

(1972) 10 CAL CK 0005
In the Calcutta High Court

Dhemo Main Collieries and Industries Ltd.	APPELLANT
Vs	
Commissioner, Burdwan Division and Others	RESPONDENT

Date of Decision : 04-10-1972

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 2, 29, 4, 5, 7

Citation : 78 CWN 44

Hon'ble Judges : Chittatosh Mookerjee, J

Bench : Single Bench

Advocate : Ranadeb Chaudhuri, Sourendra C. Bose and Ashim Kumar Ghose, for the Appellant; R.K. Mukherjee, for the Respondent

Judgement

Chittatosh Mookerjee, J.—The Petitioner-Company carries on business in mining in the District of Burdwan, West Bengal. Prior to October, 1949, the Petitioner-Company had obtained from the then properties of the respective mouzas mining leases in the following mouzas, namely, (i) Burrra Dhemo, (ii) Jagatdhi, (iii) Batoria & (iv) Khilgaon. Prior to October, 1949, the Petitioner-Company had obtained sub-leases from the then lessees of the properties of the following Mouzas, namely, (i) Barachak, (ii) Narsamuda, (iii) Santa, (iv) Fatepur and (v) Lalpur. All the above Mouzas are situated in Burdwan District.

2. With effect from the 15th April, 1955, u/s 4 of the West Bengal Estates Acquisition Act, all estates and rights of every intermediaries in each estate situated in the District of Burdwan vested in the State free from all encumbrances. u/s 2(1) of the West Bengal Acquisition Act as originally enacted the expression "intermediately" did not include lessees and sub-lessees of mines and minerals. On the 16th January, 1957, an Ordinance was passed altering the definition of the word "intermediary" in section 2(i) of the said Act. Thereafter, the West Bengal Act 4 of 1957 was enacted replacing the Ordinance. Under the amended definition given in section 2(i), the expression "intermediary" in relation to mines and minerals includes a lessee and a sub-lessee. The said amendment of the definition of the expression "intermediary" was given

retrospective effect. Section 5 of the West Bengal Estates Acquisition Act laid down the effects of a notification under-section 4 of the Act. By West Bengal Act 33 of 1964, Sub-section 2 was added to section 5 which declared that all rights and interests in mines and minerals of all intermediaries, being lessees and sub-lessees, in any notified area shall be deemed to have been vested in the State with effect from the date of vesting mentioned in the notification u/s 4 in respect of such notified area.

3. From the 11th November, 1955, the Petitioner-Company made some adhoc payments to the State Government on account of royalty, etc. in respect of its mining operation, in the aforesaid mine Mouzas. Upto the 6th July, 1957, the Petitioner-Company had paid in this behalf Rs. 1,69,006. 36 paise. Again the Petitioner-Company had made some more payments towards the royalty to the State Government Between September, 1966 and June, 1967. Ultimately on the 6th October, 1968, the Collector of Burdwan filed a Certificate of public demand against the petitioner being Misc. Case No. 22/68-69 for a sum of Rs. 25,71,565.62 paise as balance amount of the royalty on coal, surface & way leave, rent and price of fire coal etc. due from 15th April, 1955. The said certificate also included interest due on the arrear amount. The total dues came to Rs, 31,16,771.98 paise less Rs. 5,45,206.36 paise already paid by the petitioner, (vide Annexure "A" to the petition). The petitioner was served with a notice u/s 7 of the Bengal Public Demand Recovery Act.

4. On the 10th/12th day of June, 1969, the Collector of Burdwan filed another Certificate of public demand being Certificate No. Misc. 5 of 1969-70 for Rs. 12,12,214.88 paise in the office of the Certificate Officer, Asansol as arrears of royalty and surface rent etc. from the 1st July, 1966 to the 30th September, 1968 and interest due on the said unpaid amount. It is not disputed that the petitioner was served with a notice u/s 7 of the Act also in respect of the second certificate.

5. The petitioner had filed objection-petition in Misc. Case No. 22 of 68-69 which was rejected by the Certificate Officer, Asansol on the 17th June, 1969. The Certificate Officer, Asansol thereafter issued a Distress Warrant against the Petitioner-Company, for realisation of the certificate due. Similarly, the petitioner's objection-petition in Misc. Case No.5 of 69-70 was rejected by the Certificate Officer, Asansol and thereafter Distress Warrant was issued against the petitioner. The petitioner preferred an appeal against the aforesaid order of the Certificate Officer dated the 17th June, 1969. The Additional District Magistrate, Asansol dismissed the appeal of the petitioner and affirmed the order of the Certificate Officer, Asansol. The petitioner preferred a Revision Application before the Commissioner of Burdwan Division.

6. On the 27th May, 1970, the Additional District Magistrate (Estates Acquisition), Burdwan filed another Certificate of public demand in Misc. Case No. 22 of 1968-69 before the Certificate Officer. Asansol for recovery of Rs. 42,78,229.24 paise from the petitioner as the balance amount of the royalty due.

The said certificate showed that the royalty etc. at the rate of 5% percent f.o.r. was payable by the petitioner from the 15th April, 1955 to the 31st August, 1965. From the total sum of Rs. 5,45,206.36 paise already paid by the petitioner was deducted. Another sum of Rs. 25,71,565.62 paise which was already the subject matter of the Certificate of public demand, dated the 6th November, 1968 was deducted. The Certificate Officer certified that a sum of Rs. 42,78,299.24 paise was due from the Certificate-Debtor, the petitioner-Company and the said sum was justly recoverable.

