

(1985) 05 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.P. No. 1260 of 1982

Central Coalfields Ltd.

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 03-05-1985

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 4
Constitution of India, 1950 — Article 254
Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 15, 29, 68
Mines and Minerals (Development and Regulation) Act, 1957 — Section 2

Citation : AIR 1986 MP 33(1) : (1986) 31 MPLJ 255 : (1986) MPLJ 255

Hon'ble Judges : G.L. Oza, C.J;B.M. Lal, J

Bench : Division Bench

Advocate : Krishna Murthi and P.S. Nair, for the Appellant; A.M. Mathur, General, O.P. Namdeo and Y.S. Dharmadhikari, for the Respondent

Final Decision : Dismissed

Judgement

B.M. Lal, J.

This petition under Arts. 226 and 227 of the Constitution of India, is directed against the order dt. 4-5-81 (Annexure-F), order dt. 30-9-81 (Annexure-J) and order dt. 9-6-82 (Annexure-K), passed by the Chairman, Special Area Development Authority (hereinafter referred to as "SADA"), Singrauli, District Sidhi, Madhya Pradesh, for seeking directions that the provisions of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as the "Adhiniyam"), are not applicable to the petitioner's property situated in Sidhi District (M.P.).

Short facts leading to this petition are as under : The petitioner is a subsidiary company of Coal India Limited. This Company, according to the petitioner, is a Government owned company, wholly financed and controlled by the Government of India and is registered under the Indian Companies Act, 1956. This Company, previously was known as National Coal Development Corporation limited. But,

this name has been changed and now it is known as "Central Coal Fields Limited.

For carrying on the mining operations, the petitioner company made application for acquiring lands of Singrauli Tahsil. These lands u/s 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (hereinafter referred as the "Coal Act"), were notified as coal bearing area vide Notification S.C. No. 1552 dt. 6-5-75, published in Gazette of India, New Delhi, dt. 17-5-75. After due consideration of the report of the competent authority and the State Government of Madhya Pradesh, notification of acquisition of all rights in and over approximately 1857 acres of land in village Garda, Jaipur, Sarswa, Raja Tole, Sarswa Lal Tole, Mudwani and Nigahi was notified u/s 9 of the Coal Act.

According to the petitioner by virtue of notification u/s 9 of the Coal Act, all rights in the lands stated in the notification vested in the Central Government under the provisions of Sub-section (1) of Section 10 of the Coal Act (free) from all incumbrances. Therefore, the rights and liabilities of the Central Government are deemed to be the rights and liabilities of the petitioner company pertaining to such lands u/s 11 of the Coal Act.

The petitioner's contention is that in view of the provision of the Coal Act all rights in and over such lands have been acquired by the Central Government and as such the Central Coal Fields Ltd., have full rights to carry on coal mines operations and construction of office buildings and residential quarters for its officers, staff workers and other building structures for other ancillary purposes for the development of the Coal which amounts to development of coal mines.

It is further submitted by the petitioner that applications were also presented before the Collector, Sidhi for permission to acquire land situated in village Panjra for construction of office buildings and residential quarters for officers, staff and other workers. The Collector sidhi fixed the amount of compensation for acquisition of the tenancy land and informed the General Manager of the petitioner-company to pay the compensation to the tenants and acquire the land. In this process 111 acres of land in village Panjra have been acquired by paying compensation to the land holders who in their turn executed 12 registered sale-deeds in favour of the petitioner. 130.19 acres of land at village Panjra, belonging to State Government, have also been acquired by the petitioner company. This land was needed by the company for construction of the residential quarters etc.

Petitioner further submitted that the Central Government u/s 17 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereafter referred to as "Development Act") had acquired the mining rights in tenancy lands and Government land i.e. 111 acres and 130.19 acres, respectively. Therefore, according to the petitioner these lands have also been vested with the petitioner company for mining purposes.

The submission of the petitioner company was that the construction of office buildings, residential colony for officers, staff, workers and other necessary structures were immediately needed for coal mining activities and for

development of coal mines, according to the Project reports which were duly approved by the Government of India. Therefore, the work of construction had to be started as early as possible and accordingly the work of construction was undertaken.

The petitioner's main submissions are that the lands having been vested with the petitioner company for all purposes, therefore, in view of the provisions of the "Coal Act" and the "Development Act" the petitioner company was not required to obtain any permission from the local authority under the provision of local laws for the construction of houses, colonies or any other structures which are being used for mining purposes: And, according to the petitioner, the construction of the buildings etc. is also a part and parcel of the mining activities, without which no mining operations are possible and hence permission for construction work is not "required to be obtained from any local authority including "SADA".

