
(1968) 05 PAT CK 0018

In the Patna High Court

Case No : A.F.O.O. No"s. 99, 115 and 116 of 1961

Bokaro and Ramgur Ltd. and Others

APPELLANT

Vs

Kathara Coal Co. Ltd. and Others

RESPONDENT

Date of Decision : 17-05-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, 2(14)
Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 13, 14, 14(5),
20
Limitation Act, 1908 — Section 12

Citation : AIR 1969 Patna 235

Hon'ble Judges : K.B.N. Sinha, J;A.B.N. Sinha, J

Bench : Division Bench

Advocate : Ambuja Ghose, Purnendu Ghose and Madam Mohan Prasad, No. 2 in No. 99/61; S.C. Ghose and S.N. Jha, in No. 115/61 and ; Lal Narayan Sinha and Bindabasini Prasad Sinha, in No. 116/61, for the Appellant; Balbhadra Prasad Singh, Shreenath Singh and Nagendra Prasad Singh, No. 1, for the Respondent

Final Decision : Dismissed

Judgement

A.B.N. Sinha, J.—All these three appeals u/s 20 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, arise out of an award, dated 16th February, 1961, made by the Tribunal constituted u/s 14(2) of the said Act in Reference Case No. 25 of 1959. They have been all heard together and this judgment will govern all of them.

2. The facts leading to these appeals are as follows :--

One Alfred Earnest Michell for and on behalf of an unincorporated syndicate known as the Bokaro Syndicate and one Theobore Hubert Bennerts jointly obtained a prospecting licence on 26th November, 1907 in respect of an extensive area from Maharaja Ram Narain Singh of Padma Estate in the district of Hazari-bagh. The prospecting licence carried with it a right to obtain a mining lease. The licencees assigned the said prospecting licence on the 28th of

February, 1908 to M/s. Bokaro & Ramgur Ltd., the appellant in Miscellaneous Appeal No. 99 of 1961. The licence was being renewed from time to time until 1942 in which year M/s. Bokaro & Ramgur Ltd. obtained a renewal for a term of 7 years i. e. upto 1949. During the continuance of the said term, the Raja of Ramgarh, the appellant in Miscellaneous Appeal No. 115 of 1961, granted a mining lease under an indenture of lease, dated 21st November, 1946 (Ext. A-4/2) to M/s. Bokaro & Ramgur Ltd. in respect of coal in and over 3200 bighas of lands situate in five villages in the district of Hazaribagh for a period of 999 years. M/s. Bokaro & Ramgur Ltd., in their turn, executed a deed of sub-lease, dated 14th December, 1946 (Ext. F-1) in the name of Kathar Coal Company Ltd., the principal respondent in all these appeals and the cross-objector in Miscellaneous Appeal No. 116 of 1961. On 3rd June, 1948, M/s. Bokaro & Ramgur Ltd., further obtained as many as ten mining leases from the Raja of Ramgarh in respect of lands in different villages. Three of those mining leases were in respect of Jhirki Colliery, North Jhirki Colliery and North Kathara Colliery. The total area covered by the aforesaid four mining leases, namely, the one dated 21st November, 1946, and three dated 3rd June, 1948, was in the neighbourhood of 7.725 bighas.

3. On the 31st March, 1956, the Government of India, in the Ministry of Production, issued a notification under Sub-section (i) of Section 4 of the Land Acquisition Act, 1894, notifying that the land described in the schedule appended to the said notification covering an area of about 7 square miles was needed or was likely to be needed for public purposes, namely, for the prospecting of coal seams for the development of the collieries to be worked by the Union of India, and, invited objections to such acquisition by interested persons. Before, however, any further action could be taken under that Act, the Coal Bearing Areas (Acquisition and Development) Act of 1957 (hereinafter referred to as the Act) was passed and it came into force on 12th June, 1957. According to Section 28(1) of the Act, the aforesaid notification, u/s 4(1) of the Land Acquisition Act, was deemed to have been issued u/s 4 of the Act. The Act was amended by Act 51 of 1957 by which certain Sections including sections 13 and 28 were amended and Section 9A was inserted. Ultimately, after objections to the proposed acquisition had been disposed of, the Central Government, in pursuance of Sub-section (iii) of Section 28 read with Section 8 of the Act, issued a notification (SRO 3810, dated 23rd November, 1957) u/s 9 of the Act, declaring the acquisition of lands measuring 3,383.29 bighas and of the rights to mine, quarry, bore, dig and search for, win, work and carry away minerals in lands measuring 1392.27 bighas fully described in Schedules A and B respectively appended to the said notification. Possession of lands and rights so acquired was taken on behalf of the Government of India on the 6th of December, 1957, and by virtue of Section 11 of the Act, the same was transferred to the National Coal Development Corporation on the 2nd of January, 1958. The Central Government assessed the compensation for the acquisition of the mining rights at Rs. 15,73,575.81 Ps. which amount was subsequently raised by them to Rs.

17.02,709.60 and the entire amount was deposited in accordance with the relevant rules made under the Act. A dispute, however, arose as to the right to receive that compensation amount, amongst three claimants, namely, (1) M/s. Kathara Coal Company Ltd., (2) M/s. Bokaro & Ramgur Ltd. and (3) Shri Narayan Prasad Kedia. A Tribunal was accordingly constituted u/s 14(2) of the Act and the aforesaid dispute was referred to the said Tribunal for adjudication. It appears that it was agreed between the different parties including the Central Government which filed its written statement before the Tribunal through the Managing Director, National Coal Development Corporation that the Tribunal was competent to determine the amount of compensation as well as the question of apportionment of the same. The aforesaid reference was registered as Reference Case No. 25 of 1959. Three persons, namely, Raja Bahadur Kamakhya Narain Singh, M/s. Kuju Jarangdih Colliery Co., Ltd., and Shri Puran Mull Kedia were added as parties to the proceedings before the Tribunal at their own instance.