7. The Petitioner-Company in the writ petition has inter alia prayed that the proceeding for recovery of royalty in the aforesaid Certificate Case No. Misc. 22 of 1968-69 and Misc. Case No. 5 of 1969-70 be quashed and the respondents be prohibited from proceeding with the said two certificate cases. The petitioner has also prayed that the West Bengal estates Acquisition (Amendment) Act, 1964 be declared as bad, illegal and ultra vires. The petitioner has further prayed that the Respondent No. 1 be commanded not to enforce the provisions of the West Bengal Estates Acquisition (Amendment) Act, 1964.

8. Mr. R. Chaudhuri, the learned Advocate for the petitioner, submitted that after the Mines & Minerals (Regulation and Development) Act, 1957 came into force the West Bengal Legislature was no longer competent to enact any law relating to regulation of mines and developments of minerals. According to Mr. Chaudhuri, Section 5(2) of the West Bengal Estates Acquisition Act, was, therefore, ultra vires. The learned Advocate for the petitioner had further contended that until section 5(2) was enacted, the lessees of mines and minerals were not intermediaries. Accordingly, there was no privity of contract between the State on the one hand and the petitioner on the other hand in respect of sub-lessee held by it under M/s. Apar & Company. After the notification made u/s 4 of the West Bengal Estates Acquisition Act, M/s. Apar & Company, the first degree lessees under the intermediary must be deemed to have been recognised by the State of West Bengal as a lessee under the State. After the Mines and Minerals (Regulation and Development) Act, 1967 came into force, the West Bengal Legislature was no longer competent to eliminate the interests of Apar & Company so as to retrospectively create direct relationship, between the petitioner and the State According to the petitioner, the same if attempted was invalid.

9. The West Bengal estates Acquisition Act is an Act providing for the State acquisition of estates, of rights of intermediaries herein and of certain rights of raiyats and under-raiyats and of the rights of certain other persons in lands comprised in estates.

10. The entry No. 18, List II of Schedule VII of the Constitution read with entry No. 45 List II gave power to the State Legislature to enact the West Bengal Estates Acquisition Act, 1953. The Judicial Committee to the Privy Council in (1) Meghraj and another v. Allah Rakhia, AIR 1974 P.C. 72 with reference to entry No. 21 Schedule VII of the Government of India Act, 1955 stated that the

expression "Land" was not used in item No. 21 with restricted reference to agricultural land, but it related to land in general.

11. Similarly, the term "land" in entry No. 18 of list II of Schedule VII of the Constitution should be given the same wide amplitude. Accordingly, I hold that the West Bengal Legislature was competent to enact laws in respect of every kind of rights in land both surface and underground including mineral leases granted by the intermediaries and their lessees. The entry No. 23 of List II, Schedule VII of the Constitution gave legislative competence to the State Legislature to regulate mines and minerals development subject to the provisions of List I with respect to regulation and development under the control of the Union. But such legislative competence of the State Legislature under when the Parliament by law makes a declaration in terms of entry 54, List I of Schedule VII of the Constitution. But, the entry No. 54 gave legislative supremacy to the Union only to the extent that there was a declaration in terms of the said entry. But in respect of matters not covered by such declaration under entry No. 54, List-I, the State Legislature would continue to enjoy legislative competence. The State Legislature would be denuded of its legislative powers only to the extent a declaration by the Parliament is applicable.

12. As already stated the West Bengal Estates Acquisition Act is an enactment relating to acquisition by the State of the estates and rights of intermediaries and for extinguishments and modification of such rights. The West Bengal Estates Acquisition Act by pith and substance does not relate to regulation of mines and mineral development within the meaning of entry 23, List II or entry 54, List I of the VII Schedule. Merely because incidentally the West Bengal Estates Acquisition Act may affect mining rights, the same does not necessarily involve any repugnancy between the said Act and any Central statute for regulating mines and minerals development. Further, Mr. Chaudhuri, learned Advocate for the petitioner has himself submitted that the declaration made under item No.36, List I, the Government of India Act, 1935, cannot have the effect of completely depriving the legislative competence conferred upon the West Bengal State Legislature by entry 23, List II of the VII Schedule of the Constitution. Mr. Chaudhuri himself submitted that the declaration made in the instant case by the Central Legislature under item No. 36, List I of the Government of India Act, 1935 would be ineffectual to completely deprive the State Legislature of its legislative powers given by the Constitution of India.

13. The Mines and Minerals (Regulation and Development) Act, 1957, contains the following declaration-

It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and development of minerals to the extent hereinafter provided.

14. The Mine and Minerals (Regulation and Development) Act, 1957 does not contain any provision regarding the vesting of the lessees and sub-lessees in

mines and minerals. Two Acts operate in different field. The West Bengal Estates Acquisition Act was enacted before the Mines and Minerals (Regulation and Development) Act, 1957 came into force. The retrospective amendment of the term "Intermediary" in section 2(i) by the West Bengal Amendment Act 4 of 1957 was also made before the commencement of the said Central Act. Therefore, there is no scope for contending that the West Bengal State to Legislative had no competence to enact the West Bengal Estates Acquisition Act or the West Bengal Act 4 of 1957.

15. Sub-section (2) of Section 5 has been inserted by the West Bengal Act 22(XXII) of 1964, i.e., after the commencement of the Mines and Minerals (Regulation and Development) Act, 1957. The first object of Section 5(2) is to remove the doubts created by the decision of this court in (2) Katras Jharia Coal Co. Ltd. Vs. State of West Bengal and Others, regarding the effect of the notification u/s 4 of the West Bengal Estates Acquisition Act. Secondly, Section 5(2) contains a deeming provisions by which all rights and interests in mines and minerals of intermediaries being lessees or sub-lessees in any notified area retrospectively vest in the State with effect from the date on which the notification u/s 4 of the Act came into force.

