

CALCUTTA HIGH COURT

Valley Refractories

Vs.

K.S. Garewal

Matter No. 102 of 1973

(Sabyasachi Mukharji, J.)

07.04.1978

ORDER

Sabyasachi Mukharji, J.

1. In this application under Article 226 of the Constitution the petitioners Valley Refractories Private Limited and one Bajrang Prasad Agarwal contend that the weigh-bridge which is alleged to be belonging to Valley Refractories Pvt. Ltd. situate in the village Merha Mouza, Police Station and Post Office Chirkunda in the District of Dhanbad has not vested in the Central Government under Section 3 of the Coal Mines (Nationalization) Act, 1973. For the purpose of this application it is not necessary to refer to many facts. The petitioner No. 1 company contends that it is the owner of the weigh-bridge and the said weigh-bridge according to the petitioners, is situate in the plot of land on which the said refractory plant has been installed by the petitioner No. 1. Nirmal Chandra Das in his affidavit affirmed on 30th Aug., 1973 on behalf of the respondents, states that the land over which the weighbridge is situated is within the leasehold of Merha Colliery, the management of which was taken over by the Coal Mines Authority. There is no dispute that the said weigh-bridge was used for weighing coal extracted out of the Merha Collieries. In order to appreciate the contention it is necessary to refer to Section 3 of the Coal Mines (Nationalization) Act, 1973 which is as follows :

"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 incumbrances.

(2) For the removal of doubts, it is hereby declared that if, after the appointed day, the existence of any other coal mine comes to the knowledge of the Central Government, the provisions of the Coal Mines (Taking Over of Management) Act, 1973, shall until that mine is nationalized by an appropriate legislation, apply to such mine."

Section 2 of the Act provides the definition and under clause (b) of the said section 'coal mine' means a mine in which there exists one or more seams of the coal. Clause (h) of Section 2

defines "mine" and the relevant part of the same is as follows :-

"(h) 'mine' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes-

x x x x

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

(vii) all workshops (including buildings, machinery, instruments, stores, equipment, of such workshops and the lands on which such workshops stand) in or adjacent to, a mine and used substantially for the purposes of the mine or a number of mines under the same management ;

x x x x

(xi) all lands and buildings (other than those referred to in sub-Clause (x)), 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 ;

(xii) all other fixed assets, movable and immovable, belonging to the owner of a mine, wherever situated, and current assets, belonging to a mine, whether within its premises or outside, and also any money lawfully due to such owner in relation to the mine in respect of any period prior to the appointed day."

The term 'owner' is not defined in the Act. Therefore, the definition, in view of clause (o) of Section 2 of the Act, of 'owner' in the Mines Act, 1952 would be applicable. The said definition is provided by clause (1) of Section 2 of the Mines Act, 1952 and the said definition reads as follows :-

"(1) "owner", when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver such liquidator or receiver and in the case of a mine owned by a company, the business whereof is being carried on by a managing agent, such managing agent; but does not include a person, who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or license for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine, but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability;"

On behalf of the petitioner it was contended that the Valley Refractories Pvt. Ltd., which was the owner of the weighbridge in question could not be considered to be the owner of right, title and interest in relation to any coal mine. It was urged that a weigh-bridge was no part of any coal mine as is generally understood. The weigh-bridge, it was further submitted, was not wholly or exclusively used for the operation of coal mine. It was further urged that the weigh-bridge was not required for carrying out any operation of mining or of extraction of coal from the mines. According to the petitioners, what was vested was the right, title and interest of the owners In

relation to the coal mine. Therefore, anything which might be used in connection with certain operations of mining was not coal mine, according to the petitioners. In this connection it was urged that it is important under Section 3 that what was acquired was the right, title and interest of the owner of the coal mine. According to the petitioners, the Valley Refractories Pvt. Ltd. could not be considered to be such an owner. It was emphasized, secondly what was being acquired was such right, title and interest of the owner in relation to a coal mine. It was urged that the weigh-bridge could not be considered to be something which was in relation to a coal mine; and the third aspect, of Section 3 of the Act was that the coal mine must be one which was mentioned in the Schedule. There is no dispute that Merha colliery, in relation to which the weighbridge was used, is one of the coal mines mentioned in the Schedule to the Act. Counsel for the petitioners submitted that a statute of this nature should be strictly construed. He drew my attention to the observations in Maxwell on the Interpretation of Statutes 12th Edition, page 251, where Maxwell has observed that statutes which encroach on the rights of subjects, whether as regards person or property, are subject to strict construction in the same way as penal Acts. There cannot be any dispute that a provision of this nature, as the Coal Mines (Nationalization) Act, 1973, must receive strict construction. If there is any golden rule of construction or interpretation it is that the statutes must be read as a whole reasonably, fairly and strictly to find out the real intention of the legislature. Maxwell further states that it is a recognized rule that the statutes should be interpreted, if possible, so as to respect rights of the citizens and therefore in case of ambiguity the construction which is in favor of the freedom of individual should be adopted. There cannot be any dispute that in case of ambiguity any construction, which is in favor of the personal liberties of people should be favored. But if by this observation it is meant that in case of ambiguity statutes should be construed with a presumption in favor of the right to hold property, I have my doubts whether such a presumption arises in India. There must of course be a presumption in favor of Article 31 of the Constitution which provides that no man should be deprived of his property except by the authority of law. Beyond that there is no presumption in favor of right to hold property in construing provisions of this nature. Counsel for the petitioner drew my attention to the observation of the Supreme Court in the case of *Motibhai F. P. and Co. v. Collector, Central Excise*¹, and he relied on certain observations at page 832 of the report in para 11. The said observations however would not in my opinion, be relevant because those observations were made in the context of forfeiture and the forfeiture is a sort of penalty and it is well settled that penal statutes should be construed very strictly. The provision like the Coal Mines (Nationalization) Act, 1973 is an economic and a social welfare legislation and is not a penal provision as such though its effects are affecting properties of some persons. Counsel for the petitioner drew my attention to the provisions of Section 26 and Section 24 of the Act in aid of the proposition that there might be different owners in respect of different properties used in relation to a coal mine. This position in my opinion does not in any way affect the solution of the question whether weigh-bridge formed part of the coal mine. Counsel further submitted that definition cannot affect vesting. The actual vesting must be controlled by the provisions of Section 3, but what has vested must be found out by the meaning given to the expression 'coal mine' and that expression has to be found out by the definition in clause (h) of Section 2 read with clause (b) of Section 2. Counsel for the petitioner drew my attention to a decision of the Supreme Court in the case of *State of Bihar v. S. K. Roy*², where the Supreme Court was considering the definitions of Coal Mines Provident Fund and Bonus Schemes Act, 1948 as provided in Section 2 (b) as the same was amended by the Act of 1965. Originally the expression 'coal mine' was defined as under:

