

Karanpura Development Company vs Union Of India (Uoi) And Ors. on 18 March, 1988

Equivalent citations: AIR1988SC1478, JT1988(2)SC586, 1988(1)SCALE1003, 1988SUPP(1)SCC488, 1988(2)UJ393(SC), AIR 1988 SUPREME COURT 1478, 1988 SCC (SUPP) 488, (1988) 2 JT 586 (SC), 1989 SCC (SUPP) 1 747

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Bench: M.N. Venkatachaliah, S. Natarajan

JUDGMENT

M.N. Venkatachaliah, J.

1. These appeals, by certificate, preferred against the judgment dated 18.4.1970 of the Patna High Court are by M/s. Karanpura Development Company Ltd. which held certain mining leases for working coal-mines in the State of Bihar and raise questions as to appellant's entitlement to compensation and the extent thereof under Section 13 of the Coal Bearing Area (Acquisition & Development) Act, 1957 (Act) in respect of the appellant's rights in and over the lands which vested in the Central Government pursuant to the publication of the declaration dated 15.1.1958 under Section 9(1) of the Act.

2. A brief reference to the material and necessary facts is necessary:

On 26.3.1915, the Court of Wards representing the estate of Laxmi Narain Singh Bahadur of Ramgarh Raj granted to M/s. Bird & Co. certain prospecting-licences in respect of large extents of unworked coal bearing lands in Mauza Giddi and Kar Kutta of Hazaribagh District. On 30.5.1921, the grantee, M/s. Bird & Co. transferred the prospecting-licences in favour of the appellant. In the year 1937, Raja Bahadur Kamakhya Narain Singh, upon acquiring the age of majority, sought to repudiate the prospecting-licences granted by the Court of Wards. This controversy led to the institution of two suits; the first was title suit No. 28 of 1940 by the appellant against the Raja for specific-enforcement of the agreement of lease; and the other was title No. 82 of 1940 by the Raja himself for a declaration that the prospecting-licences granted by the Court of Wards were void and were not binding on the estate. Both suits were instituted in the court of subordinate judge at Hazaribagh. It is not necessary to set-out in any great detail the vicissitudinous career of this litigation except to say that, ultimately, by the judgment of this Court reported in 1956 SCR 325 appellant succeeded in its suit and the Raja lost. In the meanwhile, even during the

pendency of the litigation and subject to its final result, the Raja granted in favour of the appellant a lease for 999 years under deed, dated, 17.6.1948 in respect of 3645 Bighas of coal bearing lands.

On 4.9.1948, appellant, in turn, granted a sub-lease in favour of M/s. East Karanpura Coal Company Ltd., said to be appellant's own subsidiary-company, respecting 3064 bighas, out of said 3645 bighas. The sub-lease was for a term co-extensive with that under the main lease, less two days short of the original term.

On 25.9.1950, Bihar Land Reforms Act came into force. The Coal Bearing Areas (Acquisition & Development) Act 1957 (Act for short) came into force with effect from 12.6.1957. After compliance with the necessary antecedent formalities, a declaration under Section 9(1) of the "Act" with respect to the lands covered by the appellant's lease was published on 15.1.1958 with the attendant statutory consequence that all rights in or over the land, as the case may be, stood vested absolutely in the Central Government free from all encumbrances.

3. On 25.8.1958 appellant lodged, under Section 13 of the Act, its claim for compensation with the National Coal Development Corporation in the sum of Rs. 8,92,216.27 p. Appellant's claim included expenses said to have been incurred for obtaining the lease, such as, the premium or salami paid to the lessor; the expenses of litigation incurred in securing specific performance of the agreement of lease; expenses incurred on the prospecting-licences; payment toward dead rent, royalty etc. The sub-lessee, M/s. East Karanpura Coal Company Ltd. also filed its claim seeking compensation in the sum of Rs. 65,644. There was no conflict of interest between the two claimant-companies, inter-se. Indeed the sub-lessee conceded the claims of the appellant and had no objection to their grant. There having been no agreement between the Government and the Companies fixing the amount of compensation, the matter became referable, and was, indeed, referred to the Tribunal envisaged by and constituted under Section 14(2) of the Act. The Additional Judicial Commissioner Ranchi constituted the Tribunal. The reference was registered as Reference No. 25 of 1962. Appellant's claim was contested by the Government principally on the ground that as on the date of the publication of the declaration, the appellant had no subsisting interest in or over the lands constituting the subject-matter of the lease and could not, therefore, be considered a "person-interested" for purposes, and within the meaning of, Section 13 of the Act. The quantum of the individual claim were also contested.

