

(1954) 02 PAT CK 0001
In the Patna High Court
Case No : Title Suit No. 105 of 1953

Mineral Development Ltd.

APPELLANT

Vs

The Union of India(UOI) and Another

RESPONDENT

Date of Decision : 16-02-1954

Acts Referred:

Constitution of India, 1950 — Article 19(5)
Mineral Concession Rules, 1960 — Rule 3, 41, 47, 49, 52
Mines and Minerals (Regulation and Development) Act, 1948 — Section 3, 5
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1954 Patna 340

Hon'ble Judges : Ramaswami, J;Choudhary, J

Bench : Division Bench

Advocate : P.R. Das and J. Ghosh, for the Appellant; Govt. Advocate and Bajrang Sahai, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—In this case the plaintiff is Mineral Development, Limited, which is a public limited company incorporated under the Indian Companies Act, having its registered office at Calcutta. On 29-12-1947 the Raja of Ramgarh executed a registered lease in favour of the plaintiff in regard to 3026 villages comprised within the Ramgarh Estate on a Salami of Rs. 16,00,000. The term of the lease was for 999 years and there was an express provision in the lease granting power to the lessee to grant sub-leases.

On 8-9-1948 the Dominion Legislature enacted the Mines and Minerals (Regulation and Development) Act, 1948. The Act received the Governor General's assent on 8-9-1948 but it came into force on 25-12-1949. Rules were framed by the Central Government u/s 5 of the Act for regulating the grant of mining leases. Among other matters the rules provided for the persons by whom applications for mining leases may be made, the authority by which mining leases may be granted and the maximum and minimum area and the period for which a mining lease may be granted. There was also provision in the rules for

fixing the royalties and the minimum rent payable by the lessee. One of the rules prohibited the taking of premium from the lessee in respect of the mining lease. These rules came into force in the Province of Bihar on 25-10-1949.

By a notification u/s 92(1) of the Government of India Act, 1935, the Act and the rules were extended to Chotanagpore by a notification dated 16-1-1950. The plaintiff company granted a sub-lease to Bhagat Singh in respect of 40 acres in Mouza Ratansota and Mouza Barharia for a period of 15 years on 1-2-1950. But the Deputy Commissioner of Hazaribagh challenged the legality of the sub-lease and made a criminal complaint against two of the directors of the plaintiff company under Rule 51 of the Mineral Concession Rules. Rule 51 provided that if a private person grants a mining lease in contravention of any of the provisions or accepts any premium he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to Rs. 1,000 or both.

The plaintiff company therefore brought the present suit for a declaration (1) that the definition of the expression "mining" as provided in the rules did not include the case of sub-leases, and (2) that in any event the rules were unconstitutional since the fundamental right of the plaintiff under Article 19(1)(f) of the Constitution was violated, The Union of India and the State of Bihar who are impleaded as defendants have contested the suit on the ground that the rules are constitutional and valid, that the Act and the rules apply not only to leases but also to the case of sub-leases. They also said that the restrictions imposed by the rules are reasonable and in the public interest and are within the permissible limits under Article 19(5) of the Constitution.

2. The two issues arising in this case are therefore (1) whether the Mines and Minerals (Regulation and Development) Act, 1948 and the Mineral Concession Rules, 1949, apply to sub-leases? and (2) whether the Act and the rules are unconstitutional and void?

3. Mr. P.R. Das commenced his argument by saying that the lease granted by the Raja of Ramgarh in favour of the plaintiff company was dated 29-12-1947 and the Act and the rules could not retrospectively affect the rights of the parties acquired under that lease. Counsel based his argument upon Section 4 (1) of the Act which states --

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

The argument of the counsel was that the Act was not retrospective either by express enactment or by necessary implication & the rights acquired by the plaintiff under the lease granted by the Raja of Ramgarh could not be prejudicially affected. Mr. Das said that as soon as the lease was executed on 29-12-1947 the lessee company acquired a vested right to grant sub-leases to whomever the company liked without any certificate of approval from the Provincial Government and to stipulate for as much Salami and as much royalty or minimum rent as the parties could agree upon. It was contended that these

vested rights acquired by the plaintiff could not be prejudicially affected by the Act & rules which were promulgated on a later date.

