

(1970) 07 PAT CK 0007
In the Patna High Court
Case No : A.F.O.D. No. 175 of 1969

Gulzarilal Agarwalla

APPELLANT

Vs

Onkarmal Agarwalla and Others

RESPONDENT

Date of Decision : 15-07-1970

Acts Referred:

Mines and Minerals (Regulation and Development) (Amendment) Act, 1957 — Section 30A

Mines and Minerals (Regulation and Development) Act, 1948 — Section 13, 16, 18, 3, 4

Citation : AIR 1971 Patna 83

Hon'ble Judges : S.C. Misra, C.J.; S. Wasiuddin, J.; K.B.N. Singh, J.; G.N. Prasad, J.; A.B.N. Sinha, J

Bench : Full Bench

Advocate : Lalnarain Sinha, B.P. Rajgarhia, B.P. Gupta and S.K. Sharan, for the Appellant; J.C. Sinha, S.B. Sanyal, Choudhary and S.N. Misra, for the Respondent

Judgement

Misra, C.J.—This reference to the Full Bench has arisen in the following circumstances. On the 17th September, 1960, a suit was instituted by the plaintiffs-respondents for the relief that the defendants' lease had expired by effluxion of time which was the period of ten years under the lease. The lease was executed in favour of the defendants on the 11th of May, 1951, by the Receivers of the estate of the lessor. Shri Baldeo Singh and Shri Bholanath Dey. The mining area covered by this lease is in village Birsinghpur (mouza No. 70), measuring 300 bighas approximately, in the registration District of Manbhum, of which the proprietor was Pandra Raja. The lease was executed by the proprietor in favour of the East India Coal Company who granted a lease in favour of Rabindra Nath Sarkar in 1917 and after a few intermediate transactions the leasehold interest came to Baidyanath Dutt and other members of his family (hereinafter called the Duttas).

There was a title partition suit No. 44 of 1950 in the family of the Duttas in which two Receivers were appointed, being Baldeo Singh and Bholanath Dey. They granted the managing contract to defendant No. 1 on the 11th of May, 1951, for

ten years. The plaintiffs claim to have acquired the sub-lessee's interest from various members of the Dutta family by a series of documents (Extg. 14 series) included in Schedule B to the plaint. This covered nine transactions beginning from the 2nd of June, 1952, to the 24th of March, 1955. The case set up on behalf of the defendants was that the plaintiffs acquired no title by their alleged purchases as they were all in violation of Rule 48 of the Mineral Concession Rules, 1949, which was numbered as Rule 46 under the 1960 Rules. It is not denied that this rule applies to grant of mineral concession by private persons, whereas Rule 37 applies to grant of mineral rights in respect of land belonging to the Government. Hence the transfers relied upon by the plaintiffs are void. The defendants also claim an affirmative title on the ground that the managing contract, on a proper construction, was a sub-lease, and hence, after the vesting of the estate under the Bihar Land Reforms Act, the defendants had the status of a sub-lessee and, as such, they were paying rent and royalty to the State of Bihar.

2. The trial Court passed a decree in favour of the plaintiffs on the finding that the managing contract of the defendants had expired and, as such, they were mere trespassers. The defendants could not challenge the title of the landlord. Secondly, since the leases were of a date prior to 1949, the new rules for that reason were inapplicable. The trial Court also held that the contract in favour of the defendants was not a lease.

3. The defendants have come up in appeal to this Court. In course of hearing of the appeal before the Division Bench, it appeared that there was some conflict of opinion between two Division Bench decisions of this Court, the earlier one being *Sm. Kamla Bala Devi v. Ojha Brothers, Ltd.* ILR (1962) Pat 412 and the later one *Messrs. Bhowra Kankanee Collieries Ltd. v. Sunil Kumar Boy.* 1968 Pat LJR 486. The relevant provisions for consideration are the Mines and Minerals (Regulation and Development) Act, 1948 (Act LIII of 1948), hereinafter to be called the 1948 Act, and Rule 48 issued under this Act, which was later on re-numbered as mentioned above. Act LIII of 1948 was, however, replaced by Act LXVII of 1957, hereinafter to be called the 1957 Act. Then, four months after the passing of the 1957 Act another provision was made by the Parliament and incorporated in the 1957 Act as Section 30A of this Act.