The tribunal over-ruled the objections of the Government and, on a consideration of the evidence before it, proceeded to determine and award a compensation of Rs. 7,54,629.49 p. in favour of the appellant. Two items of the claim, in the sum of Rs. 54,439 towards solatium and the sum of Rs. 55,932 claimed towards litigation-expenses were, however, disallowed by the tribunal.

4. Against this award and the disallowances made by the tribunal, to appeals came-up before the Patna High Court. The main award was challenged by the Union of India in Misc. Appeal No. 259 of 1956, on the ground that the appellant company was not a "person-interested" having, by virtue of the sub-lease granted to M/s. East Karanpura Coal Co. Ltd., ceased to be in possession of the leased

lands. Appellant itself brought-up Misc. Appeal 373 of 1966 against that part of the Tribunal's award by which its claims for solatium and litigation expenses were disallowed.

By its common judgment, dated 18.4.1970, now under appeal, the High Court disposed of both the appeals, holding that appellant could not be said to be a "person-interested" in view of the denudation of its rights occasioned by the combined effect of Sections 4 and 10 of the Bihar Land Reforms Act, 1950 and that, accordingly, appellant was not entitled to any compensation. Accordingly, Misc. Appeal 259 of 1966 of the Union of India was allowed while Misc. Appeal 373 of 1966 of the appellant came to be dismissed. Against the success of Misc. Appeal No. 259 of 1966 appellant has preferred the present CA No. 743 of 1974. The connected CA No. 741 of 1973 arise; out of dismissal of appellant's appeal 373 of 1966.

5. We have heard Sri Harish Salve, learned Counsel for the appellants and Sri Barua for the Union of India and Sri Goburdhan for the State of Bihar. We have been taken through the Judgment under appeal and the material on record. On the contentions urged at the hearing the following points fall for determination in these appeals :

(a) Whether the view of the High Court that under the Bihar Land Reforms Act, 1950 such rights and interests as subsisted in the appellant under the lease were also extinguished is erroneous; and whether the rights of the appellant under the head-lease survived and accordingly, the appellant was a "person-interested" entitled to compensation?

(b) Whether, at all events, in view of the circumstance, that the sub-lessee was a subsidiary of the appellant which, as a holding-company, had rights and prospects of participating in the profits of the sub-lessee, appellant should be held to be a "person-interested" under and for purposes of the Act?

(c) Whether, at all events, even if the appellant was not a "person-interested" the expenses incurred by the appellant for obtaining of the lease, admit of being treated as commensurable expenses in the hands of the sub-lessee for purposes of determination of the compensation?

(d) If the finding on point (a) is in favour of the appellant, is the appellant entitled, in addition to the sums awarded by the Tribunal, to the solatium and litigation expenses claimed in CA. 741 of 1973?

6. Re : Contention (a) It is necessary to notice a few provisions of the Bihar Land Reforms Act 1950. Section 4 of the said Act mentions the consequences which follow on the publication of the notification under Section 3 (1) of the said Act. Section 4 (a) says that notwithstanding anything contained in any other law for the time being or any contract, on the publication of the declaration under Sub-section (1) of Section 3 such estate or tenure, including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure shall vest absolutely in the State free from all incumbrances and such proprietor or tenure-holder shall cease

to have any interests in such estate or tenure, other than the interest expressly saved by or under the provisions of the said Act. The effect of Section 4 of the Act has been considered by this Court in *Suraj Ahir v. Prithinath Singh* .

Section 10 of the Bihar Land Reforms Act, which is a special provision pertaining to Mines and Minerals, provides that notwithstanding anything contained in the Act, where immediately before the date of vesting of the estate or tenure, there was a subsisting lease of mines or minerals comprised in the estate or tenure or any part thereof, the whole or that part of the estate or tenure comprised in such lease shall, with effect from the date of vesting, be deemed to have been leased by the State Government to the holder of the said subsisting lease for the remainder of the term of that lease, and such holder shall be entitled to retain possession of the lease-hold property. This provision has a material bearing on the question of the entitlement of appellant to compensation in the present case.

