
(2000) 02 PAT CK 0100

In the Patna High Court

Case No : Appeal from Original Decree No. 69 of 1995 (R)

Bharat Coking Coal Ltd.

APPELLANT

Vs

Smt. Maina Devi and Others

RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Citation : (2000) 02 PAT CK 0100

Final Decision : Allowed

Judgement

N. Pandey, J.—This appeal by M/s. Bharat Coking Coal Limited (defendant) is directed against the Judgment and decree passed by the Sub-ordinate Judge, 2nd Court. Dhanbad, in Money Suit No. 18 of 1986, whereby and whereunder, the plaintiffs suit was decreed in part for Rs. 34,63,950/- (rupees thirty four lacs sixty three thousand nine hundred and fifty) coupled with damages at the rate of Rs. 175/-per month per decimal so long the defendant retains the possession of the suit land or regular sate deed was executed by the plaintiff.

2. In short, the case of the plaintiff is that he acquired 20-16 Acres of land comprising of various plots under Khata Nos. 1 and 2 at Mouza-Durgapur within Jharia Police Station in the district of Dhanbad for valuable consideration by virtue of the registered deed of sale dated 16-2-1970 and 8-6-1979 from Jiv Rai M, Patel Narasi R. Chodwa, Khem Shankar Jain and Smt. Gomati Ben Kharfeha and since then he had been coming in possession over the same. The acquired lands included 15.74 Acres comprised within plot No. 5 under Khata No. 1, the plaintiffs further case is that the lands acquired by the plaintiff were surveyed by the State of Bihar, after the promulgation of the Bihar Urban Land (Ceiling Regulation) Act, 1976 and the area of 15.58 Acres was acquired by the Slate of Bihar through the Deputy Commissioner, Dhanbad vide Notification No. 1473 dated 24-10-1980. The State of Bihar, however, could acquired possession of only 13.20 Acres of land including 8.79 Acres of plot No. 5 for the reason that no more vacant land was found on the spot to be delivered to the State.

3. Further case of the plaintiff is that in the year, 1975 defendant through its

officers made an offer to the plaintiff to purchase portion of the land of plot No. 5 for the purpose of construction of office and also for the purpose of open cast project at Golakdih within Basta-Kola area. Negotiation for sale could not be materialised due to some differences in the price of the land. It is alleged that in the year, 1981 the defendant through its officers, namely, Sri R. P. Gupta, the then General Manager and Sri Choudhary then Senior Administrative Officer of Basta Kola Area approached the plaintiff and requested him to sell 5.15 Acres of land out of Plot No. 5 as the same was urgently needed for the immediate construction of some labourer-quarters of the adjoining collieries. The officers of the defendant alleged to have settled and finalised the purchase price with the plaintiff and it was also negotiated that pending completion of enquiry by higher officers with regard to necessary papers which was likely to take enough time, the defendant will pay rent of the said land at the rate of Rs. 175/- per decimal per month until completion of the enquiry and registration of regular sale deed. The plaintiff having considered urgency of the matter, agreed to part with the land and delivered possession thereof to the defendant through its officers on 29-12-1981 after levelling the land on investing huge amount. The defendant alleged to have constructed some "Dhowras" and quarters on the land for accommodation of its labourers.

4. The plaintiffs further case is that he requested the defendant through its officers on various occasions orally and in writing to get the sale deed executed on payment of agreed price and also demanded monthly rent which had fallen due. The defendant adopted delaying tactics and eventually the Senior Administrative Officers of Basta Kola Area by his letter dated 29-11-1983 asked the plaintiff to produce the document of title which was delivered by the plaintiff. Nothing was done at the instance of the defendant. The plaintiff ultimately served a lawyer's notice on the defendant and thereupon the defendant requested the plaintiff to wait for sometime and assured him that he would get rent due and regular sale deed will be executed. The plaintiff alleged that even thereafter the plaintiff neither paid the rent due nor finalised the sale deed. Therefore, the plaintiff instituted the instant suit.