16. In the instant case, Sinha, J. (as he then was) in (2) Katras Jharia Coal Co. Ltd. Vs. State of West Bengal and Others, held that the West Bengal Estates Acquisition Act, 1953, was a valid piece of legislation. The learned Judge did not accept the contention of the petitioner of the said case that the West Bengal Estates Acquisition Act did not contemplate acquisition of mines and minerals at all and that the acquisition of mines and minerals was unconstitutional and void. Sinha, J. (as he then was) further held that the attack on the provisions of the Act including the amendment were not sustainable. But according to Sinha, J. (as he then was) when the Government issued the notification u/s 4 of the Act, they did not intend to affect interests of lessees and sub-lessees of mines and minerals. Such lessees and sub-lessees became intermediaries only after the passing of the Amendment Act in the year 1957. Sinha, J. held that in the absence of a fresh notification u/s 4, their interests did not vest. Sinha, J. observed at p. 330 with reference to the Amending Act of 1957:

If the Act said expressly that a notification issued u/s 4 in 1956 would be deemed to be a notification under the Act, also in respect of lessees and sub-lessees of mining interests, then I should be powerless. But there is no such provision. All that I have to do is to hold that the Government acquired a right in 1954 of effecting the acquisition of estates and rights in such estates of intermediaries including lessees and sub-les of mines and minerals. The existence of such a law must be considered to be a fact as from the inception of the Act. The Act requires a notification declaring such estates or rights to be vested in Government and a notification has to be published in a particular manner conveying information to the particular persons affected that such a vesting has taken place so that they may exercise their rights and discharge their

liabilities under the Act. I am unable to hold that a notification issued and published in 1955 relating to a certain set of persons must also be considered or deemed to be a notification upon a different set or person, but with effect from the original date mentioned therein. There is no provision for such a notice to be retrospective.

17. The legislature by inserting Section 5(2) in the Act with retrospective effect removed this licuna.

18. The learned Advocate for the petitioner has not disputed the power of the West Bengal Legislature to enact a validating law with reference to a topic included within its legislative field. Section 5(2) was made expressly retrospective. Therefore, it must be deemed to have been in the statute book from the date of the commencement of the original Act. Accordingly, I am unable to hold that in spite of clear declaration made by sub-section (2), the interest of lessees and sub-lessees did not vest on the date of the publication of the notification to restrict the curative provisions contained in Section 5(2).

19. The decision of the Supreme Court in (3) Baijnath Kadio Vs. State of Bihar and Others, is clearly distinguishable. In the said case, the subject matters of the challenge were the second proviso to section 10(2) of the Bihar Land Reforms (Amendment) Act, 1964 and the second sub-rule of Rule 20 of the Bihar Minor Mineral Concession Rules, 1964. The sub-section (2) of Section 10 of the Bihar Land Reforms Act, 1950 inter alia provided that the terms and conditions of the lease by the State Government in favour of its holder shall be same as the terms and conditions of the subsisting lease, but with an additional condition. Under the first proviso to sub-section (2), power was given to the State Government to make modification in the terms and conditions of the lease in accordance with the provision of any Central Act for the time being in force regulating the modification of existing mining leases. Therefore, there was no scope for any repugnancy between the terms and conditions of the statutory leases and conditions of the statutory leases in favour of the existing lessees and sub-lessees.

20. But the second proviso added by the Bihar Land Reforms Amendment Act, 1964 provided that the terms and conditions of leases in regard to mines and minerals shall in so far as they were inconsistent with the rules made by the State Government u/s 15 of the Mines and Minerals (Regulation and Development) Act, 1957 shall stand substituted by the corresponding terms and conditions prescribed by those rules.

21. Chief Justice Hidayatullah who delivered the judgement of the Supreme Court in Baijnath Kadio Vs. State of Bihar and Others, , held that since the Bihar State Legislature had inserted the second Proviso in sub-section (2) of Section 10 after coming into force of Mines and Minerals (Regulation and Development) Act 67 of 1957, the declaration made under the said Act would carve out a field to the extent provided in the Act and to that extent Entry 23 of List II, Schedule 7

would stand cut down. The Supreme Court held that the entire legislative field in relation to minor minerals had been withdrawn from the State Legislature. The vested rights could only be taken away by law made by a competent legislature. The authority to do so must, therefore, emanate from the Parliament as parliamentary law had been made regarding alteration of the terms of lease which were in existence before the Act 67 of 1957. Therefore the second Proviso to Section 10(2) of the Bihar Land reforms Act and also second sub-rule of Rule 20 in the Bihar Mineral Concession Rules, 1964 were invalid.

22. In the instant case, the leases in favour of lessees and sub-lessees in any case must be deemed to have existed from before the commencement of Act 57 of 1957. Further, Sinha, J. (as he then was) in *Katras Jharia Coal Co. Ltd. Vs. State of West Bengal and Others*, pointed out that Sections 28 and 29 are subject to the proviso that all terms and conditions shall be consistent with the provisions of any Central Act relating to the grant of mining lease or modification thereof. With these proviso operations of the Central Acts, Rules and Regulations, the Central Acts, Rules and Regulations are kept in full force. If there is any clash between any provision of the Act and Central Acts, Rules and Regulations, the Central Acts, Rules and Regulations will prevail.