We may now turn to provisions of Coal Bearing Areas (Acquisition & Development) Act 1957 particularly those that deal with the compensation payable to the holders of prospecting-licences and mining leases. Section 13(1) and (2) provide :

13. Compensation for prospecting licences ceasing to have effect, rights under mining leases being acquired, etc.-(1) Where a prospecting licence ceases to have effect under Section 5, there shall be paid to the person interested compensation, the amount of which shall be a sum made up of all items of reasonable and bona fide expenditure actually incurred in respect of the land, that is to say,-

(1) the expenditure incurred in obtaining the licence;

(ii) the expenditure, if any, incurred in respect of the preparation of maps, charts and other documents relating to the land, the collection from the land of cores or other mineral samples and the due analysis thereof and the preparation of any other relevant records or material;

(iii) the expenditure, if any incurred in respect of the construction or roads or other essential works on the land, if such roads or works are in existence and in a usable condition;

(iv) the expenditure, if any incurred in respect of any other operation necessary for prospecting carried out in the land.

(2) Where the rights under a mining lease are acquired under this Act, there shall be paid to the person interested compensation, the amount of which shall be a sum made up of the following items, namely,-

(i) if the lease was granted after prospecting operations had been carried out in respect of the land under a prospecting licence, the sum of all items of reasonable and

bona fide expenditure actually incurred with respect to the matters specified in Clauses (i), (ii), (iii) and (iv) of sub-Section (1) before the date of the lease Provided that where two or more leases had been granted in relation to any land covered previously by one prospecting licence, only so much of the expenditure aforesaid as bears to the total expenditure the same proportion as the area under the mining lease in respect of which the rights have been acquired bears to the total area covered by the mining leases shall be payable under this clause;

(ii) any reasonable and bona fide expenditure of the nature referred to in Clauses (i), (ii) and (iii) of sub-Section (1) actually incurred in relation to the lease, together with the salami, if any, paid for obtaining the lease;

(iii) the expenditure, if any, incurred by way of payment of dead-rent or minimum royalty during any year or years when there was no production of coal;

(iv) interest on any such expenditure referred to in Clauses (i), (ii) and (iii) as has actually been incurred (up to) the year in which the rights under the lease are acquired, interest being calculated in the following manner, that is to say,-interest at the rate of five per centum per annum in respect of the expenditure incurred during each calender year for the first five years commencing from the year in which such expenditure was incurred plus interest at the rate of four per cent per annum in respect of each subsequent year after the expiration of the first five years and ending with the year in which the rights under the lease are acquired:

Provided that the total sum payable under this clause shall not exceed one-half of the total amount referred to in (Clauses (i), (ii) and (iii)).

The High Court in substance held that the combined effect of Sections 4 and 10 of the Bihar Land Reforms Act 1950 was to extinguish whatever right and interest that appellant, as the head-lessee, had been left with and to supplant the sub-lessee directly under the state, with the result that appellant could not claim to be a "person-interested" under the Coal Bearing Areas (Acquisition & Development) Act 1957. The High Court relying upon and following the view taken by full Bench of that Court held :

The Full Bench in its judgment construing expression "subsisting leases of mines and minerals" which occurs in Section 10 of the Bihar Land Reforms Act in the light of the inclusive definition of "lease" given in Section 2 (1) of the said Act held that with effect from the date of vesting of the estate or tenure, the rights of the holder of a sub-lease in respect of mines and minerals comprised therein became vested in the State of Bihar and simultaneously there with a statutory sub-lease came into existence so as to entitle the sub-lessee to retain possession of the lease-hold interests for the remainder of the term of the sub-lease which was subsisting, upon the same terms and conditions which were operative on the date of vesting....

On the question whether the head-lessee also is to be held to be a "person-interested" the High Court said:

...It was argued before the Full Bench that both the lessee and the sub-lessee were entitled to be separately compensated in the manner in which they claimed in respect of the various items of expenditure specified in the different clauses of sub-Section (2) of Section 13 of the Act. This contention was rejected, and it was held that compensation is payable only to that person in whom the rights of actually working the mines are for the time being vested, because the real purpose of making the acquisition under the Act is to take over the rights of private persons who at the time of the acquisition are found to be entitled to carry on mining operations in the coal bearing areas concerned so that the exploitation of such coal bearing areas can be brought under the control of the Central Government. Such rights, at the time of the present acquisition, are vested in sub-lessee, and not in the lessee....