Counsel relied in this connection upon the authority of the decision of the Judicial Committee in -- "Colonial Sugar Refining Co. v. Irving (1905) A.C. 359 (A)". The question which arose in this case was whether the Commonwealth Judiciary Act, 1803, had the effect of depriving the plaintiff of the right of appeal to the King in Council in a suit pending when the Act was passed. It was held by the Judicial Committee that the right of appeal was not a mere procedural right but was a substantive right which had vested in the plaintiff at the time the suit was instituted. It was further held by the Judicial Committee that the Commonwealth Judiciary Act was not retrospective in operation and the right of the plaintiff to appeal to the King in Council was not taken away. Counsel also relied upon a recent decision of a Bench of this Court in -- Narayan Prasad Sukul Vs. Raj Kishore Misra and Others, , which lays down the principle in similar terms.

4. In my opinion the argument of Mr. P.R. Das proceeds upon a misconception. The question at issue in the present case is not whether Act No. 53 of 1948 and the rules made under that Act retrospectively affect the lease granted to the plaintiff company on 29-12-1947. The real question presented for determination in this case is whether the Act and the rules prospectively affect the sub-lease granted by the company to Bhagat Singh on 1-2-1950; in other words, the question is whether the expression "mining lease" occurring in the Act and the rules should be properly construed so as to cover the case of a sub-lease granted after the Act and the rules have come into force.

5. Section 3 (d) of the Act defines "mining lease" to mean a lease granted "for the purpose of searching for, winning, working, getting, making merchantable, carrying away or disposing of minerals or for purposes connected therewith, and includes an exploring or a prospecting licence". The expression is also defined in Rule 3 (ii) of the Mineral Concession Rules. Rule 3 (ii) defines "mining lease" to mean a lease to mine, quarry, bore, dig and search for, win, work and carry away any mineral specified therein. The argument on behalf of the plaintiff is that the case of a sub-lease does not fall within the definition in Rule 3(ii) of the Rules or within Section 3(d) of the Act. In my opinion this argument is not correct. There is no difference in legal character between a lease and a sub-lease. It is true that in the case of a lease, the proprietor is the transferor and in the case of a sub-lease the lessee is the transferor. But this does not affect the legal character of the transaction. A lease is the transfer of a right to enjoy immovable property made for a certain time and where the agreement (whether it is called a lease or a sub-lease) vests in the grantee a right of possession for a certain time, it operates as a conveyance and is a lease in the eye of law. In the present case Bhagat Singh has acquired under the sub-lease the right of possession of the mining properties from the plaintiff for a certain time and the transaction must be held to be a lease within the meaning of Rule 3(ii) of the Rules and Section 3(d) of the Act.

It should be noticed in this connection that the Transfer of Property Act does not separately refer to a sub-lease; on the contrary the provisions of Chapter 5 apply to the case of a sub-lease. Chapter 5 is entitled as "Leases of Immovable Property", Section 107 enacts how a lease is to be made. It cannot be doubted that this provision applies to sub-leases. Similarly Section 108 which regulates rights and liabilities of the lessor and lessee, and Section 111 which refers to determination of a lease, also apply to the case of sub-leases. In my opinion the case of a sub-lease of mining rights falls within the definition of "mining lease" u/s 3 (ii) of the Mineral Concession Rules and Section 3(d) of the Act. This view is supported by a consideration of the scope and purpose of the legislation. The principle is that if two alternative constructions of a statute are possible, that construction must be adopted which would promote the object intended by the framers of the Act and the alternative construction must be rejected which would frustrate the object. That is the canon of interpretation laid down in classical terms in -- "Heydone"s case (1584) 3 Co. Rep. 8 (C)".