5. The defendant contested the suit by filing written statement denying and disputing the allegations made in the plaint and stating that the suit itself is not maintainable and there is no cause of action for the suit. The defendant's case is that the entire land of Khata Nos. 1 and 2 of Village Durgapur along with the suit land vested in the Central Government by the operation of the Coking Coal Mines (Nationalisation) Act, 1972 (hereinafter referred to as the "Nationalisation Act"). According to the defendant, the land of Khata No. 1 originally belonged to one P.O. Hamir & Co. who had both surface and underground coal mining rights in the village which he held as mining lessee and operating a mine known as "Pure Durgapur Colliery Co." The name of P. D. Hamir & Co. was thus recorded in the survey record of right in respect of Khata No. 1 of the Village. The company used to carry on the mining by Pit mining method and had its other establishments, namely, buildings, structures, constructions, godowns, workshops, pits, office

etc. over the surface lands. It is stated that the surface and underground coal mining rights In respect of Village Durgapur were sold in a Court auction in Title Suit No. 14 of 1934, which was purchased by M/s. Narain Pursottam and Co. vide sale certificate dated 16-1-1942. Subsequently, the auction purchaser transferred its all rights to M/s. Pure Durgapur Co. Ltd. The defendant's further case is that prior to auction the property was being managed by Shri Khetra Nath Sengupta, Advocate, who was appointed as a receiver by the Court in Title Suit No. 14 of 1934, M/s. Pure Durgapur Colliery Co. Ltd. held and possessed the mines including its pits and establishment were subsequently passed to M/s. Bharat Fire Bricks and Pottery Works. As such, the lands including all the structures, buildings, pits, office, godown, workshops, etc. always belonged to mine and the same vested free from all encumbrances by reason of the enforcement of the aforesaid Act with effect from 1-5-1972. The defendant also disputed the legality or otherwise of the acquisition of 15.58 Acres of land under the provisions of Bihar Urban Land Ceiling Regulation Act, 1976.

6. Thus, the case of the defendant is that entire 20.16 Acres of land vested with the defendant by operation of the Nationalisation Act and the defendant is in possession of the same. It is alleged that the plaintiff made unsuccessful and fraudulent attempt to dupe its officers with a view to get the land sold to the defendant and, thus, the officers were neither competent to purchase nor they were authorised by the competent authority to enter into any negotiation to purchase the same. The Officers who allegedly entered into negotiation with the plaintiff had neither made any full scrutiny of the fact nor they ever purchased the land and the letters issued by those officers are by reasons of ignorance of fact and is not binding on the defendant. The alleged requirement of quarters for the labourers is imaginary and baseless. As a matter of fact the defendant had raised some new construction of quarters in the early part of 1982 over the portion of surface land of Plot No. 5 for the purpose of accommodating labourers. The defendant also denied the relationship of landlord and tenant and its liability to pay rent or compensation. The defendant also alleged that apart from the aforesaid lacuna in the case of the plaintiff, admittedly, as would appear from the facts on record, no agreement was ever executed either to purchase the land in question or to get on rental basis nor the plaintiff could produce even a chit of paper to show that at any point of time the rental was paid by the defendant for the land in question.

7. The trial Court on the basis of the pleadings of the parties, as made out in the plaint, including that in the written statement and additional written statement of the defendant, framed the following issues for adjudication :--

(i) If the suit as framed is maintainable?

(ii) Has the plaintiff got a valid cause of action for the suit?

(iii) Is there any relationship of landlord and tenant in between the parties in respect of the land described in Schedule A of the plaint for the purpose of the

claim of rent/ compensation against the defendant?

(iv) Whether the rent/compensation in respect of the property described in Schedule A of the plaint is due and recoverable from the defendant for use and occupation of the land by the latter?

(v) Whether the plaintiff is entitled to get a decree for the amount claimed in the suit against the defendant?

(vi) To what other relief or reliefs, if any, is the plaintiff entitled?

8. The learned Court below took up issue Nos. (iii) & (iv) together and after considering the evidence adduced by the parties, both oral and documentary, came to the conclusion that the plaintiff continues to be the rightful owner of the suit land, possession of which was delivered to the defendant-Company on the plea of purchasing the same sometime in the year, 1981. The court further came to the conclusion that the plaintiff has been able to prove successfully that there was a contract between him and the defendant through its officers for taking delivery of the land on rent of Rs. 175/- per decimal per month and therefore, plaintiff is entitled to recover rent/compensation from the defendant for use and occupation of the land, issue No. (v) has also accordingly, been answered by the Court below in favour of the plaintiff holding that he was entitled to damages beyond 3-4-1986 at the rate of Rs. 175/-per decimal per month. He also held that the defendant could not produce any material to show that mining lease in respect of Pure Durgapur Colliery existed after 1960. Therefore, it is obvious that underground rights of M/s. Durgapur Colliery was not utilised for the purpose of the mine. In fact, the vendor of the plaintiff by the registered sale deed dated 7-11-1967 (Ext. 7) has purchased only the surface right of the land. Because, there was no evidence that the mine in question was ever operated by him or his vendor after the year, 1960. Accordingly, the suit was decreed holding that plaintiff was entitled for the rent/compensation from the defendant.

