

(2017) 03 DEL CK 0035

In the Delhi High Court

Case No : Writ Petition (C) 973 of 2015 and CM Nos. 1719 of 2015, 4969 of 2015

GVK Power (Goindwal Sahib) Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-03-2017

Acts Referred:

Coal Mines (Special Provisions) Rules, 2015 — Rule 14
Coal Mines (Special Provisions) Second Ordinance, 2014 — Section 16
Constitution of India, 1950 — Article 14, Article 19, Article 226, Article 300A

Citation : (2017) 239 DLT 193 : (2017) 162 DRJ 503

Hon'ble Judges : Badar Durrez Ahmed and Mr. Sanjeev Sachdeva, JJ.

Bench : Division Bench

Advocate : Mr. P. Chidambaram, Sr Advocate, with Mr. Amit Kapur, Mr. Vishrov M., Mr. Rohit Venkat and Mr Apoorva Misra, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC, Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/ UOI; Mr. Kapil Sibal Mr. Ramji Srinivasan, Sr Advocates, Mr. Devashish Bharuka, Ms Rita Jha, Mr. Jatin Sehgal and Mr. Ravi Baruka, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC, Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/ UOI; Mr. Rajiv Nayar, Sr Advocate with Mr. Sanjeev Kapoor, Mr. Gaurav Juneja, Mr. Aditya Ganju and Mr Sahil Narang, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC, Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/UOI; Mr. Rajiv Nayyar, Sr Advocate with Mr. Sanjeev Kapoor, Mr. Gaurav Juneja and Mr. Aakash Bajaj, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC, Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/UOI; Mr. Atul Shanker Mathur and Ms Priya Singh, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC, Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/UOI; Mr. Rajiv Nayyar, Sr Advocate with Ms Suruchi Aggarwal with Mr. Vijender Singh and Ms Radhika Gupta, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC,

Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/UOI; Mr. P. Chidambaram, Sr Advocate with Ms Vijay Lakshmi Menon, Ms Ekta Kapil, Mr. Rajat Joneja, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC, Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/UOI; Mr. P. Chidambaram, Sr Advocate with Mr. Chinoy P. Sharma and Mr. Ritesh Singh, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC, Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/UOI; Mr. Ajay Bhargava and Ms Vanita Bhargava, Advocates, for the Respondent No.3; Mr. Gopal Jain, Sr Advocate with Mr. Devashish Baruka, Ms Rita Jha and Mr. Ravi Barukha, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC, Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/UOI; Mr. P. Chidambaram, Sr Advocate with Mr. Abhimanya Mahajan and Mr. Milan Deep Singh, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC, Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/UOI; Mr. Gopal Jain, Sr Advocate with Mr. Sanjeev Kapoor, Mr. Gaurav Juneja and Mr. Aakash Bajaj, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC, Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/UOI; Mr. Kapil Sibbal and Mr. Ramji Srinivasan, Sr Advocates with Mr. Devashish Baruka, Ms Rita Jha and Mr Ravi Barukha, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC, Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/UOI; Mr. P. Chidambaram, Sr Advocate with Mr. Amit Kapur, Mr. Vishrov Mukherjee and Mr. Rohit Venkat, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC, Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/UOI; Mr. Ratan Kumar Singh with Mr J.K. Chaudhary and Ms Swati Surbhi, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC, Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/UOI; Mr. Gopal Jain, Sr Advocate with Mr. Sanjeev Kapoor, Mr. Gaurav Guneja and Mr. Shikhar Sriwastawa Mr Ravi Barukha, Advocates, for the Petitioner; Mr. Sanjay Jain, ASG, Mr Akshay Makhija, CGSC, Mr. Amit Mahajan, CGSC, Mr. Sanjeev Narula, CGSC, Mr Kirtiman Singh, CGSC, Mr. Manik Dogra, CGSC, Mr. Shresth Jain, Mr Vidur Mohan and Ms Aastha Jain, Advocates, for the Respondent/UOI

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J—In this batch of petitions, there is a challenge to

Section 16 of the Coal Mines (Special Provisions) Second Ordinance, 2014 (hereinafter referred to as "the said Ordinance") and Rule 14 of the Coal Mines (Special Provisions) Rules, 2015 (hereinafter referred to as "the said Rules"). These provisions have been challenged on the ground that they are violative of Articles 14, 19 and 300-A of the Constitution. We may point out, at this juncture, that the said Ordinance has since been replaced by the Coal Mines (Special Provisions) Act, 2015. The provisions, however, which are relevant for our purposes, remain the same.

2. The present batch of petitions is by prior allottees of coal blocks which had been cancelled by the Supreme Court by virtue of its judgment dated 25.08.2014 [Manohar Lal Sharma v. Principal Secretary & Others: 2014 (9) SCC 516] read with its order dated 24.09.2014 [Manohar Lal Sharma v. Principal Secretary & Others: 2014 (9) SCC 614]. Thereafter, the concerned coal blocks / coal mines were put to auction. The Successful Bidders in the said auctions were to take over the coal mines. However, the prior allottees were to be compensated for the land in relation to the coal mines as also for the mine infrastructure. Section 16, as will be seen later, provides for the quantum of compensation for the land in relation to the coal mines as also for the "mine infrastructure". Rule 14 of the said Rules provides for the manner of determination of compensation to the prior allottees and for the lodging of the registered sale deeds. The plea of the petitioners is that these provisions are ex facie unjust, unfair and unreasonable. They are arbitrary and result in the petitioners (prior allottees) not receiving fair and just compensation in respect of the land and the mine infrastructure and in the Successful Bidders benefiting at the cost of the prior allottees. It is, therefore, the case of the petitioners that the said provisions be struck down. It is also their case that the said provisions suffer from the vice of excessive delegation of essential legislative functions.

