CALCUTTA HIGH COURT

Industrial Fuel Marketing Co

Vs.

Union of India

F.M.A.T. No. 223 of 1983 and F.M.A. No. 568 of 1983

(M.M. Dutt and Paritosh K. Mukherjee, JJ.)

26.09.1984

JUDGEMENT

M.M. Dutt, J.

1. The appellants, M/s. Industrial Fuel Marketing Company and others have, in this appeal, challenged the propriety of the judgment of a learned single Judge of this Court whereby the learned Judge discharged the Rule Nisi issued on the application of the appellants under Article 226 of the Constitution.

2. The Coal Washeries known as Kathara, Kargali and Swang, situate in the district of Giridih, in the State of Bihar admittedly belonged to the Central Coal Fields Ltd., the respondent No. 3. In these washeries, a large quantities of coal from Hazaribagh/Giridih coal fields are brought in for processing in order to bring out good quality of coal required for the steel plants. In the course of such processing, water containing very fine particles of coal known as 'sludge' or 'slurry' overflows and run into the neighboring raiyati fields and also into the river Damodar. As a result, this ejected sludge or slurry is deposited on raiyati lands as well as on the river bed and becomes a part and parcel of the same.

3. By an indenture of lease dated April 9, 1975, the State of Bihar granted and demised to the appellants the sludge or slurry as deposited on the lands and the bed of the river Damodar as described in paragraph 1 of the schedule to the said Indenture together with liberties, powers and privileges and on terms and conditions as mentioned therein. It is alleged that the appellants have been regularly lifting coal ejects from the lands and river bed as mentioned in the Indenture of lease. On April 2, 1980, six lorries which were loaded with sludge or slurry and soft coke manufactured out of the same were seized by the Police on the complaint of the Central Coal Fields Ltd., the respondent No. 3. It is alleged that the respondent No. 3 has been trying to remove the accumulated ejected sludge or slurry already lifted by the appellants and deposited on the southern side of the Damodar river. On the complaint of the respondent No. 3, a case being Petarbar P. S. Case No. 2, dated April 4, 1980, under section 379 Indian Penal Code , was started against the appellants. The appellants and their representatives were also prevented from going to the concerned sites for the purpose of lifting any ejected sludge or slurry for manufacturing soft

coke by the officers of the respondent No. 3. Accordingly, the appellants filed a writ petition, inter alia, praying for the quashing of the said Petarbar P. S. Case No. 2, dated April 4, 1980 and for restraining the respondent No. 3, the Central Coal Fields Ltd., and Coal India Ltd., from interfering with the rights of the appellants under the said Indenture dated April 9, 1975 to lift the ejected sludge or slurry from the concerned sites.

4. The respondents, except the State of Bihar, contested the Rule Nisi issued on the writ petition and opposed the prayer of the appellants. The State of Bihar, however, supported the appellants' case. On behalf of the respondent No. 3, the Central Coal Fields Ltd., it was contended that this Court had no jurisdiction to entertain the writ-petition. The respondent No. 3 also challenged the title of the appellants to the ejected sludge or slurry to which, exclusive title was claimed by the respondent No. 3. Further, it was contended on behalf of the respondent No. 3 that the lease granted in favor of the appellant No. 1 M/s. Industrial Fuel Marketing Company was a mining lease, and that such lease not having been granted in accordance with the provisions of the Mines and Minerals (Regulations and Development) Act, 1957, was void.

5. The learned Judge came to the finding that this Court had jurisdiction to entertain the writ petition. The learned Judge, however, accepted the contention of the respondent No. 3 that the appellants had no title to the ejected sludge or slurry, and that the respondent No. 3 was the exclusive owner thereof. The contention of the appellants that there was an abandonment of title by the respondent No. 3 to the ejected sludge or slurry by allowing the same to overflow and run into the lands of others including the lands and river bed belonging to the State of Bihar was overruled by the learned Judge. Upon these findings, the learned Judge discharged the Rule Nisi. Hence this appeal.

