SUPREME COURT OF INDIA

Bharat Coking Coal Ltd.

Vs.

Karam Chand Thapar & Bros. Pvt. Ltd.

(U.C.Banerjee and A Kumar JJ.)

13.11.2002

JUDGMENT

U.C.Banerjee, J.

1. Leave granted.

2. It is for the purposes of protecting, conserving and promoting scientific development of the resources of coking coal being a need to meet the growing requirements of iron and steel industry and for that matter connected therewith or incidental thereto, the right, title and interest of the owners of such coke oven plants have vested in the Central government w.e.f. 1st May, 1972 and by an order dated 17th August, 1972, the Central Government have directed that the right, title and interest thereto shall stand transferred to Bharat Coking Coal Ltd., Dhanbad.

3. The word 'vest' in common English acceptation mean and imply conferment of ownership of properties upon a person and in the similar vein it gives immediate and fixed right of present and future enjoyment. Significantly, however, the expression 'vest' is a word of variable import since it has no fixed connotation and the same has to be understood in different contexts under different set of circumstances. The decision of this Court in *The Fruit & Vegetable Merchants Union v. The Delhi Improvement Trust*[1] lends concurrence to the same. It is in this context a later decision of this Court (*Dr. M. Ismail Faruqui, etc. v. Union of India & Ors.*[2]) ought also to be noticed, wherein this Court stated :

> "The vesting of the said disputed area in the Central Government by virtue of Section 3 of the Act is limited, as a statutory receiver, with the duty for its management and administration according to Section 7 requiring maintenance of status quo herein under sub- section (2) of Section 7 of the Act. The duty of the Central Government as the statutory receiver is to hand over the disputed area in accordance with Section 6 of the Act, in terms of the adjudication made in the suits for implementation of the final decision therein. This is the purpose for which the disputed area has been so acquired.
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> The power of the courts in making further interim orders in the suits is limited to, and circumscribed by, the area outside the ambit of Section 7 of the Act.

The vesting of the adjacent area, other than the disputed area, acquired by the Act in the Central Government by virtue of Section 3 of the Act is absolute with the power of management and administration thereof in accordance with sub-section (1) of Section 7 of the Act, till its further vesting in any authority or other body or trustees of any trust in accordance with Section 6 of the Act. The further vesting of the adjacent area, other than the disputed area, in accordance with Section 6 of the Act has to be made at the time and in the manner indicated, in view of the purpose of its acquisition.

The meaning of the word "vest" in Section 3 and Section 6 of the Act has to be so understood in the different contexts.

Section 8 of the Act is meant for payment of compensation to owners of the property vesting absolutely in the Central Government, the title to which is not in dispute being in excess of the disputed area which alone is the subject matter of the revived suits. It does not apply to the disputed area, title to which has to be adjudicated in the suits and in respect of which the Central Government is merely the statutory receiver as indicated, with the duty to restore it to the owner in terms of the adjudication made in the suits."

Adverting to the contextual facts be it noted that vide notices dated 19.8.1972 and 30.8.1972, the Appellant herein directed the Respondents to make over possession of the properties mentioned in the enclosure to the Sub-Area Manager of the Colliery by end August 1972 under intimation to the Head Office.

Significantly, by letter dated 8th September, 1972 from the Oriental Coal Company Ltd. being a party-respondent herein, it has been specifically made clear that as regards the lands and buildings referred to in the enclosure to the notice, question of vesting of the same would not arise since the said properties belong to M/s Karam Chand Thapar & Bros. P. Ltd. and the same were being used for purposes other than coking coal mines.

It is on this factual backdrop, the Respondent No.1 moved the Calcutta High Court under Article 226 of the Constitution for issuance of a writ of mandamus for the quashing of the notices mentioned above in so far as they related to the properties of Respondent No.1. Subsequent to the initiation of the Writ Petition, the Estate Officer of Jharia initiated proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 against the Oriental Coal Company Ltd. And individual occupants of buildings. A written objection by way of show cause before the Estate Officer praying for staying of further proceedings considering the pendency of the aforesaid Writ Petition, was filed but the Estate Officer, however, rejected the said prayer for stay and fixed the date of hearing some time thereafter. It is on the wake of this factual backdrop, the Writ Petition was amended by the Respondent No.1 with a further prayer for quashing of the aforesaid proceedings under the Act of 1971. The

learned Single Judge of the High Court recorded that since the Secretaries of the Company were the owners of the properties in question and not the coal company and since the former did not possess any coking coal mine, the properties belonging to them cannot be taken possession of. The learned Single Judge in fine observed :