4. Before dealing with the specific question for deciding whether the decision of the Bench in the case of *Sm. Kamla Bala Devi* ILR (1962) Pat 412 is to be preferred to the later decision in the case of *Bhowra Kankanee Collieries Ltd.*, 1968 Pat LJR 486 set out above, it is profitable to cast a general glance at the schemes of the two Acts and the relevant rules. The 1948 Act was placed on the statute book containing the policy of the Parliament in regard to the regulation of mines and development of mineral wealth of the country as is mentioned in the preamble to the Act as also in Section 2. Section 1 is the general section and Section 3 contains the definitions of the various relevant terms. Section 4, which is material, stands thus:--

"4. (1) No mining lease shall be granted after the commencement of this Act otherwise than in accordance with the rules made under this Act.

(2) Any Mining lease granted contrary to the provisions of Sub-section (1) shall be void and of no effect."

Section 5 refers to the power of the Central Government to make rules for regulating the grant of mining leases or for prohibiting the grant of such leases in respect of any mineral or in any area. Section 6 refers to the power of the Central Government to make rules as respects mineral development. Section 7, which is also material, runs thus:

"7. (1) The Central Government may, by notification in the Official Gazette make rules for the purpose of modifying or altering the terms and conditions of any mining lease granted prior to the commencement of this Act so as to bring such lease into conformity with the rules made under Sections 5 and 6:

Provided that any rules so made which provide for the matters mentioned in Clause (c) of Sub-section (2) shall not come into force until they have been approved, either with or without modifications, by the Central Legislature.

"(2) The rules made under Sub-section (1) shall provide :--

(a) for giving previous notice of the modification or alteration proposed to be made thereunder to the lessee, and where the lessor is not the Central Government, also to the lessor, and for affording them an opportunity of showing cause against the proposal;

(b) for the payment of compensation by the party who would be benefited by the proposed modification or alteration to the party whose rights under the existing lease would thereby be adversely affected; and

(c) for the principles on which, the manner in which and the authority by which the said compensation shall be determined."

Section 8 deals with the delegation of power. Section 9 deals with penalties for violation of any rule made under this Act and Section 10 provides for rules being laid before the Legislature for approval. Section 11 provides for power for inspection and Section 12 for relaxation of rules in special cases. Section 13 provides for the provisions of the Act being binding on the Crown and Section 14 provides for protection of action taken in good faith under this Act. Later, this Act was supplemented by the Act of 1957 which came into force on the 28th of December, 1957. Section 1 of this latter Act deals with the title and the commencement of the Act. Section 2 deals with the declaration as to expediency of Union Control, Section 3 sets out the definition clause, Section 4 prospecting or mining operations under licence or lease and Section 5 is the restriction on the grant of prospecting licences or mining leases. Section 6 provides for the maximum area for which a prospecting licence or mining lease may be granted. Section 7 provides the period for which prospecting leases may be granted or

renewed. Section 8 specifies the period for which mining leases may be granted or renewed, Section 9 provides for royalties in respect of mining leases. Section 10 relates to application for prospecting licences or mining leases, Section 11 covers preferential rights of certain persons and Section 12 prescribes for registers of prospecting licences and mining leases.

Section 13 relates to power of Central Government to make rules, in respect of minerals and Section 14 provides that Sections 4 to 13 shall not apply to minor minerals. Section 15 empowers the State Governments to make rules in respect of minor minerals. Section 16 has a material bearing on the question for consideration. It relates to the power of the Central Government to modify leases granted before the 25th day of October, 1949, and reads thus:--

"16. (1) All mining leases granted before the 25th day of October, 1949, shall as soon as may be after the commencement of this Act be brought into conformity with the provisions of this Act and the rules made under Sections 13 and 18:

Provided that if the Central Government is of opinion that in the interests of mineral development it is expedient so to do, it may, for reasons to be recorded, permit any person to hold one or more such mining leases covering in any one State a total area in excess of that specified in Clause (b) of Section 6 or for a period exceeding that specified in Sub-section fl) of Section 8.

(2) The Central Government may, by notification in the Official Gazette make rules for the purpose of giving effect to the provisions of Sub-section (1) and in particular such rules shall provide -

(a) for giving previous notice of the modification or alteration proposed to be made in any existing mining lease to the lessee and where the lessor is not the Central Government, also to the lessor and for affording him an opportunity of showing cause against the proposal;

(b) for the payment of compensation to the lessee in respect of the reduction of any area covered by the existing mining lease; and

(c) for the principles on which, the manner in which, and the authority by which, the said compensation shall be determined."

