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(1984) 01 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurn. Case No''s. 1575, 1582 and 2462 of 1979

Managing Director, National Coal Development Corporation Ltd. and etc. — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 12-01-1984

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 3(6)
Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 10(1), 10(2), 11, 18A
Mines and Minerals (Development and Regulation) Act, 1957 — Section 25, 9, 9A

Citation : AIR 1984 Patna 280 : (1984) 32 BLJR 311 : (1984) PLJR 261

Hon'ble Judges : Lalit Mohan Sharma, J;Anand Prasad Sinha, J

Bench : Division Bench

Advocate : Balabhadra Prasad Singh, Bindabashini Prasad Sinha and Vishwa Mohan Kumar Sinha, for the Appellant; Ram Balak Mahto, A.A.G., Syed Rafat Alam, Jr. Counsel to A.A.G. and L.S. Sinha, (for Nos. 2 and 3), for the Respondent

Final Decision : Allowed

Judgement

Lalit Mohan Sharma, J.—The common question which arises in these three writ cases is as to whether the petitioner-company is liable to pay to the State of Bihar Dead Rent by reason of the provisions of Section 18A of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (hereinafter referred to as the Acquisition Act'').

2. With the object to establish greater public control over the Coal Mining Industry and its development, the Acquisition Act was passed in 1957. The Central Government has been authorised to make a declaration u/s 9 of the Act that any land or any rights in or over such land should be acquired. On the publication of such a declaration in the official gazette, the rights in or over the land, as the case may be, by virtue of Section 10, vest absolutely in the Central Government free from all encumbrances. The Sub-section (2) of Section 10 provides that where any person has got rights under any mining lease, the

Central Government shall be deemed to have become the lessee under the State Government. The provisions of Section 11 empower the Central Government to direct that the land or the rights in or over the land shall, instead of vesting in the Central Government u/s 10, shall vest in a Government company. The petitioner is such a company. Sections 13 to 17 deal with the liability of payment and method of determination of compensation and other connected provisions. In 1971, Section 18A, which is quoted below, was inserted in the Act by an amendment:

"18A. Payment to State Governments in lieu of royalty -- Notwithstanding anything contained in this Act, where any land or any rights in or over land belonging to a State Government (other than the rights under a mining lease granted or deemed to have been granted by the State Government to any person) vest in the Central Government u/s 10 or in a Government Company u/s 11, the Central Government or the Company as the case may be, may pay to the State Government such sum of money as would have been payable as royalty by a lessee had such land or rights been under a mining lease granted by the State Government."

According to the case of the respondents, the petitioner company is liable to pay Dead Rent. The respondent-Certificate Officer issued a notice (which is Annexure 1 to the writ application) u/s 7 of the Public Demands Recovery Act requiring the petitioner to pay specified sums of money. Three certificate proceedings were thus started. The petitioner denied the liability as also challenged the claims as public demands. The objections were overruled by the orders which have been annexed to the petitions as Annexure 2. The petitioner has filed the present writ applications for quashing the certificate proceedings and Annexures 1 and 2.

3. The areas in question were not subject to any earlier mining lease and vested in the petitioner company on the publication of the declaration u/s 9 of the Acquisition Act by virtue of Sections 10 and 11. The disputed demands have been made on the basis that the Central Government is in the position of a lessee under the State of Bihar and thus subject to the liabilities under Sections 9 and 9A of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as ''the Development Act'').

4. The Certificate Officer held that the petitioner is liable for payment of royalty u/s 18A of the Acquisition Act and the Dead Rent is nothing but the minimum payable royalty. He rejected the argument of the petitioner that the word ''may'' in Section 18A does not create any obligation and the provision is merely enabling so that the Central Government or a Government company may make payment if it so desires.

5. Mr. Balabhadra Prasad Singh, appearing for the petitioner, contended that as a consequence of a notification u/s 9 of the Acquisition Act, the entire interest in the land and the rights in or over the same vested absolutely in the petitioner free from all encumbrances. As there was no mining lease in favour of any

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person, there is no question of the petitioner becoming a lessee. The State Government, having completely divested of all the rights, cannot claim either royalty or Dead Rent. The liability in this regard mentioned in Sections 9 and 9A of the Regulation Act is dependent on a relationship of lessor and lessee. The State Government was entitled only to the compensation u/s 13. As no steps were taken by the State for determination and realisation of the compensation, and representations were made from time to time on the ground that the State had been deprived of large sums of money by way of revenue, Section 18A was introduced in the Act. In essence, it provides for payment of compensation. There cannot be any obligation to pay either royalty or Dead Rent. After a complete extinguishment of all the interest of the State, the legislature advisedly used the word ''may'' so as to enable the Central Government (or a Government company) to make payment if it so chooses. No claim, therefore, can be entertained by the Certificate Officer and enforced against the petitioner. This point was later given up and argument withdrawn by Mr. Singh. The other two questions which were pressed are:

(a) there is no liability on the petitioner to pay Dead Rent; and

(b) a claim u/s 18A cannot be demanded so as to attract the provisions of the P. D. R. Act.