> ".. But the said term should be read, viewed and considered in the perspective of the provisions of the said 1972 Act, which as mentioned above, deal with coking coal mines or coke oven plants and is further subject to the extent of properties or components as mentioned in Section 3(j) and its sub-clause. For a proper acquisition of the properties in question, I am thus of the view, that the ownership of the coking coal mine or coke oven plant, would have to be established, before taking over possession and such fact has not been duly satisfied or established in this case as yet and that too in view of the specific exceptions as taken."

4. Incidentally, it has been the specific observation of the learned Single Judge that the notices have been issued without any application of mind and the entire action was initiated in a manner totally mechanical. Aggrieved by the order as above, the matter was placed before a Bench of the Calcutta High Court in appeal and the appellate Court as well negated the contention of the appellant herein and hence the appeal before this Court upon the grant of leave under Article 136 of the Constitution of India. The short question which falls for consideration presently before this Court is as to whether the buildings and structures said to be belonging to the appellant can be termed to be a mine within the meaning of Section 3(j)(vi) of the *Coking Coal Mines (Nationalisation) Act, 1972*. The said statutory provision reads as below :

> "3.(j)(vi) - all lands, buildings, works, adits, levels, plants, machinery and equipments, vehicles, railways, tramways and sidings belonging to or in, or about a mine."

5. It is on this score, the High Court in appeal stated as below : "Therefore, one has to construe Section 3(j)(vi) of the Coking Coal Mines (Nationalisation) Act, 1972 as providing for "all lands, buildings, works, adits, levels and sidings belonging to or in a mine or in connection with a mine or relating to a mine. Some kind of nexus has to be there before any building or any land can be said to be a part of the mine."

6. It is this concept of nexus which is said to be a wrong appreciation of the statutory provisions by Mr. Mukul Rohtagi, learned ASG, appearing in support of the appeal and strong reliance has been placed in support thereof to a decision of this Court in Madan Lal (*Bharat Coking Coal Ltd. v. Madan Lal Agrawal*[3]).

7. Incidentally, whereas presently we are concerned with the Nationalisation Act of 1972, Madan Lal (supra) was dealing with the Act of 1973 though, however, the provisions are in pari materia to each other. It is on this backdrop, this Court observed :

"26. The two key words for the purpose of interpreting Section 3 are 'mine' and 'owners'. If we look at the definition of a 'mine' under Section 2(h), the definition is designed to cover :

(1) all properties "belonging to the mine" whatever be the nature of these properties, as also specified properties "belonging to the owner of the mine". Thus, for example, Section 2(h)(xii) is an omnibus clause which covers all fixed assets, moveable and immovable, belonging to the owner of a mine wherever situate and current assets belonging to a mine whether in its premises or outside. Section 2(h)(viii) covers all coal belonging to the owner of the mine. Section 2(h)(x) covers all lands, buildings and equipment belonging to the owners of a mine, and in, adjacent to or situated on the surface of the mine, where washing of coal or manufacture or coke is carried on.

(2) In addition, the definition of 'mine' also covers all those assets which are required for a proper functioning of the mine irrespective of whether these assets 'belong' to a mine or not. Thus, for example, Section 2(h)(vi) covers all lands, buildings, machinery and equipment, instruments, stores, vehicles, railways, tramways etc. adjacent to a mine and used for the purposes of the mine. Therefore, all these assets if they are lying adjacent to a mine and are required for the proper functioning of the mine would be acquired irrespective of whether they belong to the "owner of a mine" or not. Similarly under Section 2(h)(ix) all power stations in a mine operated primarily for supplying electricity for the purposes of working the mine or a number of mines under the same management will be acquired irrespective of whether the power stations belonged to the mine or owner of the mine, or not. Sub-clause (xi) of Section 2(h) provides that all other [other than those in sub- clause (x)] lands and buildings wherever situated, if solely used for the location of the management, sale or liaison offices or for the residence of officers and staff of the mine are also acquired. Unlike sub-clause (x), sub-clause (xi) does not contain the words "belonging to the owners of the mine". Therefore, the definition clause of 'mine' covers at least two different kinds of property : (i) properties which belong to the mine and (ii) properties which are used by the mine for a proper functioning of the mine. The first category of properties would be properties which are of the ownership of the mining company. The second category of properties need not necessarily be of the ownership of the mining company. These could also be properties which are leased by the mining company or in possession of the mining company and used by it.