3. On the other hand, the learned counsel for the respondents submit that the compensation to be computed in terms of the said impugned provisions is neither illusory nor expropriatory. It was also submitted that a provision of a statute can be challenged only on two grounds:- (a) lack of legislative competence; or (b) as being violative of any of the rights guaranteed under Part-III of the Constitution. It was contended that in the present case, no issue of legislative competence arises because the impugned provisions have been challenged only on the ground that they are violative of Articles 14 and 19 of the Constitution. It was also contended on behalf of the respondents that the said Ordinance (and, subsequently, the Act) would be protected under Article 31-C of the Constitution of India inasmuch as it is a law towards securing that the ownership and control of the material resources of the community ("coal" in the present case) are so distributed to best subserve the common good [see: Article 39(b) of the Constitution of India]. Even apart from this, it has been urged on behalf of the respondents that, in any event, the impugned provisions do not violate Articles 14 or 19 and also do not suffer from the vice of excessive delegation of essential legislative functions.

Petitioners' submissions

4. It is the case of the petitioners that fair and reasonable compensation has not been provided for under the said Ordinance. Section 16(1) of the said Ordinance provides for the quantum of compensation for land in relation to Schedule-I coal mines to be "as per the registered sale deeds" together with 12% simple interest from the date of such possession or acquisition till the date of execution of the Vesting Order or the Allotment Order, as the case may be. It is the contention of the petitioners that though this provision apparently prescribes the methodology for valuation of the compensation for, inter alia, the land in relation to the coal mines, it does not provide for compensation at the current market value nor does it provide for any compensation with regard to leasehold land or land in respect of which surface rights had been acquired. In the latter two cases, there would obviously be no registered sale deeds.

5. Furthermore, Section 16(2) of the said Ordinance deals with the quantum of compensation for the mining infrastructure which is required to be determined as per the written down value reflected in the statutorily audited balance sheet of the previous financial year (i.e., the year ending on 31.03.2014). However, according to the petitioners, this does not provide for compensation on the basis of the value of the mine infrastructure as on the date of the Vesting Order and, secondly, it does not provide for compensation for all the rights / assets / approvals / reports, which are also transferred to the Successful Bidder by virtue of the Vesting Orders.

6. It was, therefore, contended that the compensation would be illusory and expropriatory and would thereby be violative of Articles 14, 19 and 300-A of the Constitution of India. It was also contended that limiting the cut-off date for computation of the compensation for mine infrastructure to 31.03.2014 was in violation of the judgment of the Supreme Court dated 24.09.2014 in *M.L. Sharma v. Union of India*: (2014) 9 SCC 614, whereby the cancellation of the operational mines was to take effect from 01.04.2015. It was also contended that exclusion of the expenditure incurred by the petitioners on various permissions, consents and approvals and consequently infrastructure and capital works undertaken / capital work in progress pursuant to the terms and conditions of such permissions, consents and approvals was bad.

7. In this backdrop, it was submitted that Section 16 of the said Ordinance and Rule 14 of the said Rules were violative of Articles 14, 19 and 300-A of the Constitution of India because of the non-consideration of the expenditure incurred by the petitioners towards leasehold rights in the lands / surface rights, mine infrastructure and consents and approvals obtained by the petitioners for excavation of coal from the coal blocks. Reliance was placed on *Rajeev Sarin and Another v. State of Uttarakhand and Others*: 2011 (8) SCC 708 (paras 72 to 84) and *K.T. Plantation Pvt. Ltd. v. State of Karnataka*: 2011 (9) SCC 1 (paras 189 and 191). It was submitted that deprivation of property under Article 300-A could only be on payment of compensation which was just, fair and reasonable.

It was submitted that under the impugned provisions as being interpreted by the respondents, fair and just compensation is to be paid to the prior allottees for the following:-

- (i) Mine Intrastructure;
- (ii) leasehold land;
- (iii) land for which surface rights has been obtained,
- (iv) land for which there is no registered sale deed but "agreement to sell" has been entered into;
- (v) payment made to Government for acquisition of land but the sale deed/lease deed has not already been executed;
- (vi) advance/part payment made to the villagers/landowners but sale deed has not been executed;
- (vii) compensation for structures on land, trees, crops, pond, bore well etc.;
- (viii) compensation for preparation of geological reports, cost of obtaining statutory licences, permits, permissions, approvals, clearances or consents relevant for mining operations etc;
- (ix) expenses incurred towards mine infrastructure in financial year 2014-15;
- (x) payment made towards compensatory afforestation charges, NPV payment, cost of manpower engaged for development of mine and administrative/general overheads; and
- (xi) expenditure on Resettlement and Rehabilitation ("R&R") activities and expenditure on acquisition of land for R&R.

