Kuju Collieries Ltd vs Jharkhand Mines Ltd. & Ors on 12 August, 1974

Equivalent citations: 1974 AIR 1892, 1975 SCR (1) 703, AIR 1974 SUPREME COURT 1892, 1974 2 SCC 533, 1974 SCD 895, 1976 BLJR 233, 1976 PATLJR 13, 29 FACLR 379

Author: A. Alagiriswami

Bench: A. Alagiriswami, P. Jaganmohan Reddy, M. Hameedullah Beg

PETITIONER:
KUJU COLLIERIES LTD.

Vs.

RESPONDENT:
JHARKHAND MINES LTD. & ORS.

DATE OF JUDGMENT12/08/1974

BENCH:
ALAGIRISWAMI, A.
BENCH:
ALAGIRISWAMI, A.
REDDY, P. JAGANMOHAN
BEG, M. HAMEEDULLAH

CITATION:
1974 AIR 1892 1975 SCR (1) 703
1974 SCC (2) 533

ACT:
Contract Act. s. 65--Scope of--Payment not made under coercion or ignorance of law--Whether recoverable.

HEADNOTE:
The appellant paid to the first respondent a large sum of money in respect of mining lease granted to it. the appellant (plaintiff) instituted a suit for recovery, of possession of the leased property or in the alternative for refund of the sum paid to the first respondent. After institution of the suit the Bihar Land Reforms Act came into force as a result of which the appellant's claim in respect of possession of the mines became unenforceable. The appellant, therefore, confined its claim for the recovery of

the sum paid.

Dismissing the appeal, the trial court held that the appellant was not entitled to claim any relief under s. 65 of the Contract Act because there was no occasion for it to have been under any kind of ignorance of law and as the Mineral Concession Rules of 1949 rendered any stipulation for payment of salami illegal, the lease on that basis was also illegal. The High Court unheld the view of the trial Court.

Dismissing the appeal,

HELD : This is not a case to which sections 65, 70 and 72 of the Contract Act apply. The payment of the money was not made lawfully nor was it done under mistake or coercion. [709A]

(1) Where an agreement is void ah initio or a contract becomes void due to subsequent happenings any person receiving an advantage under such agreement at contract is bound to restore such advantage or to make compensation for it to the per-son from whom he received it. But where even at the time when the agreement was entered into both the parties knew that it was not lawful and, therefore, void,. there was no contract but only an agreement. [705F]

Harnath Kaur v. Inder Bahadur Singh, 1923, 50 I.A. 69, 75-76 and Shri Ramagya Prasad Gupta & Ors. v. Sri Murli Prasad & Ors. C.A. Nos. 17 10 of 1967 & 1986 of1966 decided on 11-4-1974, referred to.

Budhulal v. Deccan Banking Company A.I.R. 1955 Hyd. 69 and Sivaaramakrishnaiah v. Narahari Rao, A.I.R. 1960 A.P. 186, approved.

(2) Section 4 of the Mines and Mineral (Regulation and Development) Act, 1948 provides that no mining lease shall be granted otherwise than in accordance, with the Rules made under the Act. Rule 45 of the Mineral Concession Rules,, 1949 provides that a mining lease shall be granted only to a person holding a certificate of approval from the State Government. Rule 49 provides that no grantor of mining lease shall charge any premium in addition to or in lieu of the rent specified in such a lease. In the present case the appellant had no certificate as required under r. 45 and contrary to r. 49 there was a stipulation for payment of a premium, under the lease deed. The lease in favour of the appellant was, therefore, contrary, to the provisions of the Act and the rules and as such void. [708F]

(3) There was no occasion for the plaintiff to have been under any kind of ignorance of law under the Contract Act and the Mineral Concession Rules, 1949. The appellant was in the business of mining and had the advantage of consulting-. its lawyers and solicitors. [708H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1865 of 1967.

Appeal by Special Leave from the Judgment & Decree dated the 19th October, 1965 of the Patna High Court in Original Decree No311 of 1960.