9. Although specific defence was taken by the defendant in the suit that all the properties including the suit land had vested in the Central Government with effect from 1-5-1972 by operation of the Act and the plaintiff did not acquire any right, title and interest in the property, but no effort was made by the trial Court to frame any specific issue for such adjudication. But while deciding issue Nos. (iii) & (iv), the trial Court held that the dispute raised by the defendant regarding title of the plaintiff to Schedule A land being incidental to the issue relating to relationship of landlord and tenant for the purpose of rent or otherwise, entitlement of the plaintiff for compensation, as claimed in the suit, and, therefore, the question of title was only incidental. Accordingly, while coming to the relevant question as to whether the suit property had vested in the Central Government, by operation of the Nationalisation Act, the Court below incidentally held that the underground rights of M/s. Pure Durgapur Colliery Company, was not operational for the purpose of mine since 1960 until it was sold to the vendor of the plaintiff the surface right through the registered sale deed dated

7-11-1967 (Ext. C).

10. In the background of the facts noticed above, when this First Appeal was taken up on the earlier occasion, the main question arose for consideration whether all the rights in the suit properties including the right of the plaintiff (respondent) vested in the Central Government by operation of the Nationalisation Act? Undisputedly the land of Khata No. 1, Mauza Durgapur Colliery Co. originally belonged to and recorded in the survey record of right in the name of P.D. Hamir & Co., which held the mines and mining lease both surface and underground mining rights and had been running the mine in the name and style of "M/s. Pure Durgapur Colliery Co.". The said company used to carry on mining operation by pit mining method and had other establishments like buildings, structures, constructions, godown, workshop, office etc. over the surface of the land. In 1942, the mining right with respect to the land in question was auction sold in T.S. No. 14 of 1934 and purchased by M/s. Narai Purosottam & Co. vide sale deed dated 16-1-1942. Later in the year, 1949 M/s. Narai Purosottam & Co. Transferred the said land to M/s Pure Durgapur Co. Ltd. to give mining rights and thereafter, transferee became the absolute owner. Later through a registered sale deed dated 7-11-1967 (Ext. C) M/s. Pure Durgapur Co. sold 20.16 Acres of land including all buildings etc. to one Jiv Roy M. Patel. Ultimately, in the year, 1970 Jiv Roy M. Patel transferred 1/4th share in Khat No. 1 together with buildings, houses, structures, compound wall etc. in favour of the plaintiff. Remaining co-sharers also transferred their undivided 3/4th share to the plaintiff through the sale deed dated 9-6-1970. Both the sale deeds of the plaintiff have been marked as Exts. 4 and 4/A.

11. In the meantime, during the pendency of this case, the Apex Court while examining the question regarding vesting of the properties by the operation of the Coal Mines (Nationalisation) Act, in the case of Bharat Coking Coal Ltd. Vs. Madanlal Agrawal, , decided the case in favour of the Bharat Coking Coal Limited. Therefore, having appreciated that the question involved in the present case was identical to the aforesaid case which was decided by the Apex Court, it was thought proper to remand this appeal before the Court below for adjudication -- whether all rights, title and interest of the plaintiff and his pred-ecessors-in-interest over the suit property vested in the Central Government by the operation of the Coking Coal Mines (Nationalisation) Act, 1972 and/or any other corresponding Act? But the aforesaid judgment was set aside by the order dated 30-10-1998 in an appeal preferred by the defendant before the Apex Court in Civil Appeal No. 5438 of 1998 with a direction that the question raised in this case be decided by a Division Bench of this Court instead of remanding to the trial Court. It would further be relevant to mention that prior to remand of the case before this Court, a petition was also filed before the Supreme Court on behalf of the appellant for transfer of this case for hearing with the case of Madan Lal Agrawal (supra) which was disposed of on 3-2-1997 in these words ;

"In view of the decision rendered by this Court in Bharat Coking Coal Limited v.

