PATNA HIGH COURT

Keshri Mal Jain

Vs

State, (Patna)

Civil Writ Jurn. Case No. 1182 of 1983

(S.K. Jha and Satyeshwar Roy, JJ.)

12.04.1984

JUDGEMENT

Satyeshwar Roy, J.

1.According to the writ petition, the petitioner deals in slurry. He claims to have raiyati land in portions of plots Nos. 3658, 3659, 3680, 4448 and 3456 in village Dugda. There is a coal washery belonging to Bharat Coal Washery (hereinafter to be referred to as the coal washery). The affluent from the coal washery flows through rivulets and settles down in those plots. The petitioner collects the accumulated slurry and converts it into balls/briquettes. Those balls/briquettes are sold in the market as fuel. Slurry is not coal and Bihar Coal Control Order, 1956 (the Order) has no application to the business carried on by the petitioner. The respondents were illegally interfering with the business of the petitioner in slurry which he collects from the aforesaid plots. On these averments mainly, the petitioner prays for a declaration that the slurry is not coal within the meaning of the Order and the respondents be restrained from giving effect to that order and the Essential Commodities Act against the petitioner for dealing in slurry.

2. Counter affidavit has been filed by respondent No. 18 P. K. Agarwalla. In the counter affidavit, it was stated that plots Nos. 3658 and 3659 were Gair Majurwa. Portions of plots Nos. 4456, 4458 and 3659 were taken on lease by the petitioner but the lease was cancelled by the raiyat. The petitioner had no interest in any of the plots and no slurry accumulates in any of the plots. The slurry which comes out of the coal washery was "coal" and even if it accumulates in any raiyati plots, the same remained the property of the State of Bihar. The State of Bihar by a lease deed gave right to him to collect the slurry from plot Nos. 11 and 109 of village Dugda. Respondent No. 19 who was the transferee from respondent No. 18, inter alia, in its counter affidavit reiterated the averments made in the counter affidavit by respondent No. 18.

3. The hearing of the application was taken up on 29th March, 1984 and was heard in part. On 30th March, 1984, during the course of hearing, an application was filed on behalf of the petitioner for leave to amend the writ application. In this application, the petitioner *inter alia* stated that before the counsel for respondent No. 18 was heard, the validity of the lease deed executed in his favour by the State of Bihar on 4th of April, 1975, be decided as ordered by the

Supreme Court in Special Leave to Appeal (Civil) No. 5303 of 1981. The order passed by the Supreme Court related to a case in which the petitioner was not a party. In the facts and circumstances of the case, after we had heard Mr. Sahai Sinha learned counsel for the petitioner, we did not think it necessary to hear the counsel appearing on behalf of respondents Nos. 18 and 19. No opinion, therefore, is necessary to be expressed in this case with regard to the lease deed executed by the State of Bihar in favour of respondent No. 18.

4. At the time of hearing when Mr. Sahai Sinha was questioned as to how the petitioner claimed interest in the plots in question, he referred to the statements made in paragraph 4 at page 8, paragraph 3 at page 50, paragraph 2 at page 156 paragraph 3 at page 182 and paragraphs 11 and 12 at page 252 of the brief. The relevant paragraphs in the counter affidavits are paragraphs 11 and 12 at page 98 and paragraph 13 at page 196 of the brief. He did not dispute the position that if it was held that the petitioner had no interest in the plots in question he was not entitled to any relief.

5. What is required to be decided in this case is, therefore, whether the petitioner has been able to show that he is a raiyat of or has any interest in the plots claimed by him and even if it is decided in his favor whether he has any legal right to collect slurry from the said plots?