O. P. Malhotra and D. N. Mishra, for the appellant. D. N. Mukherjee and N. R. Chaudhury, for respondent Nos. 1, 3, & 5.

S. N. Prasad, for respondent Nos. 3 & 4.

D. P. Singh, S. C. Aggarwala, V. J. Francis and S. S. Bhatnagar,for the intervener.

The Judgment of the Court was delivered by ALAGIRISWAMI, J.-This appeal is against the judgment of the Patna High Court by Special Leave granted by this Court. It arises out of a mining lease granted by the 1st respondent but alleged to have been ,done so in the name of the 1st respondent by the 2nd respondent in favour of Haricharan Singh J.D. & Co. on 7-9-1950. In pursuance of the lease a sum of Rs. 80,000/- was paid to the 1st respondent. The plaint allegation was that the 1st respondent was a Limited Company created by the 2nd respondent. There was an earlier lease in respect of the same property in favour of respondents 3 and 4 which expired on 4-4-1950. Haricharan Singh J.D. & Co. later changed its name to Kuju Collieries Ltd. who are the appellants. As the plaintiff did not get the possession of the leased property it instituted a suit for recovery of possession of the leased property along with mesne profits and in the alternative for refund of the sum of Rs. 80,000/- and certain other sums. The present appeal is, however, concerned only with that amount. In the suit the 1st respondent and the 2nd respondent took the stand that the 1st respondent was not created by the 2nd respondent, that the lease was by the 1st respondent and the amount was paid to the 1st respondent alone and not to the 2nd respondent. The 1st respondent also contended that the leased properties were handed over to the plaintiff, that they were not aware that respondents 3 and 4 were resisting the plaintiff's claim and that the 1st respondent was not in any case responsible therefor and that therefore the plaintiff was not entitled to any relief. During the pendency of this appeal respondents 2 and 3 died and their legal representatives have not been brought on record. The appellant is not claiming any relief against any of the other respondents except respondent No. 1 and it is, therefore, unnecessary to refer to the attitude taken by them in the :suit.

It is necessary at this stage to mention that after the institution of the suit the Bihar Land Reforms Act came into force as a result of which any lessee working a mine became direct lessee under the State, and ,as the plaintiff was not working the mines any claim in respect of the possession of the mines became unenforceable. The appellant has, therefore, confined his claim to the sum of Rs. 80,000/- as payable to it by the 1st respondent.

The Trial Court held that as the pailntiff was already in the business of mining and had the advantage of consulting its lawyers and solicitors and their lease deed was drawn up and prepared by solicitors, there was no occasion for the plaintiff to have been under any kind of ignorance of law and as the Mineral Concession Rules of 1949 rendered any stipulation for payment of salami illegal

and the lease on that basis was also illegal, the plaintiff was not entitled to claim relief under s. 65 of the Indian Contract Act. It, therefore, dismissed the suit. On appeal the High Court also held that neither s. 65 nor s. 72 of the Contract Act applied to the facts of the case. We are of the view that s. 65 of the Contract Act cannot help the plaintiff on the facts and circumstances of this case. Section 65. reads as follows :

> "When an agreement is discovered to Be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it".

The section makes a distinction between an agreement and a contract. According to s. 2 of the Contract Act an agreement which is enforceable by law is a contract and an agreement which is not enforceable by law is said to be void. Therefore, when the earlier part of the section speaks of an agreement being discovered to be void it means that the agreement is not enforceable and is, therefore, not a contract. It means that it was void. It may- be that the parties or one of the parties to the agreement may not have, when they entered into the agreement, known that the agreement was in law not enforceable. They might have come to know later that the agreement was not enforceable. The second part of the section refers to a contract becoming void. That refers to a case where an agreement which was originally enforceable and was, therefore, a contract,. becomes void due to subsequent happenings. In both these cases any person who has received any advantage under such agreement or contract is bound to restore such advantage, or to make compensation for it to the person from whom he received it. But where even at the time when the agreement is entered into both the parties knew that it was not lawful and, therefore, void, there was no contract but only an agreement and it is not a case where it is discovered to be void subsequently. Nor is it a case Of the contract becoming void due to subsequent happenings. Therefore, s. 65 of the Contract Act did not apply.