Let us therefore examine the matter from this aspect. Act 53 of 1948 was promulgated by the Dominion Parliament in exercise of the legislative authority conferred by item 36 of the Union List which states -- "Regulation of Mines for mineral development declared by the Government to be expedient in the public interest". Section 2 of the Act also contains a declaration as to expediency of control by Central Government. Section 2 states --

"It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation of mines and oilfields and the development of minerals to the extent hereinafter provided".

Section 5 makes provision that the Central Government may, by notification in the official Gazette, make rules for regulating the grant of mining leases or for prohibiting the grant of such leases in respect of any minerals or in any area.

Turning to the rules, it is apparent that Chapter 4 imposes a number of restrictions with respect to grant of mining lease in respect of minerals which belong to Government. Chapter 5 imposes similar restrictions regarding grant of mineral concessions by private persons. Rule 41 imposes restrictions of important character. Rule 41 states that in every mining lease the royalty shall be fixed according to the rates specified in the first schedule. The rule also provides that the minimum rent in the contract shall be within the limits specified in the third schedule. The rule further provides that the lessee shall keep correct accounts showing the quantity and other particulars of all minerals obtained and despatched from the mine, the number of persons employed therein. Rule 41 (v) states that the lessee shall commence operations within one year from the date of execution of the lease and shall thereafter carry them on in a proper, skilful and workmanlike manner. Rules 41 (vii) and 41 (x) impose restrictions upon the lessee for insuring safety of a railway, reservoir or other public work.

Rule 47 imposes further conditions in the case of a mining lease granted by

private persons. The rule states that the area of the lease shall not exceed 4 sq. miles and that the length of the area leased shall not exceed four times its breadth. Rule 49 further prohibits the grantor of a mining lease from charging any premium in addition to the royalty and the dead rent specified in the lease. Upon an examination of these provisions, it is manifest that the object of the legislation is to control the activities of the persons who are actually working the mines of winning the minerals whether he is a lessee, assignee or a sublessee, so that there may be proper conservation and development of the mines and minerals in the national interest. The interpretation for which the plaintiff contends is against the whole scheme and purpose of the Act. If the expression "mining lease" is not construed so as to include sub-leases, the provisions of the Act and the Rules would become nugatory. It would be open to a lessee to grant a sub-lease of the mineral rights without any regard to the controlling provisions as regards size of the mine, royalty, dead rent and Salami, and the policy of the Act would be wholly frustrated. It cannot therefore be supposed that the Legislature contemplated that the sub-leases should be exempted from the operation of the Act or the Rules.

It is a sound rule of interpretation that a statute should be so construed as to prevent the mischief and to advance the remedy according to the true intent of the makers of the statute. The principle was, for example, applied by Lord Halsbury in -- *Eastman Photographic Co. v. Comptroller General of Patents, Designs and Trade Marks* (1898) AC 571 (D), where the question was whether the word "Solio" used as a trade mark, was an invented or a descriptive word. In examining this question Lord Halsbury said.

"Among the things which have passed into canons of construction recorded in "Heydon's case (C)", we are to see what was the law before the Act was passed, and what was the mischief or defect for which the law had not provided, what remedy Parliament appointed and the reason or the remedy."

At page 575 Lord Halsbury proceeded to state-

"Turner L.J. in "*Hawkins v. Cathercole* (1855) 6 M &G 1 (E), and adding his own high authority to that of the Judges in -- "*Stradling v. Morgan* (1584) 1 Plowd 199 (P), after enforcing the proposition that the intention of the Legislature must be regarded, quotes at length the judgment in that case: that the judges have collected the intention "sometimes by considering the cause and necessity of making the Act sometimes by foreign circumstances" (thereby meaning extraneous circumstances), "so that they have ever been guided by the intent of the Legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion." And he adds: We have therefore to consider not merely the words of this Act of Parliament but the intent of the Legislature, to be collected from the cause and necessity of the Act being made from a comparison of its several parts, and from foreign (meaning extraneous) circumstances so far as they can justly be considered to throw light upon the subject".

