

Kali Prasad Agarwalla (Dead) By Lrs. and Others

Vs

M/S Bharat Coking Coal Limited and Others

Civil Appeal No. 2647 of 1980

(G. L. Oza, K. Jagannatha Shetty JJ)

31.03.1989

JUDGMENT

JAGANNATHA SHETTY, J. –

1. This appeal by certificate under Article 133(1) of the Constitution is from a decision of the Patna High Court which reversed the decree in the suit filed by the appellants for declaration of title and confirmation of possession.

2. In the court of the Subordinate Judge, the First Court at Dhanbad, the plaintiffs/appellants instituted a suit in respect of Schedule B of the plaint for a declaration of their homestead right thereto and for confirmation of possession or in the alternative recovery of possession. The suit property consists of 30 bighas, 18 kattar and 11 chhataks being part of plot Nos. 59 and 70 in village Dhansar. The plaintiffs' claim was based on a registered indenture of lease dated December 9, 1949 by which it is said that the possession in the zamindari right of Kali Prasad was settled to Ruplal Aggarwal, father of plaintiff 1 and grandfather of plaintiffs 2 and 3. The plaintiffs' claim that they have become the owners of the leasehold land and are in possession of the same by exercising diverse acts of possession, mutuating their name and by payments of stipulated rents to the State of Bihar, who recognised the said lease.

3. The defendant is a government company called Messrs Bharat Coking Coal Limited (the company). The Company resisted the suit on three main grounds : firstly, that the disputed land formed part of North Bhuggatdih Colliery which had vested in the Central Government and thereafter in the company under the provisions of the Coal Mines (Nationalisation) Act, 1973, secondly, that the interest claimed by the plaintiffs automatically stood extinguished with the vesting of the estate of the plaintiffs' lessor, by reason of the vesting notification issued under Section 3 of the Bihar Land Reforms Act, 1950. Lastly, that actual lease of the land was taken much earlier expressly for the purposes of the mines and that the instrument of 1949 is contaminated with flaw and obtained with a view to certifying the vesting of the estates in the State of Bihar and even that on a misapprehension that the so-called homestead land would not vest.

4. The trial court negatived all the defences and decreed the suit.

5. Upon appeal by the Company, the Patna High Court reversed the decree of the trial court and dismissed the suit. There are two main findings recorded by the High Court to allow the appeal. As to the scope and effect of the provisions of the Bihar Land Reforms Act, 1950 in respect of the suit property, the High Court held :

For the reasons indicated above, I am of the view that a lease granted to the plaintiffs in the instant case was an encumbrance and it was annihilated with the issuance of the notification under Section 3 of the Act. The submission urged on behalf of the appellants, therefore, in his behalf must be accepted. The lease of the plaintiffs having come to an end consequent upon the issuance of notification under Section 3 of the Act, the plaintiffs have no title to be declared and the decree of the trial court is liable to be set aside.

6. As to the nature of the suit property and the scope and effect of the Coal Mines (Nationalisation) Act, 1973, the High Court on appraisal of the oral and documentary evidence led by both the parties said :

I would, therefore, prefer their positive evidence (referring to the defendants/respondents evidence) than to the negative evidence adduced on behalf of the plaintiffs. It will, however, be seen that the suit lands are adjacent to a coal mine, namely, North Bhuggatdih Colliery and were being used for the purpose of the said mine, namely, staking of coal and effecting local sales thereof. The conclusion is, therefore, inescapable that the suit lands are more within the meaning of the Nationalisation Act. What vests under the Nationalisation Act is the mine and not merely the interest of the owner of the mine.

7. Having regard to these findings, the High Court did not find it necessary to examine whether the instrument of 1949 was a genuine transaction.

8. In this appeal, on the submissions of counsel for both sides, two questions arise for our consideration : (i) whether the suit lands had vested, free from encumbrance in the State consequent upon the issuance of notification under Section 3 of the Bihar Land Reforms Act; and (ii) whether the suit land is "mines" within the meaning of the Coal Mines (Nationalisation) Act, 1973 ?

9. In our opinion, it is unnecessary to consider the first question and indeed it is not proper also to consider the question in the absence of the State which is a necessary party for adjudication of that dispute. The State of Bihar is not impleaded as a party to the suit and we, therefore, refrain from expressing any opinion on the first question. On the second question, the relevant provisions of the Coal Mines (Nationalisation) Act, 1973 (the Act) may now be noted :

Section 2(h) defines "mines" to mean any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes -

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(iv) all open cast workings;

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(vi) all lands, buildings, works, adits, levels, planes, machinery and equipments, instruments, stores, vehicles, railways, tramways and siding on, or adjacent to, a mine and used for the purpose of the mine;

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(x) all lands, buildings and equipments belonging to the owners of the mine, and in, adjacent to or situated on the surface of, the mine where the washing of coal obtained from the mine or manufacture, therefrom, of coke is carried on.