The Privy Council in its decision in Harnath Kaur v. Inder Bahadur Singh (1923, 50 f. A. 69, 75-76) observed:

> The section deals with (a) agreements and (b) contracts. The distinction between them is apparent by s. 2; by clause (c) every set of promises forming the consideration for each other is an agreement, and by clause (h) an agreement enforceable by law is a contract. Section 65, therefore, deals with (a) agreements enforceable by law and (b) with agreements not so enforceable. By clause(g)an agreement not enforceable by law is said to .lm15 be void. An agreement therefore, discovered to be void is one discovered to be not enforceable by law, and, on the language of the section would include an agreement that was void in that sense from its inception as distinct from a contract that becomes void."

> A full Bench of five Judges of the Hyderabad High Court in Budhulal v. Deccan Banking Company (AIR 1955 Hyd. 69) speaking through our brother, Jaganmohan Reddy J., as he then was, referred with approval to these observations of the Privy Council. They then went on to refer to the observations of Pollock and Mullah in their

treatise on Indian Contract and Specific Relief Acts, 7th Edn. to the effect that s. 65, Indian Contract Act does not apply to agreements which are void under s. 24 by reason of an unlawful consideration or object and there being no other provision in the Act under which money paid for an unlawful purpose may be recovered back, an analogy of English law will be the best guide. They then referred to the reasoning of the learned authors that if the view of the Privy Council is right namely that agreements discovered to be void' apply to all agreements which are ab-initio void including agreements based on unlawful consideration, it follows that the person who has paid money or transferred property to another for .an illegal purpose can recover it back from the transferee under this section even if the illegal purpose is carried into execution and both the transferor and transferee are in pari delicto. The Bench then proceeded to observe:

"In. our opinion, the view of the learned authors is neither supported by any of the subsequent Privy Council decisions nor is it consistent with the natural meaning to be given to the provisions of S. 65. The section by using the words 'when an agreement is discovered to be void' means nothing more nor less than: when the plaintiff comes to know or finds out that the agreement is void. The word 'discovery' would imply the preexistence of something which is subsequently found out and it may be observed that s. 66, Hyderabad Contract Act makes the knowledge (11m) of the agreement being void as one of the pre- requisites for restitution and is used in the sense of an agreement being discovered to be void. If knowledge is an essential requisite even an agreement ab-initio void can be discovered to be void subsequently. There may be cases where parties enter into an. agreement honestly thinking that it is a perfectly legal agreement and where one of them sues the other or wants the other to act on it, it is their. that he may discover it to be void. There is nothing specific in s. 65 Indian Contract Act or its corresponding section of the Hyderabad Contract Act to make it inapplicable to such cases.

A person who, however, gives money for an unlawful purpose knowing it to be so, or in such circumstances that knowledge of illegality or unlawfulness can as a finding of fact be imputed to him the agreement under which the payment is made cannot on his part be said to be discovered to be void. The ,criticism that if the aforesaid view is right then a person who has paid money or transferred property to another for illegal purpose can recover it back from the transferee under this Section even if the illegal purpose is carried into execution, notwithstanding the fact that both the transferor and transferee are in pari delicto, in our view, overlooks the fact that the courts do not assist a person who comes with unclean. hands. In such cases, the defendant possesses at,. advantage cover the plaintiff-

in pari delicto potior est conditio defendentio.

Section 84, Indian Trust Act however has made an exception in a case where the owner of property transfers it to another for illegal purpose and such purposes is not

> carried it into execution or the transferor is not as guilty as the t ransferee or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law the transferee must hold the property for the benefit of the transferor".

This specific provision made by the legislature cannot be taken advantage of in derogation of the principle that s. 65 Contract Act in applicable where the object of the agreement was illegal to the knowledge of both the parties at the time it was made. In such a case the agreement would be void ab- initio and there would be no room for the subsequent discovery of that fact,,.