Under some of the above heads, no compensation has been offered or paid.

8. It was also submitted that within the same Ordinance, there was a distinction with regard to the land to be transferred from a prior allottee to a Successful Bidder and for the land to be acquired by fresh acquisition under Section 21 of the said Ordinance. While in the case of the former, compensation under Section 16 of the Ordinance was to be paid as per the registered sale deeds together with 12% simple interest, under the latter, compensation was to be fixed as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. This was also discriminatory as the same had no nexus with the object sought to be achieved which was continuity of mining operations. It was submitted that Section 8(4) of the said Ordinance provides that the Vesting Order would transfer all statutory licences, permits, approvals, permissions, clearances, etc. to the Successful Bidder from the prior allottee. The Tender Document and, in particular, clause 3.3.2(g)(ii) also provides that the Successful Bidder shall pay a fixed amount (clause 1.1.16) for the value of the cost for preparation of geological reports, costs for obtaining all statutory

licences, permits, permissions, approvals, clearances or consents relevant to the mining operations. It was contended that the respondents have excluded this amount from the compensation to be paid to the petitioners (prior allottees) even though the same would be transferred to the Successful Bidders pursuant to the Vesting Orders. It was contended that the state cannot discriminate between one private entity and another private entity. While the prior allottees are being deprived of the market value of the land as on the date of transfer to the Successful Bidders, the latter would definitely benefit by not paying the market value at the cost of the prior allottees. It is not a case where the land would vest in the Government, but, a transfer of the right, title and interest from one private entity to another and in doing so, the Government cannot discriminate between them. Because of the discrimination, which is inherent in Section 16 (1) of the said Ordinance read with Rule 14 of the said Rules, the said provisions are clearly violative of Article 14 of the Constitution. It was also submitted that the impugned provisions suffer from the vice of excessive delegation of essential legislative functions. The argument was that the determination of the principles on which compensation was to be computed was an essential component of legislative policy and the same could not have been delegated to the Nominated Authority (who, in turn, delegated it to a Committee) without prescribing any guidelines or policy for the determination of compensation. It was submitted that there was no legislative policy which could be discerned from the impugned provisions. In fact, there is a circularity of reference inasmuch as Section 16 refers to Rule 14, which, in turn, refers to Section 16.

9. It was further contended that the Nominated Authority being a creation of the statute, could have acted only in accordance with the same. Section 16 read with Rule 14 required the Nominated Authority to determine the value of land and mine infrastructure, but, the records disclose that the value was actually determined by a Committee of outsiders, who, according to the petitioners, were not experts. Consequently, it was submitted that the said Ordinance and the said Rules were themselves not followed by the respondents. It was also submitted that the Committee, which was entrusted with the job of valuation, has arbitrarily classified all those intangible assets allegedly difficult to classify as mine infrastructure or assets, which do not relate to the coal mining activity, under the head, "Unclassified Assets". It was contended that the alleged difficulty in classification was a mere pretence and was without any basis.

10. Elaborating on the issue of leasehold rights and surface rights in respect of the land connected with the coal mines, it was submitted that Section 16(1) of the said Ordinance does not provide for any compensation for such rights. In this context, it was submitted that prior allottees have paid huge sums of money to acquire the leasehold rights from various Government bodies. These leasehold rights were quantifiable and compensation in respect thereof ought to have been provided. Similarly, in respect of surface rights of coal bearing lands and lands adjacent thereto, it was submitted that they would be acquired by prior allottees

under specific state legislations and, as an instance, in the case of Jayaswal Neco Industries Limited, it was submitted that under Section 247 of the Chhattisgarh Land Revenue Code, a sum of Rs 33.38 crores was paid for acquiring such rights. It was argued that though the surface rights are also being transferred from the prior allottees to the Successful Bidders under Section 8(4) of the said Ordinance, yet no compensation is being given to the prior allottees in respect thereof. Thus, Section 16(1) of the said Ordinance, inasmuch as it excludes any compensation or leasehold lands and / or surface rights in respect of the lands in relation to the coal mines, is violative of Articles 14, 19 and 300-A of the Constitution of India.

11. The petitioners also submitted that taking the cut-off date of 31.03.2014 had no rational basis or nexus with the object of the Second Ordinance. It was submitted that the decision of the respondents in applying a cut-off date of 31.03.2014 and treating any expenditure made thereafter as "capital work in progress" was contrary to the Ordinance. It was submitted that there was no justification of taking 31.03.2014 as the cut-off date when the mining lease was rendered ineffective from 31.03.2015 by virtue of the order dated 24.09.2014 passed by the Supreme Court. It was further pointed out in order to ensure continuity of coal production, the Supreme Court allowed the prior allottees to operate the coal mines till 31.03.2015 and for this reason, the prior allottees continued to incur expenses for development, upkeep and maintenance of the mine infrastructure during that period.

12. It was urged that the impugned provisions violate the principles of natural justice inasmuch as there is no provision for opportunity of hearing to the prior allottees for deciding the quantum of compensation payable to them.

13. Based on all these submissions, it was urged on behalf of the petitioners that the impugned provisions were violative of Articles 14, 19 and 300-A of the Constitution and were liable to be struck down.