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10. Section 3, so far it is relevant, reads :

(1) On the appointed day, the right, title and interest of the owners in relation to the coal mines specified in the Schedule shall stand transferred to, and shall vest absolutely in, the Central Government free from all incumbrances.....

11. Section 5(1) reads as under :

(1) Notwithstanding anything contained in Sections 3 and 4, the Central Government may, if it is satisfied that a government company is willing to comply, or has complied, with such terms and conditions as that government may think fit to impose, direct, by an order in writing, that the right, title and interest of an owner in relation to a coal mine referred to in Section 3, shall, instead of continuing to vest in the Central Government, vest in the government company either on the date of publication of the direction or on such earlier or later date (not being a date earlier than the appointed day), as may be specified in the direction.

12. Section 6(1) provides as under :

(1) All property which vests in the Central Government or in a government company under this Chapter shall, by force of such vesting be freed and discharged from any trust, obligation, mortgage, charge, lien and all other incumbrances affecting it and any attachment, injunction or decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn.

13. Sections 8 to 10 in Chapter III provide for payment of compensation to owners of coal mines. Provisions under Chapter IV of the Act deal with claims to be made for compensation and for disbursing the amounts payable to the owners of coal mines by Commissioner of Payments.

14. On behalf of the plaintiffs, 11 witnesses were examined including plaintiff 1 himself. Most of the witnesses have not made any relevant statement on the question of location or user of the suit land. However, Kanhaiya Lal Agarwal, witness 6 for the plaintiff stated, "The land is full of collieries on all the four sides". Likewise Ram Briksha Viswakarma, witness 8 for the plaintiffs has stated that the suit land is a fallow land and no crop is grown on it and there is nothing except the road in between the suit land and the North Bhuggatdih Colliery. Witness 9 of the plaintiffs B. K. Mukherjee, who surveyed the locality and submitted a report stated :

At the time of my inspection, the defendants were removing the over-burdened surface and then taking out coal and this is called open cast working..... I do not see the quarry by southern side of the leased coal land but do not remember whose quarry was there. There were coal all over the land but it was after the burden of earth was removed.... The coal was being cut at the depth of 25' from the surface. Adjoining the quarry, the land was not for homestead purposes.

15. The witnesses for the defendant company have specifically stated that the land in dispute constitutes the upper layer of the coal lying beneath and above the surface. The working of the mines is by open cast working system. When the mining operations are carried on in the other parts of the seam, the land is being used for the various purposes connected with the mining operations.

16. In the light of this evidence, the location of the suit land and the uses to which it is put to are beyond doubt. The land is being used for carrying on the mining operations and it is adjacent to a mine. It is used for the purposes of the mine for carrying on the mining operations in respect of the part of the seam lying immediately below the surface. Apparently, there cannot be any working mine without the surface being included in that concept. If the surface does not form part of the concept of mine, it is not possible to have any excavation. Section 2(h) (iv) includes open cast working within the definition of "mine".

17. Secondly, the suit land is also adjacent to a coal mine, namely, North Bhuggatdih Colliery and is being used for the purposes of the said mine, namely, stacking of the coal and effecting local sale thereof. It is, therefore, a mine as defined under Section 2(h) (vi) of the Act.

18. Under Section 3 of the Act, the right, title and interest of the owners in relation to the coal mines stand transferred to and shall vest absolutely in the Central Government free from encumbrances. For the purpose of acquisition and vesting, it is immaterial whether the mine belongs to the State or to the plaintiffs. In either case, the Act extinguishes the title. A Constitution Bench of this Court in State of West Bengal v. Union of India has held that under entry 42 of List III of the Seventh Schedule to the Constitution, Parliament is competent to make a law for acquisition of property owned by the State.

19. It was, however, urged for the appellants that there is no proper pleading or issue for determination of the aforesaid question and the evidence let in should not be looked into. It is too late to raise this contention. The parties went to trial knowing fully well what they were required to prove. They have adduced evidence of their choice in support of the respective claims. That evidence has been considered by both courts below. They cannot now turn round and say that the evidence should not be looked into. This is a well accepted principle.

20. In Kunju Kesavan v. M. M. Philip, this Court has stated (as summarised in the headnote at p. 637) :

The parties went to trial, fully understanding the central fact whether the succession as laid down in the Ezhava Act applied to Bhagavathi Valli or not. The absence of an issue, therefore, did not lead to a material sufficient of vitiate the decision. The plea was hardly needed in view of the fact that the plaintiff stated in his replication that the "suit property was obtained as makkathayam property, by Bhagatvathi Valli under the Ezhava Act". The subject of exemption from Part IV of the Ezhava Act, was properly raised in the trial court and was rightly considered by the High Court.

21. On the facts and circumstances of the case we cannot, therefore, accept the contention urged for the appellant in this regard.

22. In the result and for the reason stated above, the appeal fails and is dismissed. In the circumstances, however, we make no order as to costs.

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