Madanlal Agrawal (1996) 10 JT(SC) 584 it is not necessary to transfer pending writ petition. It would be open to the petitioner to have the matter decided in the light of the decision rendered by this Court, referred to earlier. The Transfer Petition is accordingly dismissed."

12. Now coming to the crucial arguments advanced on behalf of the parties, it would be appropriate to have a brief survey of the effect and scope of the legislative intent of the Coking Coal Mines (Nationalisation) Act, 1972, which is an Act to provide for acquisition and transfer of the rights, title and interest of the owners of the Coking Collieries specified in the First Schedule with a view to reorganise and reconstruing such mines and plants for the purpose of protecting, conserving and promoting scientific development of the resources of coking coal, required to meet the growing requirements of the iron and steel industry and for matters connected therewith or incidental thereto. As per Section 4 Chapter II, on the appointed day, the right, title and interest of the owners in relation to the coking coal mines specified in the First Schedule shall stand transferred to, and shall vest absolutely in the Central Government, free from all encumbrances.

13. The "Mine", as defined by Section 3(j) of "the Act" means any excavation, where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and also includes :--

- (i) all borings and bore holes;
- (ii) all shafts adjacent to, and belonging to, or in, a mine, whether in the course of being sunk or not;
- (iii) all levels and inclined planes in the course of being driven;
- (iv) all upon cast working;
- (v) all conveyors or aerial ropeways provided for bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;
- (vi) all lands, buildings, works, adits, levels, planes, machinery and equipment, vehicles, railways, tramways and sidings belong to, or in, or about, a mine;
- (vii) all workshops belonging to, or in, a mine, including buildings, machinery, instruments, stores, equipment of such workshops and the lands on which such workshops stand;
- (viii) all coal in stock or in transit or under production and other stores, stocks and instruments belonging to, or in, a mine;
- (ix) all power stations belonging to, or in, a mine or operated for supplying electricity for the purpose of working the mine or a number of mines;
- (x) all lands, buildings and equipment belonging to, or in, a mine where the washing of coal or manufacture of coke is carried on;
- (xi) all other fixed assets, moveable or immovable, and current assets, belonging

to a mine, whether within its premises or outside.

Explanation xxxxx

14. A bare reference to the aforesaid, it would appear that the idea of the Central Government behind the nationalisation was to take over all the coking coal mines including lands, buildings, machineries, plants, vehicles, airways, aerial ropeways, stock of coal and different other materials under operation for the purpose of searching or obtaining minerals or for the purpose of protecting, conserving and promoting scientific developments of the resources of coking coals. The extended meaning given to mine under the Act is to ensure that the activities of mining coal should be carried on uninterruptedly. Not only the lands, buildings and equipments, belonging to the owners of the mine, but other lands and buildings which were being used for the purpose of office or residence of the officers and staff of the mine, on the appointed day, shall vest in the Central Government.

15. From the facts noticed above, the main issue involved in this First Appeal is "whether all right, title and interest of the plaintiff and his predecessor-in-interest over the suit property vested in the Central Government by operation of the Coking Coal Mines (Nationalisation) Act, 1972, Coal Mines (Nationalisation) Act, 1973 and other corresponding Acts? If so, whether the plaintiff has got any valid right, title and interest in such property for a decree of the amount claimed towards rental and compensation for the properties described in Schedule A to the plaint"?

16. Mr. Kamal Nayan Chaubey, learned Senior Advocate, appearing on behalf of the appellant, at the very outset submitted that in view of the definition of the term "mine" as defined u/s 3(j) read with the provisions of Sections 4 & 7 of "the Act" and the ratio laid down by the Apex Court in the case of Bharat Coking Coal Ltd. Vs. Madanlal Agrawal, , the plaintiff has got no cause of action for the suit. He contended that from a bare reference to the definition of "mines" and the extended meaning, not only the mines beneath the surface of the land, rather all the buildings, lands, machinery, plants, equipments etc. of M/s. Pure Durgapur Colliery Co. Ltd. had vested with effect from the appointed day ipso facto by virtue of the operation of "the Act". Therefore, the findings of the trial Court are quite perverse and erroneous that the plaintiff or his vendor had only purchased surface right of the land in question and since there was no evidence that after the year, 1960 there was any mining operation with respect to M/s. Pure Durgapur Colliery Co. Ltd., therefore, such a land would not vest. Learned counsel contended that undisputedly, the surface is the integral part of the mine and, therefore, all the rights of the plaintiff or his predecessors-in-interest with respect to the land in question had vested in the Central Government free from all encumbrances.