4. The parties filed their respective written statements before the Tribunal. The case of M/s. Kathara Coal Company Ltd. was that they were sub-lessees in respect of mining rights in 1392.27 bighas described in Schedule B and in 1907.73 bighas described in plan A Block II of Schedule A of the aforesaid notification u/s 9 of the Act, and thus they alone were entitled to whole of the compensation with regard to the said mining rights. They claimed Rs. 24,75,620.72 Ps. as compensation in respect of different items as detailed in their written statement, besides interest. According to them, the amount awarded was inadequate and unjust.

5. According to M/s Bokaro & Ramgur Ltd., the appellant in Miscellaneous Appeal No. 99 of 1961, 7,725 bighas of lands covered by four of their leases from Raja of Ramgarh were affected by the acquisition. They claimed a sum of Rs. 81,97,660/- as compensation under different heads including a sum of Rs. 19,33,750 as compensation for loss of future royalties with regard to the above mentioned 7,725 bighas. Their case further was that as the sub-lease in favour of M/s. Kathara Coal Company Ltd. had been wiped out under the Bihar Land Reforms Act, they had no subsisting right at the time of acquisition. They also challenged the acquisition as illegal and unconstitutional.

6. The case of the Central Government was that the acquisition and reference were valid, that the Tribunal had jurisdiction to determine the amount of compensation and apportionment thereof, that since mining rights were vested in M/s. Kathara Coal Company Ltd. before the dates of the notifications under Sections 4 and 9 of the Act. M/s. Bokaro and Ramgur Ltd. could not be interested in the amount of compensation payable in respect of the mining rights acquired, that their case that lands other than those acquired had been affected by acquisition was untrue and that the amount of compensation as claimed by M/s. Kathara Coal Company Ltd. was excessive.

7. The case of Raja Bahadur K. N. Singh was that even if M/s. Kathara Coal Company Ltd. were found entitled to compensation payment should be withheld

until the final decision in the Title suit pending in the Calcutta High Court in which he had claimed specific performance of contract and for damages against the said Company. The legality and the validity of the reference were also challenged.

8. The cases of N. P. Kedia and his father Puranmull Kedia, in brief, was that their family had acquired full and absolute controlling interest in Anderson Wright Ltd. and in its subsidiaries including Kathara Coal Company, and by virtue of that acquisition, it was the joint family of Kedias which was the real sublessee and was entitled to compensation for acquisition of the sub-lease hold. Between themselves they claimed two annas interest in the compensation. M/s. Kuju Jarangdih Coal Company Ltd. claimed compensation for loss of proprietary interest in all the lands acquired, their case being that they had acquired the rights to royalty reserved to the lessor under the Mining Lease to Bokaro and Ramgur Ltd. They claimed compensation at Rs. 9,66,875 for having been deprived of the benefit of the minimum royalty payable by the lessee Bokaro and Ramgur Ltd. in respect of the entire 4675.66 bighas acquired.

9. On the aforesaid pleadings and at the instance of the parties the Tribunal framed as many as seven issues including Issue No. 4 (a) which read as under:

"Does the reference relate to other lands of the Notification besides Block II, Plan A of Schedule A, and Schedule B, Block I. Plan A?"

On issue No. 1 which related to the amount of compensation payable, the Tribunal addressed itself only to the compensation payable in regard to the mining rights in 3200 bighas of land and in the light of the several directions made in the award it determined the amount at Rs. 21,25,317.92 including interest from 23-11-1957 upto the date of deposit on the amount deposited namely, Rs. 17,02,709.60 P. It also directed payment of interest at the rate of five per cent per annum from the date of the acquisition, that is, 23-11-1957 to the date of payment on the amount of the excess compensation allowed. On issue No. 2 which related to the question as to which of the claimants were entitled to compensation and if so, in which proportion, the Tribunal came to the finding that the entire compensation with regard to the acquisition of the mining rights in 3200 bighas was payable to Kathara Coal Company Ltd. alone, and that neither the Kedias nor Bokaro and Ramgur Ltd. or M/s. Kuju Jarangdih. Coal Company Ltd., were entitled to any share in the aforesaid compensation for acquisition of the mining rights. After an elaborate consideration of the materials on the record, it came to a conclusion that M/s. Kathara Coal Company Ltd. were the real sub-lessees in mining rights in 3200 bighas and that they were not the benamidars of the Kedias. So far as the Raja of Ramgarh was concerned, the Tribunal came to the conclusion that there was no substance in his contention that no payment should be made to M/s. Kathara Coal Company Ltd. during the pendency of his suit for specific performance of contract pending in the Calcutta High Court, in regard to issue No. 4(a) quoted above, the Tribunal took the view that though in the reference petition there was a mention about 4675.60 bighas