6. The first question that requires consideration is whether the Indenture of lease dated April 9, 1975 granted by the State of Bihar in favour of the appellants is a mining lease or not within the meaning of Mines and Minerals (Regulation and Development) Act, 1957. The contention of the appellants is that the said lease does not empower or envisage collection of minerals from any coal mine. It is not disputed that sludge or slurry overflows into the fields outside the coal washeries of the respondent No. 3 and ultimately flows into the river Damodar. A portion of such sludge or slurry is also deposited on raiyati lands. It is submitted that the area outside the coal washeries wherefrom sludge or slurry is collected by the appellants is not a coal mine or any mine at all. It is contended on behalf of the appellants that in order to be a mine, there must be a natural deposit of minerals. A dumping yard is not a mine, and an artificial deposit of minerals by human agency on a place would not convert that place into a mine.

7. In support of the above contentions, the appellants have placed reliance on an English decision in *Rogers v. Longsdon*[1], where it has been held that mounds or dumps of artificial deposits, namely, tailings or waste from mining operations did not constitute a mine. The U.S. Supreme Court has also held in *South Utah Mines and Smelt v. Beaver County*[2], that the tailings deposit was either a mine or a part of a mine. In Corpus Juris, Volume LVIII, Page 35, it has been held that 'mining' connotes the removal of minerals from a natural deposit, and does not embrace the reworking of mineral dumps artificially deposited from the residue remaining after the ore has been milled and concentrates

[1](1966) 2 All England Reporter 49
[2](1922) 262 U.S. Reports 325

removed there from.

8. Our attention has been drawn to the definition of the words "coal mine" in section 2(b) of the Coal Mines (Nationalization) Act, 1973, where "coal mine" is defined as meaning a mine in which their exists one or more seams of coal. It is not in dispute that the lease in question does not relate to any seams of coal. It is, accordingly, contended on behalf of the appellants that the said lease is not a mining lease inasmuch as there is no mine from which the sludge or slurry is to be extracted or collected.

9. On the other hand, it is the contention of the respondent No. 3 that the said lease is a mining lease, and it is void as having been granted without the consent of the Central Government as required under section 5(2)(a) of the Mines and Minerals (Regulation and Development) Act, 1957, hereinafter referred to as the Act of 1957. Section 3(c) of the Act of 1957 defines "mining lease" as meaning a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose. Clause (d) of section 3 defines "mining operations" as meaning any operations undertaken for the purpose of winning any mineral. The word "winning" has not, however, been defined in the Act of 1957. In this connection, we may refer to a decision of the Supreme Court in *Bihar Mines Ltd. v. Union of India*[3], In that case, the question was as to the vesting of mining sub-leases under section 10 of the Bihar Land Reforms Act, 1950. The majority view on the point was expressed by Raghubar Dayal J. while Bachawat and Hidayatullah JJ. dissented from the majority view. The minority judgment was delivered by Bachawat J. We are not concerned with the question of vesting of mining sub-leases under section 10 of the Bihar Land Reforms Act. The only thing that will be noticed by us is the observation of Bachawat J as to the meaning of the word "winning". It has been observed, inter alia, that the expression "winning" in section 3(d) of the Act of 1957 should not be narrowly construed and that in a popular sense winning of mineral means getting or extracting it from the mine.

10. Mr. Deb, learned Counsel appearing on behalf of the respondent No. 3 has placed much reliance upon a later decision of the Supreme Court in *Banarasi Dass v. Lt. Governor, Delhi Admn*[4]., In that case, the Supreme Court was considering the question whether brickearth was a mineral or not. In this connection, the Supreme Court referred to one of its earlier decision in *Bhagawan Dass v. State of U.P*[5]., In that case, in overruling the contention that as sand and gravel are deposited on the surface of the land and not under the surface of the soil, they could not be called minerals, it has been observed that minerals need not be subterranean and that mining operations cover every operation undertaken for the purpose of "winning" any minor mineral. Further, it has been observed that "winning" does not imply a hazardous or perilous activity. It means "extracting of mineral and is used generally to indicate any activity by which a mineral is secured. We do not think that the meaning of "winning" as given by the Supreme Court excludes the existence of any mine or converts a dumping ground of sludge or slurry a mine. In our opinion, although in the case of sand or gravel mine the word "winning" means collection of sand or gravel from the surface of the earth where there is natural deposit of sand or gravel, but that does not mean that collection of coal sludge or slurry from a place where