Respondents' submissions

14. It was, first of all, submitted that as the present writ petitions essentially relate to issues with regard to compensation, they are not maintainable inasmuch as there is an equally efficacious alternative remedy available to the petitioners in the form of the adjudicatory tribunal provided under Section 27 of the said Ordinance (now the Act). The said provision and, in particular, sub-section (1) thereof provides that any dispute arising out of any action of the Central Government, Nominated Authority or Commissioner of Payment or Designated Custodian or any dispute between the successful bidder or allottee and the prior allottee arising out of any issue connected with the said Ordinance (now the Act) shall be adjudicated by the Tribunal constituted under the Coal Bearing Areas (Acquisition and Development) Act, 1957. It was submitted that the said Tribunal is a pre-existing Tribunal and has already been vested with the powers in respect of all disputes arising out of or in connection with the said

Ordinance (now the Act).

15. It was also contended on behalf of the respondents that due process was followed for computation of the mine infrastructure in terms of Section 16 and Rule 14. A Committee had been set up in order to assess the value of the assets to be paid for acquisition of running coal mines as well as to assess the liabilities. The Committee was headed by the Chief Vigilance Commissioner and included representatives of the Ministry of Coal, Ministry of Power, Ministry of Finance (DEA), Ministry of Law and Justice and the Central Mine Planning and Design Institute Limited. The Committee had issued letters to all the prior allottees and sought detailed information from them as regards the investments made in mining infrastructure along with the supporting documents. It is after application of mind that the valuations were arrived at. All the assets / claims were classified into four categories:-

- i) Land, if included in the prior allottee's claim;
- ii) Immovable assets;
- iii) Movable assets; and
- iv) Unclassified assets.

16. The last category includes all intangible assets that were difficult to classify as mine infrastructure or otherwise. It also included such assets which did not relate to coal mining as also other items where the prior allottee had not furnished the requisite details / documents. Thus, the Committee arrived at the figures of compensation that it had awarded in respect of the petitioners and this was done after examining the balance sheets submitted by the petitioners for the year-ending 31.03.2014. It is pertinent to note that though the quantum of compensation to be paid for mine infrastructure in respect of each mine had allegedly been posted on the website of the Nominate Authority, to keep open the possibility of an upward revision based on any adjudication by the Tribunal under Section 27 or by the Government itself, a corrigendum dated 31.01.2015 had been issued to the effect that the fixed amount payable by the Successful Bidders had been assessed on the basis of available information and that in case there was any upward revision in the fixed amount on a subsequent date by the Government or the Nominated Authority on account of an order of any competent court of law, the same would also have to be paid by the Successful Bidder. In this context, it was submitted that the compensation of mine infrastructure was not to be paid for by the Government and as such the Government had no vested interest in the exercise of assessment of the relevant assets.

17. With regard to the cut-off date of 31.03.2014 for computation of compensation to be paid to prior allottees, it was submitted that on the date of promulgation of the said Ordinance and after the cancellation of the earlier allocations by the Supreme Court, the date of 31.03.2014 was the only one for

which audited balance sheets were available and as such it was decided to take this as the cut-off date in order to prevent manipulation of balance sheets by prior allottees in order to inflate their claims. It was submitted that, in fact, this was to the advantage of the petitioners / prior allottees for the reason that if the written down value as on 31.03.2015 was to be considered, the capital cost of the petitioners / prior allottees for the purposes of compensation would have been further reduced on account of depreciation. It was also submitted that after the cancellation of mines by the Supreme Court, there was no question of the prior allottees developing the mine further as they were well aware that they were to hand over possession of the coal blocks on 31.03.2015 and the period of six months was given by the Supreme Court to enable the Central Government and Coal India Limited to adjust to the changed situation and also to provide adequate time to the prior allottees to adjust and manage their affairs.

18. With regard to exclusion of rehabilitation and resettlement costs from the compensation, it was submitted that the definition of "mine infrastructure" under Section 3(1)(j) of the said Ordinance, was an inclusive definition and though the Committee had, in the view of the respondents, rightly excluded the said items, such an opinion was always open to review before the Tribunal in the resolution of any dispute under Section 27 of the said Ordinance. Alternatively, it was submitted that the reason why expenses which may have been incurred towards various components other than the cost of land were not included within the "mining infrastructure" was that the same were a pre-requisite for exploiting the natural reserves. It was within the knowledge of each of the prior allottees before seeking the allotment from the Screening Committee (under the old regime) that the expenditure in any case would have to be incurred whether they get the mine or not. Such expenditure was in the nature of an eligibility cost and as such the prior allottees could not be permitted to be enriched for the same.

19. With regard to the contention of the petitioners that the impugned provisions were violative of Articles 300-A and 14 of the Constitution of India, it was submitted that Article 300-A stipulated that no person shall be deprived of his property, save by authority of law. The transfer and the vesting of the land of the prior allottee to the Successful Bidder under the said Ordinance and of mine infrastructure were clearly under the authority of law. The manner of computation of the land was in terms of the sale deeds along with a reasonable rate of interest and in the case of mine infrastructure, the same was based on the written down value reflected in the statutorily audited balance sheet of the previous financial year. Thus, the computation was clearly reasonable and represented a just and fair amount for the same. There was no question of any arbitrariness or discrimination or violation of Articles 14 or 300-A of the Constitution. It was submitted that there is no requirement for the payment of market value as long as the compensation is reasonable and fair. It was submitted that a law can be struck down by courts on two grounds only:- (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in the Constitution. A reference was made to the decisions in the

cases of *State of A.P. and Others v. McDowell & Company and Others*: 1996 (3) SCC 709 (para 43) and *Kuldeep Nayar v. Union of India*: 2006 (7) SCC 1 (para 96). It was submitted that none of the two grounds existed in the present case and, particularly, when the right to property is no longer a fundamental right.