Section 17 deals with the special powers of Central Government to undertake prospecting or mining operations in certain lands. Section 18 deals with mineral development and Section 19 with licences and provides that prospecting licences and mining leases shall be void if they are in contravention of the Act. Section 20 refers to Act and rules to apply to all renewals of prospecting licences and mining leases. Section 21 deals with penalties. Section 22 with cognizance of offences, Section 23 with offences by companies, Section 24 with power of entry and inspection. Section 25 with recovery of certain sums as arrears of land revenue Section 26 with delegation of powers. Section 27 with protection of action taken in good faith and Section 28 refers to rules and notifications to be laid before the Parliament and certain rules to be approved by the Parliament.

Section 29 which is also material runs thus:--

"All rules made or purporting to have been made under the Mines and Minerals (Regulation and Development) Act, 1948, shall, in so far as they relate to matters for which provision is made in this Act and are not inconsistent therewith, be deemed to have been made under this Act as if this Act had been in force on the date on which such rules were made and shall continue in force unless and until they are superseded by any rules made under this Act."

Section 30 deals with power of the Central Government in revision and Section 31 refers to relaxation of rules in special cases. Section 32 deals with amendments to the Act 1948 and is also material. It runs thus:--

The Mines and Minerals (Regulation and Development) Act, 1948, shall be amended in the manner specified in the Third Schedule."

Section 33 refers to validation of certain acts and indemnity. Section 30A which was inserted in the Act by the Mines and Minerals (Regulation and Development) Amendment Act, 1958 (XV of 1958) Section 2, and the interpretation of which is for consideration before (Ms Bench stands thus:--

"30-A. Notwithstanding anything contained in this Act, the provisions of Sub-section (1) of Section 9 and of Sub-section (1) of Section 16 shall not apply to or in relation to mining leases granted before the 25th day of October, 1949, in respect of Coal, but the Central Government, if it is satisfied that it is expedient so to do, may, by notification in the Official Gazette, direct that all or any of the said provisions (including any rules made under Sections 13 and 18) shall apply to or in relation to such leases subject to such exceptions and modifications, if any as may be specified in that or in any subsequent notification."

5. Mr. Lalnarain Sinha has urged that the decision of this Court in ILR (1962) Pat 412 lays down the law correctly and, as such, the plaintiffs' suit should have been dismissed, inasmuch as the rights which they acquired under the various registered documents of conveyance confer no title upon them since title was acquired without the previous approval of the Central Government. In this connection reference has been made to Sections 4, 5, and 7. So far as Sections 4 and 7 are concerned, they have been quoted above and Section 5 in so far as it is relevant stands thus:

"5. (1) The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of such leases or for prohibiting the grant of such leases in respect of any mineral or in any area."

Mr. J. C. Sinha for the respondents has, however, urged that Section 4 of the Act of 1948 refers only to leases granted after the coming into force of this Act. The original lease which gave rise to the sublease in favour of one of the predecessors-in-title of the respondents came into existence much before this Act on 1st of November, 1917 (vide Ext. 14, Part III of Paper Book, page 3) and, as such, the provisions of this Act will not be applicable to the present case. Mr.

J. C. Sinha has endeavoured to support his argument with reference to a number of decisions and an examination of the various provisions of this Act. He has formulated his points as follows:--

(1) Rule 48 which is a bar to transferability except as subject to the restrictions mentioned therein in terms applies only to post 1949 leases and not to pre, 1949 leases.

(2) Both under the Act and the Rules, unless steps were taken to bring them on par with the post 1949 leases, u/s 7 their terms and conditions and incidents could not be affected.

(3) Although Section 4 of the Act uses the term. Void", if one were to examine the scheme of the Act, it would be apparent that it would be only voidable at the option of the Government.

(4) Grant may include transfer is not correct with reference to Section 31 of the Act.

Section 31 makes a distinction between grant and transfer in so far as it provides that modification may be made by the Central Government in respect of grant, renewal or transfer of any prospecting or mining lease, thus putting each one in different categories.