The petitioner while undertaking the building construction works, has not obtained any necessary permission as required by the provisions of Section 16 and Section 29 of the "Adhiniyam".

This has resulted in complete breach/ violation of the mandatory provisions for constructing the buildings, colonies and other superstructures, therefore, the Chairman, SADA by his letter dt. 4-5-81 issued a notice u/s 37(1) of the Adhiniyam calling upon the petitioner to demolish houses and other superstructures which the petitioner had constructed without any permission.

The petitioner submitted objections on 28-8-1981 to the notice dt. 4-5-81 raising objection that neither provisions of the "Adhiniyam" nor those of the Municipalities Act are applicable to the lands which are in possession of the petitioner Company for the purposes of coal mining.

According to the petitioner, for the purposes of coal-mining the statute, rules and regulations concerning coal will be applicable which override the provisions of any other enactments. Therefore, no permission is required to be obtained for the constructions.

It is further submitted that as required u/s 15 of the "Adhiniyam", a map was published which demonstrated the existence of buildings and other constructions at Mowa and Jayant colonies of the Central Coal Fields Ltd. Therefore, according to the petitioner, if prior to the formation of SADA, Singrauli, the construction of houses etc. were carried out, no permission is required after the formation of SADA, Singrauli and question of demolition of such buildings and houses also does not arise.

The petitioner also submitted that the "Development Act" and the "Coal Act" have been enacted by the Parliament. Therefore, the entire legislative field in relation to regulation and development of mines and minerals stood transferred to Parliament and the State Legislature lost the legislative competence to make

any legislation on that subject and therefore, provisions of the "Adhiniyam" or the "Municipalities Act" have no application to the construction work which was carried out by the petitioner.

It is also submitted that the petitioner company is a Government company wholly owned, financed and controlled by the Government of India and therefore, under the provisions of Section 29 of the "Adhiniyam" it is exempted from applying for the permission to carry on any construction of building work etc. and hence no permission is required.

On the other hand, the respondents submitted that Singrauli, Special Area Development Authority has been constituted u/s 64 of the Adhiniyam by Notification No. 1909 dt. 19-7-1975 and by another notification dt. 2-6-78, the boundaries of the SADA, Singrauli were altered under Sub-clause (3) of S. 64 of the Adhiniyam. After constituting the special area of Singrauli, the respondent No. 1 also by a separate notification constituted SADA, Singrauli, District Sidhi u/s 65 of the "Adhiniyam" which comprises 133 villages with the headquarters at Vadhan in District Sidhi. The villages which constituted SADA Singrauli were included in various Gram Panchayats. There was no municipality at Singrauli or in any of the villages included in SADA, Singrauli. SADA Singrauli became a body corporate u/s 66 of the "Adhiniyam" and started discharging functions as enumerated u/s 68 of the "Adhiniyam".

The area comprised of 133 villages and was not in any territorial jurisdiction of Municipal Council or Municipal Corporation, prior to its constitution as special area. The respondent No. 1 issued a direction u/s 68(v)(b) of the "Adhiniyam" that SADA shall provide for Municipal services as specified under Sections 123 and 124 of the Madhya Pradesh Municipalities Act, 1981. As such, the directions were issued u/s 68(v)(b) of the "Adhiniyam". By virtue of these powers, the SADA, Singrauli, was required to provide municipal services to the residents of SADA, Singrauli. Here it will not be out of place to state that villages included in SADA, Singrauli, include forest lands, mineral fields, agricultural land, abadi lands, nistar land and therefore, for providing civil rights, the SADA was obliged to discharge function of Municipal Committee for the purposes of Municipal management, taxation and administration etc. While discharging these functions, under the provisions of Madhya Pradesh Municipalities Act, SADA, Singrauli had to exercise powers of regulating construction of buildings in SADA, Singrauli area. Regulation of buildings as contained in Chap. XI of the Municipalities Act, 1961, is one of the aspects of the Municipal administration and management.

Therefore, according to the respondents the petitioner company may hold mines and carry on mining operations which are regulated by the provisions of the Development Act, while acquiring the lands for the purposes of mining under "Coal Act".