of land, that is. the entire land covered under the Notification dated 23-11-1957, the reference was actually with regard to 3200 bighas only. Nonetheless, it has gone into the question of determining the compensation payable in respect of 1457.56 bighas of land. On that question it has, however, come to the conclusion that there was nothing to indicate that any portion of this land was covered by any of the leases of M/s. Bokaro and Ramgur Ltd. exhibited in the case, and there was nothing to show that the mining right in such land was also with M/s. Bokaro and Ramgur Ltd. On that finding it has held that no question of assessment of compensation in respect of this land on the basis of the principle applicable in the case of acquisition of mining rights arose. It has also found that there was a complete lack of evidence for-determining the compensation on the basis of the market value of the land. On this basis it has held that the claim of M/s. Bokaro and Ramgur with regard to 1457.56 bighas was not at all maintainable. On the question of interest on the amount of compensation in excess of the admitted amount, the Tribunal has come to the conclusion that there was no justification to relieve the National Coal Development corporation from the obligation to pay interest over the said excess amount till the date of its payment or deposit, and accordingly, acting u/s 16 of the Act it has directed payment of interest on the said excess amount at the rate of five per cent per annum from the date of the acquisition to the date of its payment.

10. The Kedias and M/s Kuju Jarang-dih Coal Company Ltd. being apparently satisfied with the award have not filed any appeal in so far the award was against them. As mentioned above Miscellaneous Appeal No. 99 of 1961 is by M/s. Bokaro and Ramgur Ltd. and Miscellaneous Appeal No. 115 of 1961 and Miscellaneous Appeal No. 116 of 1961 are by Raja Bahadur Kamakhya Narain Singh and Union of India respectively. M/s. Kathara Coal Company Ltd., respondent No. 1 in Miscellaneous Appeal No. 116 of 1961 have filed a memorandum of cross-objection which appears to be directed against that part of the award which has rejected the claim made on their behalf under certain heads and have prayed that the award be modified by directing that over and above the amount allowed by the Tribunal a further sum of Rs. 2,94,679.00 be directed to be paid by the National Coal Development Corporation to them. Before taking up Miscellaneous Appeals Nos. 99 and 116 of 1961, it will be convenient to dispose of Miscellaneous Appeal No. 115 of 1961 and the cross-objection filed on behalf of M/s. Kathara Coal Company Ltd.

11. In regard to Miscellaneous Appeal No. 115 of 1961, it is apparent that the mere filing of a suit for specific performance of contract and its pendency cannot clothe the appellant with any right to ask the Tribunal to stay the payment of the compensation money to the person or persons rightly entitled thereto and I am satisfied that there is no merit in this appeal which is accordingly dismissed.

12. In regard to the cross-objection filed on behalf of M/s. Kathara Coal Company Ltd., it appears that the same is not at all maintainable. Except Section 20 of the Act there is no other Section under which a person aggrieved by any award of a

Tribunal constituted u/s 14(2) of the Act, can come up to the High Court and Section 20 specifically provides for an appeal to the High Court by a person aggrieved by the award of such a Tribunal, in other words, under the Act no right to file a cross-objection appears to have been granted. There is no provision in the Act analogous to those of Order 41, Rule 22 of the Code of Civil Procedure. Right of cross-objection, like a right of appeal is a creature of statute. Section 26 of the Act provides, that save as otherwise expressly provided in the Act, no Civil Court shall have jurisdiction in respect of any matter which the Central Government or the competent authority or any other person is empowered by or under the Act to determine. Now, u/s 14 of the Act, in cases where the amount of any compensation payable under the Act is not fixed by agreement, the Central Government is under an obligation to constitute a Tribunal for the purpose of determining the amount of compensation and under Sub-section (5) of Section 14, it is the Tribunal which is empowered to determine the amount of compensation as also to specify the person or persons to whom the compensation so determined is payable. The determination has been expressly made appealable, but short of an appeal under and in accordance with Section 20 of the Act it cannot be canvassed in the Civil Court. The only manner in which that determination by the Tribunal, viz., its award can be subjected to a review is by appealing against the whole or part of it u/s 20. Cross-objection is thus ruled out. In the present case it is also not possible to treat the memorandum of cross-objection as a memorandum of appeal. Manifestly the cross-objection purports to have been filed under Rule 22 of Order 41 of the CPC and has been so filed within one month of the date of the service of notice of Miscellaneous Appeal No. 116 of 1961 on M/s. Kathara Coal Company Ltd., one of the respondents in that appeal. The cross-objection not having been thus filed within thirty days of the award of the Tribunal does not fulfil the requirements of Section 20 of the Act, and indeed no attempt was made on behalf of M/s. Kathara Coal Company Ltd., to get the cross-objection so treated. It follows that the cross-objection must be dismissed, as not maintainable at all.

13. Now as to Miscellaneous Appeal No. 99 of 1961, it is admitted that the appellant M/s Bokaro and Ramgur Ltd. had taken an assignment of a prospecting licence under an indenture of transfer (Ext. C/3) on the 28th of February, 1905 from the original who had been granted a prospecting licence by the proprietor of: Ramgarh Estate. There is no dispute that the aforesaid prospecting licence was in respect of all the lands and premises comprised in and commonly known as the Bokaro and Ramgur Coal Fields and that the licence carried with it a right to obtain mining leases. Thereafter, the appellant in this appeal had obtained from the proprietor of Ramgarh Estate as many as twenty-three mining leases covering a total area of nearly 50, 659 bighas. We are concerned with only four out of those twenty-three mining leases. The first of those four was a mining lease in respect of 3200 bighas (Ext. A-4/2), situate in five villages and was dated the 21st of November, 1946. The term of the lease was 999 years. The remaining three leases with which we are concerned were all dated the 3rd of

