
(2013) 07 SC CK 0097

In the Supreme Court Of India

Case No : Civil Appeal No. 4950 of 2013 (Arising out of SLP (C) No. 13053 of 2011) and Civil Appeal No. 4951 of 2013 (Arising out of SLP (C) No. 29421 of 2011)

M.P. State Mining Corporation Ltd.

APPELLANT

Vs

Sanjeev Bhaskar and Others

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Mineral Concession Rules, 1960 — Rule 25A, 27(1), 27(5), 31(1), 54
Mines and Minerals (Development and Regulation) Act, 1957 — Section 25A, 30
Motor Vehicles Act, 1988 — Section 61(2)

Citation : (2013) 7 AD 417 : (2013) 5 AWC 4821 : (2013) 3 CGLJ 525 : (2013) 8 SCALE 706 : (2013) 12 SCC 326 : (2013) 3 WLN 129

Hon'ble Judges : T.S. Thakur, J;Sudhansu Jyoti Mukhopadhaya, J

Bench : Division Bench

Advocate : Dushyant A. Dave and Rakesh Dwivedi, Viprav Sharma, Nilanjana Banerjee, Santosh Kumar Tripathi, B.S. Banthia, Kirti Renu Mishra, Apurva Upmanyu, Sansriti Pathak, Vishnu Sharma, Arjun Garg and Mishra Saurabh, for the Appellant;

Final Decision : Allowed

Judgement

Sudhansu Jyoti Mukhopadhaya, J.—Leave granted. These two appeals are preferred by the Appellants M.P. State Mining Corporation Ltd. (hereinafter referred to as the "Mining Corporation") and the State of Madhya Pradesh (hereinafter referred to as the "State") against the common judgment dated 20th April, 2011 passed by the Division Bench of Delhi High Court in LPA No. 742 of 2010 with LPA No. 284 of 2011. By its impugned judgment, the Division Bench dismissed the appeals preferred by the Mining Corporation and the State with costs quantified at Rs. 25,000/- for each appeal and affirmed the judgment dated 21st September, 2010 passed by the learned Single Judge of Delhi High Court.

2. The factual matrix of the case is as follows:

The Government of Madhya Pradesh on 3rd November, 1966 granted a mining

lease over an area of 28.00 acres in Village Kari, District Tikamgarh, (M.P.) to one Rajendra Nath Bhaskar for extraction of Pyrophyllite and Diaspore minerals under the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "the Act, 1957") read with Mineral Concession Rules, 1960 (hereinafter referred to as the "Rules, 1960") for a period of twenty years commencing from 3rd November, 1966 to 2nd November, 1986. After about 13 years, a notice dated 18th September, 1979 was issued to said Rajendra Nath Bhaskar by the Collector, Tikamgarh to show cause as to why his mining lease should not be revoked on the ground of certain breaches committed by him which were discovered during the inspection made by the Mining Inspector on 28th May, 1979. Rajendra Nath Bhaskar submitted his reply on 3rd October, 1979 and denied the alleged breaches. Thereafter, by an order dated 5th April, 1980, determination of the lease was done by the State Government in accordance with the then Rule 27(5) of the Rules, 1960, on the ground of contravention of Clause (f) and (g) of Sub-rule (1) of Rule 27 of the Rules, 1960. A Revision Application was preferred by Rajendra Nath Bhaskar to the Central Government under Rule 54, read with Section 30 of the Act, 1957 which was ultimately dismissed by an order dated 6th April, 1981.

3. Being dissatisfied, Rajendra Nath Bhaskar challenged the order of determination and the order passed in revision application by filing Misc. Petition No. 805 of 1981 before the Madhya Pradesh High Court. The Division Bench of Madhya Pradesh High Court by its judgment dated 16th July, 1986 held that the impugned orders did not disclose the aspects which were taken into account and accordingly set aside the orders with direction to the State Government to decide afresh the question of determination of lease in accordance with law.