We consider that this criticism as well as the view taken by the Bench is justified. It has rightly pointed out that if both the transferor and transferee are in pari delicto the courts do not assist them.

A Division Bench of the Andhra Pradesh High Court in its decision in Sivaramakrisnaiah v. Narahari Rao (AIR 1960 AP 186 held that "In order to invoke section 65 the invalidity of the contractor agreement should be discovered subsequent to the making of it. This cannot be taken advantage of by parties who knew from the beginning the illegality thereof. It only applies to a case where one of the parties enters into an agreement under the belief that it was a legal agreement, i.e. without the knowledge that the agreement is forbidden by law proposed to public policy and as such illegal. The effect of section 65 is that in such a situation, it enables a person not in pari delicto to claim restoration since it is not based on an illegal contract but dissociated from it. That is permissible by reason of the section because the action is not founded on dealings which are contaminated by illegality. The party is only seeking to be restored to the status quo ante. Section 65 also does net recognise the distinction between a contract being illegal by reason of its being opposed to public policy or morality or a contract void for other reasons. Even agreement the performance of which is attended with penal consequences, are not outside the scope of section 65. At the same time Courts will not render assistance to persons who induce innocent parties to enter into contracts of that nature by playing fraud on them to retain the benefit which they obtained by their wrong".

They also referred with approval to the earlier decision of the Hyderabad High Court in Budhulal v. Deccan Banking Co. Ltd.

(supra).

In a recent judgment of this Court in Shri Ramagya Prasad Gupta & Ors v. Shri Murli Prasad & Ors. (C.A. Nos. 1710 of 1967 & 1986 of 1968 decided on 11-4-1974). to which one of us was a party, this Court quoted with approval the observations of the Full Bench of the Hyderabad High Court in Budhulal v. Deccan Banking Company (supra). These decisions are in accordance with the view we have taken. The Mineral Concession Rules came into force on 25-10-1949. As the lease came into force on September 7, 1950 and money was paid on that date, the fact that there was an earlier unregistered contract does not make any difference to the question at issue. Section 4 of the Mines and Minerals (Regulation and Development) Act. 1948 provides "no mining"

lease shall be granted after the commencement of this Act otherwise than. in accordance with the rules made under this Act. and any mining lease granted contrary to the provisions of sub-section (1) shall be void and of no effect". Under Rule 45 of the Mineral Concession. Rules 1949 "no prospecting license or mining lease shall be granted except to a person holding certificate of approval from the Provincial Government having jurisdiction over the land in the respect of which the concession is required". The plaintiff had no certificate of approval from the State Government. Under Rule 49 "no grantor of a prospecting license or a mining lease shall charge any premium in. addition to or in lieu of the prospecting fee. surface fee, surface rent, dead rent or royalty specified in such license or lease". There was a stipulation for payment of a premium under the lease deed in favour of the plaintiff. Therefore. clearly the lease in favour of the plaintiff was contrary to the provisions of the Mines and Minerals (Regulation & Development) Act.. 1948 and the Mineral Rules 1949 and as such void.

The further question is whether it could be said that this contract was either discovered to be void or became void. The facts enumerated above would show that the contract was void at its inception and this is not a case where it became void subsequently. Nor could it be said that the agreement was discovered to be void after it was entered into. As pointed out by the Trial Court the plaintiff was already in the business of mining and had the advantage of consulting its lawyers and solicitors. So there was no occasion for the plaintiff have been under any kind of ignorance of law under the Act and the Rules. Clearly, therefore this is not a case to which s. 65 of the Contract Act applies.

Nor is it a case to which s. 70 or s. 72 of the Contract Act applies. The payment of the money was not made lawfully, nor was it done under a mistake or under coercion. We agree with the Trial Court that the plaintiff should have been aware of the illegality of the agreement even when it entered into it and therefore s. 65 of the Contract Act cannot help it.

The appeal is therefore, dismissed but in the circumstances without costs.

P.B.R. Appeal dismissed.