

State Of Orissa And Ors. vs Rajasaheb Chandanmull Indrakumar (P) ... on 28 March, 1972

Equivalent citations: AIR1972SC2112, (1973)3SCC739, AIR 1972 SUPREME COURT 2112, 1973 3 SCC 739, 1972 SCD 558, 38 CUTLT 649

Bench: K.S. Hegde, P. Jaganmohan Reddy

JUDGMENT

G.K. Mitter, J.

1. This is an appeal from a judgment and order of the High Court of Orissa directing the State of Orissa and other respondents to the petition filed before the High Court to put the said petitioner in possession of the virgin area of the Ib River Colliery claimed to have been taken possession of on the 28th February, 1970 and further restraining the said respondents from interfering with the possession of the petitioner over the said colliery in any manner until evicted in due course of law. The order of the High Court was made on a petition filed by the said petitioner (the main contesting respondent before this Court) for relief against the State of Orissa and some of its officers as also the Western Bengal Coal-fields Ltd., the application being one under Article 226 of the Constitution.

2. The relevant facts leading to the filing of the application are as follows. On October 1, 1917 the Secretary of State for India granted and demised unto one T. P. Yeoman the mines, beds, veins and seams of coal and coal dust situate, lying and being in or under a tract of land measuring approximately Ac. 1300-00 subject to the restrictions and conditions as to the exercise and enjoyment of powers and privileges mentioned in the document of the said date and paying to the Secretary of State the rent and royalties reserved. The document of lease also contained various covenants entered into by the Secretary of State including a clause for renewal of the lease for a further term of 30 years subject to certain conditions to be noted hereinafter. The said Yeoman purported to create some rights in favour of one M. N. Dutta. After purchase of the said Dutta's interest at a court sale by the Hindu undivided family of Chandanmull Indra Kumar, the Secretary of State entered into an agreement with the said Chandanmull Indra Kumar on December 21, 1934. By this agreement the Secretary of State recognised Chandanmull Indra Kumar as the lessee in respect of the mines etc. under an area of Ac. 871-49 out of the grant to Yeoman subject to the provisions, terms and conditions of the original lease up to the 30th September, 1947.

3. The relevant terms and conditions of the covenants contained in the lease of 1917 were as follows:

1. The lessee was empowered to sink, drive, make, maintain and use in the lands mentioned any pits, shafts, inclines and other works.

2. Before using for surface operations any land which had not already been used for such operations, the lessee was to give the Deputy Commissioner of Sambalpur for the time being as the agent in that behalf of the Secretary of State, two calendar months' notice in writing specifying the name or other designation of the land proposed to be so used.

3. The lessee was to pay to the Secretary of State in respect of all parts of the surface lands which were from time to time to be occupied or used by the lessee under the authority of the lease rent at the rate fixed as also royalties for the materials raised.

4. The lessee was not to assign the lease or transfer any interest there under without the previous sanction of the Local Government to any person, company etc. not holding a certificate of approval under the rules prescribed by the Governor-General in Council; and no assignment or transfer was to be effectual unless within one calendar month after the date thereof the lessee shall have given notice to the Deputy Commissioner as specified and paid registration fees as therein mentioned.

4. The Secretary of State on its part covenanted with the lessee that if the lessee was desirous of taking a renewed lease of the premises demised for the further term of 30 years after the expiration of the term granted and of such desire shall have, prior to the expiration of such last mentioned term, given to the Deputy Commissioner six calendar months' previous notice in writing, the Secretary of State upon request and at the expense of the lessee and upon his executing and delivering to the Secretary of State if required, a counter part thereof, will execute and deliver to the lessee a renewed lease of the said premises for the said further term at rents not exceeding twice the rent reserved and at royalties as might be prescribed by the Government of India and otherwise upon the like terms and subject to the like covenants, agreements as were contained in the lease of 1917.

5. To continue with the recital of facts, it may be noted that on the 1st March, 1947 Chandanmull Indra Kumar addressed a memorandum to the Deputy Commissioner of Sambal pur expressing the desire of exercising the right of renewal of the lease expiring on September 30, 1947 in respect of Ac. 871-49 of land. They also informed the addressee that they were prepared to execute and deliver necessary documents to the Secretary of State for the said further term at rents and royalties as might be prescribed by the Government of India in pursuance of the existing rules and regulations in that behalf.

6. The record does not show what steps, the addressee or the Secretary of State on the said, if any, took memorandum. On October 25, 1949 the Mines and Minerals (Regulation and Development) Act, 1948 and the Mineral Concession Rules, 1949 came into operation.