6. Upon the first issue therefore I hold that the Act and the Rules apply to the case of subleases created after the Act and the Rules had come into force.

7. The next point to be determined is whether the Act and the Rules are constitutional and valid. Mr. P.R. Das did not contest the validity of the Act but concentrated his argument upon the legality of certain provisions contained in the Mineral Concession Rules. Counsel referred in the first place to Rule 5 of Chapter 2 which states that a certificate of approval shall be granted only by a Provincial Government. Counsel also referred to Rule 45 which states that no mining lease shall be granted except to a person holding a certificate of approval from the Provincial Government. The argument on behalf of the plaintiff is that it was prevented from granting a sub-lease of mineral rights to any person of its choice and the restriction imposed by Rule 45 was unreasonable in nature. Mr. P.R. Das conceded that under Article 19(5) of the Constitution the State is authorised to enact any law imposing reasonable restriction on the exercise of fundamental right, but the argument of the counsel is that the restriction imposed under Rule 45 is unreasonable.

Counsel referred in this connection to Rule 6 which, states--

"A certificate of approval may be granted to any person who, in the opinion of the Provincial Government, is in a position to employ an efficient prospecting agency, or possesses special knowledge of geology or mining; Provided that, if such person is a Company or firm, it shall be registered or incorporated in India."

The argument is that Rule 6 grants an uncontrolled power to the State Government in the matter of the grant of a certificate of approval and that no machinery has been provided for determining the question whether a certain person should be granted certificate or not.

It was contended by Mr. P.R. Das that the subjective determination of the State Government has been made final under the rule and the restriction imposed is not reasonable from the procedural stand point. The argument of the plaintiff was that unless the rule provided that the decision of the Government should be ultimately tested in a civil court, the restriction imposed cannot be held to be reasonable within the meaning of Article 19(5) of the Constitution.

In support of this proposition, counsel relied upon certain passages of the Supreme Court judgment in -- "Raghubir Singh v. Court of Wards AIR 1353 SC 373 (G). It was argued in that case that the Ajmer Tenancy and Land Records Act read " with the Ajmer Government Wards Regulation, 1888 (1 of 1888) enabled the Court of Wards in its own discretion and on its subjective determination to assume the superintendence of the property of a landlord who habitually infringed the rights of his tenants and the exercise of the discretion of the Court of Wards could not be questioned in a civil Court. It was further argued that the law enacted in Section 112 was not a reasonable restriction inasmuch as it completely negated the right by making its enjoyment depend on the mere discretion of the executive. The argument succeeded in the Supreme Court and it

was held that Section 112 was invalid and was not saved by Clause 5 of Article 19. But the ratio of that case has no application to the present case. The basis of the Supreme Court decision is that the provisions of Section 112 were penal in character and that legislation which prescribes a penalty for misconduct of a landlord could not by any stretch of reasoning be regarded as a restriction on a fundamental right. It was further held that Section 112 was an ingenious device to punish landlords who habitually infringed the rights of the tenant; that the section authorised the use for an ulterior and punitive purpose of the machinery of Regulation 1 of 1888 which was really enacted to make better provision for the superintendence of Government Wards in Ajmer Merwara. That is the true principle on which the Supreme Court decision is based. At page 375 Mahajan J. (as he then was) observes--

"It was argued that the provisions of Section 112 amount to reasonable restrictions on the exercise of the right conferred by Article 19(1)(f) of the Constitution on a citizen, and these restrictions are in the interests of the general public. In our judgment, this argument also is not sound. As indicated above, the provisions of a Section 112 of Act 42 of 1950 are penal in nature and are intended by way of punishment of a landlord who habitually infringes the rights of his tenants. He is punished by being placed at the mercy of the Court of Wards and by being made subject to the stringent provisions of Regulation 1 of 1888. An enactment which prescribes a punishment or penalty for bad behaviour or for misconduct of a landlord cannot possibly be regarded as restriction on a fundamental right. Indeed, a punishment is not a restriction."

