

(1964) 10 PAT CK 0003

In the Patna High Court

Case No : Misc. Judl. Case No. 643 of 1964

Khas Karanpura Colliery Ltd.

APPELLANT

Vs

The Union of India(UOI)

RESPONDENT

Date of Decision : 30-10-1964

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 4(1), 4(4)

Citation : AIR 1965 Patna 305

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : R. Choudhary, S.C. Banerjee and S.K. Mazumdar, for the Appellant;
Govt. Advocate and Bindabashini Prasad Sinha, for the Respondent

Final Decision : Allowed

Judgement

Untwalia, J.—The petitioner, Khas Karanpura Colliery Limited, has obtained a rule from this Court against the respondent, the Union of India--the Ministry of Steel, Mines and Fuel,--to show cause why the notification No. S. O. 2991 dated 9th October, 1963, published in the Gazette of India dated October 19, 1963, a copy of which is annexure C to the writ application, be not quashed by grant of an appropriate writ and why the respondent be not restrained from taking any action on the strength of the said notification issued u/s 4(1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (Central Act XX of 1957), hereinafter called the Act. Cause has been shown by the respondent by filing counter-affidavits sworn by some officers of the National Coal Development Corporation, a Government of India undertaking, for whose benefit the notification has been issued, and by the learned Government Advocate, who opposed the rule at the time of its hearing.

2. The petitioner claims to have obtained a mining lease of a block of land measuring approximately 1401 bighas in mauza Sael in the district of Hazaribagh on the terms and conditions mentioned in the Indenture of Lease dated the 8th July, 1949, effective from a back date, i.e., the 27th of September, 1946. The

petitioner further claims to have opened the mine after obtaining necessary permission from the authorities and commenced mining operation in the demised block of land from December, 1947. The colliery is known as the Khas Karanpura Colliery. The petitioner's further case is that It has spent about fourteen lacs of rupees in developing the mine, which includes the cost of buildings, machinery, plants, railway siding, tools, implements, driving inclines, boilers and premium paid for obtaining the leasehold right. The railway siding was opened in April 1952, and despatches from the said siding commenced from June, 1952. The block of land contains several coal seams commonly known as Argada Seam, Upper Siwana Seam, Karse Seam, and Sirka Beam.

The petitioner, since June, 1952, has raised about 623650 tons of coal, upto February, 1964, and despatched 571688 tons as detailed in the statement, a copy of which is annexure A to the writ application. The petitioner claims to be working and carrying on mining operation in the entire block of land as one unit by means of inclines and quarries, which have been driven and dug by it (petitioner) for the purpose of raising coal. It has further obtained supply of electricity and the electric equipments have been placed in the said coal land with necessary accessories. A plan of the demised block known as Khas Karanpura Colliery showing the underground work as well as the surface features on which various constructions done by the petitioner are existing, has been annexed with the writ application and marked annexure B. The entire land is being worked as one unit known as Khas Karanpura Colliery In accordance with the various Statutes, Rules and Regulations governing the working of the coal mines. According to the petitioner, the mine has been worked continuously since 1947 and it is not a dormant or unworked mine or land justifying acquisition of it or any portion of it by the Central Government in exercise of the power vested in It u/s 4(1) of the Act. After the issue of the notification in October, 1963, the respondent is said to have taken action in pursuance of it upon the petitioner's land in March, 1964, and hence the present application was filed on 23rd of March, 1964.

3. On 25-3-64 when the application was admitted by this Bench, the operation of the impugned notification was stayed. On 2-6-64 an application supported by an affidavit sworn by the Legal Inspector employed under the National Coal Development Corporation was filed on behalf of the respondent alleging that the respondent, after the order of stay passed by this Court, had stopped prospecting In the land but the petitioner has started driving the inclines, etc., in the area concerned. Hence a prayer was made to direct the petitioner to maintain the status quo. In this application, it was stated in the 6th paragraph that the respondent was going to file a counter-affidavit to state that "they have not acquired the working areas of the Colliery concerned for the purpose of prospecting and they are legally within their rights to notify unworked areas under the Coal Bearing Areas (Acquisition and Development) Act, 1957". The counter-affidavit dated 26-6-64 was tiled by the petitioner by way of reply to the said application. During the course of the argument our attention was drawn to,

and stress was laid on behalf of the respondent by the learned Government Advocate upon, certain statements made in this counter-affidavit.