4. In the meantime and before the decision of the Madhya Pradesh High Court, the original lessee, Rajendra Nath Bhaskar died on 7th September, 1982, but no application for substitution was filed. The period of lease also expired on 2nd November, 1986. Subsequently, the legal heirs, Sanjeev Bhaskar and others-- Respondents herein, filed an application on 2nd September, 1986 before the State Government praying therein for bringing them on record as the legal heirs and to permit them to carry out the mining operation for the remaining period, which came to 6 years, 6 months and 29 days as the lease could not be operated for the aforesaid remaining period because of illegal determination of lease, which had been quashed vide order dated 16th July, 1986 passed by the Madhya Pradesh High Court. No action was taken thereon for about four years. The Collector, Tikamgarh issued a demand notice on 8th June, 1990 determining the dead rent for the period before expiry of the lease deed in view of audit inspection note. Subsequently, two other demand notices were issued on 14th August, 1990 and 8th December, 1993 which according to the State, were inadvertently sent. The stand of the State Government was that as per term of the lease, the period of twenty years expired on 2nd November, 1986 due to efflux of time. Subsequently, legal heirs of the original lessee made no application in the prescribed form and in the manner for grant of mining lease

either by way of a fresh grant or by way of renewal. As the lessee was not a holder of the lease the dead rent for the subsequent period could not have been demanded and therefore, notices dated 14th August, 1990 and 8th December, 1993 were inadvertently sent.

5. The first Respondent, one of the legal heirs, made representations, inter alia, on 28th August, 1996, 14th April, 1997 and 23rd September, 1997 to allow him to do mining for rest of the period of 6 years, 6 months and 29 days but it has not been made clear as to why no representation was made by legal heirs for more than 10 years after the order of the Madhya Pradesh High Court passed on 16th July, 1986.

6. Receiving no reply, the first Respondent filed a contempt petition No. 186 of 1998 before the Madhya Pradesh High Court which was dismissed on the ground of being time barred. However, an observation was made by Madhya Pradesh High Court that it could hope and trust that the Government would implement the order passed in the year 1986, if they had not implemented the same so far.

7. For the first time, the State Government responded on 21st April, 1999 declining to extend the mining lease. It was communicated that in view of the order passed by the High Court on 16th July, 1986, the mining lease was automatically restored for the remaining period upto 2nd November, 1986. In absence of any direction given by the High Court for renewal of lease and the only direction being given for the State Government to decide afresh the question of determination of lease of original lessee, no renewal could be made.

8. The first Respondent on 7th July, 1999, filed a Revision Application before the Central Government u/s 30 of the Act, 1957 read with Rule 55 of the Rules, 1960. During the pendency of the said revision application, the State Government granted a lease for five hectares out of the mining area in question to the M.P. State Mining Corporation. The Central Government vide order dated 12th August, 1999, granted an interim stay directed the State Government not to grant the mining lease to the third party. The Mining Corporation filed a Writ Petition No. 3914/1999 before the Madhya Pradesh High Court on 24th August, 1999 seeking a writ of mandamus directing the Respondents to execute a lease deed for a period of 20 years commencing from the date of execution in terms of the grant made on 30th July, 1999. But the first Respondent was not made a party therein.

9. In the said case on 15th September, 1999, interim mandamus was issued on the State to execute the mining lease in favour of the Mining Corporation which was executed on 25th September, 1999. According to Appellants, the writ petition filed by the Mining Corporation became infructuous.

10. The first Respondent filed another Revision Application on 15th December, 1999, inter alia, praying for quashing of the grant made on 30th July, 1999 in favour of the Mining Corporation. The first revision application was dismissed on 7th November, 2001 by the Mines Tribunal, which was challenged by the first

Respondent in Writ Petition (Civil) No. 8033/2002 but this time before the High Court of Delhi. The Second Revision application was dismissed on 31st December, 2002, inter alia, on the ground that the lease was executed in favour of the Mining Corporation by the State Government in compliance of the order dated 15th September, 1999 of interim mandamus by the Madhya Pradesh High Court. The said order was assailed by first Respondent by filing a Writ Petition (Civil) No. 5809/04 before the High Court of Delhi. Both the aforesaid Writ Petitions were heard by the learned Single Judge of High Court of Delhi who by common impugned judgment dated 21st September, 2010 allowed both the writ petitions filed by first Respondent holding that the grant could not have been made in favour of the Mining Corporation and that the first Respondent was entitled to the benefit of remaining expired period of the original lease to begin from the date the decision was taken by the State Government, but subject to the first Respondent complying with all the requirements of the Act and Rules and any other applicable law and paying the dead rent and other charges as required by law. The common order passed in those two writ petitions was upheld by the Division Bench of Delhi High Court by its common judgment dated 20th April, 2011.