Shri Salve submitted that the assumption underlying the reasoning that Section 10 had the effect of denuding of lessee of all his rights and interest under the lease, wherever such lessee had entered into or had granted a sub-lease is erroneous and was not in consonance with the view taken by this Court in *Bihar Mines Ltd. v. Union of India* 1967 (1)SCR 707.

In that case a lease of certain lands in Bihar was granted in the year 1928 for a period of 49 years for winning of certain minerals such as soap-stone, kaolin etc. Certain sub-leases were granted by the head-lessee and the sub-lessee in the years, 1933, 1934 and 1954. The question though incidentally arose as to the effect of Section 10 (1) of the Bihar Land Reforms Act 1950 on the rights of the main-lessee who had granted the sub-leases. It was held :

The head lease of 1928, subsisted immediately before the date of vesting of the Palgani estate in the State. Therefore, the whole or that part of the estate or tenure comprised in this lease was, with effect from the date of vesting, to be deemed to have been leased by the State Government to the holder of the lease i.e. the first lessee, up to August 19, 1977, the lease being for 49 years. The holder of the lease could retain possession of the leasehold property till then. We may mention that we are not concerned, in this case, with the effect of S. 10 A introduced by the Bihar Land Reforms Amendment Act, 1964 (Act 4 of 1965)....

(emphasis supplied) It appears to us that the position as it stood prior to the change in the law by the introduction of Section 10 (A) as set-out in *v.* that the head-lessee, notwithstanding the sublease, retains his position as such head-lessee with the State Government becoming the lessor in place of the erstwhile grantor of the lease must apply here. The view taken by the High Court that the appellant was denuded of its rights as head-lessee by virtue of Section 4 read with Section 10 cannot be accepted. Shri Goburdhan, learned Counsel appearing for the State of Bihar, however, sought

to support the view of the High Court contending that Section 10 (1) (a) of the Bihar Land Reforms Act envisages a lessee being in actual possession and that where the head-lessee had parted with possession in favour of a sub-lessee, the idea of the lessee being held to be entitled to "retain possession" become inapposite and that, therefore, Section 10 (1) can be held to be attracted only in cases where the lessee was in actual possession and could be said to be entitled to retain possession. The idea of possession under Section 10(1) cannot be so strictly construed as to be equivalent to actual physical possession. A lessee, in law is in possession through a sub-lessee though the possession of the sub-lessee is "immediate" and that of the lessee "mediate". Shri Goburdhan's contention can not be reconciled with the pronouncement in the Bihar Mines' Case.

8. In the Act the expression "person-interested" is defined under Section 2 (d) as follows :

the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land, or of the acquisition, extinguishment or modification of any rights in or over land, under this Act;

This language of the definition is in terms substantially similar to the definition of that expression in the Land Acquisition 1894. Referring to the somewhat broad import of this expression, this Court in *Sunder Lal v. Pararnsudhdas* observed:

It will be noticed that it is an inclusive definition. It is not necessary that in order to fall within the definition a person should claim an interest in land, which has been acquired. A person becomes a person interested if he claims an interest in compensation to be awarded....

...A person claiming an interest in compensation would, it seems to us, be a person interested in the objection if the objection is to amount of compensation or the apportionment of compensation....

...The provisions of the Act, including Ss 20 and 21, do not prescribe that his claim to an interest in compensation should be "as compensation", as urged by Mr. Desai. This is really a contradictory statement. For, a fortiori, he has no interest in land, and compensation is given for interest in land. He can never claim compensation qua compensation for what he claims is an interest in the compensation to be awarded. This is not to say that a person claiming an interest in compensation may not claim that the compensation awarded for the acquired land is low if it affects his interests.

Having regard to all the circumstances it requires to be held that appellant was a "person-interested". Point (a) is held and answered accordingly.

9. Re : Contention (b) This is merely an additional ground in support of the claim that appellant is a "person-interested". It is urged that having regard to the relationship between the head-lessee and the sub-lessee which is that of a holding-company and a subsidiary-company, with the attendant benefits and advantages accruing to the appellant as the holding-company from its subsidiary, appellant also should be held to be "person-interested", once the sub-lessee is so held. We have held that appellant, in its own right is a "person-interested". It is not necessary for it to rely upon any derivative benefits from the sub-lessee to establish that status. It is, therefore, unnecessary to decide that question in this case.