It will be better to refer to them at this stage. In the 4th paragraph, it is stated that out of 1401 bighas of coal land, about 1200 bighas of coal land have been notified to be acquired by the impugned notification. The block of land contains several coal seams more than 10 in number named in the said paragraph of the counter-affidavit, and it is stated that the petitioner has got permission from the Mines Department and Coal Board to work only 4 seams, the ones named in the writ application. While controverting the allegation of the respondent that the petitioner was not maintaining the status quo after having obtained the stay order, it was stated by it that there is an incline as well as two pits which have been driven to a depth of 6 feet and 30 feet respectively long before the impugned notification was issued, and the said incline and the pits have been shown as proposed incline and trial pits in the plan (annexure B) filed along with the writ application, and that "it will take about three months to touch coal through this incline and in the next two years the petitioners will not be able to work in more than 10 to 12 bighas of coal land out of the 1200 bighas notified under the Act." in reply to the respondent's assertion in its application dated 2-6-64 that the notification in question is perfectly valid and legal, it was further stated in paragraph 9 of the counter-affidavit dated 26-6-64 that the "plan attached with the main petition will show that there are Dhowras, coolies-sheds, tram line, roads, offices, engine sheds, electric line, posts, etc. over the entire 1401 bighas of coal land, which is being "developed and worked as a single unit".

4. In the counter-affidavit filed on behalf of the respondent on 1-7-64 sworn by Shri Pran Nath Kakar, Deputy Superintendent of Colliery, employed under the National Coal Development Corporation, in reply to the main writ application, the facts stated either in the writ petition or in the counter-affidavit dated 26-6-64 filed on behalf of the petitioner, do not seem to have been disputed. No portion of any details given in the plan (annexure B) seems to be in dispute. It ought to be stated here that in the said plan the area excluded from the notification has been shown within the yellow lines drawn in the plan and the rest of the area is sought to be acquired on the basis of it. The plan, shows that outside the yellow lines is the area containing bungalow and staff quarters, labour quarters, office of the Company, colliery railway siding, depots, power sub-station, power transmission lines, colliery roads to depots and office. A look at the plan would show that the demised land is to the south of the river Damodar, on the southern extremity of which is a metalled road and on the eastern side of the block passes the Patratu-Damodar Branch of the Eastern Railway.

The area sought to be excluded from acquisition is, more or less, shown in the plan as Argada Quarry No. 2, Sirka Quarry, Kurse Seam Workings and Upper Semana Seam Workings. In this background of the facts just stated with reference to the plan (annexure B), I would now advert to the stand taken by the respondent in the counter-affidavit of Shri Pran Nath Kakar. In the 7th

paragraph, it is stated that:

"... no portion of the area, which has been notified u/s 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, was ever worked at all nor the notified areas or any portion of them were being actually worked at the date or nearabout the date of the notification u/s 4 of the Act. (No actual mining operation was being actually carried on). No mining operation, even if carried on, on the notified areas would have been in conformity with the provisions of the mining Act and the Rules thereunder, inasmuch as the necessary permission for commencing mining operations in regard to those notified areas was ever obtained by the petitioner."