But, according to the respondents, when the petitioner indulges in construction activities of constructing buildings and other structures, the petitioner company

is required to follow the procedure of building regulations which is prescribed under the Municipalities Act, 1961. As such according to the respondents, when the Development Act and the Coal Act are not the enactments concerning local Government Acts, i.e. Adhiniyam or the Municipalities Act, which have been enacted by the State Legislature in exercise of the legislative powers" conferred by Entry (5) of List II, Schedule VII of the Constitution of India, for which the State Legislature is alone competent to make law for Municipal Council or local Government, therefore, according to the respondents, the buildings or other building structures may form part of the mines, but that does not mean that construction of such buildings or structures is not regulated by the provisions of building regulations enacted under the "Adhiniyam" or Municipalities Act, 1961.

It is also submitted that the petitioner has not undertaken any construction relating to the office buildings, machine rooms or other structures which are necessary for mining activities. On the other hand, the petitioner has constructed markets, schools, hospital, guest-houses, recreation centres and residential colonies for the employees of the petitioner. Therefore, if the area where the constructions have been done or carried out, included in the SADA, Singrauli for all these purposes, SADA, Singrauli has become a local authority for these areas and as such by virtue of the provisions of the "Adhiniyam" and the "Municipalities Act, 1961", the entire construction work would be regulated by the provision of "Adhiniyam" and "Municipalities Act, 1961".

It is also submitted that petitioner company is not "Union Government" and therefore, provision of Section 29 of the "Adhiniyam" has no application at all.

After hearing the rival contentions of the parties at length, we have reached the conclusion that this petition has no substance and it must be dismissed.

In order to appreciate the submissions of the petitioner-company regarding the applicability of the "doctrine of occupied fields," it is necessary to examine the scheme of the relevant enactments legislated by the Parliament and the State Legislative Assembly.

The main submission of the petitioner is that the Central Acts relating to mines have been enacted by virtue of Entry 54, List I of Schedule VII of the Constitution and, therefore, the field relating to the mining operations, having been occupied, the State Legislature has no legislative powers to enact any enactment to control the mining operations by enacting a separate law and therefore, it is submitted that the provisions of the "Adhiniyam" which control and regulate the house construction etc., relating to the mining area, are ultra vires.

The point in question has been considered by Their Lordships of the Supreme Court in Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others, and Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, and therefore, this submission has no force. The Parliament enacted the "Development Act" etc. relating to mines,

so as to ensure scientific development and utilisation of coal resources as best to subserve the common good. Entry No. 23 of List II relates to Regulation of mines and minerals development subject to provisions of List I with respect to "regulation and development under the control of the Union". Entry No. 54 of List I, relates to "Regulation of mines and minerals development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest". Therefore, it is clear that u/s 2 of the "Development Act", the legislative field covered by Entry 23 of List II, will pass on to Parliament by virtue of Entry 54 of List I.

But, in order to judge whether on that count the State Legislature loses its competence to pass the State laws, in the instant case, the "Adhiniyam", it is necessary to find out the object and purpose of the Adhiniyam and the relevant provisions thereof under which the SADA has been given the power to regulate the building construction work within the territorial jurisdiction of the SADA.

On examination of the object of the "Adhiniyam" we find that the "Adhiniyam" provides for the development and administration of the SADA.

Provision of Section 64 of the "Adhiniyam", which provides for the constitution of the special area, lays down by Sub-section (4) of Section 64, that "Notwithstanding anything contained in the Madhya Pradesh Municipal Corporation Act, 1956, the Municipalities Act, 1961, or the M.P. Panchayat Act, 1962, the Municipal Corporation, Municipal Council, Notified Area or the Panchayat, as the case may be, shall in relation to the special area and as from the date, the Special Area Development Authority undertakes to function under Clause (iv) or Clause (v) of Section 68, cease to exercise powers and perform the functions and duties which the Special Area Development Authority is competent to exercise and perform under the "Adhiniyam". Further, Section 64 defines the functions of the Special Area Development Authority, one of which, as prescribed by Clause (v), is to provide the municipal service, as specified under Sections 123 and 124 of the M.P. Municipalities Act, 1961. Similarly, Section 69 of the Adhiniyam, which provides powers of SADA shows that those powers are conferred for the purpose of municipal administration.

Therefore, it is crystal clear, that the functions, powers and duties of Municipalities and SADA do not become an "occupied field" by using of the declaration contained in Section 2 of the "Development Act" and hence, the competence of the State Legislature to enact laws for the Municipal administration, will remain unaffected by that declaration.

On behalf of the respondents it is submitted that this "Adhiniyam" has been enacted by virtue of Entry 5 of List II of Schedule VII which relates to Local Government. That is to say, the constitution and the powers of Municipal Corporations and other local authorities for the purpose of the Local Government. It is in pursuance of this power, the State Legislature enacted the "Adhiniyam".