23. I adopt the aforesaid reasonings given by Sinha, J. (as he then was) in *Katras Jharia Coal Company Limited v. The State of West Bengal* (supra) and respectfully follow the said decision in holding that the provisions of the West Bengal Estates Acquisition Act, particularly, section 5(2) of the said Act are not ultra vires the Mines and Minerals (Regulation and Development) Act, 1957. There is no repugnancy between the provisions of the two Acts. As already observed, section 5(2) does not deal with and of the matter provided in the Mines and Minerals (Regulation and Development) Act, 1957.

24. The West Bengal Act IV of 1957 which amended the definition of the expression "intermediary" given in section 2(i) of the West Bengal Estates Acquisition Act was retrospective in operation. The West Bengal Act XXII of 1964 which inserted sub-section (2) in section 5 of the West Bengal Estates Acquisition Act provided for vesting of all rights and interests in mines and minerals of all intermediaries being lessees and sub-lessees in any notified area with effect from the date of vesting mentioned in the notification u/s 4. Therefore, the petitioner is no longer entitled to contend that Messrs. Apcar & Company still had privity of interests with the State and that the petitioner was not liable to pay any rent or royalty to the State in respect of the sub-lessee held by it under Messrs. Apcar & Company. In view of the deeming provisions contained in sub-section 2 of Section 5, Messrs. Apcar & Company's interests in the mines and minerals in question also vested in the State with effect from the notification made u/s 4 and since the date of such vesting privity of interest was established between the petitioner and the State.

25. Sections 28 and 29 of the Act apply to two different classes of cases. Section 28 of the Act deals with intermediaries directly working mines and minerals

immediately before the date of vesting without any lease in their favour. It thus contemplates the proprietors of estates in whom the underground rights vested prior to the publication of the notification u/s 4 and who were themselves working mines. Although in majority of cases, such proprietors had granted leases in favour of others for working and mining minerals comprised in their estates, some proprietors themselves used to work mines and minerals comprised in their estates. Before the vesting, there was no question of any lease in case such properties who themselves worked in khas mines and minerals comprised in their estates.

26. In the instant case, the petitioner was admittedly not a proprietor. Its rights to work mines and minerals were derived from leases granted by proprietors and in some cases by sub-leases granted by lessees. Therefore, Section 29 in terms would be attracted in the instant cases.

27. Before the expressions "intermediary" was amended to include therein lessees and sub-lessees of mines and minerals, presumably, the first decree lessee under the intermediary alone became subject to the provisions of Section 29. At that time the sub-leases granted by the first decree lessees were not affected. But, after the lessees and sub-lessees of mines and minerals were also made intermediaries by the amendment of the definition "intermediary" in section 2(i) of the West Bengal Estates Acquisition Act, the lessees and sub-lessees's interests became liable to vest in the State. Although section 29 of the Act was not amended after the lessees and sub-lessees were intermediaries, in my view, no difficulty thereby arises. The object of the West Bengal Estates Acquisition Act is to eliminate intermediary interests in land, both surface and underground. Therefore, the lessees and sub-lessees of mines and minerals who in their turn had granted sub-leases are also intended to be wiped out. Upon a careful reading of the provisions of Section 29, it is clear that the said Section deals with the lessees or sub-lessees who at the date of vesting were actually working the mines or doing prospecting or development works. Thus, section 29 deals with working lessees or sub-lessees, that is, the last of the different grades of lessees and sub-lessees. Such working lessees or sub-lessees with effect from the date of vesting shall be deemed to be holders of subsisting leases on the same terms and conditions. All other intermediate grades of lessees and sub-lessees who were merely receiving rents and royalties from their working sub-lessees with effect from the date of vesting would have no further right to the mines and minerals save and except to receive compensation from the State. Upon elimination of all intermediate grades of leases and sub-leases, direct relationship is established between the State on the one hand, and the lessees or sub-lessees actually undertaking, mining operations. It is unnecessary for our present purpose to refer to detail to the provisions of the Bihar Land Reforms Act under which consequential amendments were made in the corresponding provisions relating to subsisting leases of mines and minerals after the lessees and sub-lessees of mines and minerals were made intermediaries. Although the West Bengal Estates Acquisition Act has used a different language but the object

of establishing direct relationship between the State and the lessees and sub-lessees actually working the mines have been nonetheless achieved. In view of my foregoing findings, I hold that the petitioner was liable to pay royalty in respect of the aforesaid mines to the State with effect from the date on which the notification u/s 4 of the West Bengal Estates acquisition Act came into force.

28. The next question would be what rate the petitioner was liable to pay royalty for the period in question. According to the petitioner, even assuming any privity of contract was established between the petitioner and the State from the date of vesting, still upto the year 1961 it was liable to pay royalty only at the rate stipulated in its leases. The petitioner has claimed that the sub-lessees in its favour were covered by section 30A of the Mines and Minerals (Regulations and Development) Act, 1957. Therefore, although, section 9 of the Mines and Minerals (Regulation and Development) Act, 1957, specifically extended the rates of royalties prescribed in the leases granted before the 25th day of October, 1949, in respect of coal also, but section 30A exempted the coal mining leases including the leases held by the petitioner from the operation of sub-section (1) of Section 8 and sub-section (1) of Section 16 with powers to the Government to extend these provisions to such leases at a future date.