In the 8th, paragraph of the counter-affidavit the deponent has stated:

"That with reference to the plan, I state that the portions in the said plan shown by hatched lines constitute the area on which mining operations are actually being carried on at present by the petitioner and having regard to even the future developments of the area under working a larger area around it has been excluded from the notification u/s 4, which has been indicated in the plan as bounded by yellow lines. Two other similar blocks, namely, Sirka and Argada, also shown in the said plan as bounded by yellow lines have been excluded from the notification, although they are not necessarily liable to exclusion, because they are not being actually worked now, but have been worked sometime in the past. Besides the excluded areas, no mining operation has ever been carried on in regard to the other areas shown in the map. In other words, no mining operation was "ever carried on the area notified u/s 4 of the Act."

In the opinion of the deponent of the counter-affidavit, "the areas excluded from the notification themselves constitute self-sufficient working units. It is, therefore, "misleading and incorrect to state that the whole of the area which is the subject-matter of the petitioner's lease constitute a single unit. The said area contains numerous seams and the lands containing different independent seams are necessary parts of separate units even for the purpose of mining operations." An affidavit in reply sworn on 18-8-64 was filed on 2-9-64 when the hearing of this case commenced. A copy of this affidavit in reply was served upon the respondent earlier and no further affidavit was filed- on its behalf on 3-10-64 when the adjourned hearing of the case was resumed. In this affidavit in reply it has been reiterated on behalf of the petitioner that the entire land demised tinder the Indenture of Lease continuing different seams constitutes one unit and it is wrong to say that the different seams constitute separate units. The petitioner has got permission from the Department of Mines and Coal Board to work the four seams named in the writ application and the said seams occur throughout the entire property of the petitioner including what has been notified u/s 4 of the Act.

5. From the statement of facts mentioned above with reference to the various applications and. affidavits filed on behalf of the parties, I think, most of the

facts do not seem to be in controversy between them. The main controversy seems to be as to whether on those facts the Central Government can give notice of its intention to prospect for coal in the land of the petitioner covered by the impugned notification, issued u/s 4(1) of the Act, by excluding therefrom only that portion, of the land which it proposes to exclude under Sub-section (4) of Section 4 of the said Act. On the one hand, it is claimed on behalf of the petitioner that the entire area must be excluded, while on the other hand, the respondent's case is that only that area where seams have been worked or are being worked is liable to be excluded and no further. This controversy has to be resolved with reference to the various provisions of the Acts, Rules and Regulations concerning mines and specially the coal mines. I shall state and decide a preliminary objection raised on behalf of the respondent in regard to the maintainability of the present writ application at a later stage.

6. The preamble and the various provisions of the Act would show that chiefly and mainly the Act provides for the acquisition by the State of unworked land containing or likely to contain coal deposit, or of dormant or unworked mines in the land in respect of which mining leases have been granted and the mines have either not been worked or their working has been abandoned. In *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, it has been held by the Supreme Court that the expression "unworked lands" would include not only virgin lands but also lands on which mines may have been opened and worked sometime in the past but working on those mines was either discontinued or abandoned; that is to say, it would include dormant mines also. On finding that the two collieries concerned in that case were dormant for quite a considerable period and were thus unworked mines, Mudholkar, J., delivering the judgment on behalf of the Court held that they could be legally the subject-matter of a notification u/s 4(1) of the Act.

Following this decision, this Bench held in *Bishwanath Prasad Vs. National Coal Development Corporation (Private) Ltd.*, that since the working of the mine of the petitioner in that case also had been abandoned or discontinued long before the issue of the notification under the Act and land comprised in the petitioner's colliery in respect of which the notification had been issued by the Central Government was not the land in which coal mining operations were carried on the date of the notification and hence the Central Government was not obliged to exclude that land from it. I may incidentally state that the decision of this Court in *Bishwanath Prasad Vs. National Coal Development Corporation (Private) Ltd.*, was upheld by the Supreme Court in *Biswanath Prasad Vs. Union of India (UOI) and Others*, :

