

(1986) 07 MP CK 0035
In the Madhya Pradesh High Court
Case No : First Appeal No. 69 of 1982

Coal Mines Authority Ltd., Calcutta and Others	APPELLANT
Vs	
Associated Cement Companies Ltd., Bombay	RESPONDENT

Date of Decision : 10-07-1986

Acts Referred:

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

Citation : AIR 1986 MP 241 : (1987) ILR (MP) 701 : (1986) 31 MPLJ 612 : (1986) MPLJ 612

Hon'ble Judges : K.K. Adhikari, J; B.C. Varma, J

Bench : Division Bench

Advocate : P.S. Nair, for the Appellant; Y.S. Dharmadhikari, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Varma, J.

The question raised in this appeal at the instance of the defendants is whether on the coming into force of the Coal Mines (Nationalisation) Act, 1973 (Act No. 26 of 1973) certain property, viz., fire extinguishing plants, pump and other machineries, left over the premises of Nowrozabad and Kotma Coal Mines in Shahdol district of Madhya Pradesh, stood transferred to and vested absolutely in the Central Government free from all incumbrances from the appointed date.

Facts are not much in dispute. The two Coal Mines, i.e. Nowrozabad and Kotma Mines, were owned by the respondent/plaintiff, i.e., the Associated Cement Companies Ltd., Bombay. This plaintiff company had many other establishments all over the country, including places at Kymore and Banmor in Madhya Pradesh, Lakheri in Rajasthan and Mancheri in Andhra Pradesh. It appears that in order to control the underground fire in Nowrozabad Coal Mines, its Manager summoned certain fire extinguishing equipments from Kymore Cement Works as loan. The details of the equipments so requisitioned are contained in schedule annexed to the plaint. Similarly, one pump was obtained from Lakheri Cement

Works for the same Coal Mines. An Exciter was obtained from Banmor Cement Works for Kotma Coal Mines. All this was prior to the enforcement of the Coal Mines (Nationalisation) Act and was only on loan from one concern of the plaintiff to its two coal mines. Somewhere in March, 1973, i.e., after the enforcement of the Coal Mines (Taking Over of Management) Act, 1973 (Act No. 15 of 1973), but before the promulgation of the Coal Mines (Nationalisation) Act, the plaintiffs Manager at Mancherial Cement Works requested for return of the pump which was spared for Kotma Coal Mines. The custodian refused to return the said pump. There had been some correspondence between the plaintiff on one hand and the coal mines authority on the other regarding return of the said articles. Finally, the appellant refused to return the articles compelling the plaintiff to file a suit either for the return of the property (Schedule-A to the plaint) or for payment of its value which was assessed at Rs. 1,81,650/-. The suit was resisted on two counts. First it was asserted that the property belonged to the mines and, therefore, vested in the Central Government free from all incumbrances on the coming into force of the Coal Mines (Nationalisation) Act and the plaintiff, therefore, ceased to have any right, title or interest in the said property. As a corollary, it was said that the plaintiffs remedy, if any, was to apply for compensation and the civil suit was barred u/s 26(5) of the Coal Mines (Nationalisation) Act. The trial Court's finding is that the properties in question did not belong to either of the two coal mines although they were properties of the plaintiff employed in different concerns. Consequently, these properties did not vest in the Central Government and continued to belong to the plaintiff. The suit was held maintainable and the plaintiff was held entitled to either the return of the property or its equivalent value, i.e., Rs. 1,81,650/-. The defendants have also been made liable to pay interest at nine per cent per annum from 10-3-1975 until realisation.