It is true that the company is a legal entity distinct from its shareholders. It is a juristic person and the fact that another company is a share-holder, even a major share-holder, does not affect the legal distinction between the two entities. The provisions of the Companies Act provide that in certain circumstances, where one company holds in another company shares upto and above a certain percentage of the equity shares capital, the former is deemed to be a holding company. As stated earlier it is not necessary for the appellant to rely on this ground to support its claim.

10. Re :Contention (c) The contention is that having regard to the scheme of the Act, and the principles of determination of the holders of the mining-leases and prospecting-licences, it is not necessary that the expenses incurred for obtaining of the lease should have been incurred by the sub-lessee itself, even assuming that sub-lessee could alone be the "person-interested" and the head-lessee is not such a person in its own right and that, accordingly, compensation payable towards the actual expenses incurred for the purpose of obtaining of the lease can only be claimed by sub-lessee.

Learned counsel for the appellant submitted that the statute does not qualify the entitlement to this component of the compensation by any requirement that the "person-interested" should alone be shown to have incurred these expenses and that it would be sufficient if the expenses are actually shown to have been incurred for the purpose of obtaining lease, whether it be by the "person-interested" himself or by his predecessor-in-title or interest from whom the former claims. The essence of the matter, says learned Counsel, is that in quantifying the compensation one of the relevant criteria is the quantum of expenses reasonably and bona fide incurred for obtaining the lease and that it is immaterial if such expenses may have been incurred by the predecessor-in-title of the "person-interested" as long as the expenses had been shown to have been reasonably and bona fide incurred for the purpose. It is also submitted that for this purpose the "person-interested" must include his predecessor-in-title or interest as long as there is an organic continuity of title. It is also urged that there is nothing in the scheme of the 'Act' which compels the exclusion of such a claim. It appears to us that this is a reasonable construction of the relevant provision of the Act. If the Act does not envisage that the person must have himself incurred the expenses, it would be sufficient for the purpose if those expenses are shown to have been incurred bona fide and reasonably by the predecessor-in-interest. The opening words of Section 13(1) provide that "there shall be paid to the "person-interested" compensation, the amount of which shall be a sum made up of all items of reasonable and bona fide expenditure actually incurred in respect of the land". In the present case the head-lessee, had incurred expenses. But here again, as in point (b) the matter becomes academic

having regard to the finding on contention (a). This point assumes materiality only if appellant is not entitled to compensation and as a consequence, the further question arises whether the expenses incurred by it under Section 13(1) (i) can constitute a head of claim in the hands of the sub-lessee.

11. Re : Contention (d) The actual quantification of the claims made by the tribunal was not challenged before the High Court. The award was assailed before the High Court on a matter of principle as to the very entitlement of the appellant to prefer a claim. In regard to the question whether litigation-expenses are an admissible item of compensation as necessarily incurred for the purpose of obtaining the lease, the view taken by the Patna High Court in Union of India and Anr. v. Karanpura Development Co. Ltd. AIR 1976 Pat. 121 where in a similar context a similar claim was upheld does appear to be reasonable view to take. If it requires a prolonged litigation in proceedings for specific performance of the agreement of lease, it may not be reasonable to hold that such expenses were not necessary for obtaining of the lease and should be excluded from the quantification of the compensation.

The view taken by the High Court on this matter is not a reasonable one and calls for interference. We think we should allow the claim for litigation expenses.

There is a claim in regard to the solatium in the sum of Rs. 55,932/-. In the very nature of the claim, it requires to be rejected. There was no question of sustentation of the operation of mining lease and the claim under Section 13(4) is not supportable. This claim requires to be and is hereby rejected.

12. Accordingly CA 743 of 1973 is allowed and the judgment dated 18.4.1970 of the High Court under appeal is set aside and the claim of compensation as awarded by the Tribunal is restored. So far as Civil Appeal No. 741 of 1973 arising out of the Misc. Appeal 373 of 1966 before the High Court is concerned, it succeeds and is allowed 5 in part in respect of claim for litigating expenses which is awarded. The claim for solatium made in CA 741 of 1973 is rejected. The judgment of the High Court in Misc. Appeal 373 of 1966 on its file is modified accordingly. The appeals are disposed of accordingly.

13. In the circumstances of the case, there will be no order as to costs 10 in these appeals.