6. But all this appears to me to be wholly academic in view of the pronouncement of the Supreme Court in the case of the The Mineral Development Ltd., Calcutta Vs. The Union of India (UOI) and Another, . The Judgment of the Supreme Court was pronounced affirming a decision of this Court reported in AIR 1954 Pat 340 (Mineral Development Ltd. v. Union of India). The approach of their Lordships in that case was that a mining sub-lease, after the coming into force of the Act of 1948 and the Rules, is included in the terms "mining lease" as defined in Section 3(d). The rules made in Sections 5 and 6 would apply to such a sub-lease though the main lease was granted before the Act and the Rules came into force. Their Lordships repelled the contention in that case although not conclusively, that Section 7 would affect any sub-lease granted by such a lessee when the sub-lease is granted after the date on which the Rules came into force. Wanchoo, J., who delivered the leading judgment in that case, observed that Section 7 was enacted for an entirely different purpose as Sub-section (2) thereof would show. His Lordship, however held that the provisions of the rules made under Sections 5 and 6 of this Act would nevertheless apply to such a sub-lease on the ground that the expression "mining lease" as defined in Section 3(d) of the Act would include a sublease. Clause (d) of Section 3 to which reference was made stands thus :--

"(d) "mining lease" means a lease granted for the purpose of searching for, winning, working, getting, making merchantable, carrying away or disposing of minerals or for purposes connected therewith, and includes an exploring or a prospecting license;"

Although there was no mention in specific terms of any sub-lease in it, the Supreme Court nevertheless held that the grant of a sub-lease is included within the meaning of the expression "mining lease" and as such the creation of a sublease is covered by Section 4 and the rules made under Sections 5 and 6. This view has also been reaffirmed by their Lordships of the Supreme Court in *Biswanath Prasad Vs. Union of India (UOI) and Others*, , where also it has been held that Rule 48 of the Mineral Concession Rules, 1949, was made under this Act (Act of 1948), which prohibits a transfer of the right of a lease except with the restriction contained therein and this would be applicable in the case of a sub-lease.

It may be stated that Rule 48 which puts a bar in the way of the transfer of the rights of a lease and the conditions under which such a transfer can be made stands thus:--

"48. Transfer or assignment -- No prospecting license or mining lease to which the provisions of this Chapter shall apply or any right, title or interest in such license or lease shall be transferred except to a person boding a certificate of approval from the State Government having jurisdiction over the land in respect of which such concession is granted.

Provided that no prospecting license or mining lease or any right, title or interest in such license or lease in respect of any mineral specified in Schedule IV shall be transferred except with the previous approval of the Central Government."

After quoting Rules 37 and 48, Sikri, J., who spoke for the Court, observed as follows (P. 824) :--

"These Rules prohibit the transfer of lease of a Coal mine except with the previous approval of the Central Government. It is argued on behalf of the petitioner that these Rules do not regulate the grant of a mining lease for the word "grant" does not include transfer or assignment of a lease. It is true that in a particular context, as existed hi the case of *Mason, Herring and Brooks v. Harris* (1921) 1 KB 653 the word "grant" may not include an assignment. But we are not satisfied that the word "grant" in the context of Section 5 has this narrow meaning. The word "grant", inter alia, connotes transfer of property and mining leases are property. Further, mining leases are usually of long duration and it could not have been the intention not to regulate assignments of such leases."

In view of the clear pronouncement of the Supreme Court in these two decisions, the contention urged by Mr, J. C. Sinha on behalf of the respondents must be held to be unacceptable and is accordingly overruled. Further, in view of it, it is not necessary even to refer to the various decisions which have been cited at the Bar in regard to whether the provision of R. 48 is retrospective or retroactive and whether the Legislature intended this rule to be applicable even to the leases which came into existence before the passing of this Act.