It should be noticed that the Ajmer Tenancy and Lands Records Act prescribed no machinery for the determination of the question whether a landlord is guilty of habitually infringing the rights of his tenants, because Section 112 of the Act was merely of a declaratory character and declared such a landlord as being under a disability and suffering from an infirmity. This declaration became operative and effective when the Court of Wards in its discretion decides to assume superintendence of the property of such a proprietor. Upon these facts it was held by the Supreme Court that the statutory provisions violated the guarantee under Article 19(1)(f) of the Constitution and were not within the limits of reasonableness permitted under Article 19(5). In the present case the material provisions are different. Rule 6 provides that a certificate of approval may be granted to any person who, in the opinion of the Provincial Government, is in a position to employ an efficient prospecting agency, or possesses special knowledge of geology or mining. There is a proviso to Rule 6 which states that if the applicant is an incorporated company or a firm it shall be registered or incorporated in India. Rule 7 states--

"An application for the grant or removal of a certificate of approval shall be submitted to the Provincial Government, and the former shall contain the following particulars: "

(a) (i) if the applicant is an individual, his name, nationality profession and

residence, and (ii) if the applicant is a company, syndicate partnership or private firm, its name, nature and place of business, place of registration or incorporation and

(b) A statement showing the technical qualifications and mining experience of the applicant, and his Manager, if any, and such other particulars as may be necessary to satisfy the Provincial Government of the competence of the applicant to hold the certificate."

Rule 7 therefore prescribes that the applicant must furnish sufficient information about his technical qualification and mining experience so as to satisfy the Provincial Government of his competence. Rule 52 is also important in this connection. Rule 52 provides that any person aggrieved by an order of a Provincial Government may, within two months of the date of such order, apply to the Central Government for reviewing the same. Rule 54 states-

"Upon receipt of such application, the Central Government may, if it thinks fit, call for the relevant records and other information from the Provincial Government, and after considering any explanation that may be offered by the Provincial Government, cancel the order of the Provincial Government or revise it in such manner as the Central Government may deem just and proper."

In my opinion, these rules provide a reasonable machinery for dealing with applications for certificate or approval and for granting such certificates. It is true that Rule 6 has conferred a highly discretionary power on the Provincial Government in granting the certificate but that discretion is not an uncontrolled or untrammelled discretion. If Rule 6 is read in the context of Rule 7, it is clear that before the grant of a certificate of approval the Provincial Government must apply its mind and satisfy itself that the applicant or his manager has sufficient technical qualifications and mining experience or whether the applicant is competent to employ an efficient prospecting agency. That is a condition limiting the exercise of the discretionary power on the part of the Provincial Government. In my opinion the language of Rule 6 cannot therefore be interpreted in a wholly subjective sense and the power granted under Rule 6 is not an arbitrary power but a power which is subject to a condition which is capable of an objective test (see the reasoning of Lord Radcliffe on a similar question in -- "Nakhuda Ali v. Jayratne 1951 AC 66 (H). Further, Rule 52 grants a right of appeal if an applicant is dissatisfied with the order of the Provincial Government. The appeal lies to Central Government from the order of the Provincial Government and Rule 54 prescribes what is the procedure to be adopted by the Central Government in hearing such an appeal.