29. On the 29th December, 1961, the Government of India in exercise of power conferred by section 30A of Mines and Minerals (Regulation and Development) Act, 1957 directed that the provisions of sub-section (1) of Section 9 of the Act "shall apply, with immediate effect to or in relation to mining leases in respect of coal granted before the 25th day of October, 1949, subject to the modification that the lessee shall pay royalty at the specified in any agreement between the lessees and lessor or at 2-1/2% percent of f.o.r. price whichever is higher, in lieu of the rate of royalty specified in respect of coal in the Second Schedule to the said Act." According to the petitioner, upto the date of the said notification it was liable to pay royalty at the contractual rate inasmuch as u/s 29 of the West Bengal Estates Acquisition Act it was entitled to continue as a lessee under the State on the same terms and conditions. Upon publication of the aforesaid notification dated the 29th December, 1961, the petitioner became liable to pay royalty at 2-1/2 percent.

30. On the 1st January, 1966, the Government of India again made a notification in exercise of its power conferred by Section 30A of the Mines and Minerals (Regulations and Development) Act, 1957. It superseded its earlier notification dated the 29th December, 1961 and directed that the provisions of sub-section (1) of section 9 of the Act shall apply, with immediate effect to or in relation to mining leases in respect of coal granted before the 25th day of October, 1949. Thus, section 9(1) and the Second Schedule of the Mines and Minerals (Regulation and Development) Act, 1957 became fully operative and on and from the 1st January, 1966 and the coal Mining lessees including petitioner became liable to pay royalty at the full rate of 5% percent.

31. Mr. Chaudhuri learned Advocate, appearing on behalf of the petitioner, has

contended that section 30A of Mines and Minerals (Regulation and Development) Act, 1957 covered the petitioner's lease. The point for consideration is whether or not the coal mining leases and sub-leases in favour of the petitioner which were granted before the 25th day of October, 1949, and subsequently came within the ambit of section 29 of the West Bengal Estates Acquisition Act, 1953 are within the scope of section 30A or not. In other words, whether the following expression shall not apply to or in relation to mining leases in respect of coal granted before the 25th day of October, 1949" in Section 30A includes the mining leases and sub-leases granted by the intermediaries before the 25th day of October, 1949 and which subsisted at the date of vesting.

32. Section 29 of the West Bengal Estates Acquisition Act inter alia provides that leases "granted by an intermediary and subsisting immediately before the date of vesting shall, with effect granted by the State Government to the holder of the said subsisting lease on the same terms and conditions as of the subsisting lease so, however"

33. The majority decision of the Supreme Court in (4) Bihar Mines Ltd. Vs. Union of India (UOI), with reference to section 10 of the Bihar Land Reforms Act inter Alia was that the mining leases shall be deemed to be new statutory leases. In the said case-

In August, 1928, Raja Ram Bahadur Singh of Palganj, in Bihar, executed a lease in favour of one Chakravarti of Asansol for a period of 49 years for the purpose of carrying out mining operations in the said area for soap, stone, kaoline etc. In 1933, Chakravarti executed a sub-lease in favour of Solanki, Solanki in his turn, granted sub-lease in respect of the same area in favour of Parmar and Brothers. Parmar & Brothers assigned their right title and interest in the said area in favour of the appellants, the Bihar Mines Ltd. u/s 3(1) of the Bihar Land Reforms Act, Palganj Estate vested in the State Chakravarti's mining rights in the area became subject to the provisions of Section 10 of the Bihar Land Reforms Act. The controller of mines took action for notification of the head lease dated the 11th August, 1928, and the sub-lease executed in favour of Solanki and Parmar and Brothers. The appellants appears and objected. The Controller passed an order that the head lease and the sub-leases would terminate in 1961. Against these orders of the Controller, the appellant had filed revisions which were rejected by the Central Government. The main contention of the Bihar Mines was that the head lease could not be modified under the 1956 Rules as it did not come within the expression "existing mining lease" as defined in Clause (c) of Rule 2 of those Rules. Existing mining lease means a mining lease granted before October 24, 1949 and subsisting on the date of the commencement of 1956 Rules. The head lease granted in 1928 would ostensibly come within existing mining leases. The contention was in view of section 10 of the Land Reforms Act, the head lease as such come to an end and new statutory sub-leases u/s 10 replaced new statutory lease was not a lease granted before October 25, 1949. The contention of the respondents was that old lease continued with the State

Government substituted as a lessor. Therefore, lease could be modified.

34. Majority of the Supreme Court held:

all intermediaries estates having vested no interest remains in the lessor, the original proprietor of the land leased, having once vested, certain rights were confirmed by statute as a proprietor or a tenure-holder and the lessees. Section 9 provided for mines directly worked by the intermediary. Section 10 dealt with leases of mines and minerals. According to the Supreme Court the head lease of 1928 subsisted immediately before the date of vesting. Therefore, whole or that part of the estate or tenure comprised with that lease was with effect from the date of vesting, would be deemed to have been leased by the State Government to the holder of the lease. The holder of lease could retain possession of the leasehold property. Supreme Court pointed out that they were not concerned with the effect of section 10A introduced by the Bihar Land Reforms Amendment Act, 1964. The terms and condition of this statutory lease by the State Government were to be the same. On the interruption of Section 10(2). Supreme Court held that the statutory lease would be modified in accordance with the provisions of 1984 and 1957 Acts. 1956 Rules which applied to the leases granted before October 25, 1949 were not applicable in cases of statutory leases. In paragraph 16 Supreme Court observed that statutory lease granted to the intermediary u/s 9 is a new lease and its terms and conditions are to be in accordance with the provisions of the Central Act regulating the grant of new mining leases. As a new lease, it had to be in accordance with the provisions regulating the grant of new mining leases. Proviso to sub-section (2) of Section 10 had to use the expression "existing mining lease" in contradiction to the expression "new mining leases" in proviso to section 9 (2) as modifications in the terms and conditions of the statutory lease u/s 10 might be made only in accordance with the provisions of the Central Act regulating the modification of the "existing mining leases" if the expression "existing mining leases" were ultimately defined to include a statutory lease under section 10. When the Land Reforms Act was passed the expression had not been defined. No help can therefore be derived by the Respondent from the difference in language in the provision to sub-section (2) of S. 9 and the proviso to sub-section (2) of section 10. In paragraph 18, Supreme Court summed up the possession by saying the statutory lease now held by the head lessee from the State Government was a new lease granted after October 25, 1949. It followed that the Controller had no jurisdiction to modify the terms of the lease which was granted by the State government to the head lessee in view of sub-section (1) of section 10. Now head lease could not be modified. It being not an existing mining lease the sub-leases could also not be modified. They two would be deemed to be new leases granted by the new leases from the State Government as the rights of the lessor under the original head lease had ceased on the vesting of the estate and he is deemed to have got a new lease from the State.

