(1991) 05 GAU CK 0008

In the Gauhati High Court

Case No : Second Appeal No. 131 of 1983

Coal India Limited APPELLANT

Vs

Khirod Chandra Chakraborty and Another RESPONDENT

Date of Decision : 15-05-1991

Acts Referred:
Coal Mines (Nationalisation) Act, 1973 — Section 2, 3

Citation : AIR 1992 Guw 50

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : B.K. Das and S. Dutta, for the Appellant; B.C. Das and B. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Saraf, J.—The only question that falls for determination in this appeal is whether the suit land falls within the definition of "mine" as defined in Section 2(h) of the Coal Mines (Nationalisation) Act, 1973, or not.

2. The appellant, Coal India Limited is a Government Company. By virtue of the provisions of Section 3(1) of the Coal Mines (Nationalisation) Act, 1973 (hereinafter ''the Act'') and order issued by the Central Government in exercise of powers u/s 5(1) thereto, the right, title and interest of a limited company, namely, the Assam Railways and Trading Company Limited (ARTC), Margherita in respect of the coal mine specified in the schedule to the said Act got vested in the appellant company with effect from 1-5-1973.

3. In the year 1979 the appellant company filed a suit against one Khirod Chandra Chakraborty, the principal respondent herein, for his eviction from the suit land and for recovery of khas possession.

The case of the appellant-plaintiff, in brief, was that it was the absolute owner of the land described in the schedule to the plaint. On or about 20-10-75, the defendant No. 1 trespassed into the suit land and constructed a kutcha residential house and despite notice and repeated demands did not vacate the same. So the suit.

4. The defendant No. 1 entered appearance and contested the suit by filing written statement. His case was that he was an employee of ARTC. The suit land belonged to the ARTC. It was taken by him on lease. The lease rent was regularly paid to ARTC till 1972. After 1972 it refused to accept the rent on the ground that the land had fallen under the Land Ceiling Act being in excess of ceiling limit. When the coal mines were nationalised and the right, title and interest of ARTC in respect of the coal mine was taken over by the Central Government and vested in the plaintiff, the defendant became the employee of the plaintiff. He resigned from service in the year 1975 and as a result of a dispute that arose on his resignation in regard to payment of gratuity which had been withheld by the plaintiff for not vacating the suit land, the suit had been filed as a vindictive measure. It was stated that the plaintiff was not entitled to any relief. ARTC which was proforma-defendant did not enter appearance.

5. The Munsiff, Tinsukia (trial Court'', hereinafter), considered the provisions of the Coal Mines (Nationalisation) Act, 1973, more particularly, Section 2(h) thereof and held that the suit land was not covered by the definition of ''Mine'' and, as such, it did not vest in the plaintiff. While arriving at the said finding the trial Court also considered the evidence of P.W. 1 and Ext. 4 which is the patta in respect of the suit land and observed that the dag in which the suit land was situated (Ext. 4(1)) was a ''Faringati'' i.e. cultivable high land. In that view of the matter it was held that the plaintiff had no title over the suit land and, as such, it was not entitled to the relief sought for. This judgment was affirmed on appeal by the Assistant District Judge. Having lost in both the Courts below the plaintiff has filed this second appeal.

6. There is no dispute that the right, title and interest of ARTC in the coal mine named ''Borgolai'' situted at Post Office Borgolai was acquired by the Central Government by the Coal Mines (Nationalisation) Act, 1973. The name of this mine finds place in the schedule to the Act at Serial No. 4.

7. The only question that arises for determination is whether the suit land forms part of the mine. For that purpose it will be necessary to have a look at the object of the Nationalisation Act and subject-matter of acquisition. In other words, it is to be seen as to what are the rights of the owners which stood transferred and vested in the Central Government and in turn to the Government Company, Coal India Limited.

8. The Coal Mines (Nationalisation) Act was enacted to provide for acquisition and transfer of the right, title and interest of the owners in respect of the coal mines specified in the schedule. Section 3 deals with acquisition of rights of owners in respect of coal mines. It provides, inter alia, that on the appointed day, i.e. 1-5-1973 the right, title and interest of the owners in relation to the coal mines specified in the schedule shall stand transferred to, and shall vest

absolutely in, Central Government free from all encumbrances. Section 5(1) empowers the Central Government under certain conditions to direct by an order in writing that the right, title and interest of an owner in relation to a coal mine referred to in Section 3, shall, instead of continuing to vest in the Central Government, vest in the Government company In pursuance of this power notification was made and the right, title and interest in respect of the coal mine in question was vested in Coal India Limited.

9. From the aforesaid resume it is clear that what was acquired by the Central Government by the Nationalisation Act was only the "right, title and interest of the owners in relation to the coal mines". What is ''coal mine'' has been defined in Section 2(b) of the Act in the following terms :

" ''coal mine'' means a mine in which there exists one or more seams of coal."

"Mine" is again defined in Section 2(h) of the Act. It reads as follows :

"''mine'' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes -

(i) all borings and bore holes;

(ii) all shafts, whether in the course of being sunk or not;

(iii) all levels and inclined planes in the course of being driven;

(iv) all open cast workings;

(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 equipments, instruments, stores, vehicles, railways, tramways and sidings in, or adjacent to, a mine and used for the purposes of the mine;

(vii) all workshops (including buildings, machinery, instruments, stores, equipment of such workshops and the lands on which such workshops stand) in, or adjacent to, a mine and used substantially for the purpose of the mine or a number of mines under the same management;

(viii) all coal belonging to the owner of the mine, whether in stock or in transit, and all coal under production in a mine;

(ix) all power stations in a mine or operated primarily for supplying electricity for the purpose of working the mine or a number of mines under the same management;

(x) all lands, buildings and equipments belonging to the owners of the mine, and in, adjacent to or situated on the surface of, the mine where the washing of coal obtained from the mine or manufacture, therefrom, of coke is carried on;

(xi) all lands and buildings other than those referred to in Sub-clause (x) wherever situated, if solely used for the location of the management, sale or liaison offices, or for the residence of officers and staff, of the mine;

(xii) all other fixed assets, movable and immovable, belonging to the owner of a mine, wherever situate, and current assets, belonging to a mine, whether within its premises or outside.