17. Mr. Chaubey next contended that apart from the vesting of the right, title and interest of the plaintiff in the Central Government, even the earlier sale deed

dated 7-11-1967 (Ext. C) whereby the plaintiffs vendor had purchased the lands from M/s. Pure Durgapur Colliery Co. Ltd. was in contravention of the provisions of Rule 37 of the Mineral Concession Rules and is, therefore, void. Because from a bare reference to the said provision, it would appear that a lessee either he is a contractual or statutory, shall not without the previous consent in writing of the State Government with respect to the mining lease, or any mineral specified in the First Schedule of "the Act" assign, sublet or mortgage etc. to any other person. In this case, admittedly no consent was ever obtained either by M/s. Pure Durgapur Colliery Co. Ltd. or the vendor of the plaintiff for the purchase of the mining land. Therefore, the plaintiff or his vendor could not derive any title and interest on the basis of such sale deeds since they are void in terms of Rule 19. In support of this submission, as aforesaid, learned counsel placed reliance on a decision of this Court in the case of *Sudhansu Kanta v. Manindra Nath*, AIR 1965 Patna 144 to show that the intention of the legislature to provide such a restriction under the Mines & Minerals (Regulation & Development) Act, was purely in the public interest so that mineral wealth of this country should be worked out properly without wastage and by persons qualified in this kind of work. Therefore, in order to ensure a proper check about the person who may actually control the working of any particular mine, Rule 37 of the Mineral Concession Rules was provided to ensure that before a transfer of any mining lease is made, the transferor must obtain the consent of the State Government in writing. Failure compliance of such a command at the time of transfer of mine would certainly be void in terms of Rule 19.

18. It was further contended that undisputedly, from a bare reference to Section 4 of "the Act", it would appear that on the appointed day, right, title and interest of the owners in relation to the coal mines specified in the First Schedule shall stand transferred and vest absolutely in the Central Government free from all encumbrances. This is not in dispute that in the First Schedule, framed under Sections 4 and 10 of the Act, M/s. Pure Durgapur Colliery Co. Ltd. has been included at serial No. 154 of the Schedule. Therefore, there cannot be any scope for the plaintiff to contend that the land in question has not vested in the Central Government. If the plaintiff had a grievance regarding any error, omission, or misdescription in relation to the particular of a coking coal mine included in the First Schedule or the name and address of the owner of any such coking coal mine, he can satisfy the Central Government regarding such omission and the same can be corrected in the manner prescribed under Chapter II itself. But in any view of the matter, the question regarding vesting of coking coal mine cannot be challenged.

19. There is no doubt that there has been specific denial on behalf of the defendant regarding any agreement with the plaintiff either for purchase of the land in dispute or to get the same on rental. Mr. Chaubey contended that even assuming that some of the officers of the Bharat Coking Coal Limited either in collusion with the plaintiff or of their own, got the land in dispute on rental, the defendant would not be bound for the act done or part performed by such

officers and, therefore, cannot be estopped from denying the plaintiffs title. While placing reliance in support of such a submission to a decision of this Court in the case of *State of Bihar v. Raja Bahadur Kamakshya Narain Singh* 1961 BLJR 446, he contended that it is always difficult for the employer to control various acts which officials perform in course of discharge of their duties and consequently the employer cannot in all cases assume responsibility for any negligent act of its servant even if approved and encouraged by its officials, unless it was cognizant of the legal consequences flowing therefrom and its legal rights. That apart, once it is held that the property in dispute had already vested with the Central Government, by virtue of "the Act", there cannot be any estoppel against the statute.