The power to regulate the building construction etc. is derived by the SADA from

the provisions of the "Adhiniyam" and therefore, the SADA has power in order to discharge its municipal functions effectively to control and regulate the construction of houses and colonies etc. and therefore, in our opinion, Entry 54 of List I, Schedule VII, does not envisage the taking over of municipal functions by the petitioner by virtue of the "Development Act" and "Coal Act". They only ensure the scientific development and utilisation of coal resources as best to subserve the common good. Hence, we are of the opinion, that the doctrine of "occupied field" has no relevancy in the instant case, where the powers and duties of municipalities or SADA are different than those provided in the "Development Act" and the Coal Act and hence the submission in this regard of the petitioner fails,

In *State of Haryana and Another Vs. Chanan Mal and Others*, , their Lordships of the Supreme Court held that the declaration u/s 2 of the Mines and Minerals (Regulation and Development) Act, 1957 does not result in invalidation of other State Legislation relating to the mines and minerals. In this case the Haryana Minerals (Vesting of Rights) Act, 1973, under which the notifications were issued for acquisition of right to saltpetre, a minor mineral and for auctioning certain saltpetre bearing areas, in this context their Lordships of the Supreme Court held that the Haryana Act was not in any way repugnant to the Mines and Minerals (Regulation and Development) Act, 1957 enacted by the Parliament and that the ownership right could be validly acquired by the State Government under the said Act.

Next, it is submitted that the petitioner company is a Government owned company wholly financed and controlled by the Government of India and therefore, under the provisions of Section 29 of the "Adhiniyam, the petitioner company is exempted and is not required to obtain any permission for the construction of buildings etc. from the SADA.

Now the point to be determined is, whether the petitioner-company, although a Government owned company and wholly financed and controlled by the Government of India, comes within the purview of the provisions of Section 29 of the "Adhiniyam" and therefore it is not necessary to obtain permission of the SADA under the building regulations.

To examine this, (sic) their Lordships of the Supreme Court in the case of *Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another*, have held that a Government company incorporated under the Companies Act, has a legal entity of its own. Even if entire share capital is subscribed by the Union Government, it cannot be said that the Union Government owns the Company or its property in the absence of a provision in the constitution of the Company to that effect. The company, which is not even a statutory corporation, cannot be equated with a Government Department like Railways or Post Offices and its property cannot be held to be the property owned by the Union Government so as to attract the exemption u/s 29 of the "Adhiniyam". The property of the petitioner i.e. the lands etc. which have been

allotted to the petitioner for mining purposes, is not, therefore, exempt from the provisions of Section 29 of the Adhiniyam and therefore, the petitioner- company which is incorporated under the Companies Act, has a corporate personality of its own distinct from that of Government of India and therefore, the petitioner-company cannot seek protection under the provisions of Section 29 of the "Adhiniyam". Therefore, this second ground also fails.

The petitioner lastly submitted that u/s 15 of the Adhiniyam, the maps etc. which were published by the respondent No. 2 demonstrate the existence of buildings and other constructions at Morwa and Jayant colonies of the petitioner. Therefore, if prior to the formation of SADA, the construction of houses was there, no further permission is required after the formation of SADA. It is true that if the buildings etc. had been constructed prior to the constitution of the SADA, then for those buildings etc., permission will not be required after the formation of the SADA; but the submissions as have been made by the petitioner, are misconceived. Some constructions in those villages i.e. Morwa and Jayant have been carried out without prior sanction of the SADA for which the respondents have filed separate maps of the colonies of the petitioner-company showing the buildings already standing and the buildings which were under construction and therefore, under the provision of the Adhiniyam, the respondent No. 2 has rightly taken steps vide Annexure F dt. 4-5-81, which requires no interference by this Court, in writ jurisdiction.

Therefore, the third submission as made by the petitioner is also repelled being devoid of any substance and based on disputed questions of fact which cannot be decided in writ jurisdiction.

We, however, like to make it clear that if there are constructions started prior to the formation of SADA and the alignment of the buildings etc. are in accordance with the development plan of the SADA and the same have been completed after the enforcement of the Adhiniyam, then the respondent No. 2 if approached by the petitioner, may consider this aspect and after ascertaining the factual position, may pass an appropriate order in accordance with the provisions of the Adhiniyam.

No other grounds were raised before us by the petitioner.

From the discussion aforesaid, this petition fails and is hereby dismissed with costs. Counsel's fee Rs. 250/-, if certified. The balance of security amount, if any, be refunded to the petitioner.