20. Finally, it was submitted on behalf of the respondents that the said Ordinance (and now the Act), fell under Entry 54 of List I of the Seventh Schedule to the Constitution of India and was for the purposes of giving effect to the policy of the state to secure the Directive Principle laid down in Article 39 (b) of the Constitution and, as such, the said Ordinance would get the protection of Article 31-C of the Constitution and would, therefore, be immune to any challenge on the grounds of Articles 14 and 19 of the Constitution. Reliance was placed on *Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Limited and Another*: 1983 (1) SCC 147.

Rejoinder by the petitioners

21. In rejoinder, the learned counsel for the petitioners, apart from reiterating, in brief, the submissions earlier made by them, contended that the said Ordinance did not fall under Entry 54 of List I of the Seventh Schedule to the Constitution of India and does not give effect to Article 39(b). As such, it would not be entitled to the protection under Article 31-C of the Constitution. Furthermore, it was submitted that the respondents had raised the issue of Article 31-C for the first time in their written submissions filed on 21.04.2015. No such plea had been taken in the counter-affidavit filed on behalf of the Union of India. Therefore, it was submitted that the respondents ought not to be permitted to take up such a plea and, in any event, the plea was a clear afterthought. It was also submitted that the present case related to the deprivation of property of a prior allottee and its vesting directly in favour of a Successful Bidder at a price which discriminates against the prior allottee and in favour of the Successful Bidder. It was submitted that any legislation which seeks to effectuate such an objective has to be struck down as being violative of Articles 14, 19(1)(g) and 300-A of the Constitution of India. It was submitted that the decision in *Sanjeev Coke* (supra) would not be relevant nor would the other decisions referred to by the learned counsel for the respondents in support of their plea under Article 31-C of the Constitution. None of those cases, according to the petitioners, deal with the issue which arises in the present case, that is, of depriving a prior allottee of its property and transferring the same directly to the Successful Bidder at a price which, according to the prior allottees, is discriminatory against them and in favour of the Successful Bidders. It was urged that the transfers in the present petitions were not to give effect to any Directive Principle but was a forcible sale / transfer of property from one private entity to another and clearly was not in furtherance of giving effect to any Directive Principle of State Policy. Therefore, the said Ordinance and, in particular, the impugned provisions would not enjoy the protection under Article 31-C of the Constitution.

Discussion:

22. At this juncture, it would be appropriate to set out the relevant provisions of the said Ordinance:

"3. Definitions.

(1) In this Act, unless the context otherwise requires,-

xxxxxx xxxxxx xxxxxx xxxxxx

(j)"mine infrastructure" includes mining infrastructure such as tangible assets used for coal mining operations, being civil works, workshops, immovable coal winning equipment, foundations, embankments, pavements, electrical systems, communication systems, relief centres, site administrative offices, fixed installations, coal handling arrangements, crushing and conveying systems, railway sidings, pits, shafts, inclines, underground transport systems, hauling systems (except movable equipment unless the same is embedded in land for permanent beneficial enjoyment thereof), land demarcated for afforestation and land for rehabilitation and resettlement of persons affected by coal mining operations under the relevant law;

(k)"nominated authority" means the authority nominated by the Central Government under section 6;

xxxxxx xxxxxx xxxxxx xxxxxx

(m)"prescribed" means prescribed by rules made under this Act;

(n) "prior allottee" means prior allottee of Schedule I coal mines as listed therein who had been allotted coal mines between 1993 and 31st day of March, 2011, whose allotments have been cancelled pursuant to the judgment of the Supreme Court dated the 25th August, 2014 and its order dated 24th September, 2014 including those allotments which may have been de-allocated prior to and during the pendency of the Writ Petition (Criminal) No.120 of 2012.

xxxxxx xxxxxx xxxxxx xxxxxx

8. Nominated Authority to issue vesting order or allotment order. -

(1) The nominated authority shall notify the prior allottees of Schedule I coal mines to enable them to furnish information required for notifying the particulars of Schedule I coal mines to be auctioned in accordance with such rules as may be prescribed.

(2) The information required to be furnished under sub-section (1) shall be furnished within a period of fifteen days from the date of such notice.

(3) A successful bidder in an auction conducted on a competitive basis in accordance with such rules as may be prescribed, shall be entitled to the vesting of Schedule I coal mine for which it bid, pursuant to a vesting order drawn up in accordance with such rules.

(4) The vesting order shall transfer and vest upon the successful bidder, the following, namely:-

(a) all the rights, title and interest of the prior allottee, in Schedule I coal mine concerned with the relevant auction;

(b) entitlement to a mining lease to be granted by the State Government;

(c) any statutory licence, permit, permission, approval or consent required to undertake coal mining operations in Schedule I coal mines if already issued to the prior allottee;

(d) rights appurtenant to the approved mining plan of the prior allottee;

(e) any right, entitlement or interest not specifically covered under clauses (a) to (d).

