitled to claim any damages from his lessor on the ground that the term of the lease in respect of the mines or minerals have become incapable of fulfilment by the operation of this section.

13. Purporting to act under the Mining Leases (Modification of Terms) Rules, 1956, the Controller of Mining Leases, an officer appointed by the Central Government for the purpose of implementing the rules, by his order dated August 8, 1959 enhanced the royalties payable under the aforesaid lease dated July 31, 1927 to 37 naya paise per ton.

14. In exercise of its option under the sub-lease dated October 12, 1928, the appellant paid rent and royalty payable by the head lessee in respect of the aforesaid Chunhatta quarries under the aforesaid indenture of lease dated July 31, 1927, directly to the Raja upto the date immediately preceding the date of the aforesaid vesting of the interest of the Raja in the State of Bihar under the B.L.R. Act. After the date of the vesting of the interest of the Raja in the State of Bihar the appellant started paying directly to the State the said royalty at the rate of 24 paise per ton. The appellant also continued paying additional royalty at the rate of 17 paise per ton to the respondent in terms of the sub-lease dated October 12, 1928 but stopped doing so from July 1, 1958. The respondent thereupon brought a suit on July 10, 1961 being suit 1104 of 1961 on the original side of the High Court at Calcutta claiming a decree for (1) Rs. 25,181.27 as arrears of royalty from July 1, 1928 to August 7, 1959 - the date immediately proceeding the date on which the Controller enhanced the royalty payable to the State to 37 paise; (2) Rs. 32,223.64 as arrears of royalty at the rate of annas -/11/- (eleven) from August 8, 1959 to March 31, 1961; (3) Rs. 1444.00 on account of deficit payment for the overdue period in respect of royalty for the quarters ending June 30, 1957. September 30, 1957, December 31, 1957 and June 30, 1958. It also claimed interest on the aforesaid amounts at the rate of 12 per cent per annum. The respondent based his claim on the ground that notwithstanding the issue of the aforesaid notification under Section 3 of the B.L.R. Act, its interest as a lessee under the lease which continued to subsist did not vest in the State of Bihar and it became and still continued to be a lessee under that State from the date of the aforesaid notification under Section 3 of the B.L.R. Act.

15. The appellant contested the suit averring inter alia that while the position of Dutts in respect of the mines under the aforesaid blocks of land was that of the tenure holders under the Raja, its own position was that of the lessee in possession and that from November 14, 1951 - the date of vesting of the Sonepura estate in the State of Bihar - the proprietary right of the Raja in the aforesaid mine ceased to exist and the respondent became an intermediary in respect thereof directly under the State of Bihar from the said date and the appellant continued to be a lessee in possession under the respondent. The appellant denied that the interest of the respondent in the mine was that of the

lessee or that from the date of the aforesaid notification under Section 3 of B.L.R. Act, respondent became a lessee of the said mine directly under the State and averred that it continued to be the lessee in possession of the said mine under the respondent as before. The appellant further averred that in any event the respondent's right to receive additional royalty from the former in terms of the aforesaid sub-lease dated October 12, 1928 ceased to exist from January 1, 1956, when the interest of the latter as tenure holder in the Chunhatta Lime Stone Quarries came to vest in the State. The appellant further averred that due to ignorance of the publication of the notification dated January 1, 1956 and bona fide mistake arising therefrom, it continued paying additional royalty to the respondent in terms of the sub-lease dated October 12, 1928 for the period beginning from January 1, 1956, to the end of June, 1958, which the latter had no right to receive and was refundable to it with interest thereon at the rate of six per cent. The appellant alternatively pleaded that assuming without admitting that the interest of the responding in the Chunhatta quarries did not vest in the State of Bihar either by notification dated November 14, 1951, or under notification dated January 1, 1956, and that the respondent continued to be a lessee under the lease dated July 31, 1927, even then the appellant was, under the sub-lease dated October 12, 1928, liable to pay royalty only at the rate of annas -/15/- (fifteen) per 100 cubic feet as provided in the lease dated July 31, 1927, and an additional royalty of annas -/11/- (eleven) per 100 cubic feet aggregating Rs. 1/10/- per 100 cubic feet equal to 24 naya paise plus 17 naya paise per ton (calculating 100 cubic feet as equivalent to 4 tons) for the period commencing from August 1, 1942 to May 31, 1958; that the respondent being a holder of the mining lease within the meaning of Section 9 of the 1957 Act was liable to pay royalty at the rate of 37 naya paise per ton in respect of the minerals removed from the said quarries from June 1, 1958, and since payment to the tune of Rs. 61,684.40 on that account upto March 31, 1961 had been made by the appellant as an agent of the respondent to safeguard its position and enjoyment of the leasehold property, the former was entitled to be reimbursed to that extent. In conclusion, the appellant claimed to set off the aforesaid sum of Rs. 61,684.40 and subsequent payments of royalty against the royalty that might be payable to the respondent under the sub-lease dated October 12, 1928, in respect of the minerals removed from the leased quarries from June 1, 1958 upto March 31, 1961 and thereafter. The appellant, however, admitted that it had paid the additional royalty to the respondent as stipulated in the sub-lease dated October 12, 1928, upto June 30, 1958 only.