20. Mr. N. K. Prasad, learned senior counsel, on the other hand, contended that in view of the clear line of distinction in the definition of "mine" as prescribed u/s 2(h) of the Coal Mines (Nationalisation) Act and Coking Coal (Nationalisation) Act, the ratio laid down by the Apex Court in the case of *Bharat Coking Coal Ltd. Vs. Madanlal Agrawal*, shall not be applicable to the property in dispute allegedly taken over under the provisions of "the Act". Because, the "mine" as defined under the Coal Mines (Nationalisation) Act, means things which did not belong to the Mines owner, mentioned in the Schedule, but falls within Sub-clauses (i) to (xii) of Section 2(h) of the said Act will vest in the Central Government free from all encumbrances. In other words, if the mine owner had located staff quarters and offices in rental building, the same will also vest in the Central Government. But in absence of any provision identical under the Coking Coal (Nationalisation) Act, it would not be proper to apply the ratio laid down in that case. In support of his contention, Mr. Prasad however, placed reliance to a decision of the Apex Court in the case of *A.K. Ghosh Vs. Bharat Coking Coal Limited*, to show that the land purchased and residential buildings constructed thereon by the plaintiff in his individual capacity would not vest. In my view, the ratio of aforesaid case is not applicable to the present case. In that case, the land which the plaintiff had purchased was for his residential purpose. There was no evidence that the said land was ever used for carrying on mining operation or it was adjacent to the mine. In this case, apart from other evidence, even the sale deed (Ext. C) itself shows that the land along with coal mines etc. was transferred.

21. Learned counsel also placed reliance yet on another decision of the Apex Court in the case of *Bharat Coking Coal Ltd. Vs. Shri Parmeshwar Kumar Agarwala and Another*, to show that although coke oven was being used for the mining purpose but it was held that coke oven would not vest. In my view, in the case before us undisputedly entire M/s. Pure Durgapur Colliery Co. Ltd. has been included in the 1st Schedule. That apart, I have already noticed that even the sale deed (Ext. C) itself discloses that the mines along with structures thereon were sold.

22. Mr. Prasad then contended that from a bare reference to the findings of the trial court, it would appear that the mine in question was purely non-productive.

No evidence was brought on record by the defendant to show that either the vendor of the plaintiff or the plaintiff ever operated the mine. A bare reference to the meaning of the mine as defined u/s 3(j) of the Act would mean that non-productive mine will not come in such category and, therefore, not vest with the Central Government. In support of submission regarding non-productivity of the mine in question, Mr. Prasad heavily relied on a decision of the Estate Officer (marked Ext. 12/a) in Case No. 35/ 86 dated 20-8-1988 and also the findings recorded by the trial Court to show that after the year, 1960 there was no mining activity on this land.

23. He contended, even from a bare reference to Exts. 4 and 4/a, the sale deeds through which the plaintiff had purchased the land from his vendor, and the sale deed of the year. 1967 (Ext. C) through which the plaintiff's vendor had purchased the land, It would appear that only surface of the land was purchased and not the mine. Therefore, the plaintiff cannot be said to be a owner of the property as defined u/s 4 of the Act. That apart, in absence of the plaintiff's vendor, a party to the suit or any pleading on behalf of the defendant regarding validity of such a transaction, it would not be open to the Court to declare such a transaction void.

24. He next contended that apart from the aforesaid, there is a complete fallacy in the submission of Mr. Chaubey that the sale deed of the year, 1967 (Ext. C) was void for want of the consent of the State Government prior to the transfer of the land. Because, a bare reference to the provisions of Rule 37 of the Mineral Concession Rules would indicate that consent of the State Government would be essential only with respect to a transfer of mining lease, if subsisting, and not otherwise. In this case neither any document was brought on the record on behalf of the defendants nor evidence to show that after the year, 1960, there was any mining activity on this land. Rather from the findings of the trial Court and the order of the Estate Officer, Ext. 12/a, it is evident that no mining lease subsisted on the day the land was transferred in favour of the vendor of the plaintiff. Reference in this regard was made to a decision of the Apex Court in the case of Varanasiya Sanskrit Vishwavidyalaya and Another Vs. Dr. Rajkishore Tripathi and Another, .

25. Undisputedly, from a bare reference to the sale deed (Ext. C) it appears the vendor of the plaintiff had purchased the surface land including the mines and mineral beneath it in the year, 1967. This is also not in dispute that the plaintiff purchased those very land in the year. 1970 through the registered sale deeds marked Exts. 4 and 4/a together with the structures and constructions including offices, labourer quarters, staff quarters used for the purpose of colliery. The only dispute which is being raised is since after the year, 1960, the mine had become non-productive. Therefore, the transfer was made only with respect to the surface land for the construction of the houses etc. and, thus, such a land is not covered under the definition of "mine" as prescribed u/s 3(j) of "the Act".

26. In my view, from a bare reference to different statutory provisions it would

appear, If such an argument is upheld, it will certainly make the extended meaning given to "mine" in Sub-sections (j), (i) to (xiii) of Section 3 of "the Act" nugatory and of no effect.

