(1986) 12 AHC CK 0017

In the Allahabad High Court

Case No : First Appeal No. 279 of 1976

Jagdeo Sahai APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 10-12-1986

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 14(4), 19(4), 20, 24, 3

Citation : (1987) 1 AWC 692

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.N. Sapru, J.—The only question in this appeal by the Plaintiff-Appellant is whether the suit instituted by the Plaintiff in the civil court was within the jurisdiction of the civil court or not. The jurisdiction of the civil court was questioned, inter alia, on the ground that the claim was barred by the provisions of Section 20 of the Coal Mines (Nationalisation) Act, 1973 (hereinafter referred to as the Act). The trial court upheld the objection to the jurisdiction of the civil court and dismissed the suit.

2. The Plaintiff came with the allegation that M/s. Assam Railway and Trading Company Limited was liable to pay a sum of Rs. 23,841 to the Plaintiff in respect of an old transaction between the parties before coming into force of the Act, i.e. the claim which arose before the appointed day i.e. 1-5-1973. The learned trial court took the view that the only remedy to the Plaintiff was to file a claim petition u/s 20 of the Act which provides that every person having a claim against the owner of the coal mine shall prefer such claim before the Commissioner within thirty days from the specified date. The Act provides for the manner in which claims against ex-owner of the coal mine will be adjudicated upon by the Commissioner and for the payment of the admitted claim out of the amount credited to the account of a coal mine. It is further provided in Section 24 that where such amount is insufficient to meet in full the claims admitted by

the Commissioner the claims shall abate in equal proportions and be paid accordingly.

3. The Act provides in Section 3 that from the appointed day, the right, title and interest of the owners in relation to the coal mines specified in the schedule shall stand transferred to and shall vest absolutely in the Central Government free from all incumbrances. Then Section 7 of the Act provides in Sub-section (1) that "every liability of the owner, agent, manager or managing contractor of a coal mine, in respect of any period prior to the appointed day, shall be the liability of such owner, agent, manager or managing contractor, as the case may be, and shall be enforceable against him and not against the Central Government or the Government Company". Thus u/s 7(1) the liability of the former owner is preserved as against him but not against the Central Government.

4. Then we come to Chapter III of the Act, It provides for payment to the owner of coal mine an amount equal to the amount specified against it in the fifth column of the Schedule. Then we come to Chapter VI which deals with Commissioner of Payments. Broadly the scheme of the Act is that out of the amount payable to the owner of the coal mine claims which arise out of the transactions before the appointed day which are admitted by the Commissioner shall be paid over to the claimants and the amount payable to the owner shall be debited to that extent u/s 8 of the Act. This is made dear by Sub-section (4) of Section 14 of the Act read alongwith its proviso. Sub-section (4) of Section 19 is reproduced below:

19(4). The liabilities of the coal mine (not being liabilities arising out of advances made by the Central Government or the Government Company), which could not be discharged by the appointed day, may be discharged by the Central Government or the Government Company up to the specified date, and every payment as made shall be included in the statement of accounts as on the day immediately before the appointed day, indicating therein the period in relation to which the payments were made:

Provided that the liabilities in relation to the period prior to the appointed day, which have not been discharged on or before the specified date, shall be the liabilities of the owner of the coal mine.

5. Learned Counsel for the Respondent has argued that Section 20 of the Act provides that every person having a claim against the owner of a coal mine shall prefer such claim before the Commissioner within thirty days from the specified date. It then provides that the Commissioner shall adjudicate upon such claims and then provide for disbursement of the amount of claim admitted by him to the claimants. Apparently a person having a claim against the ex-owner of the mine can approach the Commissioner and get his claim adjudicated upon and get the payment. However, the Act has not shut out the remedy of the claimant by having its claim adjudicated upon by the civil court. There is absolutely nothing in any of the provisions of the Act which impliedly ousts the jurisdiction of the

civil court to entertain and adjudicate upon the claims against the owners of the coal mines in respect of the liability incurred before the appointed day.

6. It is well settled that the jurisdiction of a civil court can be ousted either by express provisions of law or by necessary implication. Ouster of jurisdiction is not to be lightly inferred,

7. Similar questions came up before the Calcutta and Bombay High Courts who have taken the view that under the Act a claim against an ex-owner of a coal mine before the appointed day can be adjudicated upon by the Civil Court. See in this connection, the decisions of the Calcutta High Court in the cases of The Indian Cable Co. Ltd. Vs. Lodna Colliery Co. (1920) Ltd., and Barakar Coal Company Limited v. N.C. Mehta AIR 1977 Cal 198 (NOC) and of the Bombay High Court in the case of Oriental Coal Co. Ltd. Vs. Mohanlal Kisnlal and Another, .

8. In this view of the matter, I find that there is no express ouster, or by necessary implication, of the jurisdiction of the Civil Court.

9. In the result the appeal succeeds and is allowed. The impugned decree of the trial court is set aside and the matter is remanded to the trial court for decision of the matter on merits.

10. At this stage Sri S.N. Venna appearing for the Respondent No. 3 stated that a claim petition has been filed by the Plaintiff u/s 20 of the Act after the decision of the suit and the claim has been admitted by the Respondent No. 3. The court will take into account any subsequent development in the case including any payment which may have been made by the Commissioner to the Plaintiff.

11. The costs of the appeal will be taxed at the time of decision of the matter by the trial court.