¹ AIR 1970 SC 829

"2. (b) 'Coal mine' means any excavation where any operation for the purpose of obtaining coal has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a coal mine ;

Provided that it shall not include any part of the coal mine on which a manufacturing process is being carried on unless such process is a process for cokemaking or the dressing of minerals. An amended definition was provided by the Coal Mines Provident Fund and Bonus Schemes (Amendment) Act, 1965 and the same was as follows :-

"(2) for clause (b), the following clause shall be substituted, namely :-

(b) 'coal mine' means any excavation where any operation for the purpose of searching for or obtaining coal has been or is being carried on, and includes :-

(i)" all borings and bore holes :

(ii) all shafts, in or adjacent to and belonging to a coal mine, whether in the course of being sunk or not ;

(iii) all levels and inclined planes in the course of being driven ;

xxx xxx xxx

(v) all conveyors or aerial rope-ways provided for bringing into or removal from a coal mine of coal or other articles or for removal of refuse therefrom :

(vi) all adits, levels, planes, machinery works, railways tramways and sidings, in or adjacent to and belonging to a coal mine.

(vii) all workshops situated within the precincts of a coal mine and under the same management and used for purposes connected with that coal mine or a number of coal mines under the same management ;

xxx xxx xxx

(ix) all power stations for supplying electricity for the purpose of working coal mine or a number of coal mines under the same management :

(x) any premises for the time being used for depositing refuse from a coal mine, or in which any operation in connection with such refuse is being carried on, being premises exclusively occupied by the employer of the coal mine ;

xxx xxx xxx

(xiii) any premises in or adjacent to and belonging to a coal mine on which any plant or other machinery connected with a coal mine is situated or on which any process ancillary to the work of a coal mine is being carried on ;"

The Supreme Court observed that the word 'or' must be read to mean 'and' and any works, machinery, tramways and sidings not appertaining to a coal mine in the sense of ownership could not come within the meaning of the expression 'coal mine' as given in the first part of clause (b) of Section 2. But the Supreme Court emphasized that the expression "belonging to a coal mine" was the controlling expression governing all aspects of the matter. Significantly, in the instant case before me there is no need of an item covered by sub-Clause (vi) or sub-Clause (vii) to belong to the coal mine. What is required is that it should be "used for the purpose of the mine".

So, if the items mentioned in sub-clauses (vi) and (vii) are in or adjacent to a mine and are used for the purposes of the mine, they would come within the ambit of the definition of 'coal mines' as defined under the Act. Counsel for the petitioners, as I have mentioned before, emphasized that weigh-bridge was not used for extraction of coal or for mining operations. Assuming that that is so, even if weigh-bridge is used after the coal has been extracted for the purpose of transport or sale of the coal and it was an equipment in and adjacent to a mine, then, in my opinion, it comes within the definition and if it comes within the definition of a coal mine, then the right, title and interest of the owner in relation to that object would be the right, title and interest of the owner in relation to a coal mine and the same will by virtue of sub section (1) of Section 3 vest in the Central Government. Counsel also urged that it was no part of the duty of the Court to fill in any omission in the provisions of the Act. He drew my attention to the observations of the Supreme Court in the case of *Sm. Hira Devi v. District Board, Shahjahanpur*³, In my opinion, the said proposition does not affect the question germane in the present case.

2. In the view I have taken on the definition, in my opinion, the weighbridge would come within the purview of the 'coal mine' and the right, title and interest and the ownership of the weighbridge vests in the Central Government by virtue of Section 3.

3. I make it, however, clear that I have not decided about the rights of the petitioners in respect of water supply in this case, which were not pressed before me.

4. In view of the aforesaid reasons, this application fails and is, accordingly, dismissed. Rule Nisi is discharged. Interim order, if any, is vacated. There will, however, be no order as to costs.

5. There will, however, be a stay of operation of this order for three weeks.

Application dismissed.

³ AIR 1952 SC 362