7. The main question, however, which has been canvassed before us is the effect

of the passing of the Act of 1957, the occasion for which arose because in terms of Section 7 of the Act of 1948 steps were not taken by the executive Government for bringing into conformity the terms and conditions of leases granted prior to that Act with the rules made under it. In the latter Act, however, there was some modification of the provisions of the 1948 Act. u/s 29 of the Act, however, all the rules made under the 1948 Act were adopted. Four months after the passing of the Act LXVII of 1957, the Parliament had a second thought as to coal mining leases, as the rigour of the provisions of the Act LXVII of 1957 had the effect of hampering free activity in extraction of coal which, being a vital commodity for all industrial processes, was regarded as being placed on an independent footing so that coal mining activities might not be hampered. Section 30A, as already quoted, thus came to be inserted and it is the consideration of the scope of this section which has led to some difference in the point of view in the two decisions of this Court referred to above. As I have already said, a Division Bench of this Court in *Sm. Kamla Bala Devi's case*, (1962) ILR 41 Pat 412 had occasion to consider the scope of Section 30A in regard to the sale of mining right by a Court of law in execution of a decree. It was held in that case that the effect of Section 30A was that rule 46 issued under the Act of 1957, corresponding to Rule 48 under Act LIII of 1948, was mandatory and Section 30A was not intended to except the creation of a sub-lease from the operation of Rule 46.

The view, however, expressed in 1968 PLJR 486, another Division Bench of this Court, is that Section 30A is of wide application and it provides an exemption in favour of leases in respect of coal mines created before the 25th day of October, 1949, from the operation of R. 46. It may be stated at the outset that there appears to be some misconception in regard to the policy of the Government of India respecting coal mining areas and it is urged that such areas cannot be exempted for the operation of the Act of 1957 as it would defeat the policy of the Parliament in the matter of regulation of mining activities in coal bearing areas. It may be stated that the provision in the Section, at least in part is beyond doubt that the power of the Union Government to apply any of the rules under the Act of 1957, issued under Sections 13 and 18, or the provision of Sub-section (1) of Sections 9 and 16, is unfettered and it is not right to say that Section 30A cannot be regarded as an exemption, which in fact it is. In terms the Section empowers the Union Government to apply the rules either in whole or with such modification as the Central Government may think necessary in the circumstances and therefore, Section 30A cannot (sic) be regarded as providing an exemption and, thus taking coal mining areas completely beyond the control of the Central Government. If anything, in some instances, the power of the Central Government would be wider and the control even closer in regard to the coal mining areas, according to the provision of Section 30A, than even in the case of other minerals which are strictly governed by the rules promulgated under this Act.

All that the Section provides, therefore, is that there is more flexibility in regard

to this mineral than in regard to the other minerals. Apart from this general background on which Section 30A has got to be read, the terms of this Section will have to be examined to see what is intended. An analysis of this Section would show, in the first place, that the provisions of Sub-section (1) of Section 9 and of Sub-section (1) of Section 16 shall not apply to or in relation to the coal mining leases granted before the 25th of October, 1949. Secondly, the Central Government, if it is satisfied that it is expedient so to do, may by notification in the Official Gazette direct that all or any of the said provisions including any rules made under Sections 13 and 18 shall apply. Section 9 of this Act refers to payment of royalty of mining leases. Sub-section (1) of it lays down:--

"The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement pay royalty in respect of any mineral removed by him from the leased area after such commencement, at the rate for the time being specified in the second Schedule in respect of that mineral."

Thus, Sub-section (1) empowered the Central Government to realise royalty at the rate mentioned in the second Schedule of the Act even from the lessees whose right came into existence before the commencement of the Act of 1948. It is clear that Section 30A provides an exception in regard to the application of this provision in general terms in respect of Coal mining leases, but authorises the Central Government, by special notification in the Official Gazette, to apply the provision of Sub-section (1) of Sections 9 and 16 which, therefore, will not be applicable *proprio vigore* but only by virtue of a notification in the Official Gazette. Section 16, which has been quoted in extenso above, confers power on the Central Government to modify the terms and conditions even of leases granted before the 25th of October, 1949, which is the date of coming into force of the rules under the 1948 Act. But the second part of Section 30A, while dealing with exemption of the operation of Sub-section (1) of Sections 9 and 16 of the Act, makes it more comprehensive, widens the scope and provides that even the rules made under Sections 13 and 18 may be made applicable to such mining leases.

If all rules made under Sections 13 and 18 were made automatically applicable to lease granted before the 25th of October, 1949, there was no occasion to express this fact clearly in Section 30A. Section 13, which confers on the Central Government the rule making power, provides in Sub-section (1) as follows:--

"(1) The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of prospecting licences and mining leases in respect of mineral and for purposes connected therewith."

It is clear that rules for regulating the grant of prospecting licences and mining leases are made under the power conferred on the Central Government under Sub-section (1) of Section 13. Sub-section (2) of this Section lays down some of the specific items in respect of which such rules may be made but the general

power conferred under Sub-section (1) is not affected in Sub-section (2) which in terms states that the power enumerated in the various clauses in Sub-section (2) is to be exercised without prejudice to the generality of the power under Sub-section (1).