35. Similarly, the Supreme Court in (50) Chhatu Ram Horil Ram Ltd. Vs. State of

Bihar and Another, while considering whether an option for renewal contained in a lease granted before vesting by an intermediary would be binding upon the State after the interests of the lessor vested in the State. Upheld the decision of the Patna High Court that such covenant for renewal was not binding upon the State. According to the Supreme Court, after vesting, the company had become a lessee under expression provision of section 4(a) of the Bihar Land Reforms Act all interests of owners vested absolutely and free from all encumbrances. The original contractual had come to an end by operation of section 4(a) of the Bihar Land Reforms Act, and a fresh statutory lease for the remainder of the terms of the lease in favour of the lessee came into being under section 10 (1) of the Act.

36. The provisions of section 29 of the West Bengal Land Reforms Act are nearly similar to those contained in section 10(1) of the Bihar Land Reforms Act. On the authority of the aforesaid decision in Bihar Mines Act's case (supra). I am bound to hold that u/s 29 of the West Bengal Estates Acquisition Act, fresh leases must be deemed to have been granted in favour of the working leases with effect from the date of vesting. Although the terms and conditions of such leases were same as those of the leases granted by the intermediary and subsisting on the date of vesting, it is not open to contend that the original leases and sub-leases granted prior to the 25th day of October, 1949 are still subsisting.

37. Mr. Chaudhuri learned Advocate for the petitioner, has submitted that section 30A of Mines and Minerals (Regulation and Development) Act also granted exemption in respect of leases and sub-leases granted by intermediaries before the 25th day of October, 1949 and subsisting at the date of vesting. According to Mr. Chaudhuri learned Advocate for the petitioner, although with effect from the date of vesting such lessees and sub-lessees shall deemed to be holding under the State under the fresh statutory leases still, section 30A applied.

38. Mr. Chaudhuri, learned Advocate appearing on behalf of the petitioner, has placed strong reliance upon the recent Full Bench decision of the Patna High Court in (6) Khas Karanpura Collieries Ltd. and Others Vs. State of Bihar and Others, .

39. The subject matters of challenges in the said matters were demands made for payments of royalty at the rate of 5 percent during the period 3rd November, 1951 to 31st December, 1965, from the petitioners who were lessees and sub-lessees. All the leases and sub-leases were granted before the 25th day of October, 1949 viz. the date on which the Mines and Minerals (Regulation and Development) Act, 1957 and Mineral Concession Rules, 1949 came into force. The claim of the State for royalty at the rate of 5 percent prior to June 1, 1958 (the date on which 1957 Act came into force) rested on section 29 of the 1957 Act read with Rule 41 of the Mineral Concession Rules, 1949. The claim for royalty from June 1, 1958 was made on the basis of section 9 of the 1957 Act. Incidentally in Khas Karanpura Collieries cases (supra) the State of Bihar had also argued that section 30A was violative of Article 14 of the Constitution and therefore void. The said point and therefore void. The said point of vires has not

been however, urged by the State before me.

40. According to the Patna Full Bench decision the State could not claim royalty at the rate of 5 percent u/s 29 of the 1957 Act read with Rule 41 of the Mineral Concession Rules, 1949. They relied upon the decision in *Chhatu Ram Horil Ram Ltd. Vs. State of Bihar and Another*, wherein it was held that Rule 41 of the Mineral Concession Rules, 1949 had no application to statutory leases arising by virtue of section 10 of the Bihar Land Reforms Act 1950. According to the Full Bench Rule 41 of 1949 Rules was applicable only to contractual grants and not to statutory leases u/s 10 of the Bihar Land Reforms Act, 1950. The Patna full Bench interpreted section 29 of the 1957 Act by observing that section 29 was inserted to save only such Rules made under 1948 Act which related to matters for which provisions have been made in 1957 Act and are not inconsistent therewith, as if they had been made under 1957 Act itself and for that purpose alone 1957 Act must be deemed to be in force on the date on which the Rule was continued. According to the Full Bench, section 9(2) of 1957 Act incorporated the provisions of Rules 41(1) (i) of the Rules of 1949. Therefore, no question of continuing Rule 41(1) (i) could arise. Patna Full Bench also held that section 9(2) cannot be pushed back to any date anterior to the date on which the 1957 Act came into force. Therefore the claim of the State for payments of royalty at rules higher contractual rules were not justified. With regard to claim of royalty for the period subsequent to June 1, 1958 the Full Bench referred to the *W.O. Holdsworth and Others Vs. The State of Uttar Pradesh*. The Full Bench held that Supreme Court in *Bihar Mines case* had laid down that all leases of mines and minerals subsisting immediately before the date of vesting came to end and new subsisting leases u/s replaced them. A.B.N.Sinha J. at p. 344 of the reports observed that it must be taken as firmly established that by reason of section 10 of the Bihar Land Reforms Act, pre-October, 1949 mining leases which were granted by the different intermediaries in the permanently settled areas in Bihar ceased to exist in 1956; they had all been replaced by new statutory leases deemed to have been granted by the State of Bihar to the lessees themselves by reason of the legal fiction introduced by section 9(1) of the Bihar Land Reforms Act. The contention that statutory leases did not come within section 9(1) was rejected. According to the Full Bench decision in *Khas Karanpura Collieries v. State of Bihar (supra)* section 30A was in two parts, the first part barred the applicability of section 9(1) and 16(1) to or in relation to mining leases granted before the 25th day of October, 1949, and the second part empowered the Central Government to lift that bar either wholly or to a limited extent. The Full Bench observed that there was no reason why new statutory leases which had come into existence under the legal fiction incorporated in section 10(1) of the Bihar Land Reforms Act could not be described as mining leases in relation to those mining leases whom they had replaced. The Full Bench of Patna High Court in *Khas Karanpura Collieries Ltd. v. State of Bihar (supra)* upheld the vires of section 30A of the Mines and Minerals (Regulation and Development) Act, 1957 and the classification of mining leases made by the provision was rational and