June, 1948 (Exts. D-3/1, D-3/2, and D-3/3). The mining rights under the lease of the 21st of November, 1946 was sub-leased to Kathara Coal Company Ltd. on the 14th of December, 1946 (Ext. F-1), and a premium of Rs. 9,60,000 was received by the appellant from the sublessee in respect of the sub-lease. This was the position until the Bihar Land Reforms Act, 1950, came to be passed. And as a result of the operation of that Act, certain consequences followed. The first consequence was that the Estate of the lessor, namely, that of the Raja of Ramgarh got vested in the State of Bihar. The second consequence was that the appellant became a statutory lessee under the State of Bihar by virtue of provisions of Section 10 of the said Bihar Land Reforms Act 1950. According to the case of the appellant as originally put forward, one of the effects of the passing of the Bihar Land Reforms Act 1950 was that by virtue of the provisions of Section 10 of that Act the sub-lease in favour of M/s. Kathara Coal Company Ltd. was wiped out, but this case was subsequently given up by them. Indeed, the appellant in this appeal, namely, M/s. Bokaro and Ramgur Ltd. have not claimed before us that they should be given a share out of the compensation money which has been or might be allowed to M/s. Kathara Coal Company Ltd. They have claimed compensation in their own rights and it is this claim which is the subject-matter of this appeal.

14. Under the Notification of acquisition issued u/s 9 of the Act, the lands measuring 3283.29 bighas and right to mine and carry away mineral in lands measuring 1392.27 bighas were acquired. It is, however, admitted that the 3200 bighas covered by either the head-lease (Ext. A-4/2) or the sub-lease (Ext. F-1) was made up of the whole of 1392.27 bighas fully described in Block I, Schedule B of the aforesaid Notification and of only 1807.73 bighas out of 3283.29 bighas described in Plan A, Block II of Schedule A of the said Notification. The Tribunal has, therefore, rightly pointed out whereas only mining rights in respect of 1392.27 bighas had been acquired in 1807.73 bighas both the mining right as well as the surface rights had been acquired. It will be convenient to deal with the claims arising out of the acquisition of mining rights separately from the claims arising out of the acquisition of the surface rights. The question of right to compensation arising out of the acquisition of the balance of 1475.36 bighas will also be dealt with separately.

15. It appears from the award under appeal that before the Tribunal the appellant's claim to compensation was considered under two heads: (1) Compensation for loss of future royalty and (2) compensation for expenditure incurred in obtaining the prospecting lease and in developing the area. In regard to the claim under the first head, the Tribunal while holding that the appellant Company by reason of the acquisition of the mining rights, in the aforesaid 3200 bighas as free from all encumbrances as provided for in Section 10(1) of the Act had undoubtedly lost its right to receive royalties from the sub-lessee, has, however, declined to allow any compensation on the ground that no such claim was admissible u/s 13 of the Act. The claim under the second head has been rejected on the ground that there was no reliable evidence to show that the

prospecting operations over the 3200 bighas in question had been carried out by the appellant company at any time before the date of the lease in its favour.

16. Learned counsel who appeared in support of this appeal in substance reiterated the claims which had been made before the Tribunal. According to him, the appellant should be allowed compensation under a third head as well, namely, in respect of the expenditure incurred by it in obtaining the lease on the 21st of November, 1946, quantifying the claim, it was argued that the appellant was at least entitled to a sum of Rs. 6,87,793 of which the break up was as under:

(i) Rs. 4,80,000/- as compensation for loss of future royalty.

(ii) Rs. 1,35,784/- as compensation for expenditure incurred by the appellant in obtaining the lease on the 21st of November. 1946, and,

(iii) Rs. 72,009/- as compensation for the expenditure incurred in obtaining the prospecting licence, proportionate to 3200 bighas.

17. In regard to the claim for compensation for loss of future royalty, it was urged on behalf of the appellant that at the time of the acquisition, the appellant was to get Rs. 10/- per bigha from the sub-lessees (vide Exts. H-1, F-1 and A/5). But out of this Rs. 10/- the appellant had to pay Rs. 5/- to its lessor, and therefore, the net loss of the appellant by reason of the acquisition came to Rs. 5/- per bigha per year, and accordingly, Rs. 16,000/-per year for 3200 bighas. He sought to capitalise this amount by multiplying the same by thirty, a period which according to him, was allowable under the Mineral Concession Rules. The total sum claimed, therefore, came to Rs. 4,80,000/-. It was contended that there could be no doubt that by virtue of the operation of Section 10 of the Bihar Land Reforms Act, the appellant Company had come to acquire the status of a statutory lessee and its rights to receive royalty from the sub-lessees in that capacity could not be gain said. It was, however, no longer possible, it was contended, to go on receiving the royalty reserved under the sub-lease because the mining rights which had been acquired and which on the date of acquisition lay with the sub-lessees had been so acquired free from all encumbrances, as provided for in Section 10(1) of the Act. The liability to pay royalty on the part of the sub-lessees was in the nature of an encumbrance and as the Act provides that the acquisition will be free from all encumbrances, the appellant's right to receive royalty had been wholly destroyed. It was further urged that it could not have been the intention of the Legislature that no compensation was payable in respect of any loss or injury inflicted on any person by reason of the acquisition. On the other hand, it was contended on behalf of the Union of India that a right to receive royalty could not be described as a mining right and as under clause B of the Notification only mining rights "had been acquired, the right to receive royalty could not be said to have got vested in the State. And, thus no question of payment of any compensation to the appellant under this head could, arise. It was pointed out that it was apparent that the appellant did not own the mining

right acquired on the date of acquisition, and as such its claim was not covered by Section 13(2) of the Act and was, therefore, wholly inadmissible. M/s. Kathara Coal Company Ltd. which also figures as respondent in this appeal has not contested the claim of the appellant.