There is no dispute that these two mines, i.e., Nowrozabad and Kotma Coal Mines, were owned by the plaintiff i.e., the Associated Cement Companies Ltd., which also owned the Kymore Cement Works, Lakhera Cement Works and Banmor Cement Works. It is also not disputed that the articles in question at the time of coming into force, the Taking Over of Management as also the Nationalisation Act were found on the premises of the two coal mines and were in actual use for the purposes of those mines. From the oral evidence led by the plaintiff and particularly from that of Shri. K.C. Jain (P.W. 1) and Shri Gurudayal Prasad (P.W. 4) it is also amply proved that these articles were first installed at different establishments of the plaintiff at different places but were requisitioned by the authorities of the two coal mines prior to the coming into force of the Coal Mines (Taking Over of Management) Act and the Coal Mines (Nationalisation) Act for the purpose of extinguishing fire at Nowrozabad Mines and for pumping out water in the other, i.e., Kotma Mines. From Ex. P/1 which is a letter from the Coal Mines Authority Ltd. to the plaintiff, it appears that at one time (November, 1973) the Coal Mines Authority was inclined to return some of the items claimed in the suit to the plaintiff. However, ultimately there had been a denial on the

contention that they all vested in the Central Government.

What vested in the Central Government on the appointed date, i.e., 1-5-1973, u/s 3 of the Coal Mines (Nationalisation) Act is the right, title and interest of the owners of the mines. This vesting was free from all incumbrances. Kotma and Nowrozabad mines also vested in the Government and it is also not disputed that on acquisition of these mines certain amount of compensation has also been paid to their owner, i.e., the plaintiff. The dispute, however, is as to what actually so vested. "Mine" and "Coal Mine" have been assigned special significance under the Coal Mines (Nationalisation) Act. "Mine" is defined u/s 2(h) which reads as follows :

"(h) "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-

... .. (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 purpose 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 purposes of 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 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.""

And, a "coal mine" according to Section 2(h), means a mine in which there exists one or more seams of coal.

This artificial and wider definition of mine is not without purpose. Attempt is to frustrate the attempt of the owners to take away the assets of the mines from vesting. The various clauses of Sub-section (h) of Section 2 are indicative of the nature of the properties which may so vest. Whenever a question arises as to whether a particular asset vested in the Central Government as a consequence of the application of the Coal Mines (Nationalisation) Act to that particular mine, what is to be seen is whether it answers the description given in any of the clauses. What is, therefore, to be determined first is whether a given property was or was not the asset of the coal mine on the date of vesting and further whether the particular asset is within the sweep of Section 2(h). This is how the matter has been viewed by the Supreme Court in *Union of India (UOI) and Others Vs. United Collieries Ltd. and Others*, , where, in paragraph 6 of the report, the following observations were made :

"Parliament by an enlarged definition of "mine" in Section 2(h) has indicated the nature of the properties that vest and the question whether a particular asset is taken within the sweep of Section 2(h) depends on whether it answers the description given therein.

Evidence adduced in the case by the plaintiff/respondent and not rebutted at all by the appellants, is that the properties in question were borrowed for temporary use in the mines. Fire extinguishing equipments were requisitioned for extinguishing fire at Nowrozabad colliery while pumps were used for extracting water in Kotma colliery. All the same, it belonged to the plaintiff who owned both the mines as also the concerns from which these articles were taken on loan by the mines. Apparently such articles borrowed from elsewhere for specific use in mines cannot be termed as mine. Shri Nair, learned counsel for the appellants, however, submitted that since the property belonged to the plaintiff who also owned those two coal mines and since they were used for the purposes of mines, they are covered by Clauses (vi) and (x) of Section 2(h) of the Nationalisation Act. Learned counsel also added that they became assets either of the owner of the mines or the mines themselves and were covered under Clause (xii). Clause (vi), in our opinion, is wholly out of consideration for the reason that before a property of the description mentioned therein is held to be a mine, it has to be shown that it is in or adjacent to a mine. In addition, it has to be shown that it was used for the purpose of mine. Obviously, the articles in question were neither in nor adjacent to the two mines. Instead, they were temporarily brought on the premises for specific purpose and that too on loan from different establishments. No doubt they were used for the purpose of mines but that by itself will not make them a "mine" u/s 2(h) of the Nationalisation Act. Likewise, Clause (x) is also not attracted. In terms of that clause, only such lands, buildings and equipments belonging to the owners of the mine which are 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 "are mines". Certainly that is not the case here. May be that the articles in question belonged to the owners of the mines but they are neither in nor adjacent to not situated on the surface of the mines. Therefore, merely because the properties in question are owned by the plaintiff who also owned the two mines, it is difficult to say that either under Clause (vi) or Clause (x) of Sub-section (h) of Section 2 they became vested in the Central Government from the appointed date, i.e., from 1-5-1973.