7. The question which falls for our decision in the instant case, however, is quite different. Here, the Khas Karanpura Colliery is a working colliery. The mining operations in it are being carried on in conformity with the relevant provisions of the enactment, rules or orders concerning the coal mines. The mine as a whole is not an abandoned or dormant mine. Even then, the stand on behalf of the

respondent is that it has power to proceed against "unworked area" of the mine comprised in the petitioner's colliery and it is not bound to exclude such areas under Sub-section (4) of Section 4 of the Act. The question is; is this stand justified and supported by the provisions of the Act? Sub-section (4) of Section 4 of the Act provides :

"In issuing a notification under this section the Central Government shall exclude therefrom that portion of any land in which coal mining operations are actually being carried on in conformity with the provisions of any enactment, rule or order for the time being in force or any premises on which any process, ancillary to the getting, dressing or preparation for sale of coal obtained as a result of such operations is being carried on are situate."

Apart from the question as to what portion of the land can be said to be such in that coal mining operations are actually being carried on, it is manifest that the Central Government has not taken into consideration the second part of the provision contained in Sub-section (4) as obviously the land containing premises, on which process ancillary to the getting, dressing or preparation for sale of coal obtained as a result of mining operations is being carried on, has not been excluded. The office, the labour quarters, the railway siding, the depots, the roads etc., everything scattered throughout the area covered by the mining lease, are covered by the impugned notification and have not been excluded under Sub-section (4). Reading the two parts of this Sub-section together, it is clear to me that what has to be excluded by the Central Government is the entire land comprised in, and forming part of, the working colliery or the mine, which, on the facts of this case, is the entire demised area.

I must guard myself against being understood as saying that in all cases the entire land covered by a mining lease must be held or deemed to be a working colliery or mine even if mining operations are separately being carried on in a, portion of it as a self-contained unit with all premises on which any process ancillary to the getting, dressing or preparation for sale of coal obtained as a result of such operations, is being carried on. I am conscious that in view of the theme of the Act and specially the provision of law contained in Section 13(3), even a part of the land covered by a mining lease can be proceeded against under the Act. But that, in my opinion, will only be possible if it does not form part of the working colliery or mine operated as a unit. It will be a travesty of justice and a flagrant encroachment upon the rights of the coalmine owners if it be held that the Central Government can acquire under the Act unworked area of a mine or a colliery even though it forms part of the unit of the land in which coal mine operations are actually being carried on--unit in the commercial and the legal sense and in the sense it must be understood with reference to the provisions contained in second part of the 4th Sub-section of Section 4 of the Act.

Learned Government Advocate at one stage argued with reference to the statement made on behalf of the petitioner in the counter-affidavit dated 26-6-6-1 that the petitioner, according to its own estimate, will be working 10 to

12 bighas of coal out of 1200 bighas notified under the Act in 2 years" time, so in the economic and national interest of India the unworked area of the mine like that of the petitioner should be acquired; that is to say, if the colliery or the mine is mismanaged or not properly worked and exploited to the fullest extent, the mine should be allowed to be acquired by the Government. I am afraid Act XX of 1957 is not meant to achieve this object and it is not permissible for the Court to legislate and provide for such a contingency in the garb of interpreting the provisions of the Act. I may also add that the facts referred to above were stated in the counter-affidavit filed on behalf of the petitioner in a different context and do not necessarily lead to the conclusion as suggested by the learned Government Advocate.

8. The word "mine" has been defined in Clause (j) of Section 2 of the Mines Act, 1952 (Act 35 of 1952). It means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes various things enumerated in Sub-clauses (i) to (x) of the said clause. u/s 16 of the said Act and regulation 3 of the Coal Mines Regulations, 1957, the owner, agent or manager of a mine has to give before the commencement of any mining operation to the various authorities mentioned in Sub-section (1) of Section 16 notice in writing in form I given in first schedule of the said Regulations. Primarily the permission is required to open a mine and to carry on the mining operations therein, Regulation 6 requires the person concerned to give notice when it is intended to abandon a mine or seam or discontinue working thereof; and, under regulation 7 notice of reopening of a mine or seam after abandonment or after discontinuance for a period exceeding 60 days has got to be given.