16. By his judgment dated July 23, 1963, Sankar Prosad Mitra, J. of the High Court of Calcutta to whom the suit had been assigned passed a decree in favour of the respondent to the extent of Rs. 47,944.10 as the principal sum, and Rs. 8887.90 on account of interest, holding inter alia that the respondent was not an intermediary or tenure holder in respect of the estate in suit under the B.L.R. Act and its interest did not vest in the State of Bihar as a result of the aforesaid notification dated November 6, 1951 or the notification dated January 1, 1956; that the holder of a mining lease as envisaged by the B.L.R. Act could be a lessee or a sub-lessee; that it was the lessee or the sub-lessee who removed the minerals from the mine that had to pay royalty at the rate specified in the Second Schedule to the 1957 Act and as it was the appellant and not the respondent that removed the minerals from the quarries during the relevant period, the provisions of Section 9 of the 1957 Act could not be invoked for realization of royalties from the latter; and that if the appellant had paid any sum in excess of the sum stipulated in the indenture of lease dated July 31, 1927, it did so entirely at its own choice and risk. The learned single Judge further held that Section 69 of the Contract Act had no application to the facts of the present case. The learned Judge, however, disallowed the claim of the respondent so far as the item of Rs. 1,144 was concerned. Aggrieved by this judgment and decree, the appellant preferred an appeal before a Division Bench of the High Court which provided abortive. While affirming the findings of the single Judge, the Division

Bench held that the interest of the respondent did not vest in the State Government at the material time and the appellant continued to be sub-lessee under the respondent bound by the terms of the sub-lease and that the liability to pay royalty to the State at 37 paise per ton from the date of coming into force of the 1957 Act fell on the appellant. Dissatisfied with the judgment and decree of the Division Bench of the High Court, the appellant has, as already stated come up in appeal to this Court.