27. It would also be significant to note that Section 4 of "the Act" speaks of acquisition and vesting of the right, title and interest of the owner in relation to the Coking Coal Mines specified in the First Schedule. I have already noticed that admittedly, M/s Pure Durgapur Colliery Co. Ltd. has been included at serial No. 154 of the First Schedule. Therefore, all the ownership rights not only of the coal mines have been taken over by the Government free from the encumbrances with effect from the appointed day rather all lands, buildings, works, plans, machinery, vehicles, workshop, equipments in relation to the mine in question were also taken over from the appointed day. That apart, the definition of "mine" u/s 3(j) of the Act will not cover only the excavation where any operation for the purpose of searching for or obtaining mineral has been or is being carried on, rather it includes all the properties belonging to the mine, as specified under different clauses of Sub-section (j) of Section 3 of the Act. Therefore, in my view, from a bare reference to the extended meaning given to mine in Sub-section (j) of Section 3. It would be thus, evident that the ratio laid down by the Apex Court in the case of Madan Lal Agrawal (*supra*) is fully applicable.

28. This is not in dispute that right from the year, 1942 until the year, 1960 even according to the trial Court, the mine in question was being operated by different persons and the last being M/s Pure Durgapur Colliery Co. Ltd. which transferred the land in the year, 1967 to Jiv Roy M. Patel, from whom the plaintiff had purchased. This is also not in dispute that the land, which the plaintiff had purchased, was being used for the purpose of carrying on mining operations. There cannot be any working mine without the surface being included in that concept. If the surface does not form part of the concept of mine, it is not possible to have any excavation. Therefore, there cannot be any dispute in holding that the land purchased by the plaintiff is a mine, as defined u/s 3(j) of the Act. A reference in this regard can be usefully made to a decision of the Apex Court in the case of Kali Prasad Agarwalla v. Bharat Coking Coal Limited, 1989 Suppl (1) SCC 628 : (AIR 1989 SC 1530).

29. Apart from the aforesaid even in the sale deed (Ext. C) itself, which I have perused myself, it is mentioned that the vendor had agreed to sell to the purchaser their underground coal mining right and the colliery commonly known as Pure Durgapur Colliery Co. Ltd. Therefore, it would be difficult for the plaintiff to change his case at this stage to state that it was the surface land which was only purchased and not the mine. In this connection, I have already noticed that a bare reference to the case of the defendant and the findings recorded by the trial Court, it would appear that In the year, 1942 the mining right with respect to the land in question was auction sold in T.S. No. 14 of 1934 and purchased by M/s. Narain Purosottam & Co. Later in the year, 1949, the said company transferred the land to M/s Pure Durgapur Colliery Co. and accordingly, the

transferee became the absolute owner. Thereafter, on 7-11-1967 the land was transferred to the vendor of the plaintiff along with the mine together with the buildings, houses, structures, compound wall etc. Undisputedly, the plaintiff had purchased the said property vide sale deeds (Exts. 4 and 4/a). Therefore, on the face of such authentic document, it would not be open to the plaintiff to take a plea that M/s Pure Durgapur Colliery is not a mine as defined u/s 3(j) of the Act.

30. There is equally another aspect which may also fall for consideration regarding the provisions of Section 10 of the Bihar Land Reforms Act, 1950, whereby, notwithstanding anything contained in the said Act, where immediately before the date of vesting of the estate or tenure, there is any subsisting lease of mines or minerals comprised in the estate or tenure or any part thereof, 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 term of that lease. From a bare narration of the case of the parties, as stated above, there cannot be any dispute that on 25-9-1950, when the Bihar Land Reforms Act was brought into effect, there was a statutory mining lease with respect to M/s Pure Durgapur Colliery Co. Ltd. Therefore, for this reason also, it would not be open to the plaintiff to state that M/s Pure Durgapur Colliery was not a mine as defined u/s 3(j) of the Act.