6. The impugned notice and the order of the Certificate Officer described the demand as Dead Rent. Mr. Additional Advocate General, appearing on behalf of the State, also did not suggest otherwise. The question arises as to whether the petitioner can be held to be liable to pay Dead Rent.

7. In the State counter affidavit in C. W. J. C. 2462 of 1979, it has been stated that a relationship of lessor and lessee exists between the State Government and the petitioner-company. This stand does not appear to be correct. As has been pointed out, the present cases do not attract Section 10(2) of the Acquisition Act inasmuch as there were no mining leases. Admittedly, these cases relate to virgin mineral which continues to be unworked till now. The case is governed by Section 10(1) and its language in no uncertain terms states that the entire interest of the State vests absolutely in the Central Government free from all encumbrances. The State is completely divested of all its rights and a relationship of lessor and lessee does not continue between the State and the Central Government (or for that matter the petitioner-company).

8. The next question is; does Section 18A of the Acquisition Act create a right in the State to realise Dead Rent? The language of Section 18A quoted above, while referring ''royalty'' has omitted to include ''Dead Rent'' in the section. ''Royalty'' and ''Dead Rent'' are two separate and distinct liabilities payable by lessees and have been dealt with separately by two sections of the Development Act, that is, Sections 9 and 9A. The rates are also detailed in the second and third schedules respectively. The rate of royalty is related to the quantity of coal to be extracted while Dead Rent is payable area-wise. Royalty is payable on the extracted

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mineral while Dead Rent on area having unworked mineral. The two expressions cannot be treated to refer to a common claim by the State. The distinction between the two has been appreciated and discussed in the decisions in Bherulal Vs. State of Rajasthan and Another, , Sethi Marble Stone Industries and Others Vs. The State of Rajasthan and Another, and Surajdin Laxmanlal Vs. State of M.P. and Others, . The view of the Certificate Officer that royalty includes Dead Rent is, therefore, clearly illegal. It must, therefore, be held that Dead Rent is not payable by reason of Section 18A.

9. The State counter-affidavit in C. W. J. C. 2462 of 1979 suggests that Dead Rent is payable under the provisions of the Mineral Concession Rules, 1960. There is no merit in this plea either. The rules were framed u/s 13 of the Development Act. Clause (i) of Section 13(2) authorises the Central Government to make rules for fixing and collection of Dead Rent etc. The liability to pay Dead Rent arises u/s 9A of the Development Act and not under the Rules. The Rules merely deal with several aspects of this liability already created. It is, therefore, not possible to accept the State''s demand on this basis. So far as the liability u/s 9A of the Development Act is concerned, the same is confined to cases of a mining lease. Since there is no relationship of lessor and lessee between the State and the petitioner, no question of payment of Dead Rent can arise. Mr. Additional Advocate General, who represents the State of Bihar in all these three cases, therefore, very rightly has not relied on the counter-affidavit. For the reasons mentioned above, I hold that the demand for payment of Dead Rent as mentioned in the impugned annexure is illegal.

10. The petitioner''s case that any amount payable u/s 18A of the Acquisition Act cannot be treated as public demand is also well founded. Section 25 of the Development Act, relied on by Mr. Additional Advocate General in support of his argument that the rent, royalty and other sums due to the State Government are liable to be recovered as public demand, is not helpful in the case. The section expressly states that the sum in question must be due to the Government "under this Act or the rules made thereunder or under the terms and conditions of any prospective licence or mining lease." Although for the purpose of determination of the amount payable u/s 18A of the Acquisition Act, the Development Act and the rules may have to be referred to, the money remains payable u/s 18A of the Acquisition Act and not under the Development Act or the Rules of any lease. Since no other provision has been relied on for bringing the liability u/s 18A of the Acquisition Act, within the scope of public demand, the impugned demand in the present cases on that basis and the order under challenge of the Certificate Officer as contained in Annexure 2 series must be held to be without jurisdiction. On this ground also, the writ application is fit to be allowed.

11. In the result, the impugned certificate proceeding including Annexures 1 and 2 are quashed and the writ applications are allowed, but without cos''s.

Anand Prasad Sinha, J.

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