[3] AIR 1967 SC 887
[4] AIR 1978 SC 1587
[5] AIR 1976 SC 1393

they are artificially deposited or dumped will be "winning" within the meaning of the Act of

1957. In our view, where a mineral can be obtained from a mine, winning will mean collection of such mineral from the mine and not from any other place where such mineral is artificially deposited. In the instant case, the sludge or slurry which is deposited in the bed of the river Damodar does not convert the bed of the river into a mine and, consequently, collection of sludge or slurry from the bed of the river or from any land where it is deposited cannot be said to be winning or a mining operation. Under the impugned lease, the appellants have been conferred by the State of Bihar the right to collect sludge or slurry from the bed of the river Damodar. It is true that some expression which are generally used in a mining lease have been used in the impugned indenture of lease. But, in our opinion, use of such expression would not convert a lease into a mining lease if it is really not so. As the right to collect sludge or slurry does not relate to any coal mine, the impugned lease cannot be said to be a mining lease.

11. Section 5(2)(a) of the Act of 1957 provides that except with the previous approval of the Central Government, no prospecting licence or mining lease shall be granted as respect any mineral specified in the First Schedule. The First Schedule contains coal as ' one of the specified minerals. Even assuming that sludge or slurry is coal, yet the question of the approval of the Central Government in respect of the impugned lease does not arise in view of our finding that the impugned lease is not a mining lease at all. On this ground also, the contention of the respondent No. 3 that in any event, the impugned lease stands terminated by virtue of clauses (a) and (b) of sub-section (3) of section 3 of the Coal Mines (Nationalization) Act, 1973 cannot be accepted. Clause (a) prohibits all persons other than the Central Government or a Government company etc. to carry on coal mining operations in India, in any form. Clause (b) *inter alia* provides that all mining leases other than those in favour of the Government or the Government company or Corporation etc., shall, in so far as they relate to the winning or mining of coal, stand terminated. In the instant case, by the impugned lease, the appellants have not been conferred with any right of carrying on a coal mining operation, nor such right relates to winning or mining of coal. Accordingly, clauses (a) and (b) of sub-section (3) of Section 3 of the Coal Mines (Nationalization) Act, 1973 has no manner of application.

12. Now the question is whether the sludge or slurry which overflows the washeries of the respondent No. 3 and is deposited in the raiyati lands and in the bed of the river Damodar, is still the property of the respondent No. 3. It is urged on behalf of the appellants that as the respondent No. 3 voluntarily allows sludge or slurry to flow into the river Damodar and other raiyati lands and does not exercise any control over the same, it is a clear case of abandonment, and that the doctrine of Res Derelictae will apply which, according to Black's Law Dictionary, 4th Edition, Page 1469, means property thrown away or forsaken by the owner, so as to become open to the acquisition of the first taker or occupant. On behalf of the respondent No. 3, the application of the doctrine has been very much disputed. It is also disputed by the respondent No. 3 that it voluntarily allows the sludge or slurry to overflow into the raiyati lands or into the bed of the river Damodar.

13. The sludge or slurry which issues out of the coal washeries of the respondent No. 3 and deposited on the raiyati lands and in the bed of the river becomes part of such lands and the bed of the river. The sludge or slurry becomes an accretion to the raiyati lands and the river bed. The respondent No. 3 has no right to trespass into the lands of others and collect the sludge or slurry. The owner of the land may refuse to allow the respondent No. 3 to go upon the land for the purpose of collecting sludge or slurry. As the river bed area from which the appellants have been

granted the right to collect sludge or slurry belongs to the State of Bihar, we are afraid, the respondent No.3 cannot claim any title to sludge or slurry. Moreover, under the Bihar Land Reforms Act, 1950 all minerals have vested in the State. The respondent No. 3 has, therefore, lost title to the sludge or slurry deposited on the lands of others.

