
(2006) 10 JH CK 0005

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 3021 of 1999 (R)

Bharat Coking Coal Limited

APPELLANT

Vs

State of Bihar (now Jharkhand) and Others

RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 83, 89(2)
Chota Nagpur Tenancy Rules, 1959 — Rule 74
Coal Mines (Nationalisation) Act, 1973 — Section 2, 3

Citation : (2007) 1 BLJR 379 : (2007) 1 JCR 271

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Anoop Kr. Mehta and P.K. Choudhary, for the Appellant; P. Modi, GP-I, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—The petitioner M/s Bharat Coking Coal Limited, a Government Company and a subsidiary of Coal India Limited has filed this writ application for quashing of the order dated 19/12/1990 (Annexure-1), i.e. the order passed by Respondent No. 4 the Assistant Settlement Officer, Dhanbad, rejecting the objection u/s 83 of the Chhotanagpur Tenancy Act filed by the petitioner, the order dated 19/03/1994 (Annexure-2) passed by Respondent No. 3 the Charge Officer, Dhanbad, dismissing the revision filed by the petitioner u/s 89(1) of the Chhotanagpur Tenancy Act and also the order dated 27/03/1999 as contained in Annexure-4, passed by the Commissioner, North Chhotanagpur Division, Hazaribagh, Respondent No. 2 herein, disposing of the appeal filed by the petitioner, u/s 89(2) of the Chhotanagpur Tenancy Act read with Rule 74 of the Chhotanagpur Tenancy Rules.

2. The dispute between the parties is with regard to 2.06 acres of land of C.S. Plot No. 122, Khata No. 14 out of the total area measuring 645.03 acres of land situated in Village Bherakatta of Bastacola Coal Company Limited, Dhanbad.

3. According to the petitioner, in the recent Revisional Survey Operations, R.S. Plot No. 9 was carved out from C.S. Plot No. 122, which recorded in the Khata of M/s Bharat Coking Coal Limited. The said R.S. Plot No. 9 was ordered to be recorded in the name of Respondent Nos. 5 to 8 herein. The petitioner filed an objection u/s 83 of the Chhotanagpur Tenancy Act before the Assistant Settlement Officer, Dhanbad, stating therein that C.S. Plot No. 122 appertaining the C.S. Khata No. 14 of Mauza Bherakatta suit recorded in the name of New Birbhum Coal Company Limited in the last C.S. record of rights. The recorded owner M/s New Birbhum Coal Company granted "Mokarrari Mourashi Patta" to Babulal Madhavjee by a registered deed dated 27/09/1946 in respect of underground and surface rights over the lands of Mauza Bastacola and Mauza Bherakatta. The said Babulal Madhavjee was the owner of Bastacola Colliery which vested in the Central Government after coming into force of Coal Mines (Nationalisation) Act, 1973 and consequently, in M/s Bharat Coking Coal Limited free from all encumbrances. In the recent Revisional Survey, R.S. Plot No. 9 was carved out from C.S. Plot No. 122, which was recorded in the Khata of M/s Bharat Coking Coal Limited and the same was wrongly ordered to be recorded in the name of Respondent Nos. 5 to 8.

4. The said objection of the petitioner was rejected by order dated 19/12/1990 by the Assistant Settlement Officer, Respondent No. 4, which has been appended as Annexure-1 to this writ application. Against the said order as contained in Annexure-1, the petitioner moved before the Respondent No. 3, i.e. the Charge Officer by filing a revision, which was dismissed by order dated 16/03/1994 vide annexure-2 to the writ application. The petitioner thereafter, preferred an appeal before the Respondent No. 2, the Commissioner, North Chhotanagpur Division, Hazaribagh under the provisions of Section 89(2) of the Chhotanagpur Tenancy Act read with Rule 74 of the Chhotanagpur Tenancy Rules which was registered as C.N.T. Appeal No. 26/94. The learned Commissioner vides impugned order as contained in Annexure-4 disposed of the appeal holding that the lands were settled by the SDO, Dhanbad in the year 1964 in favour of the private respondents and, therefore, the petitioner should approach the Civil Court for cancellation of the said settlement and if the petitioner succeeds it can approach before the authorities for correction of entries in the Survey records.

5. Nobody has appeared for the private respondent Nos. 5 to 8 in spite of service of notice.

6. Mr. A. K. Mehta, learned Counsel appearing for the petitioner relying on the decision in the case of Bharat Coking Coal Ltd. Vs. Madanlal Agrawal, , wherein it was held that the suit premises fall within the ambit of the definition of "mine" in Section 2(h) of the Coal Mines (Nationalisation) Act, 1973 and, as such, had vested in the Central Government on the appointed day by virtue of the provision of Section 3 of the Act, even though these premises might not have been in the ownership of the United Mining Company, has submitted that the disputed land was a part and parcel of C.S. Khata No. 122 was transferred by a "Mokrrari

Mourashi Patta" to the proprietor of Bastacola Colliery for mining work by the recorded tenant and the said land vested in Bharat Coking Coal Limited through the Central Government when Coal Mines (Nationalisation) Act, 1973 came in force. According to the petitioner the provision of Coal Mines (Nationalisation) Act is a legislation having overriding effect over the provision of general legislation. According to the definition of "mine" as defined u/s 2(h) of Coal Mines (Nationalisation) Act, 1973 all the mines vested in the Central Government free from all encumbrances. The authorities unnecessarily placed reliance on the so-called settlement papers produced by the respondents, which had got no relevance in view of the "Mokrrari Mourashi Patta".

7. A counter affidavit has been filed on behalf of the respondent authorities wherein it has mainly been stated that since the writ petitioner did not produce the concrete evidence or proof of their claim and, therefore, the impugned orders were rightly passed and the learned Commissioner rightly directed the petitioner to approach the Civil Court.

8. From perusal of the impugned orders it appears that none of the authority has considered as to whether the disputed land was a part and parcel of C.S. Plot No. 122 or not and further that whether the lands in question comes within the definition of "mine" under the Coal Mines (Nationalisation) Act, 1973 or not? If the said land as "mine" at the time vesting under the terms of the Act then certainly the said land has vested in the Central Government free from all encumbrances. From perusal of the impugned orders it further appears that the authorities concerned have not considered the aforesaid questions, which are necessary for deciding the controversy between the parties.

9. In such a situation, I am of the view that the matter has to be remanded for fresh consideration.

10. Accordingly, this writ application is allowed. The impugned orders as contained in Annexure-1, 2 and 4 are hereby quashed and the matter is remitted back to the Assistant Survey Settlement Officer, Dhanbad to consider the matter afresh and to pass afresh order in accordance with law in the light of the observations made above.