27. That is why under Sections 2(n) and 2(o) read together, the term 'owner' would carry a wider meaning assigned to that term under the Mines Act of 1952 which would cover, depending on the context, even the rights of a lessee or occupier of the mine or any part thereof. Thus the entire interest in the properties which are covered under the definition of a mine is to be acquired so that the mines can be reorganised and run efficiently." (Emphasis supplied)

8. In the same vein, a Division Bench of the Calcutta High Court in *Valley Refractories Pvt. Ltd. & Anr. v. K.S. Grewal & Ors.*[4] : (wherein one of us was a party : U.C. Banerjee, J), the Calcutta High Court stated :

> "6. It is a golden rule of construction that the legislature uses the words and expressions knowingly and upon proper appreciation of its connotation. In that view of the matter the expressions "used for the purpose of the mine" cannot but only mean user simplicitor. Substantial user cannot be imported in clause (vi) as is apparent in clause (vii). To contend otherwise or to hold otherwise would be in our view a violent injustice to the legislative intent and contrary to well settled principles of interpretation and construction of statutory provisions.
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> 7. The other aspect of the matter is in regard to the ownership of the weighbridge. Mr. Mitter contended that the owners of the Mehra Collieries had no right, title or interest in respect of the weighbridge and the same did not vest in the Central Government under the Nationalisation Act since the same did not belong to any coal mine nor being owned by the owners of the coal mine. Our attention was drawn to the Schedule to the Act of 1973, in particular serial no.250, which provides that the Mehra Collieries at all material times was being owned by one Raghu Nath Agarwal but the weighbridge on the other hand was being owned by Valley Refractory, a private limited company having no connection with the colliery in question."
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> Incidentally, Valley Refractories (supra) also dealt with the provisions of the Act of 1973 and not that of 1972. Significantly, however, both the decisions above named being relied upon by the appellant introduce the doctrine of user. In paragraph 29 of the judgment in Madan Lal (supra) the situation stands clarified as ". The definition itself takes care of this aspect by stipulating wherever necessary that such properties must be used for the purpose of the mine, whether the purpose is specific or general" and in paragraph 19 of the Valley Refractories (supra) the High Court came to a definite conclusion as regards the user of the weighbridge for the colliery and as such the weighbridge stated to be within ambit of the Act of 1973 and the right, title and interest thereof thus stand vested on to the Central government by virtue of the provisions of Section 3 of the Act of 1973.
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> It is this concept of user which stands accepted by the High Court though expressed in slightly different way as "some kind of nexus has to be there".

9. The entire gamut of submissions of the parties seem to be restricted on the issue which cannot but be ascribed to be factual rather than a legal issue. We shall deal with the effect of the same slightly later in this judgment, especially having regard to the language of Article 136 of the Constitution, but presently assuming the state of events as it is, let us analyse the factual events with some detail : Notices were sent recording therein the vesting of property. The first available opportunity is a reply to the notice in which the Respondents herein stated as below : "As regards the lands and buildings referred to in the enclosure to the purported notice, we have to point out that the said properties belong to Messrs Karam Chand Thapar

& Bros. Pvt. Ltd. and the same are being used for purposes other than Coking Coal Mines. In the circumstances no question can arise either on the ground of alleged vesting or at all. We dispute that on the alleged application of Section 3(j) of the said Act, the ownership of the said property or for that matter any vehicles in our possession has vested in the Bharat Coking Coal Ltd. and we dispute the said allegation."