18. I am of the opinion that the contention raised on behalf of the Union of India is sound and must be accepted. Section 13 of the Act deals with compensation for (i) prospecting licences ceasing to have effect and (ii) compensation for the acquisition of rights under mining leases. We are not concerned with the former, namely, compensation for prospecting licences ceasing to have effect. Under the Notification u/s 9 of the Act mining rights in some lands and lands in another block have been acquired. Sub-section (2) of Section 13 which deals with the compensation for acquisition of rights under a mining lease reads as under:

"(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 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 during the period commencing from the date of the lease and ending with 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 calendar year for the first five years commencing from the year in which such expenditure was incurred plus interest at the rate of four per centum per annum in respect of each subsequent year after the expiration of the first five years and ending with the years 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 (ii) and (iii)."

It is apparent that where rights under mining lease are acquired, the statute has laid down several items which can be taken into consideration for arriving at the total compensation payable. It is also clear that the compensation payable is the sum total of the actual legitimate expenditure incurred by the lease holder plus a sum in the nature of interest. In *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, , it was held that Section 13 dealt with the whole subject of payment of compensation to the owner or lessee of the mine for his entire interest in the land including the rights to minerals. It follows that the provisions of Section 13 are exhaustive on the question of compensation. Under Sub-section (5) of Section 14 the Tribunal constituted under Sub-section (2) of that Section and thus a creature of the Act is directed that in making the award, it shall have regard to the circumstances of each case and to the foregoing provisions of the Act with respect to the manner in which the amount of compensation shall be determined. "The foregoing provisions" obviously referred to the provisions of Section 13 of the Act. The appellant's claim for compensation for loss of future royalty cannot be said to fall under any of the clauses under Sub-section (2) of Section 13 of the Act, and that appears to me to be the short answer to the maintainability of the appellant's claim on account of any loss of future royalty.

19. In regard to the claim for Rs. 1,35,784/- as compensation for the expenditure incurred by the appellant in obtaining the lease on the 21st of November, 1946, it has been urged that this claim falls u/s 13(2)(ii) and was thus allowable. On reference to Ext. A-4/2, the indenture of lease in favour of the appellant, it appears that the appellant had actually incurred an expenditure of Rs. 1,35,784 for obtaining the said lease, Rs. 1,28,000/- having been paid by way of premium and Rs. 7784/- having been spent on stamp and registration. The question, however, is whether it can be said that the said amount was incurred in relation to the lease under which the mining rights had been acquired. It may be that the rights and properties of the appellant under its lease dated the 21st of November, 1946 had not been destroyed by reason of the appellant having become a statutory lessee u/s 10 of the Bihar Land Reforms Act, and, it may also be that giving of compensation to the sub-lessee under any of the rub-clauses under Sub-section (2) of Section 13 was no bar, on principles, to grant of compensation to the reversioner. But it appears to me that it will be straining the language of the relevant clause to hold that "the lease" as it finds mention in Section 13(2)(ii) of the Act refers to any other lease than the lease under which the mining rights were actually acquired. The entire object for enacting the Coal Bearing Areas (Acquisition and Development) Act, 1957 was to empower the Union Government to acquire coal bearing lands with a view to work those areas themselves or through their appointed agents. It was, therefore, necessary to acquire the lessee's rights to un-worked coal bearing areas on payment of reasonable compensation to them and thus the Act provides for payment of compensation for the acquisition of the rights of mining lessees,

and the compensation payable is the actual legitimate expenditure incurred by the lease-holder. In the instant case, it is not in dispute that the mining rights at the date of the acquisition were in M/s. Kathara Coal Company Ltd. and not in their lessor's M/s. Bokaro and Ramgur Ltd. I am, therefore, of the opinion that the expenses incurred by the appellant in relation to his lease cannot be equated with the expenses incurred in relation to "the lease", the rights under which were acquired. In this view of the matter, this particular claim as well cannot be sustained.

20. In regard to the last item of claim amounting to Rs. 72009/- I find myself in complete agreement with the Tribunal that there was no reliable evidence whatsoever that any prospecting operations over the 3200 bighas in question had been carried out by the appellant company at any time before the date of the lease in its favour. If at all, this claim was sustainable only u/s 13(2)(i) read with Section 13(1)(i) of the Act. But none of the four witnesses examined on behalf of the appellant before the Tribunal have succeeded in establishing that any prospecting operations had been carried out and thus the condition on which this claim could be allowed cannot be said to have been made out, namely, it has not been established that the lease in favour of the appellant had been granted after prospecting operations had been carried out by them in respect of the land under the prospecting licence or in respect of the land covered by their lease. This claim as well, therefore, fails.

