

SUPREME COURT OF INDIA

State of Jharkhand

Vs.

Misrilall Jain & Sons

C.A.Nos.3226-3271 of 2010

(P.Sathasivam and R.M.Lodha JJ.)

13.04.2010

JUDGEMENT

R.M.Lodha, J.

1. Leave granted.

2. In this group of 52 appeals by special leave, 46 are directed against the common judgment dated May 7, 2007 passed by the High of Jharkhand disposing of 46 writ petitions.

“The remaining 6 arise from separate judgments but following the judgment dated May 7, 2007. These appeals involve common issues and, accordingly, were heard together and are being disposed of by this common order.”

3. The appellants in these appeals are State of Jharkhand and their officers (for short, ‘State Government’).

“The respondents are major mineral lease holders and minor mineral lease holders (for short, ‘lessees’).”

4. On June 17, 2005, the State Government through Department of Mines and Geology issued a Resolution regarding collection of surface rent on the area of mining leases at par with the land under commercial use whereby and whereunder the following decisions were taken:

“(a) The area held for minor and major mineral mining lease shall be treated as held for commercial purposes in accordance therewith the surface rent shall be collected on it.

(b) The annual land rent for the entire area held under minor and major mineral shall be equal to the 5% of the latest market price determined for that particular area by the Dy.

Commissioner-cum-District Registration (should be Registrar) and it shall be collected by the District/Asst. Mining Officer from the lease holders.

(c) This rate shall be variable from time to time in proportion of the market price determined by the Dy. Commissioner-cum-District Registrar.

(d) The arrear of the surface rent can be realized by initiating case for auction as a public under the Bihar & Orissa Public Demand Recovery Act, 1914.”

5. In pursuance of the aforesaid Resolution, demand notices were issued to the lessees in respect of the leases held by them for payment of enhanced surface rent, i.e., surface rent equal to 5% of the latest market price of the land treating the entire leased area as having been held for commercial use. The lessees approached Jharkhand High Court by filing writ petitions challenging the competence and authority of the State Government in issuing the said Resolution treating entire land for the purposes of determination of surface rent as the lease for commercial purposes and revising surface rent at 5% of the latest market price of the land. The lessees prayed for quashing the Resolution dated June 17, 2005 and demand notices.

6. The State Government defended their action as valid, legal and justified. According to State Government, the Resolution dated June 17, 2005 has been issued in terms of the power conferred upon them, insofar as major minerals are concerned, under the Mines and Minerals (Development and Regulation) Act, 1957 (for short, '1957 Act') and Mineral Concession Rules, 1960 (for short, '1960 Rules') and as regards minor minerals under Jharkhand Minor Mineral Concession Rules, 2004 (for short, '2004 Rules').

7. The High Court by a common judgment dated May 7, 2007, allowed 46 writ petitions and quashed the Resolution dated June 17, 2005 and the demand notices. The other 6 writ petitions were allowed subsequently by following the judgment dated May 7, 2007.

8. Mr. M.S. Ganesh, learned senior counsel for the State Government invited our attention to Entry 54 of Union List and Entry 18, Entry 23 and Entry 45 of the State List in Seventh Schedule to the Constitution. He referred to the provisions of 1957 Act, particularly, definition of 'mining lease' and 'mining operations' in Section 3(c) and Section 3(d) respectively, Section 13 that empowers Central Government to make rules in respect of minerals, Section 15 that empowers State Government to make rules in respect of minor minerals and Section 17 that specially empowers the Central Government to undertake prospecting or mining operations in certain lands. He also invited our attention to 1960 Rules, particularly, Rule 27 (1)(d) and Rule 31. In backdrop of the aforesaid legal provisions, Mr. M.S. Ganesh assailed the impugned judgment of the High Court dated May 7, 2007 and submitted that none of the writ petitioners laid any challenge to or prayed for any relief

against the legislative competence of Parliament to enact, or to the constitutional validity/vires of Section 13(2)(i) of 1957 Act or to the competence of the Central Government to make, or to the vires of, Rule 27(1)(d) of the 1960 Rules or to the constitutional validity/vires of Section 15(1A)(g) of 1957 Act or to the competence of the State Government to make, or to the vires of Rule 29(1)(d) of the 2004 Rules. In the circumstances, learned senior counsel submitted that it was not open to the High Court to pronounce that the imposition of surface rent (whether for major or minor minerals) is beyond the legislative competence of the State and the subordinate/delegated legislative competence and executive authority of the State Government.