6. From the perusal of the relevant paragraphs of the writ application with regard to the claim of the petitioner in the plots mentioned therein, it appears that at one place he claims some of the plots under a sale deed dated 26-7-1983 and at another place he claimed the plots as lessee under the raiyat. In support of his claim, the petitioner has annexed Annexure-12, order sheet of Title Suit No. 32 of 1983 of the court of Munsif, Bermo, which shows that the suit was decreed in terms of the compromise entered into by and between the petitioner, who was plaintiff in the suit, and one Noni Gopal Chatterjee, who was defendant in the suit and the petition of compromise filed in that suit which is Annexure-13. The subject matter of the suit was portions of plots Nos. 3658 and 3659. In the counter affidavit the respondents asserted that these two plots were Gair Majurwa. Nothing has been brought on record on behalf of the petitioner to show that in fact Noni Gopal Chatterjee, who was defendant in that suit and who had stated to have executed a sale deed in respect to portions of those two plots on 26-7-1983, was a raiyat of those two plots. Further, in paragraph 5 at page 82 of the brief, the petitioner stated that he took settlement of those two plots, the petitioner either became a raiyat by virtue of the sale deed or he became a leasee by virtue of a settlement. He cannot claim both the interest. With regard to plots Nos. 4448, 4456, 3659 and 3680 in paragraph 2 of page 156 of the brief he stated that he acquired those plots. No document was annexed to show how the petitioner acquired those plots and whether his interest was subsisting, particularly when respondent No. 18 brought on record Annexure C/1, a registered deed by which the lease deed granted by the raiyat in favor of the petitioner was cancelled. In view of prevarication on the part of the petitioner and in view of the disputed question of facts, it cannot be decided in this application, if the petitioner has any interest in any of the plots in question. No relief can be granted to the petitioner. The respondents 18 and 19 in their counter affidavit have seriously contested the fact of accumulation of any slurry in those plots. Since it is a disputed question of facts and the petitioner did not bring on record anything to show that slurry accumulated in those plots, it is not necessary to give any finding if slurry from the coal washery accumulated on those plots.

7. The writ petition could have been disposed of on these findings alone. But as Mr. Sahay Sinha

strenuously contended that slurry was not coal, in fitness of things. I am also giving my finding on this question.

8. The admitted facts are that there is a coal washery at Dugda which belongs to B. C. C. L. Coal mines from B. C. C. L. collieries is washed there. During the process of washing, coal particles along with mud and other discard flow out of the coal washery. The coal particles which flow out of the coal washery have admittedly high percentage of ash content. Such particles are commonly known as "slurry". The slurry carried by the water accumulates in slurry ponds or tanks of the coal washery and at times it overflows the tanks or ponds into neighbouring fields belonging to raiyats and also in river Damodar. The slurry ultimately settles down in river bed and the raiyati lands. We are concerned in this case with slurry that settles down in the raiyati land.

9. Mr. Sahai Sinha submitted that since the ash content of slurry was as high as more than 75%, it was not coal. On being questioned, as to whether there is any definition of "coal" in any legislation, he drew our attention to the Coal Mines (Conservation and Development) Act, 1974, where according to Section 3(c) "coal" includes coke in all its forms, but does not include lignite. The definition of coal in that Act, therefore is without reference to the ash content of coal. Coal is graded according to the ash content and more the ash less the heat or the energy. According to Nelson"s Dictionary of Mining: "slurry", inter alia, means "fine carbonaceous discharge from a colliery washery". It cannot, therefore, be denied that the carbonaceous particles so discharged from the coal washery remains "coal", and it is used for producing energy or heat. For using slurry, it was admitted by the petitioner it is converted into balls or briquettes. According to Nelson"s Dictionary of Mining "briquette means a moulded block of compressed solid fuel made from crushed coal. It is common knowledge that coal is crushed into specific dimension and is washed in the coal washery. Such crushed coal particles which flow out with the water from the coal washery are used for manufacturing briquettes or balls, commonly known as qool by some cementation agent, for instance, mud. I am therefore of the opinion that slurry is coal and, therefore, is a mineral specified under Mines and Minerals (Regulation and Development) Act, 1957. All minerals belong to the State. If slurry that is coal, is found on a raiyati land, it belongs to the State and nobody can appropriate it except in accordance with law. Since the petitioner did not claim that he has any valid lease in accordance with law for collecting and appropriating slurry, it is not necessary to decide whether the petitioner can carry on business in slurry without a licence under Bihar Coal Control Order, 1956. The petitioner, therefore, is not entitled to any relief in this application.

10. In the result, the application is dismissed, but in the circumstances of the case there will be no order as to costs.

S.K. Jha, J.

11. I agree.

Petition dismissed.