20-A. The appellant company can have no claim for compensation in respect of the acquisition of the surface right in 1807.73 bighas. Proving of ownership or interest in a mine under any parcel of land does not raise any presumption or afford any evidence regarding ownership of the surface. In the instant case, it appears from the terms of the head-lease (Ext. A-4/2) that what was demised was the underground coal mining rights in 3200 bighas situate in five villages, the rights in the surface being retained in the lessor. This is apparent from the recitals and the covenants included in the said Indenture of lease. It follows that for the acquisition of the surface rights which by virtue of the provisions of the Land Reforms Act must be taken to have vested in the State of Bihar, no claim was sustainable at the instance of the appellant.

21. In regard to 1475.56 bighas of lands which have been also acquired under the relevant Notification, the Tribunal has held in the first place that the reference was confined to the mining rights in 3200 bighas only and in the second place it has found that there was no evidence on the record on which the market value of the said lands could be determined. In regard to the first finding, the crucial document was the reference petition. While mentioning the particulars of the reference, the entire land covered under the Notification issued u/s 9 of the Act has been mentioned, under the heads date and number of the Notification and of the declaration and situation of the land. It may be mentioned that possession of the lands acquired along with the mining rights had already been taken u/s 12 of the Act on the 6th of December, 1957. In the

circumstances, it is difficult to read the reference as being confined to the mining Tights in 3200 bighas only. It must, there-fore, be held that the reference was also in respect of the aforesaid 1475.56 bighas of lands as well. As the Tribunal has not determined its market value, it would have been necessary to remand the case for that purpose. But in view of the fact that the appellant Company has not been able to show that any portion of the said area was covered by any of its leases, viz., Exts. D-3/2, D-3/1, and D-3/3, it cannot be said that they had any interest in those lands, and, as such, no useful purpose will be served by remanding the case for, the purpose of ascertaining the market value. Some attempt was made to identify a portion of the lands covered under Ext. D-3/1 and Ext. D-3/2 with a portion of the aforesaid area but it was not successful. Indeed, before the Tribunal as mentioned in paragraph 70 of the award it was accepted on behalf of the appellant that the aforesaid land could not be said to be connected with the lands covered by the above mentioned leases.

22. Miscellaneous Appeal No. 99 of 1961 is thus disposed of.

23. In regard to Miscellaneous Appeal No. 116 of 1961, a preliminary objection was raised on behalf of M/s. Kathara Coal Company Ltd. to the effect that the appeal having been filed on the 14th of April, 1961 which was more than 30 days from the date of the award dated 12-3-1961, was barred by limitation. It, however, appears that if the time requisite for obtaining the copy of the award under appeal is allowed, the appeal was well within time. In my opinion, the case is covered by Sub-section (4) of Section 12 of the Limitation Act, and the appeal cannot be said to be barred by limitation. None of the three cases on which reliance was placed on behalf of M/s. Kathara Coal Company Ltd. is relevant on the issue. In ILR (1898) 22Bom 802 Mikanth Ganesh v. Collector of Thana all that was held was that the Land Acquisition Act (10 of 1877) did not provide for or contemplate an award for compensation being enforced against the Collector by execution proceeding. In ILR (1911) 35Bom 146 Laddha Ibrahim and Co. v. Assistant Collector, Poona, it was held that award under the Land Acquisition Act (I of 1894) was not a decree or order capable of execution under the Code of Civil Procedure, In (1912) LR 39 IndAp 197 Rangoon Botatoung Co. v. Collector, Rangoon, the point decided was that no appeal lay to the Judicial Committee from the High Court disposing of an appeal from an award, as the Land Acquisition Act, 1894 had not expressly provided for any such appeal. All that may be said to follow from the above decisions is that an award is not enforceable per se, at least not through execution proceedings. But there is no reason why it cannot be treated as an "order". En-forceability is by no means a necessary quality of an "order". It is true that the CPC contemplates of order capable of execution, but at the same time there may be orders which are not capable of execution. u/s 2 clause (14) of the Code of Civil Procedure, an "order" means the formal expression of any decision which was not a decree. I can see no reason why an award cannot be taken to be the formal expression of the decision of the arbitrator. The essential attribute of a decision is that it formally decides controversies between the parties. In this view of the matter, I am of the

opinion, that under Sub-section (3) of Section 12 of the Limitation Act the time requisite for obtaining a copy of the reasons given by the arbitrator for his award should be excluded in computing the period of limitation. There is good authority in support of the proposition (vide the case AIR 1932 165 (Privy Council)) that any application by a party to an appellate court asking it to set aside or revise a decision of a subordinate Court is an appeal in the ordinary acceptation of that term. On this view, the present appeal by the Union of India can be treated as an application to set aside or modify an award and thus time requisite for obtaining a copy of the award shall be excluded as provided for in Sub-section (4) of Section 12 of the Limitation Act. The preliminary objection thus fails.

24. In Miscellaneous Appeal No. 116 of 1961, the Union of India disputes the quantum of compensation which has been allowed to M/s. Kathara Coal Company Ltd.