Explanation.-- The expression ''current assets'' does not include,--

(a) dues representing the sale of coal and coal products effected at any time before the appointed day and outstanding immediately before the said day;

(b) dues from the Coal Board, established u/s 4 of the Coal Mines (Conservation, Safety and Development) Act, 1952, prior to the repeal of the said Act, with respect to any period before the appointed day;

(c) dues from sundry debtors, loans and advances to other parties and investments, not being investments in the coal mines;

(d) security deposits made by the owners with the Coal Controller appointed by the Central Government or with the Railways for the fulfilment of contracts or with a State Electricity Board for the payment of bills;

(e) earnest money deposited by the owners with the Railways for obtaining contracts;....."

Clauses (vi), (vii), (x) and (xi) of the aforesaid definition specifically refer to lands and buildings which would fall within the definition of mine. The admitted position is that the land in question does not fall in any of these clauses. The contention of the learned counsel for the appellant is that it will fall in the residuary clause, namely, Clause (xii) which includes "all other fixed assets, movable and immovable, belonging to the owner of a mine, wherever situate."

10. I have carefully considered the submission. I have also heard Mr. B. C. Das, learned counsel for the respondents.

11. On careful consideration of the provisions of the Nationalisation Act, more particularly, section 3 read with Section 2(b) and 2(h), I find it difficult to hold that Clause (xii) of Section 2(h) is so wide as to take in all lands belonging to the owners of the coal mines irrespective of the fact whether they meet the description specifically given in any of the clauses of Section 2(h), namely, Clauses (vi), (vii), (x) and (xi). Clause (xii), in my opinion, deals with "all other fixed assets, movable and immovable".

12. To appreciate the true meaning of this expression, one has to carefully examine the aforesaid four clauses of the definition of mine which refer to land. Clause (vi) refers to lands and buildings in, or adjacent to, a mine and used for the purposes of the mine. Clauses (vii) refers to all workshops including the buildings and the lands on which such workshops stand. Here also the condition is that such workshop should be in or adjacent to the mine and used

substantially for the purpose of the mine. Clause (x) deals with lands and buildings belonging to the owners of the mine, and in, adjacent to or situated on the surface of the mine where the washing of coal obtained from the mine etc. is carried on. Clause (xi) covers a much wider category and it encompasses within the definition of mine all Lands and buildings wherever situate, subject, however, to the condition that they are solely used for the location of the management, sale or liaison offices or for the residence of officers and staff of the mine,

13. From Section 2(h), particularly the clauses discussed above, it is clear that the object of Section 2(h) is to enlarge the definition of mine so that not merely the colliery but everything connected with the mining might vest in the Central Government. It is, however, also clear that no asset other than one which answers to the description given in the various clauses of Section 2(h) shall fall within the definition of mine and consequently would not vest in the Central Government. The owner of a coal mine may have various lands and houses at different places. The Nationalisation Act does not intend to acquire the right, title and interest of the owners in respect thereof unless these lands and buildings answer to the description given in any of the clauses of Section 2(h). As already indicated above, Clauses (vi), (vii), (x) and (xi) include only such land and buildings in the definition of mine which are used for the purposes of the mine including for the location of management, sale or liaison offices or for the residence of officers and staff of the mine, etc, Here again it is connected with the use by the officers and staff of the mine either as office or residence. Clause (xii) deals with other fixed assets, movable and immovable, belonging to the owner of a mine, wherever situate. This clause has to be read in the light of the other eleven clauses preceding it. It cannot be interpreted to refer to assets which have been specifically dealt with in the preceding clauses. It will cover only assets other than those which are specifically dealt with. It is evident from the use of the word ''other'' which precedes the words ''fixed assets. Evidently, lands and buildings have been specifically dealt with. In that view of the matter, on a harmonious construction of the various clauses of Section 2(h), assets referred to in Clause (xii) shall mean assets other than assets like land and building which have been specifically dealt with in preceding clauses. Any other interpretation will render all other clauses of Section 2(h) and the description of various assets given therein otiose. I, therefore, hold accordingly.

14. In the instant case, the admitted position is that the land in question does not answer to the description given in any of the clauses of Section 29(h) which deal with land. .From the evidence of the witness of the plaintiff itself, namely, P.W. 1 and the document exhibited by him (Ext. 4) it is clear that the land in question is an agricultural land. It is neither used for the purposes of the mine or for any other purposes specified in Clauses (vi), (vii), (x) and (xi) of Section 2(h). This land, therefore, did not vest in the plaintiff by virtue of the Nationalisation Act and, as such, the right, title and interest in the said land continued to vest in its original owner ARTC.

15. In the light of the foregoing discussion, I am of the opinion, suit of the plaintiff for eviction of the defendant from the suit land was rightly dismissed by both the Courts below.

16. I, therefore, do not find any merit in the appeal and the same is, therefore, dismissed. I make no order as to costs.