Mr. P.R. Das referred to Rule 55 which makes the order of the Central Government under Rule 54 final. The contention of the counsel is that the restrictions imposed by the rules should be held to be unreasonable since there is no provision for ultimate decision of the matter by a civil court. I am unable to accept this argument. A decisive answer to the argument is the decision of the

Supreme Court in -- Dr. N.B. Khare Vs. The State of Delhi, in which the scope of the guarantee under Article 19(1)(d) and 19(5) was fully considered. In that case, the subjective satisfaction of the State Government regarding the necessity for externment of a person, coupled with a reference of the matter to the Advisory Board, whose opinion had, however, no binding force, was considered by the Supreme Court to be a "reasonable" procedure for restricting the right conferred under Article 19(1)(d). The truth of the matter is that there is no uniform standard, no uniform pattern of reasonableness which can be laid down in the abstract. The test of reasonableness prescribed under Article 19(5) must depend upon the scope, the subject-matter and the context of each individual statute which is impugned. That is the principle enunciated by the learned Chief Justice of India in -- State of Madras Vs. V.G. Row, ;

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."

8. Counsel on behalf of the plaintiff also referred to Rule 47 (i), Rule 49 and Rule 41 read with Rule 47 and put forward the argument that these provisions unreasonably place restriction on fundamental right. Rule 47(i) states that the period of the mining lease granted by a private person shall not exceed 20 years. Rule 47(ii) states that the area shall not exceed 4 sq. miles. Rule 47 (iv) states that the length of the leased area shall not exceed four times its breadth. Rule 49 prohibits the grantor of a mining lease from charging any premium in addition to the surface rent, dead rent or royalty specified in the lease. Rule 47(v) read with Rule 41 imposes a limit on the royalty and the minimum rent which may be fixed between the parties in a mining lease. Rule 41(1)(i) states that the lessee shall pay royalty on minerals at the rates specified in the first schedule and Rule 41 (in) provides that the lessee shall pay yearly dead rent within the limit specified in the third schedule to the rules.

Counsel on behalf of the plaintiff did not put forward any argument that the restrictions imposed by these rules are unreasonable from the quantitative point

of view. No material has been adduced on behalf of the plaintiff to show that the quantum of the restriction is unreasonable-Counsel for the plaintiff attacked the validity of these rules only from the qualitative standpoint. But I cannot accept this argument as correct. The object of the Act and the Rules is the conservation of important minerals and the efficient and economic working of mines in the national interest. The restrictions are imposed for controlling ; the price of basic minerals needed for industrial development. In this connection reference may be made to a passage at page 383 of the First Five Year Plan--

"Though a mining industry has been in existence in this country for about half a century, only a comparatively small number of mines are being worked in an efficient manner under proper technical guidance. Many units are too small in size or too poorly financed for such working. Lack of a conservation policy is also responsible for the present condition of the industry. There is large wastage, especially in minerals of marginal grades, as these are either abandoned in the mines or thrown away on the mine dumps. Ways and means must be devised for the mining and recovery of these low grade materials. Ores which it is not possible to work economically under normal conditions should be left in the mines so that they may be extracted at a later date without serious loss. The mine dumps all over the country have to be carefully examined and sampled so that their valuable mineral content may be recovered, by methods of beneficiation now available. It should be a rule that selective mining of high grade minerals alone should not be undertaken and that all grades should be worked and, wherever possible, blended to produce marketable grades."

It is in the light of these facts that we must examine the scope and validity of the restrictions. So examined, it is clear that the restrictions imposed under the Rules are not unreasonable. It is an accepted doctrine of constitutional law that every presumption must be made in favour of the constitutional validity of a statute and the onus would therefore be on the plaintiff to establish facts showing that the restrictions are unreasonable. No such facts have been alleged or proved on behalf of the plaintiff in this case. On the contrary, the defendants have provided material to suggest that the restrictions are necessary for the conservation of basic minerals and the efficient working of mines in the national interest. It is manifest that the restrictions are not unreasonable even from the qualitative aspect and the argument addressed on behalf of the plaintiff on this point must fail.

9. For the reasons stated I think that both the issues must be decided against the plaintiff and the suit must be dismissed with costs.

Choudhary, J.

10. I agree.