25. The first question which was raised on behalf of the Union of India turns on a construction of Sub-section (2) of Section 13 of the Act. It was urged that the sub-lease which had been granted to M/s. Kathara Coal Company Ltd. was not subsisting on the date of the acquisition, what in fact, was subsisting was a lease deemed to have been granted to them u/s 10 of the Bihar Land Reforms Act with effect from the date of vesting, namely, the 3rd of November, 1951. It was urged that compensation to M/s. Kathara Coal Company Ltd. could have been awarded only with reference to that statutory lease and not with reference to their lease which had ceased to subsist by virtue of the operation of Section 10 of the Bihar Land Reforms Act. It was, however, conceded on behalf of the Union of India that even if this contention of theirs found favour with the Court, they were not going to withdraw the amount of compensation which they had already deposited to the credit of M/s. Kathara Coal Company Ltd. And in that case it would be unnecessary to go into the details of the several items for which compensation had been allowed to them. It was clearly stated on their behalf that it was only when this above contention failed that it would be necessary to go into the details of the different items. The soundness of this contention was strenuously combated on behalf of M/s. Kathara Coal Company Ltd. It was submitted on their behalf that on principle as also on the language of Sub-section (2) of Section 13 of the Act, it was quite clear that the words "rights under a mining lease" as occurring in the opening sentence of Sub-section (2) of Section 13 were descriptive of the property acquired and not of any particular lease that might be in operation at the time of acquisition. It was also urged that u/s 10 of the Bihar Land Reforms Act, the interest of the sublessees was not at all touched and thus the sub-lease subsisted as before. Very elaborate arguments were advanced on behalf of both sides on this question. Two things, in my opinion, clearly stand out (1) that the sub-lessee did not get any new sub-lease u/s 10, his lease subsisted by virtue of the statutory grant in favour of his lessor u/s 10 of the Bihar Land Reforms Act, and (2) that sub-section (2) of Section 13 on a proper construction was not intended to cover only statutory leases as are contemplated under Sections 9 and 10 of the Bihar Land Reforms Act. This question, in my opinion

was more relevant for consideration in the appeal by M/s. Bokaro and Ramgur Ltd. but as that appeal could be disposed of on rather comparatively simpler points, I have not discussed this point in that appeal. So far as the position of the sub-lessees is concerned in whom the mining rights were vested at the time of the acquisition I have, no doubt, that their interest was not at all touched by Section 10 of the Bihar Land Reforms Act. Sub-section (1) of Section 10 of the Bihar Land Reforms Act inter-alia provides that -

"..... where immediately before the date of vesting of the estate or tenure there is 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 terms of that lease, and such holder shall be entitled to retain possession of the lease-hold property."

It is true that u/s 2(1) of the Bihar Land Reforms Act "lease", in relation to mines and minerals, includes a sub-lease and a lessee includes a sublessee. The true meaning and import of Sub-section (1) of Section 10 of the Bihar Land Reforms Act, as quoted above, is, however, apparent when reference is made to Sub-section (3) of Section 10. That sub-section provides that -

"The holder of any such lease of mines and minerals as is referred to in Sub-section (1) shall not be entitled to claim any damages from the outgoing proprietor or tenure-holder on the ground that the terms of the lease executed by such proprietor or tenure holder in respect of the said mines and minerals have become incapable of fulfilment by the operation, of this Act"

It will be apparent if Sub-section (1) and Sub-section (3) are read together then Section 10 speaks of subsisting lease from the outgoing proprietor or tenure-holder, otherwise there was no reason to provide for protecting the outgoing proprietor or tenure-holder against claims. for damages by their erstwhile lessees on the ground that the terms of the lease executed by such proprietor or tenure-holder had become incapable of fulfilment by operation of the Act. This construction is in consonance with the well recognised object of the Bihar Land Reforms Act. This question can be looked at from another angle as well. If Section 10 of the Bihar Land Reforms Act contemplates both a lease as well as a sub-lease by the State in favour of the lessor as well as the sub-lessee, the position would be mutually destructive. The State cannot be the lessor vis-a-vis the lessee as well as the sub-lessee at the same time. The State having come in the position of the outgoing proprietor or the tenure-holder will undoubtedly be the lessor of the erstwhile lessee and in case both the sub-lessee as well as the lessee are deemed to have obtained a statutory lease from the State, the position will be already anomalous by bringing into existence two lessees in respect of the same lease-hold estate. Such an anomalous position could not have been contemplated by the Legislature. Indeed, the terms of Section 10A of the Bihar Land Reforms Act as inserted in the said Act by the Bihar Land Reforms

(Amendment) Act, 1964 clearly show that the operation of Section 10 had not been wiped out by the sub-leases. u/s 10A the sublessees have now been brought as lessees directly under the State. This could be possible only if their original sub-leases were subsisting. It follows, therefore, that the sub-lease which had been granted by M/s. Bokaro and Ramgur Company Ltd. to M/s. Kathara Coal Company Ltd. had not been wiped off and had not been substituted by a new lease by virtue of Section 10 of the Bihar Land Reforms Act. The decision of the Supreme Court, namely, in Bihar Mines Ltd. Vs. Union of India (UOI), holding that the effect of Section 10 of the Bihar Land Reforms Act was that a new statutory lease came into existence on the date when the estate vested in Government is thus of no relevance. Further it appears to me that while on the one hand the principle underlying the mode of computation of compensation as laid down in Section 13 of the Act was to liberate the power of eminent domain from the limitations of the Land Acquisition Act and of the Land Acquisition (Mines) Act and thus from the obligation of payment of the market value or the just equivalent of the surface and the minerals underlying the same, on the other hand, it quite clearly provides for compensation in respect of the investment made by the lessee or sub-lessee concerned, for acquiring the leasehold properties to the extent of expenses incurred out of the pocket and for some interest thereon. In other words, Section 13 of the Act on its very terms appears to lay down the formula for determining the amount of compensation payable to the lessee to the extent each one of them might have invested over the leasehold regardless of the date of the lease, provided the expenses had a bearing or were related to the activities necessary for securing the lease and for developing the property. The Act has provided for payment for all the advantages which the State secures by the acquisition. That the provisions of Section 13 are not designed to cover statutory lease brought into existence u/s 10 of the Bihar Land Reforms Act, is also clear from the language of the provisions of Section 13. If, for instance, Clause (ii) of Sub-section (2) of Section 13 were intended to cover statutory leases u/s 10 of the Bihar Land Reforms Act, and, it must be supposed that the Parliament was aware of the Bihar Land Reforms Act when it came to pass the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Parliament would have provided for the payment of such expenses only as are envisaged to be incurred by the grantee of a mining lease in respect of lands in which the minerals belong to the Government, as provided for in Rules 28, 29 and 36 of Chapter IV of the Mineral Concession Rules, 1949. The total amount of money required to be paid by a prospective lessee under the Mineral Concession Rules was only about two thousand rupees. But we find that it is not so. In clause (ii) of Sub-section (2) of Section 13 not only has the Parliament provided for various items of expenditure of the nature referred to in Clauses (i), (ii) and (iii) of Sub-section (1) of Section 13 which expenses would be practically unknown to the statutory lease, it has further provided for compensating the lessee or the sub-lessee, as the case may be, for the salami paid for obtaining the lease. It is well known that no salami is payable for a statutory lease. Indeed, a statutory lease comes into existence by a legal fiction. Thus we find