11. Learned Counsel for the State and the Mining Corporation assailed the impugned judgment on the following grounds:

(a) Original Lessee Rajendra Nath Bhaskar having died on 7th September, 1982, the lease comes to an end. As per Rules, 1960 as was prevailing in June, 1982, if lessee dies during the continuation of the lease, a fresh application has to be presented by his heirs or legal representatives if they are continuing the business of the deceased and have the required qualification to obtain a grant on account of special reason for grant. In absence of any such application filed by legal heirs for grant of lease in their favour, they are not entitled for renewal of lease or to continue for the remaining period.

(b) The High Court of Delhi had no jurisdiction to interfere with the impugned order of grant passed in favour of the Mining Corporation, being granted by the State Government pursuant to the direction of the Madhya Pradesh High Court dated 15th September, 1999.

12. Per Contra, according to first Respondent pursuant to the original order passed by the Madhya Pradesh High Court dated 16th July, 1986 it was the duty on the part of the State Government to re-examine and decide the matter afresh regarding the question of determination of the lease. Admittedly, the State Government did not proceed to decide the matter afresh. Therefore, the first Respondent was entitled for mining for the remaining period of six years, six months and twenty nine days. Learned Counsel for the Respondents contended that first Respondent, Sanjeev Bhaskar, son of Rajendra Nath Bhaskar, original lessee moved an application on 2nd September, 1986 for mutating his name saying that in view of family settlement his name be mutated. He also requested for grant of benefit for the period during which mining was unlawfully

interrupted. In this background, the High Court rightly interfered with the order as well as the order issuing grant in favour of the Mining Corporation which was passed during the pendency of the Revision Application.

13. Further, according to learned Counsel for the first Respondent, part of the cause of action having taken place at Delhi, the orders in the Revision Applications had been passed by the Central Government, the Writ Petitions were maintainable before the Delhi High Court.

14. It is not disputed that much before the decision of the Madhya Pradesh High Court, the original lessee, Rajendra Nath Bhaskar died on 7th September, 1982. The Miscellaneous Petition No. 805/1981 pending before the Madhya Pradesh High Court abated in absence of any petition for substitution filed by the legal heirs.

15. Further, in the year 1982 when the original lessee died, there was no provision for orders to continue the application for a mining lease. Legal heirs/representatives of the original lessee, if they wanted to continue the business or mining activity of the deceased and also if they had required qualification, could at best file an application for grant of fresh mining lease. Admittedly, after the death of the lessee (7th September, 1982), legal heirs including the first Respondent never applied for fresh grant of lease. It has also not been made clear that whether any one of them have required qualification for grant of mining lease.

16. In view of the aforesaid fact, we hold that after the death of the original lessee, Rajendra Nath Bhaskar, all rights come to an end and the first Respondent or any other legal heir(s) were neither entitled to continue with the lease nor entitled for renewal of lease.

17. Similar issue fell for consideration before this Court in C. Buchivenkata Rao Vs. The Union of India (UOI) and Others, In the said case, this Court held as follows:

14. It has to be remembered that, in order to enable a legal representative to continue a legal proceeding, the right to sue or to pursue a remedy must survive the death of his predecessor. In the instant case, we have set out provision showing that the rights which an applicant may have had for the grant of a mining lease, on the strength of an alleged superior claim, cannot be separated from his personal qualifications. No provision has been pointed out to us in the rules for impleading an heir who could continue the application for a mining lease. The scheme under the rules seems to be that, if an applicant dies, a fresh application has to be presented by his heirs or legal representatives if they themselves desire to apply for the grant of a lease. It may be that the heirs and legal representatives, if they are continuing the business or industry of the deceased and have the required qualifications, obtain priority over an earlier applicant on account of special reasons for this preference. But, in each case, they have to apply afresh and set out their own qualifications. It has not been

shown to us that any legal representatives have applied afresh. The legal representatives only claim to be entitled to succeed the deceased Buchivenkata Rao under a will. The assumption underlying the application is that whatever right the deceased may have had to obtain a lease survived and vested in the heirs after his death, we are unable to accept the correctness of this assumption.