(5) The nominated authority shall, in consultation with the Central Government, determine the floor price or reserve price in accordance with such rules as may be prescribed.

(6) The successful bidder shall, prior to the issuance and execution of a vesting order, furnish a performance bank guarantee for an amount as notified in relation to Schedule I coal mine auctioned to such bidder within such time, form and manner as may be prescribed.

(7) After the issuance of a vesting order under this section and its filing with the Central Government and with the appropriate authority designated by the respective State Governments, the successful bidder shall be entitled to take possession of the Schedule I coal mine without let or hindrance.

(8) Upon the execution of the vesting order, the successful bidder of the Schedule I coal mine shall be granted a prospecting licence or a mining lease, as applicable, by the concerned State Government in accordance with the Mines and Minerals (Development and Regulation) Act, 1957.

(9) A Government company or corporation or a joint venture company formed by such company or corporation or between the Central Government or the State Government, as the case may be, or any other company incorporated in India, allotted a Schedule I coal mine shall be granted a prospecting licence or a mining lease, as applicable, by the concerned State Government in accordance with the Mines and Minerals (Development and Regulation) Act, 1957.

(10) In relation to Schedule II coal mines, the successful bidder which was a prior allottee, shall continue coal mining operations after the appointed date in terms of the approved mining plan, till the mining lease in terms of sub-section (8) is granted, upon the grant of a vesting order and to that extent, the successful bidder shall be deemed to have been granted a mining lease till the execution of the mining lease in terms of the said sub-section.

(11) In relation to Schedule II coal mines, the Government company or

corporation which was a prior allottee can continue coal mining operations after the appointed date in terms of the approved mining plan, till the mining lease in terms of sub-section (9) is granted, upon execution of the allotment order and to that extent, the allottee shall be deemed to have been granted a mining lease till the execution of the mining lease in terms of the said sub-section.

(12) The provisions of sub-sections (1) and (2) and sub-sections (4) to (7) (both inclusive) of this section as applicable to a vesting order, shall mutatis mutandis be also applicable to an allotment order.

9. Priority of disbursal of proceeds.—The proceeds arising out of land and mine infrastructure in relation to a Schedule I coal mine shall be disbursed maintaining, inter alia, the priority of payments in accordance with the relevant laws and such rules as may be prescribed—

(a) payment to secured creditors for any portion of the secured debt in relation to a Schedule I, coal mine which is unpaid as on the date of the vesting order;

(b) compensation payable to the prior allottee in respect of the Schedule I coal mine.

xxxxx xxxxx xxxxx xxxxx

16. Valuation of compensation for payment to prior allottee. -

(1) The quantum of compensation for the land in relation to Schedule I coal mines shall be as per the registered sale deeds lodged with the nominated authority in accordance with such rules as may be prescribed, together with twelve per cent simple interest from the date of such purchase or acquisition, till the date of the execution of the vesting order or the allotment order, as the case may be.

(2) The quantum of compensation for the mine infrastructure in relation to Schedule I coal mines shall be determined as per the written down value reflected in the statutorily audited balance sheet of the previous financial year in accordance with such rules and in such manner as may be prescribed.

(3) If the successful bidder or allottee is a prior allottee of any of the Schedule I coal mines, then, the compensation payable to such successful bidder or allottee shall be set off or adjusted against the auction sum or the allotment sum payable by such successful bidder or allottee, as the case may be, for any of the Schedule I coal mines.

(4) The prior allottee shall not be entitled to compensation till the additional levy has been paid.

xxxxx xxxxx xxxxx xxxxx

27. Dispute settlement and Bar of Jurisdiction of civil courts (1) Any dispute arising out of any action of the Central Government, nominated authority or Commissioner of payment or designated custodian, or any dispute between the

successful bidder or allottee and prior allottee arising out of any issue connected with the Act shall be adjudicated by the Tribunal constituted under the Coal Bearing Areas (Acquisition and Development) Act, 1957.

(2) Where the Central Government is of the opinion that any dispute arising out of any issue connected with the Act exists or is apprehended and the dispute should be adjudicated by the Tribunal referred to in sub-section (1), then, the Central Government may by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, to the Tribunal for adjudication.

(3) The Tribunal referred to in sub-section (1) shall, after hearing the parties to the dispute, make an award in writing within a period of ninety days from the institution or reference of the dispute.