7. On January 13, 1950 a limited company, the petitioner before the High Court, was formed evidently for the purpose of taking over the business of the Hindu undivided family in respect whereof a suit for partition had been filed. On January 28, 1950 there was a consent decree for partition of the assets of the said family. It appears that on November 7, 1950 the members of the

erstwhile Hindu undivided family purported to transfer, convey and assign all the assignor's right, title and interest in the Hindu joint family business carried on under the name and style of Rai Saheb Chandanmull Karnani as a going concern together with all assets, zamindari or other rights in alienated properties and colliery etc. and benefits of all outstanding contracts up to the 25th January 1950 with retrospective effect as on and from 26th January 1950 more fully set out and described in different lots in the schedule to the deed. This document was not annexed either to the petitioner or to any affidavit filed before the High Court of Orissa although it appears that a copy of the document was produced before the High Court. No reference was made by counsel appearing before us to the schedules to show whether there was any mention of the rights created in favour of Chandanmull Indra Kumar in respect of the said Ac. 871-49 on a part whereof they were operating a colliery known as the Ib River Colliery.

8. The record before us does not show what if any steps were taken, either by the Hindu undivided family or the Government in respect, of the renewal of the lease of the said colliery before April 22, 1957. On the last mentioned date the Deputy Secretary to the Government of Orissa, Mining and Geology Department, wrote to Raisaheb Chandanmull Indra Kumar purporting to convey "the sanction of the Government to the renewal of the mining lease over an area of Ac. 871-49 for coal in Ib River Colliery in the name of the old concern of Rai Saheb Chandanmull Indra Kumar subject to the general terms and conditions laid down in the model form of mining lease adopted by the State Government (of which a copy was enclosed)." Among other terms and conditions mentioned therein was one to the effect that the renewal would be granted for a period of 30 years with effect from November 1, 1947 and that the addressee would deposit a sum of Rs. 500/- towards security deposit etc. The addressee was further informed that if it agreed to the terms and conditions it was to convey in writing its acceptance hereof through the Collector of the District, deposit a sum of Rs. 500/- in the Post Office Savings Bank account and submit a map prepared in accordance with the executive instructions in that behalf after survey and demarcation of the area.

9. Although there is no reference in the letter to the company which was formed to take over the business of the former Hindu undivided family the use of the expression 'the old concern of Rai Saheb Chandanmull Indra Kumar' seems to suggest that the writer was aware of some change in the status of the former lessee. This was followed by a letter from the Deputy Commissioner of Sambalpur to the petitioner company that the latter had not up to then communicated in writing its acceptance to the terms and conditions in Clauses (1) to (10) of the letter of April 22, 1957 and had not also complied with the other requisites mentioned in the letter. The addressee was also called to show cause why in view of Rule 28-A of the Mineral Concession Rules the order of Government sanctioning the renewal of the lease should not be deemed to have been revoked because of the failure to comply with the requirements of the Government letter within six calendar months. On the 2nd November 1957 the petitioner acknowledged receipt of the letter of 25th October and claimed to have sent a reply to the letter of 22nd April by one dated 13th May accepting the terms and conditions mentioned in the letter under reply. It also informed the Deputy Collector that it was prepared to pay Rs. 500/- as security deposit and the cost of preparation of the map by the Government surveyor.

10. On April 20, 1963 a memo the Government of Orissa calling upon it to vacate addressed random to the petitioner the colliery by the 6th of May as it had no locus standi to work the mines. It was stated that although renewal was granted by the letter of 22nd April to Rai Saheb Chandanmull Indra Kumar the grantee did not comply with the terms and conditions of the grant and the orders granting renewal of mining lease therefore stood revoked under Rule 28-A of the Mineral Concession Rules, 1949. It was also mentioned that the lease had been purported to be transferred to a private limited company without the permission of the State or the Central Government and as the original lease had expired on 30th September 1947, there could be no question of any transfer of the area covered by the lease. This was replied to by the petitioner on May 4, 1963 wherein it was alleged that rents and royalties had been regularly paid and all the terms and conditions regarding the grant or renewal of the mining lease been complied with.

11. On February 6, 1970 the Government of Orissa directed the Col lector of Sambalpur to take possession of the virgin area of the Ib River Colliery immediately as indicated in Government's letter dated 8th January, 1969. The Collector was informed that it would be enough to walk over the area with beat of drums and putting pegs on the ground as a mark of demarcation. The Collector was also informed that further and separate instructions would issue as regards the area in actual possession of the party. The writ petition before the High Court was filed on April 10, 1970. On May 8, 1970 the Government of Orissa entered into an agreement with Western Bengal Coal-fields Ltd. purporting to appoint it as agents to work the mines in the virgin area.

