

Western Coalfields Limited

Vs

Municipal Council, Birsinghpur Pali and Another

Civil Appeal No. 6734-A of 1983

(S. P. Bharucha, N. Santosh Hedge JJ)

12.01.1999

ORDER

1. The appeal relates to the Birsinghpur Colliery. It was nationalised by reason of the Coal Mines (Nationalisation) Act, 1973 and by reason of a direction issued by the Central Government under Section 5 thereof, it vested in the appellant. The first respondent sought to levy property tax on the Colliery. The levy was challenged by the appellant by way of a writ petition before the High Court of Madhya Pradesh. The writ petition was summarily dismissed, relying upon the judgment of this Court in the case of the appellant itself Western Coalfields Ltd. v. Special Area Development Authority ((1982) 1 SCC 125). This appeal against the order of summary dismissal is filed by special leave.

2. The first respondent sought to tax the property of the Colliery in exercise of the power contained in Section 127-A of the M.P. Municipalities Act, 1961. Section 127-A contains sub-section (2) which states that property tax shall not be leviable on "buildings and lands owned by or vesting in (i) the Union Government".

3. Sections 3, 5 and 11 of the Coal Mines (Nationalisation) Act, 1973, so far as they are relevant to this appeal, read thus :

"3. Acquisition of rights of owners in respect of coal mines. - (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 encumbrances.

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5. Power of Central Government to direct vesting of rights in a government company. - (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.

(2) Where the right, title and interest of an owner in relation to a coal mine vest in a government company under sub-section (1), the government company shall, on and

from the date of such vesting, he deemed to have become the lessee in relation to such coal mine as if a mining lease in relation to the coal mine had been granted to the government company and the period of such lease shall be the entire period for which such lease could have been granted under the Mineral Concession Rules; and all the right and liabilities of the Central Government in relation to such coal mine shall, on and from the date of such vesting, be deemed to have become the right and liabilities, respectively, of the government company.

(3) The provisions of sub-section (2) of Section 4 shall apply to a lease which vests in a government company as they apply to a lease vested in the Central Government and references therein to the 'Central Government' shall be construed as reference to the government company.

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11. Management, etc., of coal mines. - (1) The general superintendence, direction, control and management of the affairs and business of a coal mine, the right, title and interest of an owner in relation to which have vested in the Central Government under Section 3, shall, -

(a) in the case of a coal mine in relation to which a direction has been made by the Central Government under sub-section (1) of Section 5, vest in the government company specified in such direction, or

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4. A nine-Judge Bench of this Court dealt with the right of a State to tax Union property in the case of *New Delhi Municipal Council v. State of Punjab* ((1997) 7 SCC 339). It held (para 179) thus : (SCC p. 429)

"(b) the levy of property taxes under the aforesaid enactments on lands and/or buildings belonging to the State Governments is invalid and incompetent by virtue of the mandate contained in clause (1) of Article 289. However, if any land or building is used or occupied for the purposes of any trade or business - trade or business as explained in the body of this judgment - carded on by or on behalf of the State Government, such land or building shall be subject to levy of property taxes levied by the said enactments. In other words, State property exempted under clause (1) means such property as is used for the purpose of the Government and not for the purposes of trade or business;"

5. Mr. Raval, learned Additional Solicitor General appearing for the appellant drew our attention also to para 147 of the judgment where it was held that there is no way in which a State Legislature can levy tax upon the property of the Union. The said paragraph goes on to discuss when the Union can levy tax in respect of property owned by a State. Mr. Raval also drew our attention to the judgment of this Court in *Air India Statutory Corpn. v. United Labour Union* ((1997) 9 SCC 377 : 1997 SCC (L & S) 1344 : JT (1996) 11 SC 109) where, in the context of deciding what was an instrumentality of the State for the purposes of Article 12, it was said : (SCC p. 409, para 26)

"(7) Though the instrumentality, agency or person conducts commercial activities according to business principles and are separately accountable under their appropriate bye-laws or memorandum of association, they become the arm of the

Government."

Mr. Raval's contention is that the property in the Colliery at Birsinghpur vests in the appellant-Company on behalf of the Union and, therefore, by reason of Section 127-A(2) of the M.P. Municipalities Act, may not be made subject to the levy of property tax by the first respondent.

6. The answer, in our view, is to be found in the plain language of Sections 3, 5 and 11 of the Coal Mines (Nationalisation) Act, 1973 which we have reproduced above. Under Section 3, from the appointed date the right, title and interest of the erstwhile owner of the Birsinghpur Colliery in its property stood transferred to and vested absolutely in the Union. Section 5 empowered the Union, if it was satisfied that a government company was willing to comply with or had complied with such terms and conditions as the Union might think it fit to impose, to direct 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".

Therefore, the right, title and interest of the erstwhile owner of the Birsinghpur Colliery in its property, which vested in the Union on the appointed day, instead of continuing to vest in the Union, was, by reason to the direction issued by the Union under Section 5, vested in the appellant. Section 11 dealt with the management of the coal mine whereas Section 5 dealt with the right, title and interest in the property of the coal mine. Under Section 5, the general superintendence, direction, control and management of the affairs and the business of the Colliery, which by reason of Section 3 had vested in the Union, now "vest in the government company" in whose favour the direction under Section 5 had been made. In other words, by reason of Sections 5 and 11, the right, title and interest of the erstwhile owner of the Birsinghpur Colliery in the property thereof as also in the superintendence, control, management and business thereof which has vested in the Union, now vested in the appellant consequent upon the direction in that behalf issued by the Union under Section 5. The appellant as a company, is a legal entity. It holds its property in its own right and for itself. It is, therefore, that we cannot accept the submission of Mr. Raval that the property of the Birsinghpur Colliery vests in the appellant-Company or behalf of the Union and that for that reason, cannot be subjected to the levy of property tax under Section 127-A of the M.P. Municipalities Act, 1961.

7. The reference to the judgment in the case of Air India Corpn. ((1997) 9 SCC 377 : 1997 SCC (L & S) 1344 : JT (1996) 11 SC 109) is inapposite in the present context, for the observation therein that was relied upon was made in the context of determining what is an instrumentality to the State for the purposes of Article 12.

8. We should now add that the issue that we are here concerned with is substantially covered by the judgment of this Court in Municipal Commr. of Dum Dum Municipality v. Indian Tourism Development Corpn. ((1995) 5 SCC 251) and agreeing with that judgment, we see no reason to accept Mr. Raval's submission that it needs to be reconsidered.

9. The civil appeal is, therefore, dismissed with costs.

SLP No. 5706 of 1997

10. By reason of the order that we have passed in CA No. 6734-A of 1983, the SLP is dismissed, the facts being substantially similar. No order as to costs.

TC No. 359 of 1983

11. By reason of the order that we have passed in CA No. 6734-A of 1983, the transferred case is dismissed, the facts being substantially similar. No order as to costs.