that there are intrinsic materials in the section itself which go to indicate that the words "rights under a mining lease" as occurring in Sub-section (2) of Section 13 were really descriptive of the property acquired, regardless of the lease under which the property might have come into existence. Thus regarded, there is clearly no substance in the contention that it is only a statutory lease which had come into existence u/s 10 of the Bihar Land Reforms Act, at least so far as Bihar was concerned, that were contemplated by Section 13(2) of the Act. In any case, I have held above that no statutory lease can be said to have come into existence in respect of the sub-lessees, namely M/s. Kathara Coal Company Ltd. This contention, therefore, fails.

26. Coming to the details of the items in respect of which compensation has been allowed to M/s. Kathara Coal Company Ltd., the only item which was seriously contested relates to compensation under the head of minimum royalty. It was urged that in no case compensation under that head could exceed Rs. 5/- per bigha per year. The Tribunal has allowed claim for minimum royalty at the rate of Rs. 7/8/- per bigha upto June, 1957 and at the rate of Rs. 10/- per bigha for the period from 1-7-1957 to 23-11-1957, the date of the acquisition. In respect of the period upto 31-1-1955, however, as the Union Government had themselves allowed royalty at the rate of Rs. 5/- till that date, the Tribunal has only allowed the difference between the royalty at the rate of Rs. 7/8/- and Rs. 5/- upto January, 1955 and Rs. 7/8/- thereafter until the 30th of June, 1957. It will be noticed that the correctness of the figures of the expenditure as claimed under different heads has not been disputed. The cash book and other account papers like the journal, ledger and vouchers have all been accepted. In regard to allowing minimum royalty at the rate of Rs. 7/3/- per bigha per year, it would be found that the Tribunal had granted at that rate on the basis of actual payment made by M/s. Kathara Coal Co. Ltd. to their lessors. This payment was made on the basis of a bona fide settlement between M/s. Kathara Coal Company Ltd. and M/s. Bokaro and Ramgur Company Ltd. The settlement had been arrived at in course of a dispute about the correct Interpretation of the term relating to payment of royalty in the deed of sub-lease and it appeared as pointed out above that M/s Kathara Coal Company Ltd. had made actual payment at the rate of Rs. 7/ 8/- per bigha, in pursuance of the said settlement upto June, 1957. There was nothing to show that the settlement was not bona fide. The settlement, however, was for a period ending with June, 1957. The liability to pay minimum royalty after June, 1957, namely, 1-7-1957 to 23-11-1957, the date on which the acquisition was made was clearly governed by the contract embodied in that behalf in the deed of the sub-lease and, in fact, during the period from 1-7-1957 to 23-11-1957 payment had been made at Rs. 10/ per bigha per year. In the circumstances, I can see no justification to interfere with the award of the Tribunal in regard to the compensation allowed to M/s. Kathara Coal Company Ltd. by way of reimbursing them for the payments by them of minimum royalty. In regard to the directions of the Tribunal for payment of interest at the rate of 5% per annum on the excess amount determined from the date on which it

became payable, that is, the date of acquisition to the date of payment, as well, I can see no reason to interfere with the discretion exercised in that behalf. The Tribunal has referred to the letters exchanged between N. C. D. C. and M/s. Kathara Coal Company Ltd. showing the latter pressing for payment and the former delaying the same on one pretext or another. It has also pointed out that though the properties were acquired on 23-11-1957 and almost simultaneously dispute had arisen between the various claimants, the reference was abnormally delayed till the 25th of May, 1959. In the circumstances, it cannot be said that the Tribunal has exercised its discretion arbitrarily in regard to the directions for payment of interest on the excess amount.

27. No other point was urged on behalf of the Union of India in Miscellaneous Appeal No. 116 of 1961.

28. It follows from what has been discussed above that all the three appeals as also the cross-objection preferred by M/s. Kathara Coal Company Ltd. must be dismissed. In the result, the appeals fail and are dismissed. In the circumstances and on the facts of this case, there will be no order as to costs in any of the appeals.

K.B.N. Singh, J.

29. I agree.