Even assuming, therefore, that creation of a sub-lease is the grant of a lease as has been held by the Supreme Court, rule 46, which refers to transfer being also of the nature of a grant, proceeds from a power conferred on the Central Government under Sub-section (1). If that is so, then any rules made under this sub-section also may be made applicable only when the "Central Government is satisfied that it is expedient that these rules should apply Mr. Lalnarain Sinha has contended in a general way that such exclusion of mining leases would be unreasonable and, therefore, operation of Section 30A should be confined only to modification of the rate of royalty as provided in Sub-section (1) of Section 9 and modification of terms and conditions as provided in Sub-section (1) of Section 16, but it has got no reference to rules made under Sections 13 and 18. But Section 16 also comprehends Section 13 as the following words occurring therein indicate:--

"16. (1) All mining leases grantedbe brought into conformity with the provisions of this Act and the rules made under Sections 13 and 18."

Section 30A also specifically includes Ss. 13 and 18 and provides that any rules made u/s 13 should be applicable only at the option of the Central Government, and rules regulating transfer are made u/s 13(2). From this it is clear that these rules also may be made applicable only when the Central Government thinks it proper to apply. It may be so either because Section 16, which refers to modification of the terms and conditions, may refer to a case where there is a distinct provision in a lease in regard to the right of transfer or the right of transferability is regarded as a term in accordance with the provisions of the Transfer of Property Act and, hence, the Legislature thought it proper that any rule u/s 13 regarding transferability also will stand in abeyance in regard to the coal mining areas unless the Central Government thinks it proper to apply these rules or any of these rules, to coal mining areas. Even upon such a view the policy of the Legislature or the public interest of the country is not in the least affected. If however, the Central Government does not think it proper to do so in respect of old leases for any reasons which it is for the Central Government to decide, it is not correct to contend that it must necessarily be inferred that the Legislature u/s 30A must have excluded the rule in regard to the transferability from purview of Section 30A. There is another difficulty in accepting such a contention inasmuch as what is implied in this contention is that some of the rules under Sections 13 and 18 no doubt, may be excluded in so far as they relate to royalty and some of the terms and conditions of the lease but not transferability, i.e. rules u/s 13 may be held to be exempted in part and not in whole. I am unable to accept it because it appears to me that the Legislature while referring to rules made under Sections 13 and 18, excluded all the rules u/

s 30A in its entirety unless the Central Government would make some of them, or all of them, applicable by a notification in the Official Gazette. The argument that some rules under Sections 13 and 18 may be covered by Section 30A as excluded and not all the rules, does not appear to me to be warranted in terms of Section 30A. Mr-Lal Narain Sinha has contended, however, that the decision of the Supreme Court in Biswanath Prasad Vs. Union of India (UOI) and Others, , holding such transfers void in terms, also has given this interpretation of Section 30A. Since, however, the attention of their Lordships was not drawn to this particular section and the argument at the Bar in the Supreme Court was only confined to the meaning of the word "grant" in terms of Section 4 of 1948 Act. the authority of that decision cannot be invoked for interpretation of the scope of Section 30A of the Act of 1957. It is clear that specific reference to Sub-section (1) of Sections 9 and 16 and rules under Sections 13 and 18 lump them together and there is no scope for applying the rules under Sections 13 and 18 in part only.

8. Mr. Sinha for the appellant has stressed another point in support of his contention which is to the effect that Section 30A cannot be so interpreted as to comprehend all cases of transfer of title, creation of a sub-lease etc, between the date of the passing of 1948 Act and the subsequent Act of 1957 or, for the matter of that, a date when Section 30A was incorporated in the Act of 1957. If R. 48 of the Rules under the 1948 Act laid down the conditions under which alone any new title could be created in respect of a lease and Section 4 provided that any transaction relating to a lease in contravention of the provisions of this Act would be void, the ordinary consequence should be, as in this case, that a sublease created during this interval also Would be void. If it is taken as void, it would be non est (as if it never existed) and Section 30A could not, therefore, refer to such leases also as not being affected unless the necessary notification were published in the Official Gazette by the Central Government. A thing that is void under an Act, which occupies the field, cannot be held to be revived or given new life by a subsequent legislation. The subsequent legislation, therefore, must be so construed as to exclude such transactions from the operation of this Act. Even, the doctrine of eclipse cannot be applied to such a case, because such a transaction from its very inception is ineffective in law. It is not a case where the transaction in the beginning was valid and then it was followed by any legislation declaring it as void and thereafter another legislation sought to revive it. That situation might be different from the present case where when the transaction took place under R. 48 of the 1948 Act and it was void as held by the Supreme Court, Section 30A declared it to be valid.