9. Learned senior counsel for the State Government would submit that the High Court while considering the controversy relating to the Resolution dated June 17, 2005 applied principles evolved in relation to taxing statutes and the decisions rendered relating to such statutes overlooking the conceptual distinction between the State's sovereign capacity to levy taxes and duties and the State's capacity as a lessor to collect rent. He vehemently contended that the findings recorded by the High Court, namely, (a) that mining leases do not partake of the same character as other leases that are characterised as commercial leases and (b) that no provision has been made in 1957 Act for the enhancement of surface rent were fundamentally erroneous. He urged that High Court seriously erred in overlooking the fact that lessees have failed to plead jurisdictional facts, let alone discharge their burden of, showing that the surface rent as enhanced pursuant to Resolution dated June 17, 2005 is at a rate that exceeds the land revenue in terms of 1960 Rules. He would also submit that power to review and enhance the surface rent of a mining lease, even during its subsistence as regards major minerals, is embodied and inherent in Section 13(2)(i) of 1957 Act read with Rule 27(1)(d) and Part-V, clauses (2) and (4) in the statutory lease of 1960 Rules and in respect of minor minerals, in Section 15(1A)(g) read with Rule 29 (1)(d) of 2004 Rules. He also submitted that lessees have all along been paying surface rent without demur and their challenge to the enhancement of surface rent had no merit yet High Court allowed writ petitions.

10. Mr. A.K. Ganguli, learned senior counsel led the arguments on behalf of the lessees. He supported the judgment dated May 7, 2007 and submitted that the entire field of legislation-- 'Regulation of Mines and Minerals Development' is fully under the control of the Central Government and consequently the State Legislature are denuded of their power to make any law with reference to the subject matter covered by Entry 23 of List II of Seventh Schedule to the Constitution.

“He would submit that the validity of the Resolution dated June 17, 2005 has to be tested with reference to the powers of the State Government within the four corners of 1957 Act and the Rules made thereunder and the State Government would not be competent to issue such Resolution as an executive order in exercise of its power under Article 162 of the Constitution. He invited our attention to Sections 2,4, 5 and 13 of 1957 Act, Rule 27(1)(d) and Rule 31 of 1960 Rules and submitted that a conjoint reading of these provisions would show that the surface rent is payable only

for surface area occupied or used by the lessee and that too during the period when the lessee continues to occupy or use such area even though the mining lease for the leasehold area continues beyond the period when the surface area ceased to be occupied by the lessee.

Mr. Ganguli submitted that the surface rent as determined by the State Government is required to be specified in the lease deed itself and although royalty/dead rent is variable but surface rent is not. He vehemently contended that surface rent could not be levied for the entire leasehold area held under the mining lease. According to him, the approved mining plan demarcates only limited surface area which could be put for mining operation in a given year or for block of years and, therefore, the Resolution dated June 17, 2005, in any case, is bad to the extent it authorizes the levy of surface rent on the entire area held. He would, thus, submit that the judgment dated May 7, 2007 and subsequent judgments relying upon the said judgment do not call for any interference. Learned senior counsel and counsel for lessees in some appeals adopted the arguments of Mr. A.K. Ganguli.”

11. It was fairly clear during the course of arguments before us that there was no challenge by writ petitioners to the legislative competence of the Parliament to enact 1957 Act or to the competence of the Central Government to make 1960 Rules or to the competence of the State Government to make 2004 Rules. It is also apparent from the Resolution dated June 17, 2005 that it has been issued by the State Government as an executive order. However, perusal of the judgment of the High Court dated May 7, 2007 shows that High Court was not at all clear about the Resolution dated June 17, 2005. In paragraph 29, High Court says:

“29. Taking into consideration the Act and the Rules, we have no doubt in our mind in holding that the State Legislature has no legislative competence to issue executive orders for revision of surface rent in respect of the mining lease of major minerals as it's jurisdiction is fully occupied by the Central Act and the Rules.”

(emphasis supplied) Then, in paragraph 37, High Court observes:

"37. On the face of the resolution, we are of the definite opinion that said resolution is not only beyond the competence of the State Legislature but also illegal, arbitrary and without application of mind."

(emphasis supplied) In paragraph 48, High Court has concluded :

"48. Be that as it may, when the imposition of surface rent is beyond the legislative power of the State Government then by the Executive Orders of the State demand of Surface rent treating mining leasehold used for commercial purposes is uncalled for. In our considered opinion, therefore, demand of surface rent both for major and minor minerals by issuing executive orders is illegal, arbitrary and wholly without jurisdiction.”

(emphasis supplied)

12. The observations, 'that the State Legislature has no legislative competence to issue executive orders for revision of surface rent' and 'that said Resolution is not only beyond the competence of the State Legislature' in the impugned judgment dated May 7, 2007 show that the Division Bench carried the impression as if the Resolution dated June 17, 2005 has been issued by the State Legislature. The legality and validity of the said Resolution was examined by the High Court partly on that assumption. The reasoning in the judgment dated May 7, 2007 is full of confusion. The aspects which were germane for consideration of the controversy have been overlooked by the High Court and certain irrelevant aspects have been taken into consideration. By reason of such patent errors, it is difficult to sustain the impugned judgments. Ought we know what would have been the ultimate decision of the High Court had such errors not occurred. In the circumstances, we do not deem it necessary to go into the merits of the diverse contentions and leave the parties to agitate their contentions before High Court as in our opinion the controversy relating to Resolution dated June 17, 2005 and demand notices needs to be considered afresh by the High Court.

13. Consequently, these appeals are allowed and impugned judgments are set aside. Writ petitions are restored to the file of the High Court for fresh consideration and disposal as expeditiously as may be possible. No orders as to costs.