12. The case made out in the petition under Article 226 of the Constitution filed in the High Court was:

(a) The petitioner took over administration and management of the Ib River Colliery after its formation on January 30, 1950. It obtained a certificate of approval from respondent No. 1 and started working the colliery. The respondents accepted rents and royalties in terms of the lease of 1947 and acknowledged the petitioner as lessee. Such acknowledgement is also borne out by correspondence which passed in 1955.

(b) In spite of such recognition by letter dated April 22, 1957 the Government purported to convey its sanction to the renewal of the mining lease to the old concern of Rai Saheb Chandanmull Indra Kumar imposing certain terms and conditions to be observed and performed by the petitioner. With the exercise of option for renewal by Chandanmull Indra Kumar the lease stood renewed as from 1-10-1947. In as much as the renewal had taken effect prior to the coming into force of the Mineral Concession Rules 1949 the petitioner was not liable to pay royalty at any rate other than that provided for in the deed of lease but to maintain good relationship the petitioner raised no objection with regard to the terms contained in the memorandum of April 22, 1957.

(c) In the circumstances the notice contained in the memorandum dated April 20, 1963 was illegal and without effect. Notwithstanding Rule 28-A of the Mineral Concession Rules the renewal of the lease remained in full force and effect.

(d) The order purporting to be passed by the respondent No. 5 on February 28, 1970 alleging that possession of an area of Ac. 668-19 of the virgin portion of the colliery had been taken was without any effect as the petitioner was holding and possessing the said area and working the said mines.

13. The relevant prayers in the petition were:

(1) A declaration that the order of 28th February 1970 was without jurisdiction.

(2) The respondents were not authorised to revoke any lease after the same stood renewed under any powers contained in the Mines and Minerals (Regulation and Development) Act 1948 and the Mineral Concession Rules, 1949.

(3) A writ in the nature of mandamus commending the respondents to withdraw and/or cancel and/or forbear from giving effect to any order affecting in any manner the right, title and interest or possession and/or working of the Ib River Colliery should be issued by the High Court.

14. In the counter affidavit of the Deputy Secretary to Government, opposite party No. 2, reliance was placed on Section 4 of the Act of 1948 and it was claimed that anything done in violation of the provisions of the Act and the rules there under was void abinitio. It was asserted further that there was no lease in existence on January 30, 1950 and there never was any transfer of any lease in respect of the property in question. The petitioner did not hold any certificate of approval and the working of the mines was completely unauthorized. It was further alleged that the State Government had already started working with effect from May 9, 1970 the virgin portion of the Ib River Colliery through Western Bengal Coal-fields Ltd. as its agent. It was associated with the virgin portion which area was never under the possession of the petitioners.

15. Before the High Court numerous contentions were raised against the grant of any relief on the basis of the petition. The respondents before the High Court contended that the petitioner company had no right, title or interest in the leasehold property for merely held by the Hindu undivided family of Rai Saheb Chandanmull Indra Kumar and as such the application for the issue of a writ was not maintainable.

16. On behalf of the petitioner the main contention was that so long as it was not evicted in due course of law it was entitled to remain in possession of the colliery. It was also submitted that though in a proper case even the title of the petitioner might be examined, in a proceeding under Article 226 the facts and circumstances did not justify such examination and prejudice was likely to result if the High Court was to embark on an enquiry into title.

17. The High Court felt it proper to leave the matter of title and/or legal interest of the company to be determined in a regularly constituted suit and taking the view that there was no dispute that the petitioner company had been in possession of the leasehold area though a part only of it had been worked, proceeded to grant relief to the company. Examining the facts of the case in its broad

aspects, the High Court observed:

The manner in which in the present case action had been taken by Government leaves no doubt in our minds that it has been extremely highhanded and Government has arrogated to itself a power which it does not have." The High Court concluded:

In view of the long possession of the petitioner over the leasehold, the several transactions in which Government and its Subordinate officers accepted the petitioner-company as lawfully entitled to work the mines and be in possession as the lessee and the general dealings of the parties spread over two decades leads us to conclude that the petitioner's possession was not that of a trespasser and that Government was not justified in acting in the manner it has to dispossess the petitioner from the virgin area of the leasehold.

In the result the High Court ordered the opposite parties to put the petitioner in possession of the virgin area of the colliery said to have been taken possession on February 28, 1970 and restrained them from further interfering with the possession of the petitioner over the said colliery.

18. The State has come up In appeal to this Court by certificate. The points canvassed on behalf of the appellant by the learned Attorney-General were as follows:

1. The respondent company was not in actual possession of the virgin area taken possession of by the Government and no question of forcible dispossession arose in the case.
2. An application under Article 226 does not lie unless the petitioner has a legal right and the Court does not assist the petitioner to continue to do acts forbidden by law.
3. Acceptance of rent by subordinate officers of Government did not relate to the virgin area taken possession of by Government.
4. The principles embodied in Section 6 of the Specific Relief Act 1963 are not applicable in the case of Government.
5. In any event acceptance of rent by subordinate officers did not attract the principles formulated by this Court in Century Spinning & Manufacturing Co. Ltd. v. The Ulhasnagar Municipal Council, and Union of India v. Indo Afghan Co. as there was no mining lease after 30th September 1947 and mining operations without a mining lease were forbidden by law.