15. In support of the contention on behalf of the heirs of Buchivenkata Rao, our attention was drawn to the case of Dhani Devi v. Sant Bihari which related to a right to obtain transfer of a permit for a Motor Vehicle u/s 61, Sub-section (2) of the Motor Vehicles Act. It was held there that, in the case of the death of an applicant for the grant of a permit in respect of his motor vehicle, the Regional Transport Authority had the power to substitute the person succeeding to the possession of the vehicle in place of the deceased applicant. It was routed out there that the right to the permit was related to the possession of the vehicle. Moreover, there was a rule enabling the Transport Authorities to substitute the heir or legal representatives of the deceased. No such rule applicable to the case of the heirs of the deceased Buchivenkata Rao has been pointed out to us. Therefore, we are unable to hold that the heirs, who have been heard, had any right to continue the appeal before us. This feature of the case is decisive not only on the right to be heard on the fresh ground but also on the right to advance any argument in support of the appeal of the deceased.

18. After a period of more than 9 years from the death of original lessee, Rule 25A was inserted in the Rules 1960 by GSR 129(E), dated 20th February, 1991, which reads as follows:

25A. Status of the grant on the death of applicant for mining lease.-(1) where an applicant for grant or renewal of mining lease dies before the order granting him a mining lease or its renewal is passed, the application for the grant or renewal of a mining lease shall be deemed to have been made by his legal representative.

(1.2) In the case of an applicant in respect of whom an order granting or renewing a mining lease is passed, but who dies before the deed referred to in Sub-rule (1) of Rule 31 is executed, the order shall be deemed to have been passed in the name of the legal representative of the deceased.

19. The aforesaid substituted provision of Section 25A is not applicable in the present case as it was not a case of death of the applicant during the pendency of grant or renewal of mining lease. Further Section 25A having inserted nine years after the death of the Assessee, the first Respondent and the other legal heirs cannot derive advantage of the same.

20. The Original Lessee died on 7th September, 1982 during the pendency of Miscellaneous Petition No. 805/81 and much before the final order dated 16th July, 1986 passed in the said case by the Madhya Pradesh High Court. In the absence of petition for substitution of legal heirs, the said case got abated. The legal heirs including the first Respondent cannot derive the advantage of the order dated 16th July, 1986, which was inadvertently passed by the Madhya

Pradesh High Court in absence of knowledge of death of the original Petitioner/ lessee.

21. From the impugned judgment, it is clear that after 1986, the first Respondent made representations on 28th August, 1996, 14th April, 1997 and 23rd November, 1997. In 1998, a Contempt Application No. 186/98 was filed by the first Respondent which was dismissed for being barred by time. The first Respondent had not explained the delay of more than 14 years after the death of the original lessee and delay of 10 years after the order dated 16th July, 1986 passed by the Madhya Pradesh High Court as to why they did not choose to move before any Court of Law. In absence of any such valid explanation, we are of the view that the High Court ought to have dismissed the case on the ground of delay and laches.

22. Admittedly, the third party rights were created in the meantime in favour of the Mining Corporation pursuant to the order of Madhya Pradesh High Court dated 16th July, 1986. The order passed by the Madhya Pradesh High Court was not challenged in any appeal. The Delhi High Court also failed to notice the aforesaid fact and failed to decide the jurisdiction of the High Court to entertain the appeal against the order passed in favour of the Mining Corporation which was passed pursuant to the direction of the Madhya Pradesh High Court. In this back-ground, it was not desirable for the Delhi High Court to entertain the writ petition. Even though the revisional order was passed by the Central Government, the Delhi High Court ought to have asked the first Respondent to move before the Madhya Pradesh High Court for appropriate relief.

23. In view of our findings given in the preceding paragraph, the order dated 21st September, 2010 passed by the Single Judge of the High Court of Delhi and the impugned order dated 20th April, 2011 passed by the Division Bench of the Delhi High Court cannot be upheld. They are accordingly set aside. Both the appeals are allowed but there shall be no order as to costs.