(4) On and from the commencement of the Act, no court or other authority, except the Supreme Court and a High Court, shall have, or be entitled to exercise, any jurisdiction, powers or authority, in relation to matters connected with the Act.

xxxxx xxxxx xxxxx xxxxx

31. Power to make Rules.- (1) The Central Government may, by notification in the Official Gazette, and subject to the condition of previous publication, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

xxxxx xxxxx xxxxx xxxxx

(s) the manner of determination of compensation payable to prior allottee and the lodging of registered sale deeds with the nominated authority under sub-section (1) of section 16;

(t) the method of determination of compensation for mine infrastructure in relation to Schedule I and its reflection in the statutorily audited balance sheet under sub-section (2) of section 16;

xxxxx xxxxx xxxxx xxxxx"

23. Rule 14 of the Coal Mines (Special Provisions) Rules, 2014 is also relevant. The same reads as under:-.

"14. Manner of determination of compensation to the prior allottee and lodging of the registered sale deeds.-

(1) The compensation payable to the prior allottee shall be determined by the nominated authority in accordance with the provisions of section 16 of the Ordinance and for the said purpose the nominated authority may- (a) seek information regarding the written down value of the mine infrastructure as

reflected in the statutorily audited balance sheet in accordance with the provisions of sub-section (1) of section 8 and sub-section (2) of section 16 of the Ordinance; and

(b) seek assistance from the Central Government or experts regarding determination of compensation payable to the prior allottee in terms of sub-section (2) of section 6 of the Ordinance.

(2) The prior allottee shall lodge the registered sale deeds or its certified copy or both with respect to the Schedule I coal mines with the nominated authority in accordance with the provisions of sub-section (1) of section 16 of the Ordinance, within the time specified by the nominated authority in this regard."

24. From the above provisions, it is clear that the definition of "mine infrastructure" as given in Section 3(1)(j) of the said Ordinance is an inclusive definition and is, therefore, not close-ended. This means that the expression "mine infrastructure" could also include other items which are not specifically referred to in Section 3(1)(j).

25. Section 8(4) of the said Ordinance makes it clear that a vesting order, when made in favour of a successful bidder, shall transfer and vest upon the said successful bidder:-

(a) all the rights, title and interest of the prior allottee, in the Schedule-I coal mine concerned with the relevant auction;

(b) entitlement to a mining lease to be granted by the State Government;

(c) any statutory licence, permit, permission, approval or consent required to undertake coal mining operations in Schedule-I coal mines if already issued to the prior allottee;

(d) rights appurtenant to the approved mining plan of the prior allottee; and

(e) any right, entitlement or interest not specifically covered under clauses (a) to (d) above.

All these items virtually amount to everything connected with the mine, getting transferred from the prior allottee to the Successful Bidder and, in terms of Section 8(7) of the said Ordinance, after the issuance of a vesting order, the successful bidder becomes entitled to take possession of the schedule-I coal mine without let or hindrance.

26. For the land and mine infrastructure, which is transferred from the prior allottee to the successful bidder, the latter has to pay compensation and the same has to be collected by the respondents and disbursed in the manner indicated in Section 9 of the said Ordinance. The said provision clearly stipulates that the proceeds arising out of the land and mine infrastructure are to be disbursed maintaining the priority of payments in accordance with the relevant laws and rules by first making a payment to the secured creditors for any portion

of the secured debt (in relation to the concerned Schedule-I coal mine) which is unpaid as on the date of the vesting order and only thereafter compensation would be payable to the prior allottee. The valuation of compensation for payment to the prior allottee in the manner to be disbursed as per the priority described under Section 9 of the said Ordinance is provided for in Section 16 thereof. Section 16(1) of the said Ordinance pertains to the quantum of compensation for the land in relation to the Schedule-I coal mine. Section 16(2) provides for the quantum of compensation for the mining infrastructure in relation to such mines.

27. In terms of Section 16(1) of the said Ordinance, the quantum of compensation for land in relation to the coal mine, is to be "as per" the registered sale deeds lodged with the Nominated Authority in accordance with such rules as may be prescribed, together with 12% simple interest from the date of such purchase or acquisition till the date of execution of the vesting order or the allotment order, as the case may be. A large part of the controversy involved in the present petitions is with regard to this manner of computation of the quantum of compensation for land.

28. Rule 14 of the said Rules and, in particular, Rule 14(2) stipulates that the prior allottee shall lodge the registered sale deeds or its certified copies or both with respect to the concerned mines with the Nominated Authority in accordance with the provisions of Section 16(1) of the said Ordinance, within the time specified by the Nominated Authority in this regard. Reading Section 16(1) and Rule 14(2), it appears as if the two provisions have a circular reference. In Section 16(1), the expression used is "in accordance with such rules as may be prescribed" and in Rule 14(2), the expression used is "in accordance with the provisions of sub-Section (1) of Section 16 of the Ordinance". We are of the view that although this appears to be a case of circular reference leading to nowhere, it is actually a case of unhappy drafting. The expression "in accordance with such rules", as appearing in Section 16(1) is, in our view, only in respect of lodgment of the sale deeds with the Nominated Authority and Rule 14(2) prescribes that the registered sale deeds are to be lodged either in original or by way of certified copies or both with the Nominated Authority within the time specified by the Nominated Authority in this regard. The expression "in accordance with the provisions of sub-section (1) of Section 16 of the Ordinance", used in Rule 14(2) is, in our view, mere surplusage inasmuch as the quantum has, in any event, to be determined as given in Section 16(1).

29. Reading the provisions of Section 16(1) with Rule 14(2), it is evident that the quantum of compensation for a land in relation to the concerned coal mine is to be "as per" the registered sale deeds (whether in original or through certified copies or both) which are to be lodged with the Nominated Authority within the time specified by such authority. The quantum is to be computed as per the registered sale deeds, together with 12% simple interest from the date of such purchase or acquisition till the date of issuance of the vesting order or the

allotment order, as the case may be.