17. Appearing in support of the appeal, Mr. Patel has advanced two contentions. He has in the first instance invited our attention to the definitions of 'intermediary', 'intermediary interest', 'lease', 'tenure' and 'tenure-holder' contained in clauses (ii), (iii), (i), (q) and (r) respectively of Section 2, as also Sections 3, 3A, 4 and 9 of the B.L.R. Act and stressed that as the respondent was merely a 'tenure-holder' and all his rights, title and interest as such extinguished along with the interest of the erstwhile proprietor of the suit land i.e. the Raja with the coming into force of notification 83 IR/ZAN (supra) on November 14, 1951, and it was the appellant who being a sub-lessee stepped in as a direct lessee of the mine in question under the State, the respondent was not entitled to claim with effect from November 14, 1951, the additional royalty stipulated in the sub-lease dated October 12, 1928. He has further urged that assuming that the respondent enjoyed the status of a head lessee even then, its right, title and interest as such having become extinct and vested absolutely in the State without the encumbrance of the lease at least from January 1, 1956 - the date of notification EVII-102/56-ILR (supra), it could not claim the said additional royalty after December 31, 1955. These contentions which appear to be based upon a misconception of the true legal position cannot be accepted. The respondent could not be said to be a tenure holder as contemplated by the aforesaid Section 2(r) of the B.L.R. Act as he had neither acquired from the Raja by virtue of the lease dated July 31, 1927 a right to hold the land mentioned therein for the purpose of collecting rent nor a right to hold the land for bringing it under cultivation by establishing tenants on it. The right of the respondent as head lessee of the mines and minerals also did not cease and the appellant did not acquire the status of the lessee as contended by Mr. Patel. The consequences of vesting of an estate or tenure in the State are set out in Section 4(a) of the B.L.R. Act. According to this provision, on the publication of the notification under sub-section (1) of Section 3 or sub-section (1) to (2) of Section 3A of the B.L.R. Act, the estate or tenure mentioned in the notification including the interests of the proprietor or the tenure holder comprised in such estate or tenure and his interest in all sub-soil including any right in mines and minerals inclusive of such right of a lessee of mines and minerals comprised in such estate or tenure vests absolutely in the State free from all encumbrances and such proprietary or tenure holder has to cease to have any interests in such estate or tenure, other than the interests expressly saved by or under the provisions of the Act. The last words of Section 4(a) of the B.L.R. Act viz. "other than the interests expressly saved by or under the provisions of the Act" are pregnant with meaning. They unequivocally show that these interests which are expressly saved by or under the provisions of the Act are not affected or impaired by the aforesaid notifications. Now according to Section 10 of the B.L.R. Act which itself is in the nature of a non-obstinate provisions overriding other provisions of the Act, every lease of mines and minerals comprised in the notified estate or tenure or any part thereof which may be subsisting immediately before the date of vesting has to be treated with effect from the date of 'vesting' as a lease from the State Government to the holder of the said subsisting lease for the residue of the term of that lease and such holder acquires the right to retain possession of the leasehold property for that period. In other words, in place of every contractual lease which might have been subsisting immediately before the date of vesting of the estate or tenure, a statutory lease on practically identical terms and conditions came into being. Thus the combined reading of Section 4(a) and Section 10 of the B.L.R. Act leaves no room for doubt that the interests of the head lessee were left

unaffected by the aforesaid notifications to the extent indicated above. This view receives support from a catena of decisions of this Court where this position has been fully recognised and affirmed. (See Bihar Mines Ltd. v. Union of India ((1967) 1 SCR 707 : AIR 1967 SC 887); Chhatu Ram Horil Ram Private Ltd. v. State of Bihar ((1968) 2 SCR 881 : AIR 1969 SC 177); M/s. Hindustan Steel Limited, Rourkela v. Smt. Kalyani Banerjee ((1973) 3 SCR 1 : (1973) 1 SCC 273) and State of Bihar v. Khas Karanpura Collieries Ltd. (C.A. Nos. 705-724 of 1971, decided on August 6, 1976) to which one of us was a party.)

18. The insertion of Section 10-A in the B.L.R. Act by the Bihar Amendment Ordinance 3 of 1964 which was subsequently replaced by the Bihar Land Reforms (Amendment) Act (Bihar Act 4 of 1965) also indicates that the law as it obtained prior to the aforesaid amendment was not intended to have the effect of divesting a lessee of his interests in a lease of mines or minerals comprised in the estate or tenure or part thereof which subsisted immediately before the vesting of a notified estate or tenure.

19. We must here deal with what has been tried to be impressed upon us by Mr. Patel in regard to this aspect of the matter by reading out to us a passage from Craies on Statute Law. The counsel has strongly urged that since it is not strictly permissible to interpret a statute by reference to what has been said in subsequent statutes, resort cannot be had to the provisions of Section 10A which was interdicted in the B.L.R. Act in 1964 while interpreting Section 10 of the Act with reference to the situation obtaining at the relevant time before the introduction of the said section. We also find ourselves unable to accept this contention and to disregard the well settled canon that sometimes light may be thrown upon the meaning of an Act by taking into consideration 'parliamentary expositions' as revealed by the later Act which amends the earlier one to clear up any doubt or ambiguity. This principle has to be followed where, as in the instant case, a particular construction of the earlier Act will render the later incorporated Act ineffectual or otiose or inept. (See *Krikness v. John Hudson & Co.* (1955 AC 696 (HL))) This view also receives support from the decision of this Court in *Yogendra Nath Naskar v. C. I. T., Calcutta* ((1969) 1 SCC 555) where approving the authoritative pronouncement in *Cape Brandy Syndicate v. I. R. C.* ((1921) 2 KB 403 : 90 LJKB 461 : 37 TLR 402) that the subsequent legislation may be looked at in order to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous, it was held that the language employed in Income Tax Act, 1961 may be relied on as a parliamentary exposition of the earlier Act (I.T. Act, 1922) even on the assumption that the language employed in Section 3 of the earlier Act is ambiguous.