base on intelligible differentia. According to the Full Bench decision section 30A kept right of the Government u/s 9(1) of the Act to realise royalty at a rate higher than the contractual rate in abeyance. The Full Bench further held that by virtue of sc. 10 of the Bihar Land Reforms Act, they must be deemed as leases granted prior to commencement of Mines and Minerals (Regulation and Development) Act, 1957. A.B.N.Sinha, J. at pp. 345-346 of the reports observed:

In my opinion, therefore, the words "in relation to" in Section 30A are words great significance and it would be erroneous to ignore them as redundant Section 10(1) of the Bihar Land Reforms Act undoubtedly brought into existence new statutory leases.

41. According to Full Bench, "in relation to mining leases granted before the 25th day of October, 1949" would include statutory leases u/s 10(1). The Full Bench held Section 30A was intended to give protection to the holders of the mining leases, and it would be starting if similar protection was not extended to the holders of statutory mining leases in respect of coal. In spite of section 10(2) of the Bihar Land Reforms Act which provided the same terms and conditions would continue. There was no reason why holders of statutory mining leases in respect of coal and having identical terms and conditions as in the contractual leases granted before the 25th day of October, 1949 should have been discriminated against and left without protection. Therefore, the Legislature advisedly used the expression "in relation to" as words qualifying the expression-mining lease granted before October 25, 1949. Upon this view, the Patna Full Bench held that section 30A in terms provided that section 9(1) shall not apply to two categories of leases, (i) mining leases granted before the 25th day of October, 1949 and (ii) mining leases granted before the 25th October, 1949. The statutory leases fell within the second category.

42. The State of Bihar had argued in *K.K. Colliery v. State of Bihar* (supra) that "in relation to" as used in section 30A was an appropriate expression with reference to section 16 of the Act, because that section contemplated making of Rules and taking of proceedings for modifying mining leases granted before the 25th October, 1949. The Full Bench also did not accept the argument that section 16 and section 30A should be read together and that section 16(1) did not apply to statutory leases. Therefore, section 30A would be also in applicable. According to the Patna Full Bench, if section 30A did not refer to statutory leases, then, it must follow that section was referring to dead leases only. But in respect of dead leases, no question of payment of royalty can arise and thus no question of protecting them for the time being from the operation of section 9(1) was necessary and called for. According to the Patna Full Bench, such a construction would make the enactment wholly redundant. According to the Full Bench, it would be reasonable to interpret the expression "mining leases granted before the 25th October, 1949" as meaning and implying mining leases "originally" granted before the 25th day of October, 1949. That interpretation would alone give effect and meaning to the first part of section 30A even if the words "in

relation to" were assumed as referable to section 16 only. Even if contractual leases granted before the 25th day of October, 1949 had ceased to exist by virtue of section 10(1) of the Bihar Land Reforms Act, according to the Patna Full Bench, the legislature intended to identify the person or persons whom it wanted to profit or protect with reference to a historical fact, namely, that though they were holders of statutory leases in 1956, they could be still identified with reference to a particular date before which they had come into existence for the first time.

A. B. N. Sinha, J. at page 347 observed:

the words "in relation to" are ambiguous and are reasonably capable of more than one meaning. In such circumstancesthe rule in Haydon's case becomes applicable".

43. The provision must be intended to suppress the mischief and advance the remedy. In this connection, the objects and reasons Section 30A were also quoted by the learned Judge. The Full Bench of Patna High Court in the above decision unanimously held that statutory mining leases were covered by section 30A and thus the applicability of section 9(1) was barred until the Central Government notified otherwise.

44. Mr. Chaudhuri, learned Advocate appearing on behalf of the petitioner, has submitted that in order to properly understand the scope of section 30A and to decide whether the said provisions would apply in relation to mining leases granted before the 25th day of October, 1949 and which subsisted at the date of vesting referred to the object and Reasons of the amendment bill and the memorandum dated the 19th March, 1958, at the time of the insertion of section 30A in the Mines and Minerals (Regulation and Development) Act, 1957. I set out hereunder the said statements of objects and reasons for introducing section 30A:

In view of its importance as a basic fuel and the position it occupies in the country's economy, coal has always been treated differently from other minerals. It is in recognition of this that no rules have been framed so far u/s 7 of the Mines and Minerals (Regulation and Development) Act, 1957, in regard to modification of the terms and conditions of mining leases for coal granted before the commencement of that Act, though minerals have been covered.