30. When all the rights, title and interest in the land in question are to be transferred from the prior allottee to the successful bidder, it cannot be expected of the Legislature (or the Government) to make a provision designed to enrich the successful bidder at the cost of the prior allottee. Such enrichment would be unjust and is to be avoided as then, it would amount to being discriminatory and arbitrary and violative of Article 14 of the Constitution of India. It must be remembered that the mining lease had been annulled by the Supreme Court and the mines were to be re-allocated in a fair, just and transparent manner. This certainly did not mean that the land was to be confiscated or some penalty qua the land was to be imposed. In fact, even Section 16 speaks of "Compensation", which would obviously have to be fair, just and reasonable. Otherwise, it would not amount to "compensation" at all. Unfairness and arbitrariness can be avoided if a just, fair and reasonable amount by way of compensation is awarded for the land in question. This may be and, usually is, the market price or the market value of the said land. It may well be that the quantum of compensation for the land based on the registered sale deeds along with 12% simple interest per annum is a just and fair compensation as it is equal to the market value or is very close to it. But, this may not necessarily be the case. By fixing a rigid formula of the value of the land as per the historical value given in the sale deeds together with 12% simple interest may operate unfairly against the prior allottee and to the benefit of the Successful Bidder.

31. Whenever there is a challenge to the validity of a provision on the ground that it is ultra vires the Constitution, it is well-settled that the courts must attempt to read the provision in such a manner which would uphold its validity and avoid an interpretation which would compel the court to declare it as invalid. In our view, all the arguments with regard to arbitrariness and discrimination vis-?-vis Section 16(1) of the said Ordinance can be put aside by interpreting Section 16(1) to mean that the quantum of compensation for the land in relation to Schedule-I coal mines would be "based on" the registered sale deeds and together with 12% simple interest thereon per annum only as a bench mark. If the prior allottee is able to produce tangible evidence before the Nominated Authority that the fair market value of the land on the date of the execution of the vesting order was more than the said bench mark figure, then the prior allottee ought to be entitled to the same. Of course, the determination would be subject to review under the adjudicatory process stipulated in Section 27 of the said Act by the Tribunal and perhaps, ultimately, by the High Courts and the Supreme Court. The point being that the successful bidder ought not to get the land for a song and, that too, at the expense of the prior allottee. Interpreting in the above manner, we uphold the validity of Section 16(1).

32. Insofar as the quantum of compensation for mine infrastructure is concerned, this does not offer much difficulty because of the fact that the definition of mine infrastructure is an inclusive one and is not close-ended as

rightly submitted by the learned counsel for the respondents. If certain items, which, according to the prior allottees, have not been specifically mentioned as constituents of mine infrastructure in the definition, it will always be open to them to raise an issue with regard to the same and get it adjudicated by the Tribunal under Section 27. Thus, leasehold rights in the land or surface rights qua the land, may have a value and could possibly be included in "mine infrastructure".

33. Section 16(2) prescribes that the quantum of compensation for mine infrastructure shall be determined as per the written down value reflected in the statutorily audited balance sheet of the previous financial year. Here again, the quantum of compensation, in our view, has to be determined on the "basis" of the written down value as reflected in the statutorily audited balance sheet of the previous financial year (i.e., 31.03.2014). But, this does not mean that the compensation has to be computed as equal to the written down value as on 31.03.2014, though, that shall form the basis of the determination of quantum of compensation. We feel that the valuation of the mine infrastructure should be done as on the date of execution of the vesting order or the allotment order, as the case may be. The date of 31.03.2014 is to be taken only as the date for fixing the bench mark as that would be the date of the latest statutorily audited balance sheet. Whatever has transpired thereafter and goes towards affecting the quantum of compensation for mine infrastructure, must also be taken into account - whether it helps the prior allottee or not. The essence being that when the mine infrastructure changes hands from the prior allottee to the successful bidder, neither of them gains at the other's expense. Therefore, the contention on the part of the respondents to take only the figures as on 31.03.2014 and stop at that would not be the correct manner of interpreting and working the provisions of Section 16(2) of the said Act as that would run the risk of being declared as discriminatory and arbitrary. Therefore, Section 16(2) of the said Ordinance, if interpreted in the manner indicated by us, there could be no challenge under Articles 14, 19 or 300-A of the Constitution.

34. Since, we have interpreted the provisions of Section 16 of the said Ordinance and Rule 14 of the said Rules in a manner that steers the provisions clear from the risk of being tainted with arbitrariness and thereby being hit by Article 14 of the Constitution, the need to discuss the arguments and counter-arguments in the context of Article 31-C of the Constitution does not arise.

Conclusion:-

35. Section 16 of the said Ordinance and Rule 14 of the said Rules are to be interpreted and worked in the manner indicated above. As such, they cannot be held to be violative of Articles 14, 19(1)(g) or 300-A of the Constitution. It is open to the individual petitioners to raise disputes with regard to the quantum of compensation, if the same has not been done in the manner indicated above, before the Tribunal which has been specifically indicated for this purpose under Section 27.

36. The writ petitions are disposed of in the above terms. All pending applications also stand disposed of. There shall be no order as to costs.