31. Mr. Prasad, however, while referring to a decision of the Apex Court in the case of Chhatu Ram Horil Ram Ltd. Vs. State of Bihar and Another, , contended that from a bare reference to the provisions of Section 10 of the Bihar Land Reforms Act, it would appear that an original contractual lease comes to an end by operation of Section 4(1)(a) of the said Act and a fresh statutory lease for the remainder period of the term of that lease in favour of the lessee comes into being. But in this case. In absence of any material on the record to show that any fresh statutory lease was executed to the lessee, it would not be proper to hold that the day on which the land was purchased by the vendor of the plaintiff, there was any fresh statutory lease. Be that as it may, in order to find out whether M/s. Pure Durgapur Colliery Co. Ltd. is a mine as defined u/s 3(j) of the Act, it would not be necessary to hold that a mining lease was subsisting on the appointed day. The only thing required to be found out is whether there was a mine as defined under the said Act. That apart, even assuming that on the day of transfer of the land in favour of the plaintiffs vendor there was no lease subsisting, it may therefore, be relevant for the purpose, whether the consent of the State Government as required under Rule 37 was necessary. But for the purpose of vesting with Central Government the moment a mine is included in the Schedule, it be deemed to have vested.

32. Apart from what has been noticed in the foregoing paragraphs, a bare reference to the preamble of the Act, it would appear that the main object behind the nationalisation of the coking coal mine is to protect, conserve and to promote development of the resources of coking coal needed to meet iron and steel Industry and the matters connected therewith. Therefore, even a mine is

not being operated for the time being, the coking coal has to be preserved for such purposes.

33. Hence having regard to different statutory provisions together with the fact of the case and authoritative pronouncements as noticed above, I hold that the suit premises fall within the ambit of definition of mine as defined u/s 3(j) of the Act and, thus, such land had vested in the Central Government on the appointed date.

34. In view of the aforesaid findings regarding the vesting of the land with the Central Government, the other claim of the plaintiff regarding rent compensation against the defendant practically becomes non-maintainable. Besides that, admittedly there was no agreement of lease in respect of the land between the plaintiff and the defendant to prove that there was any tenancy nor the letters contained in Ext. 6 series were issued by any of the competent authorities of the defendant. Hence, in absence of any agreement or contract by a competent authority, the defendant cannot be sued for the claim of rental compensation. In support of such a view, I may usefully quote a passage from the case of State of Bihar v. Raja Bahadur Kamakshya Narain Singh 1961 BUR 446 as under :

"Once it is held that the estates of the plaintiff vested absolutely in the State on 3-11-1951, then all realisations made, compensation paid and proceedings taken in respect of the said estates constituted the ultra vires acts of the various Government servants and, as a matter of law, were inadmissible to raise estoppel against the Government. They were obviously the outcome of their ignorance of the correct legal position or mistakes on their part, induced presumably by the proceedings taken by the plaintiff to avoid vesting. The Government was, therefore, not bound by them and was not estopped from denying the plaintiffs title."

35. The plaintiff, however, has examined P.W. 6 Tarkeshwar Ram, P.W. 7 Sheo Bahadur Yadav and P.W. 8 Chhotelal and his son P.W. 14 Satya Narain Agrawal to state that sometime in the month of October, 1981, the Administrative Officer of the Area No. 19 accompanied by Shri Gupta and some other officers of the B.C.C.L. had approached to negotiate for the purpose of some of the lands for construction of houses. These officials had also settled the price of the land and agreed to pay the rental at the rate of Rs. 175/- for the use of the land until execution of the sale deed. These witnesses also stated that the plaintiff had a petrol pump near the land in question and had also constructed certain huts for residential purpose.

36. On the other hand, defendant has also examined witnesses like D.W. 1 Jitendra Prasad Singh and D.W. 2 Ramayan Singh. These witnesses have asserted that Schedule A land was in possession of the defendant and different quarters were constructed for its employees. They have also deposed that the land in question was part and parcel of M/s. Pure Durgapur Colliery Co. They have also stated that the previous owners of M/s Pure Durgapur Colliery Co. had

also constructed some quarters over the land prior to the nationalisation of the colliery.

37. Thus, having taken into consideration the oral and documentary evidence of the plaintiff, I am unable to hold that there was any colluded contract between him (Plaintiff) and the defendant, either for purchase of the land or to get the land on rental. Therefore, it would not be possible to uphold the findings of the trial Court that there was a relationship of landlord and tenant between the parties. In view of such a circumstance, therefore, the plaintiff would not be entitled to a decree for compensation or rental of the land.

38. For the reasons, stated above, in the result this appeal is allowed. The impugned judgment and decree under appeal are hereby set aside. But there shall be no order as to costs.

39. Appeal allowed.