2. The Mines and Minerals (R&D) Act 1957 (67 of 1957) which replaces the Act of 1954, however, specifically extends the rate of royalty prescribed in the second Schedule to mining leases granted before the 25th October, 1949, in respect of coal also and makes it obligatory for the other terms and conditions of such leases to be brought into conformity with the provisions of the Act and the rules made under sections 13 and 18. It is considered that these changes will have numerous undesirable consequences. The areas covered by these mining leases are principally in West Bengal and Bihar and they account for as much as 80 percent, of the total coal production in the country. The royalties paid on this coal

vary over a wide range but are generally much below the rate per ton prescribed in the second increase of these royalties is likely to have an unsettling effect on the industry and may retard the programme of coal production under the Second Five Year Plan. The same adverse effect would be felt by a sudden modification of the other terms and conditions.

3. The object of present Bill is accordingly, to exempt mining leases for coal granted before the 25th October, 1949, from the operation of sub-section (1) of Section 9 and sub-section (1) of Sec 16 of the Act, with powers to Government to extend these provisions to such leases at a future date, subject to such exceptions and modifications as may be considered necessary".

45. Mr. Chaudhuri, learned Advocate for the petitioner has also drawn my attention to the memorandum regarding delegated legislation annexed to the amendment bill introducing section 30A. Mr. Chaudhuri has submitted that if it is held that section 30A did not apply to mining leases granted before the 25th day of October, 1949, subsisting at the date of vesting, then the object with which section 30A was inserted in the Mines and Minerals (Regulation and Development) Act, 1957, would be to a large extent defeated. The relief sought to be given to the holders of the mining leases for coal from the operation of section 9(1) section 16(1) would be defeated. In that case the holder of such leases would be liable to pay royalty at full rate although the legislature intended to exempt such leases for coal from the full impact of Mines and Minerals (Regulation and Development) Act. 1957.

46. I have given my anxious thought to this question and I am of the view that the contention of Mr. Chaudhuri regarding the scope of section 30A must be accepted. I agree with the reasons given by the Full Bench decision of Patna High Court in Khas Karanpura Collieries Ltd. and Others Vs. State of Bihar and Others, . Therefore, it is unnecessary to recapitulate here the same reasons. I hold that in section 30A the expression "shall not apply to or in relation to mining leases granted before the 25th day of October, 1949, in respect of coal" was widely formulated so as to include also the statutory leases of different Estates Acquisition Acts in favour of the lessees and sub-lessees working coal mines and minerals under subsisting leases at the dates of vesting of the interests of intermediaries.

47. In the result, I find that the leases and sub-leases held by the petitioner came within the scope of section 30A of the Mines and Minerals (Regulation and Development) Act, 1957. Therefore, until the notification dated the 31st December, 1961 was published, the terms and conditions of its original leases and sub-leases still continued to apply in respect of statutory leases held by the petitioner. In other words, the petitioner was liable to pay royalty to the State at the rates specified in the deeds of leases and sub-leases made prior to the vesting. Upon publication of the first notification u/s 30A dated the 31st December, 1961, on and from the 1st December, 1962, the petitioner became liable to pay royalty at the rate of 2-1/2 percent f.o.r. price of coal. It is not

disputed that after the second notification u/s 30A was made, on and from the 1st January, 1966, the petitioner became liable to pay royalty at the enhanced rate of 5 per cent f.o.r. price of coal. The additional demand made by the State Government for payment of royalty at the rates exceeding the rates specified in the deeds of leases and sub-leases for the period the 15th April, 1955 to the 31st December 1961 must be quashed, in view of the fact, section 30A exempted coal mining leases from the operation of section 9 and section 16(1) of the Mines and Minerals(Regulation and Development) Act, 1957 until publication of the notifications under the said provision. The petitioner's challenge against the demand for payments of royalty at the rates stipulated in the notifications u/s 30A must, however, fail on the ground that it is the case of the petitioner itself that it was liable to pay royalty at the rates specified in the two successive notifications made u/s 30A.

48. There is no substance in the contention raised on behalf of the petitioner that it was not liable to pay interest on the arrears of royalties. It has been conceded before me under the deed of leases subsisting at the date of vesting, the petitioner was liable to pay interests on arrears of royalty. Therefore, the respondents acted within their rights by adding interests on the arrears amounts of royalty due from the petitioner.

49. I, therefore, make the Rule absolute in part. Let a writ in the nature of mandamus issue commanding the respondents to forbear from recovering royalty from the petitioner in respect of the mentioned in the petition at the rate exceeding the rate specified in the deeds of leases and sub-leases in favour of the petitioner which were subsisting on the date of vesting upto the 31st December, 1961. The respondents would be at liberty to recover from the petitioner according to law at the rate of 2-1/2 per cent for the period the 1st January, 1962 to the 31st January 1965 and at the rate of 5 per cent on and from the 1st January, 1968. The petitioner's challenge to the demand of royalty at these rates from the 1st January, 1962 must fail. The respondents would be entitled if necessary to amend the impugned certificates according to law and to recover the arrears of royalty from the petitioner at the rates mentioned in this order. The respondents are directed to adjust the sums which the petitioner company may have deposited either before issue of the Rule or during the pendency of this Rule towards the claim of arrears of royalty, etc. against the petitioner.

There will be no order as to costs.

On the prayer of the learned Advocate for the respondents, let the operation of this order be stayed for one week after the long vacation.