19. The learned Attorney-General referred to several provisions of law which regulate mines and minerals including collieries. The first statute is the Mines and Minerals (Regulation and Development) Act 1948 under Section 4 whereof no mining lease could be granted after the

commencement of the Act otherwise than in accordance with the rules made under the Act and any mining lease granted contrary to the said provisions was to be void and of no effect. Under Section 13 of the Act the provisions were to be binding on the Crown whether in the right of the Dominion or of a Province. The Mineral Concession Rules promulgated under powers conferred under Section 5 of the Mines and Minerals (Regulation and Development) Act, 1948 came into force on 18th October 1949. Under Rule 26 thereof no mining lease was to be granted to any person unless he held a certificate of approval from the State Government concerned and no mining lease for any mineral specified in Schedule IV which included coal could be granted except with the prior approval of the Central Government. Rule 27 laid down the procedure for application for a mining lease. Under Rule 28-A when a mining lease was granted a formal lease had to be executed within six months of the order sanctioning the lease and if no such lease was executed within the aforesaid period the order sanctioning the lease was to be deemed to have been revoked. Under the proviso to the rule power was conferred to permit the execution of a formal lease after the expiry of the said period when the State Government was satisfied that the applicant for the lease was not responsible for the delay in the execution of the lease. Under Section 4 of the Mines and Minerals (Regulation and Development) Act 1957 no person could undertake any prospecting or mining operations in any area except under and in accordance with the terms and conditions of a prospecting licence granted under the Act and the rules made there under. Under the proviso to the section, mining operations undertaken in any area in accordance with the mining lease granted before the commencement of the Act were not to be affected. Under Section 10 any prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of the Act or any rules or orders made there under were to be void and of no effect.

20. The learned Attorney-General submitted that on the face of the statutory provisions and rules the respondent company could not be allowed to put forward any right or claim to work the colliery except in compliance with the provisions thereof.

21. He further urged that although the Hindu undivided family might have given a proper notice of renewal by letter of March 1947 they did not follow that up by executing and delivering to the Secretary of State a counter part of the lease to be executed and delivered to them for a further term of 30 years. Neither had there been any agreement fixing the rent which would be raised up to twice the rents reserved by the lease of 1917. Further there was no agreement as regards the royalties to be paid under the renewed lease.

22. With regard to the right claimed under the deed of assignment it was argued that the assignment could take place only when the lease was in force and as the lease of 1917 had expired in 1947 no valid assignment could take place if indeed, there was in fact any assignment of the colliery as alleged.

23. It was argued that without examining those questions and without coming to the conclusion that the petitioner company had by their petition disclosed a legal right in them with regard to the colliery or to continue in possession thereof the High Court was not competent to grant them any relief as it had purported to do. It was submitted that at the most there was a term in the agreement of 1934 read with the lease of 1917 which entitled the Hindu undivided family to sue for specific

performance of the contract to renew for a further term. The demise in its favour of the veins etc. under the lease of 1917 had come to an end and even if the person in possession of the seams and veins which were being worked could not be dispossessed by an order of the nature disclosed in the letter of February 1970, the petitioner company had not been able to show any right in it to claim possession of the virgin area, that is to say, the seams, veins, mines etc. of which they were not in physical possession and which they were not working at the moment, when the impugned order was served on them.

24. In our opinion the High Court should have examined these questions and specially the question as to whether the petitioner company had been able to substantiate the claim that it was in possession of the end underground rights in respect of Ac. 871-49 covered by the agreement of 1934. The agreement of 1934 bound the Government and the Hindu undivided family: the petitioner company was not a party to it. Even if the Hindu undivided family continued in possession of some of the mines, seams and veins after the 1st October 1947 it is a moot question whether such possession meant possession of the seams, mines and veins which were not actually being worked. A further question would arise as to how and what right the company could lawfully claim in respect of the colliery by virtue of the deed of assignment in 1950. Without an adjudication of these questions the High Court was not justified in directing the State and other authorities to put the company in possession of the area described as virgin area. Whether the case is a fit one for examination on affidavits will be for the High Court to consider.

25. In the circumstances we set aside the judgment and order of the High Court and remand the matter to it for re-adjudication in the light of the observations made by us. The High Court may allow the parties the liberty of filing further affidavits if it thinks proper. The costs of this appeal will abide by the result of the decision of the High Court.