10. The writ petition moved against the issuance of such a notice reiterating the aforesaid that the properties were being used for purposes other than the coking coal mines and belong to M/s Karam Chand Thapar & Bros. Pvt. Ltd. In the counter-affidavit, however, filed before the High Court surprisingly there is no denial or a positive case made out as regards the doctrine of user. It is on this score Mr. Rohtagi in his usual fairness submitted that neither the notice nor the counter-affidavit relate to anything but the statutory language without any factual support and if we may say so, no exception can be taken to that. The counter as also the notices stand delightfully vague as regards the factual support. The letter of objection to the notice spoken of earlier categorically recorded as follows :

> "That your Petitioner submits that the properties in question comprise R.S. Plot No.2808, 2887, 2833, 2834 and 5826 of Village Bagenia (Barkar), P.S. Kulti which correspond to C.S. Plot Nos, 2096, 2112, 2110, 2121 and 2144 of the same will formerly belong to Maharaj Kumar Somendra Chandra Nandi of Cossimbazar Estate and your Petitioner by a Registered Indenture of Lease dated 24th March, 1955, took lease of the aforesaid properties for a period of 999 years.
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> That R.S. Plot Nos.2184 and 2.85 of mouza Begonia (Barakar), P.S. Kulti corresponding to C.S. Plot Nos.1567 and 1568 formerly belonged to Shri Nrishingha and others of Barakar and your Petitioner by Indenture of Lease dated 9th July, 1948 took lease of the said plots for a period of 999 years that the said leasehold properties never comprised any coal mine or part thereof.
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> That after having acquired the aforesaid plots by virtue of herein before indentures of leases your Petitioner constructed buildings, bungalows, servants quarters, access roads to the said building as well as compound walls for the purpose of carrying on different business which had nothing to do with coking coal mines.
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> That your Petitioner at the relevant time when the aforesaid building, quarters, etc. were constructed were in addition to various other business also acting as Managing Agents and/or Secretaries Treasurers of several collieries whose business were quite distinct and separate from that of coking coal mines."

11. Reliance was placed as a matter of fact not on the pleadings of the parties in support of the appeal but on the submissions as recorded in the judgment of the learned Single Judge which, however, stand merged with the judgment of the Appellate Court. In our view, the effort though strenuous and apparently very attractive at first, but on a closer scrutiny the same loses its efficacy since submissions in a court of law that by itself cannot form the basis of the issuance of the notices, spoken of earlier. It is trite that there must be some co-relation

with the activity of a coal mine the user must be there for the purposes of the coal mine, be it a weighbridge, be it a Director's bungalow or be it even a Union's office, but it must relate to the affairs of the coal mine concerned and not de hors the same. The nexus concept introduced by the High Court cannot in our view be taken exception to since there is no factual justification in support of the issuance of the notice on the wake of the reply to the show-cause notice by the Respondent No1 herein. In any event the user being the requirement of the statute and since the contextual facts did not have the factual support to prove the same, question of vesting within the meaning of the Act of 1972 would not arise. Adverting to the other aspect of the matter, to wit, that the appeal involves more of a factual issue than a legal issue and as such intervention under Article 136 is not warranted - be it noted that intervention under Article 136 can be had when the judgment is tainted with serious legal infirmities or is founded on a legal construction which cannot but be attributed to be otherwise wrong. The jurisdiction under Article 136 stands out to be extremely wide but that does not, however, warrant intervention having concurrent set of facts and an appeal therefrom on the factual issue. The Article has been engrafted by the founding-fathers of the Constitution for the purposes of avoiding mischief of injustice on the wrong assumption of law. The justice delivery system of the country prompts this Court to interfere under Article 136 of the Constitution when the need of the society stands established and the judgment, if left outstanding, would not only create prejudice but would have an otherwise adverse effect on to the society it is this solemn objective of administration of justice with which the Constitution-makers thought it prudent to confer such a power on to the Apex Court of the country. It is the final arbiter but only when the dispute needs to be settled by the Apex Court so as to avoid injustice and infraction of law. In the contextual facts we do not find such an infraction. By reason whereof the appeal, in any event, cannot be sustained. There is no merit even otherwise. As such this appeal fails and is dismissed.

[1]*AIR 1957 SC 344*
[2]*AIR 1995 SC 604*
[3]*1997 (1) SCC 177*
[4]*1990 CWN 615*