Mr. J. C. Sinha, for the respondents, has, however, urged that the transactions between the respondents and their vendors were in fact entered into and it was only as a result of R. 48 prohibiting such a transaction that in the eye of law the transaction would be ineffective. As it is however. Section 30A in general terms makes its operation retrospective and exempts from the mischief of 1957 Act all coal mining leases even covered by rules u/s 13 which, in terms, therefore,

would be applicable to transactions in respect of a lease coming into existence prior to the 25th of October, 1949. The present sub-lease is connected with the lease which came into existence prior to 1949 and, as such, is covered by the provisions of Section 30A of the Act, even on the basis that without Section 30A the transaction of sub-lease would be hit by the prohibition contained in Rule 48. All the same Section 30A has the effect of exempting it from the mischief of that rule.

It is true that acting upon the provisions of Rule 48 and Section 4, if the right of a third party arises in respect of the transaction, the position, no doubt, will be different, but in the present case the right of a third party has not arisen and the matter lies entirely between the plaintiffs-respondents and the defendants who, according to the plaintiffs, is in possession of the mine only as a managing contractor, the real character of which however, is not for consideration before us.

9. Mr. J. C. Sinha has endeavoured to distinguish the rights of the sublessee in the present case from the rights of an ordinary sub-lessee, because in the present case the plaintiffs-respondents had no locus standi to come into possession so long as the managing contract granted by the Receivers of the estate of the Duttas could be valid. Since this was due to expire on the 11th of May, 1961, because it was to subsist for ten years, as it was granted in 1951, the plaintiffs' right, if any, remained dormant and since before the expiry of the terms of the managing contract, Section 30A was incorporated in the Act of 1957, the right of the plaintiffs can never be affected. What was dormant became active as a result of Section 30A, which may be taken to have in its retrospective character the statutory force of infusing life into what was rendered ineffective because of non-compliance with the requirement of Rule 48. Halsbury's Laws of England (Volume 8, page 146, Article 252, 3rd Edition) has made the following observation on this point:--

"In some instances, examples of which are to be found in working agreements between railway companies before the transfer of railways to public ownership, an agreement which would otherwise be invalid is scheduled to a local and personal Act of Parliament, by which it is confirmed and declared to be valid and binding upon the parties to it. The effect of such a provision is not merely to give the parties capacity to enter into an agreement which would otherwise be ultra vires or invalid, but to make the agreement itself valid in toto, for every clause of the agreement has statutory validity",

This is based upon several decisions, e.g. *Jonas v. St. Dunstan's Overseers* (1908) 98 LT 691. CA at p. 696. In that case an agreement was found to be void because one of the parties to the contract was found to exceed his power. It was thus observed by Vaughan-Williams. L. J.:--

"The overseers have no right or authority to agree apart from statutory authority that owners shall take upon themselves the liability for poor rates to the exemption of the liability of occupiers to the parish, or that there shall be paid in

lieu of satisfaction of poor rates a fixed sum annually even though the agreement be temporary or dependent on a contingency: (see *Norwood Overseers v. Salter* (1893) 67 LT 376. per Hawkins, J.). It seems to me plain that these words mean that the society had by the recited agreement agreed with the overseers to the utmost extent that they could without the aid of Parliament, having regard to the limitation of the authority of the overseers, and the fact that the society was not a Corporation, but that the agreement being ultra vires it was brought intra vires by this Act."