Shri Nair, however, laid stress and tried to bring his case within Clause (xii). In order to attract that clause and to bring a particular property within its ambit, it has to be necessarily found that the given article or articles whether movable or immovable are the fixed assets belonging to the owner of the mine or are current assets belonging to a mine whether within its premises or outside. It has, therefore, to be shown that the articles were included in the assets of the mines at the relevant time. The term "assets" has not been defined in the Act. One, therefore, has to proceed on the basis of the meaning attributable to this term as

ordinarily understood. It would mean and include every thing that is available to meet liabilities. Pullan and Alcock in their "Commercial Dictionary", at page 26, set out how the term is understood in law. According to the authors, it means the sum total of property available to discharge liabilities and in that sense the word has a collective connotation. Later, plural sense was accorded to it, and singular form also came into use. Nowadays, in accounting and business, an asset represents an embodiment of invested resources. (See also Words and Phrases legally Defined, Vol. I, IIInd Edition, page 126). The authors have then given basis of classification of assets. They divide the assets in two classes current assets and non-current assets. The non-current assets again have been put in three classes fixed tangible assets, fixed intangible assets and deferred assets. This is how current assets and fixed assets have been explained :

"Current Assets are thus those which represent immediate purchasing power in the form of cash or claims to cash and those which will be converted into purchasing power or obviate the outlay of purchasing power within a short time during the normal course of operations of the undertaking.

Fixed Assets. Those acquired with the intention that they shall be held and used without change over a long period for the purpose of earning revenue. They are necessary to the operations of most enterprises, since without them revenue could not be earned."

In Union of India (UOI) and Others Vs. United Collieries Ltd. and Others, , the Supreme Court has assigned the following meaning to these terms :

"Fixed assets in general comprise those assets which are held for the purpose of conducting a business, in contradistinction to those assets which the proprietor holds for the purpose of converting into cash, and they include real estate, building, machinery etc."

The evidence on record, both oral and documentary, gives absolutely no indication of the articles in suit being assets of the two coal mines. Far from being any assets of the mines, the evidence indicates that they were borrowed from different establishments of the mine owner for specific purposes. They did not form part of invested resources of the mines. They were never acquired by the mines nor were held nor used without change over a long period for purposes of earning revenue. The evidence shows that they were brought on the premises temporarily either for extinguishing fire or for throwing out water. They, therefore, cannot in any case be said to be fixed assets. Similarly, they also are not current assets as none of them can be converted into purchasing power or obviate the outlay of purchasing power. The finding on evidence in this case must be that they could not be converted into purchasing power at the mines. With this finding alone application of Clause (xii) of Sub-section (h) of Section 2 must be ruled out.

Our finding, therefore, is that the articles in suit (Schedule A to the plaint) do not fall in any of the clauses of Section 2(h) of the Act and are, therefore, not mines

within the meaning of such provision. Those articles, therefore, did not vest in the Central Government. The property in those articles continued and still continues to belong to the plaintiff/respondent who has rightly been held entitled to either the return of those articles or of its equivalent value. It was not disputed by the appellants that they have taken possession of all those properties and as appears from Ex. P/1 mentioned above, that at one time the Coal Mines Authority Ltd., was prepared to return quite a few of them to the plaintiff.

Shri Nair also urged that no interest should have been awarded to the plaintiff. The trial Court awarded interest on a sum of Rs. 1,81,650/- at nine per cent per annum from 10-3-1975 up to the date of delivery of the articles or payment of its price. In our opinion, interest prior to the date of suit, i.e. prior to 26-11-1975 could not have been awarded. Interest can be awarded to the plaintiff only from 26-11-1975 and that too at not more than six per cent per annum. We hold accordingly.

For the reasons aforesaid, the appeal substantially fails and is dismissed except in so far as it awards interest to the plaintiff at nine per cent per annum from 10-3-1975. That part of the decree is set aside. Instead, we award interest at six per cent per annum and that too from 26-11-1975 on a sum of Rs. 1,81,650/- until realisation. The appellants shall pay costs of this appeal to the plaintiff. Counsel's fee as per schedule, if certified.