20. It follows from the above discussion that the estate comprised in the head lease in the instant case which was assigned to the respondent nationally stood leased by the State from the date of vesting to the holder of the subsisting lease for the remainder of the terms of the lease and the respondent became entitled to retain possession of the leasehold property. The first contention of Mr. Patel is, therefore, repelled.

21. Mr. Patel has next contended that as the royalty payable to the lessor was enhanced under the provisions of the 1957 Act read with the Mining Leases (Modification of Terms) Rules, 1956, which continued in force by virtue of Section 29 of the 1957 Act and the enhanced royalty was payable by the respondent who was the holder of the mining lease as envisaged by Section 9 of the 1957 Act, the appellant was entitled to be reimbursed to the extent of Rs. 61,684.40 which was paid by him as an agent of the respondent. This contention has to be examined with reference to two periods viz. (i) from July 1, 1958 to August 7, 1959, and (ii) August 8, 1959 to March 31, 1961. It is admitted by the appellant that during the period intervening between the date when the 1957 Act came into force

and August 8, 1959 when the Controller passed the aforesaid order enhancing the royalty payable to the State, it continued to pay the said royalty at the old rate of 24 paise per ton and was never required to pay the same at the enhanced rate of 37 paise. No question of reimbursement for this period can, therefore, arise.

22. The position, however, with regard to the second period from August 8, 1959 to March 31, 1961, is not free from difficulty and has to be examined with reference to the provisions of Section 9 of the 1957 Act and of the Mining Leases (Modification of Terms) Rules, 1956 as also of the provisions of Section 9 of the B.L.R. Act. Whereas according to Counsel for the appellant, it is the respondent which being the holder of lease as contemplated by Section 9 of the 1957 Act that has to bear the burden of royalty payable to the State in accordance with the requirements of Second Scheduler to the 1957 Act, according to Counsel for the respondent, as the expression "mining lease" used in Section 9 of the 1957 Act has been defined in Section 3(c) of the Act as including a 'sub-lease' and the mineral has actually been removed by the appellant, the liability for payment of enhanced royalty squarely falls on the appellant. There is yet another aspect of the matter which may reasonably be urged in accordance with the ratio of the decisions of this Court in Bihar Mines Ltd. v. Union of India (supra) and M/s. Hindustan Steel Limited, Rourkela v. Smt. Kalyani Banerjee (supra) where it was unequivocally laid down that a statutory lease held by a head lessee from the state Government being a new lease granted after October 25, 1949, and not being an existing lease, it could not be modified and when the head lessee not being an existing mining lease could not be modified, the sub-lease could also not be modified as it too would be deemed to be a new lease granted by the new lessee from the State Government. In view, however, of the fact that neither the Union of India nor the Controller of Mining Leases is a party to the case before us and the aforesaid order dated August 8, 1958 appears to have been passed by the Controller of Mining Leases with the agreement of the parties hereto, we do not consider ourselves called upon to resolve the conflicting contentions advanced before us by counsel for the parties. For the purpose of this appeal, it would suffice to observe that in view of Exhibit 'L' (reproduced at pages 280 to 282 of the paper book), the burden of payment of the royalty for the second period also is to be borne by the appellant and the question of his being reimbursed by the respondent cannot be countenanced. The second contention raised by Mr. Patel also, therefore, fails.

23. In the result the appeal fails and is dismissed. In the peculiar circumstances of the case, the parties are left to pay and bear their own costs of the appeal.

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