The argument, therefore, that what may be regarded as non est, because it is void either on account of any defect in the capacity of the parties etc., or because of any statutory prohibition, may nevertheless be regarded as a valid contract if the Legislature by passing a statute declares it to be valid. A very common example of this policy is when certain transactions have been declared by Court to be invalid or ultra vires, as under the Bihar Buildings (Lease, Rent, and Eviction) Control Act, 1947, the Legislature by subsequent enactment in the Bihar Buildings (Lease, Rent and Eviction) Control (Validating) Act, 1959 (Bihar Act 22 of 1959) has provided for validation of contracts made under Bihar Act 3 of 1947 in Section 3 and re-hearing of appeals in Section 4. The principle is thus firmly established in what is known as a validating Act. In view of this established position in law, there is no substance in the contention that when the transfer of the sub-lessee's right was made in favour of the respondents, it was void in law because it was in violation of the provisions of Rule 48 and Section 4 as it was not done with the previous approval of the Central Government.

Mr. J. C. Sinha has cited a Division Bench decision of this Court in *Sanwarmal Agarwalla Vs. Benoy Krishna Mukherjee and Another*, in which it has been observed that any mining lease granted after the coming into force of the Act of 1957, not in consonance therewith, shall not be void. The observation stands thus at p. 956 (of BLJR) = (at p. 171 of AIR) :--

"So, clearly, this Act does not lay down that any mining lease in contravention of this section shall be void altogether".

The position under the 1957 Act is quite like such a grant made under the Act of 1948, as has been pointed out in the judgment by the learned Judge. Further their Lordships referred to the decision of the Supreme Court in the *Bihar Mines Ltd. Vs. Union of India (UOI)*, for the proposition that in view of Section 29 of the Mines and Minerals (Regulation and Development) Act, 1957, the rules made under the 1948 Act must now be deemed to have been made under the 1957 Act, as if that Act was in force when the rules were made.

Mr. Lal Narain Sinha referred to some English cases but they are not relevant and need no specific mention. Mr. J. C. Sinha has contended, however, that so far as the previous approval of the Central Government is concerned, the proviso to R. 48 was added by notification No. M. II-159(7)/54, dated the 21st December, 1954. He has contended that the documents executed in favour of the plaintiffs

prior to this date will not be hit by the restriction imposed in the proviso that the plaintiffs did not have the previous approval of the Central Government. All the nine documents under which the plaintiffs acquired their right are set out in Schedule B to the plaint. It is stated that serial Nos. 1 and 2 came into existence on the 4th of June, 1952 and 2nd of June 1952, respectively, and in any case these two documents will not be affected by the proviso to rule 48, so far as the State Government is concerned. The State Government has acknowledged the right of the plaintiffs as sub-lessees and accepted rent from them in that capacity.

Rule 48 minus the proviso, therefore, which enjoins that transfer can be made only to a person holding a certificate of approval from the State Government, cannot be taken as a bar to the accrual of the right of the plaintiffs. This rule does not make it mandatory that there should be previous approval of the State Government, but that the approval of the State Government must be given to the transferee and, if in this case the State Government has recognised the sub-lease of the plaintiffs, this amounts to the grant of a certificate of approval by the State Government- The wording of this part of the rule is to be contrasted with the wording in the proviso which refers to the obtaining of the previous approval of the Central Government. These are, however, matters of detail with which this Bench cannot concern itself inasmuch as the reference before this Bench is only as to which of the two decisions referred to above lays down the law correctly in interpreting the meaning and scope of Section 30A. All other questions including this one and a co-sharer's right as considered in Ram Niranjana Das and Another Vs. Loknath Mandal and Others, may be gone into by the Division Bench after the decision of the Full Bench on the only question referred to it for consideration.

10. For the reasons stated above, I am inclined to hold that the decision of this Court in ILR (1962) Pat 412 was not sound and it must be held that grant of a sub-lease in relation to a lease or the transfer of a right under the lease which came into existence prior to the 25th of October, 1949, in regard to the coal mining leases, cannot be hit by the provisions of R. 46 of the Rules made u/s 13 of the Act of 1957, and likewise not affected by rule 48 made under the Act of 1948, unless the Central Government issues a notification that this will be applicable even to coal mining leases. This will only apply to a situation when the question arises after the enactment of Section 30A. In that view of the matter, the decision of the learned Subordinate Judge on the point must be upheld as correct and the conflict between the two decisions must be resolved to the effect that the decision of this Court in 1968 PLJR 486 was correct and that the decision in ILR (1962) Pat 412 was unsound.

G.N. Prasad, J.

11. I agree

A.B.N. Sinha, J.

12. I agree,

K.B.N. Singh, J.

13. I agree.

Wasiuddin, J.

14 I agree.