Under Rule 39(1) of the Coal Mines (Conservation and Safety) Rules, 1954 made by the Central Government in exercise of the powers conferred by Section 17 of the Coal Mines (Conservation and Safety) Act, 1952 (Act xxii of 1952), no coal mine, seam or section of a seam can be opened and no coal mine, seam or section of a seam, the working whereof has been discontinued for a period of 6 months, can be reopened and no operation can be commenced without the prior permission in writing of the Coal Board and except in accordance with such directions as the Board may give. Application for permission to open a seam or section of a seam or reopen a seam which was closed for a period exceeding six months has to be submitted under form No. OR 2 given at page 100 of the Coal Board Manual, 1962. It would thus be noticed that at the commencement of the mining operation in a mine a notice for the opening of the mine has to be given to the authorities mentioned in Section 16 of Act 35 of 1952, and permission of the Coal Board has to be obtained for opening of each seam.

9. "Mining lease" has been defined in Clause (c) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (Act 67 of 1957) to mean "a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose". Clause (d) says "'mining operations"

means any operations undertaken for the purpose of winning any mineral"; and Clause (h) defines "prospecting operations" to mean "any operations undertaken for the purpose of exploring, locating or proving mineral deposits". Under Clause (g) of Section 3, "prospecting licence" means "a licence granted for the purpose of undertaking prospecting operations". Section 8 of Act 67 of 1957 prescribes periods for which mining leases may be granted or renewed, which, in the case of coal, cannot exceed in the first instance 30 years subject to renewal for the same period. u/s 16 of the said Act, all mining leases granted before the 25th day of October, 1949, have to be, soon after the commencement of the Act, brought into conformity with the provisions of this Act and the Rules made under Sections 13 and 18.

Rule 22 of the Mineral Concession Rules, 1960, made by the Central Government in exercise of the powers conferred by Section 13 of Act 67 of 1957 provides that an application for the grant of a mining lease in respect of land in which the minerals vest in the Government, shall be made to the State Government in form I appended to the Rules. One of the compulsory conditions to be provided in a mining lease under Rule 27(1) (f) is-

"unless the State Government for sufficient cause permits otherwise, the lessee shall commence mining operations within one year from the date of execution of the lease and shall thereafter conduct such operations in a proper, skilful and workman-like manner."

The explanation appended to this clause is important and must be quoted:

"For the purposes of this clause, mining operations shall include the erection of machinery, laying of a tramway or construction of a road in connection with the working of the mine."

The various rules contained in the Coal Mines (Conservation and Safety) Rules, 1954, would show as to how in a mine mining operations have got to be slowly and gradually carried on for conservation and safety of the minerals and the mine. I would refer to Sub-rules (2) and (3) of Rule 39 providing for the grading of coal by the Board before granting the permission to open the mine or the seam and the powers of the Board provided in Rules 35 to 38 for the safety and conservation. Regulation 59 of the Coal Mines Regulations, 1957, requires the owner, agent or manager of every mine to keep surface and underground plans showing the various things mentioned in the said regulation, including "a surface plan showing every surface feature within the boundaries, such as telephone, telegraph or power transmission line, water-main, tram-line, railway, road, river, watercourse, reservoir, tank, borehole, shaft and incline opening, open cast working, subsidence and building on the surface". Sub-regulation (2) of regulation 59 says:

"Separate plans and section for the workings of every seam or of every separate section of every seam shall be kept in respect of Clauses (b), (c) and (d) of Sub-regulation (1)".

Sub-regulation (4) (a) (1) reads thus:

"The plans kept under Clauses (a) and (b) of Sub-regulation (1) shall also show the settled boundary of the mine, or where the boundary is in dispute, the boundaries claimed by the owner of the mine and by the owners of the mines adjacent to the disputed boundary".

