

SUPREME COURT OF INDIA

Union of India

Vs.

Sova Ispat Limited

C.A.No.1182 of 2015

(J.Chelameswar and Rohinton Fali Nariman JJ.)

27.01.2015

JUDGMENT

CHELAMESWAR, J.

1. Leave granted.

2. Aggrieved by an interim order passed by the High Court of Calcutta in AST No.432 of 2014 dated 23.12.2014, the respondents 1 and 2 therein preferred the instant appeal. The relevant portion of the order reads as follows:-

"As the writ application has been admitted and as affidavits have been called for and as the constitutionality of the said Ordinance is under challenge, any auction conducted by the respondents, in respect of the Ardhamgram coal block, as incorporated under serial No.19 of the allotment list in Annexure-II of the memorandum dated 18th December, 2014, shall abide by the result of the writ application. In the event any such auction is held, the instant order should be indicated in the auction notice."

3. The following are the facts relevant for the purpose of this order. The first respondent, a company registered under the Companies Act, 1956 along with one M/s. Jai Balaji Sponge Ltd., secured the allotment of a coal block known as "Ardhamgram Coal Block" under the memorandum of the appellant dated 6th December, 2007, which was subsequently renewed on 24.2.2014.

4. Pursuant to the said allotment, the third respondent herein executed a mining lease in respect of the said 'coal block' in favour of the first respondent.

5. The legality of the various allotments of the coal blocks became the subject matter of public interest litigation before this Court. By judgments dated 25.8.2014 and 24.9.2014, the allocation of various coal blocks including the one allocated in favour of the first respondent was cancelled.

6. As a consequence, an Ordinance came to be promulgated by the President of India known as the Coal Mines (Special Provisions) Second Ordinance, 2014 (No. 7 of 2014).

7. Under Section 4 of the said Ordinance, "coal mines" shall be allocated by way of public auction in accordance with Rules as may be prescribed. For the purpose of the said Ordinance, coal mines are divided into three categories under Schedules I, II and III of the Ordinance. Broadly speaking, Schedule-I coal mines are those mines whose allocation (made earlier in favour of the various parties like the first respondent herein) were cancelled by the orders of this Court referred to earlier.

8. A successful bidder in an auction held pursuant to the Ordinance is entitled for securing a "vesting order" of the mine under Section 8 of the Act.

9. Such an order of vesting shall transfer and vest upon the successful bidder various rights enumerated under Section 8(4).

10. Under Section 16 of the Ordinance, compensation is required to be paid with reference to "land" and "mine infrastructure" of the Schedule-I coal mines. The expression "mine infrastructure" is defined under Section 3(j) of the Ordinance.

11. From a cursory reading of the pleadings, it appears that the respondents have installed certain end user plants in a parcel of land, a part of which falls within the area of the coal block of which the first respondent was the prior allottee and the remaining part is outside such coal block but abutting the said coal block.

12. The case of the first respondent is that the Ordinance provides for compulsory acquisition of the respondents' end user plant or part of it which is located within the coal block area without the payment of any compensation and therefore various articles of the Constitution of India are violated including Article 300A. Pending adjudication of such a claim, by way of an interim order, the first respondent sought stay of the auction of the coal block of which he was the earlier allottee.

13. While declining to stay the auction as sought by the first respondent, the order impugned in the instant appeal came to be passed.

14. The learned Attorney General appearing for the Union of India submitted that the Union of India does not propose to acquire the end user plant of the respondent, as apprehended by the respondent. The observations such as the one made by the High Court (which is extracted earlier) would seriously hamper the prospects of any competitive bid as the prospective bidders would be hesitant to acquire any coal block which would drag them into litigation in future. He further submitted that since the basic concern of the respondent is only to ensure that he is not deprived of his property without adequate compensation, the Union of India gives an undertaking to earmark that portion of the land occupied by the end user plant falling within the coal block area and exclude the same from the process of auction and vesting contemplated under the Ordinance so that the rights of property of the respondent remain intact.

15. On the other hand, Shri Kapil Sibal, learned senior counsel submitted that the Union of India would be acting contrary to the letter of the Ordinance in making such a concession and therefore the same should not be accepted.

16. In view of the fact that the Writ Petition is pending in the High Court, we do not propose to examine the submissions made by the learned counsel for the respondent, but we are satisfied that the interest of justice demands that the impugned order be set aside recording the undertaking of the learned Attorney General mentioned above. We order accordingly. There will be no order as to costs.

17. We leave open all questions of law to be agitated by the parties before the High Court.

Appeal allowed as indicated above.