14. It is, however, contended on behalf of the respondent No. 3 that most of the lands and the river bed have been acquired by the Central Government under the Coal Bearing Areas (Acquisition and Development) Act, 1957 under notification No. 3810 dated 23-11-1957. Our attention has also been drawn to clause (d) of paragraph 5 of the affidavit-in-opposition of the respondent No. 3 dated December 17, 1981 and affirmed by one M.P. Rai Adhikary. In clause (d) of paragraph 5, it has been averred that areas that have been acquired under the Coal Bearing Areas (Acquisition and Development) Act, 1957 have been vested in the respondent No. 3 by the notification No. 1070 dated 8-5-1959; the notification No. 2771 dated 11-12-1959; the notification No. 3706 dated 3-10-1976 and the notification No. 4219 dated 4-10-1969. Further, it has been alleged in clause (d) of paragraph 5 that the State of Bihar also granted a lease on June 3, 1970 to the National Coal Development Corporation Limited, now known as the Central Coal Fields Limited, the respondent No. 3, in other parts of the river bed in respect of which the appellants are claiming their right under the impugned lease. There can be no doubt that if such areas or any portion thereof where the sludge or slurry is deposited have been acquired by the respondent No. 3 and/or taken settlement of by it from the State of Bihar for collection of the same, the appellants will not have any right to collect sludge or slurry from such areas. It has been submitted on behalf of the appellants that they do not propose to enter upon any land acquired by the respondent No. 3. It is the case of the appellants that the respondent No. 3 has not acquired any right whatsoever in respect of the areas mentioned in the impugned lease wherefrom the appellants are entitled to collect the sludge or slurry. It may be stated here that there is no dispute that the above lease in favour of the respondent No. 3 dated June 3, 1970 relates to removal of sand from the bed of the river and not sludge or slurry.

15. Be that as it may, we are of the opinion that the learned Judge is not justified in dismissing the writ petition on the ground that the impugned lease is a mining lease and it is void in view of the provision of section 5(2)(a) of the Act of 1957. The judgment of the learned Judge cannot, therefore, be sustained.

16. Before we part with the case, we may dispose of the objection taken on behalf of the respondent No. 3 as to the jurisdiction of this Court to entertain the writ petition. It is found by the learned Judge that this Court has jurisdiction to entertain and hear the writ petition. It is true that no part of the cause of action has arisen within the territorial jurisdiction of this Court but, as the learned Judge points out, as all the respondents are within the State of West Bengal the writ petition is quite maintainable in this Court. We are not also impressed with the contention of the respondent No. 3 that as the writ petition involves disputed questions of fact, it should be rejected on that ground also. In our opinion, there is no merit in either of the above contentions, and, accordingly, we are unable to accept the same. The above contentions of the respondents are rejected.

17. For the reasons aforesaid, we set aside the judgment of the learned Judge and restrain the respondent No. 3, their servants and agents, from interfering with the rights of the appellants under the impugned indenture of lease dated April 9, 1975 to collect the sludge or slurry from the areas mentioned in the schedule to the said impugned lease, subject to this that the appellants

shall not exercise any such right as conferred on them by the impugned lease in respect of any land or any portion of the bed of the river Damodar that may have been acquired by the Central Government under the Coal Bearing Areas (Acquisition and Development) Act, 1957 and vested in the respondent No. 3 by the notifications mentioned above. Let a writ of mandamus be issued in the above terms. The Rule Nisi is made absolute to the extent indicated above.

18. The appeal is allowed. There will, however, be no order as to costs.

19. The prayer for stay of operation of this order is disallowed.

Paritosh K. Mukherjee, J.

20. I agree.

Appeal allowed.