Regulation 98 onwards contained in Chapter X of the Coal Mines Regulations provide for the method of mine workings, a glance at which would show the cumbrous procedure, process and actions involved In the mine workings.

10. I have briefly referred to the relevant provisions in the various Statutes, Rules and Regulations concerning mines and coal mines, which would clearly show that after obtaining a mining lease the lessee or the sub-lessee has to open the mine and carry on the mining operations in conformity with the provisions of the enactment, rules and orders for the time being in force. And, for opening of each seam, he has to obtain the grading certificate and the permission of the Coal Board. Can it be said that, when the petitioner obtained permission of the Coal Board for opening four seams only in its mine in Khas Karanpura Colliery, it carried on the mining operations in the land where actually it was winning coal from the four seams? Can it be said that the roads, electric transmission lines, railway sidings and various other premises ancillary to the getting, dressing or preparation for sale of coal obtained as a result of such operations were not situate on the land in which coal mine operations were actually being carried on within the meaning of first part of Sub-section (4) of Section 4 of the Act (Act XX of 1957), or, In any event, such land was not liable to be excluded under the second part of the said provision of law?

To my mind, the answer must be given in favour of the petitioner. From the undisputed facts which I have stated above with reference to the various applications, affidavits and specially the plan (annexure B to the writ application), it is manifest that the petitioner Is carrying on the mining operations in the entire land covered by its mining lease as one single commercial unit and the whole of it is liable to be excluded under Sub-section (4) of Section 4 of the Act. It is difficult to accept the argument put forward on behalf of the respondent that the mining operations are actually being carried on in the areas sought to be excluded by the Central Government in the impugned notification; that is to say, only where the actual process of digging coal is going on.

11. In *Hodgson v. Field* (1806) 7 East 613: 103 ER 238 Lord Ellenborough C. J. interpreting the terms of the grant in question In that case, has said at page 620 (at page 241 of the English Reports):

"It seems that the object of the grant was to drain the water from such intended colliery; the local extent and limits of which intended colliery we have no means of defining: but judging from the nature of such works, there seems no reason to give them any other or narrower limit than the boundaries of the continued

property of the grantee, under which the intended colliery might be prosecuted by him, without regard to the closes and pieces of ground under which it might be carried, and who might of course be expected to follow the coal through all the contiguous and connected veins and seams of coal which belonged to him""

(Underlining (here into " ") by me). In *County of Gloucester Bank v. Rudry Merthyr Steam and House Coal Colliery Co.* (1895) 1 Ch 629, Lord Halsbury has pointed out at page 634 that the word "colliery" in its compendious and commercial sense means the Industrial occupation together with the right of managing the business. In Halsbury's *Laws of England Third Edition*, Volume 26, at page 325, Article 679, it is stated:

"The word "colliery" Includes or may include all contiguous and connected veins and seams of coal which are worked as one concern, together with the workings and machinery necessary for working the minerals, and the business of selling the coal worked."

At page 317, it would be found mentioned that:

"The word "mine" is not a definite term, but is one susceptible of limitation or expansion according to the intention with which It is used."

It would thus be noticed that the word "colliery" In its commercial sense includes the business of selling the coal worked and the word "mine" is capable of different meanings in particular context. That seems to be the reason, if I may hazard a surmise, that in Sub-section (4) of Section 4 of the Act neither the word "colliery" nor the word "mine" has been used but reading the two portions of the said sub-section, It Is clear that what is meant to be excluded under it is the land comprised in the colliery or the mine if It forms one unit in the commercial and legal sense with reference to the various enactments, rules and regulations referred to above.

12. I would like to illustrate my interpretation of Sub-section (4) of Section 4 of the Act by two examples. Suppose, as in the instant case, the entire land covered by the mining lease is being worked as one mine or colliery in the sense I have explained above, how will the lessee be able to work the mine if "unworked areas" are acquired under the Act as proposed to be done in the instant case--areas of land containing various parts of the commercial unit meant for, and connected with, the mining operations In the mine? The petitioner after excavating and raising coal in Kurse and Upper Siwana Seams, cannot take them for despatch to the depot near the colliery railway siding. The persons working in the colliery either in its office or in the field and living in the labour quarters cannot be allowed to so live" and work after the acquisition of the land containing the offices and the quarters. To me, it seems it can never be the Intention of the framers of the Act.

I will take another example of grant of a mining lease In respect of land, say, measuring about 5000 bighas. The lessee has set up one industrial and

commercial unit consisting of railway sidings, depot, office, labour quarters, etc., and has actually carried on the digging and raising of coal in an area of land, say, measuring about 1000 bighas in one corner of the entire demised land. In such a situation, it is possible to take the view that the Government can proceed against, and acquire the remaining 4000 bighas of land, which do not form part of the colliery or the mine comprised of the land measuring 100 bighas.

13. Learned Government Advocate submitted that the passages from the Halsbury's Laws of England, Volume 26, were cited by late Mr. P. R. Das, learned counsel for the petitioners in *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, along with the decision of the Privy Council in AIR 1931 18 (Privy Council) . I may mention here that the passage which seems to have been cited from Halsbury's Laws of England is at page 330, Article 603, Third Edition, and not at page 630, as mentioned In the AIR report of the case at page 859 (sic) (959?) (column 1), but the Supreme Court old not place reliance upon them and said that:

"Both the decisions of the Privy Council as well as the passage in Halsbury deal with the question of possession and state the law to be that a person can be said to be in possession of minerals contained in a well-defined mining area even though this actual physical possession is confined to a small portion, that is, to the mine which is being actually worked. The decision of the Privy Council as well as the passage in Halsbury are thus not in point."

Counsel, therefore, contended that no help can be sought from the English decisions and the passage at page 325 in Halsbury's Laws of England, Volume 26, cited by Mr. R. Choudhury, learned counsel for the petitioner in this case. I am unable to accept this contention. The Privy Council decision and the passage in Halsbury's Laws of England, Volume 26, cited by late Mr. P. R. Das, were not relevant to the point which fell for decision of their Lordships of the Supreme Court in *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, nor can they be quite relevant for the purpose of deciding the case in hand. But the English decisions which I have referred to above and the passage in the Halsbury's Laws of England occurring at page 325, to my mind, do help in interpreting Sub-section (4) of Section 4 of the Act and lend support to the view I have expressed above.

14. Learned Government Advocate raised a preliminary objection that the stage to decide as to which portion of the land comprised in the petitioner's colliery known as Khas Karanpura Colliery should be acquired will come only after a notification is issued u/s 7 of the Act, whereafter it would be open to the petitioner to file its objection u/s 8. He endeavoured to persuade us not to decide this question at this stage. I am unable to find any force in this argument, On the facts of this case which, as I have said above, are not in dispute, It is clear that the petitioner's right of working the colliery has been infringed and interfered with at this stage by the issuance of the notification u/s 4(1) of the Act by the Central Government and under Clause (b) of Section 5 of the lessee or the

person, claiming through him could not undertake any operation in the land mentioned in the mining lease. That being so, the petitioner can be given the relief if, otherwise it is found entitled to it at this stage; rather, I am inclined to think that the objection of the kind raised by the petitioner, although one could say, can be raised u/s 8, can legitimately be raised for safeguarding the interest of the petitioner under Article 226 of the Constitution of India.

15. In the result, I allow the application and quash the impugned notification dated the 9th of October, 1963, issued by the Central Government contained in annexure C to the writ application by grant of a writ of certiorari. I would further direct that a writ of mandamus should issue against the respondent commanding it to forbear from taking any action on the basis of the said notification, either directly through its officers or through its agents, nominees or the like. In the circumstances of the case, I would make no order as to cost.

Ramaswami, C.J.

16. I agree.