

(2012) 02 JH CK 0075
In the Jharkhand High Court
Case No : L.P.A. No. 147 of 2011

M/s Bharat Coking Coal Limited, Dhanbad	APPELLANT
Vs	
M/s Bharat Fire Bricks and Pottery Works (P) Limited, Jharia, Dhanbad	RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Coking Coal Mines (Nationalisation) Act, 1972 — Section 3
Limitation Act, 1963 — Section 27
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4(1)

Citation : AIR 2013 Jhar 9 : (2012) 2 JCR 32 : (2012) 2 JLJR 121

Hon'ble Judges : Prakash Tatia, J; Aparesh Kumar Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appellant-Company initiated a proceeding against the respondent-M/s Bharat Fire Bricks and Pottery Works(P) Limited under the provisions of Public Premise (Eviction of unauthorized Occupants) Act, 1971 on the basis of the report of encroachment dated 16.5.2006 alleged to have been made by the respondent on the alleged land of the appellant. It has been submitted by one of the officers of the appellant-Company alleging that land measuring 10.71 acres of plot nos. 50, 51,52 and 53 of Khata No. 26, Mouza-Fatehpur, Thana No. 130 have been encroached by constructing pucca house with fire bricks manufacturing ovens and building etc. and the date and period of encroachment of unauthorized occupants as mentioned in the report is 10 years. Upon submitting this application, a notice u/s 4(1) of the Act of 1971 was issued to the respondent and the respondent contested the matter.

2. The claim of the appellant before Estate Officer was that by virtue of the "Coking Coal Mines (Nationalization) Act, 1972", the disputed property vests in them by operation of law and since the respondent had illegally encroached upon that property, mentioned above, of the appellant about 10 years ago, it is unauthorized occupation in the definition as given in the Act of 1971 and the

property being public premises vested in the appellant's Company; therefore, the appellant has right to take possession by exercising power as given under the Act of 1971 to take possession through the competent authority.

3. The respondent submitted a reply before the Estate officer stating therein that the respondent is not claiming the plot No. 52 since the plot No. 52 is a public road and area of that plot is not included in the land measuring 10.71 acres, possession of which has been sought by the appellant.

4. It is submitted that M/s Bharat Fire Bricks and Pottery Works(P) Limited was incorporated under Companies Act on 02nd November, 1944 and since then they are owner of this property and are in possession not only this, but there was negotiation between the appellant and respondent as appellant-BCCL wanted to purchase the aforesaid land measuring 10.71 acres for which a letter dated 17.5.2004 was exchanged between them wherein all details were given and to find out the feasibility and utility of the land in question, the appellant itself constituted a Committee to inquire into the feasibility and utility of the land in question and Committee submitted its report on 23.9.2005 inter-alia stating therein that "seeing the reasonable Coking Coal reserve Committee recommends outright purchase of this 10.71 acres of land from M/s Bharat Fire Bricks & Pottery Works (P) Ltd.; as acquisition through L.A. Act may be time taking as well as costly, as the Company may be required to pay about 45% extra amount as solatium and Interest etc. as per L.A. Provisions. By acquiring this land the coal below railway acquired land which has already been transferred to BCCL may also be extracted in that area".

5. After getting this report, BCCL Management demanded document of title from the respondent vide letter dated 18.10.2005 and respondent furnished Raiyati Clearance Certificate by its letter dated 19.10.2005. Thereafter, the appellant-BCCL again demanded the documents of title from the respondent vide letter dated 20.5.2006 and the respondent submitted the required documents on 19.7.2006 and 2.8.2006. After this, in the year 2006 itself, this proceeding was initiated under the provisions of Act of 1971. The Estate Officer in its order dated 10.3.2009 as well as the learned District Judge, Dhahi in his order dated 26.11.2009, after taking note of this fact, both observed that in spite of giving full opportunity to the appellant, the appellant failed to produce any document even showing that this property vested in the appellant. The order of the Estate Officer, dated 10.3.2009 and the appeal order dated 26.11.2009 were challenged before this Court by filing W.P.(C) No. 650 of 2010 which was dismissed after relying upon the judgment of Hon"ble Supreme Court delivered in the case of present appellant i.e. Bharat Coking Coal Ltd. Vs. Madanlal Agrawal, and Bharat Coking coal Ltd. Vrs. Karam Chand Thapar & Bros Pvt. Ltd., reported in (2003) 1 SCC 69, wherein Hon"ble Supreme Court, in detail, considered Section 3 of the Coking Coal Mines (Nationalization) Act, 1972 which refers to the acquisition of the rights of owners in respect of all the properties which are covered by the definition of a "mine" and after considering the definition of "owner" and after

considering the definition of the occupier including lease holders and short term lease holder. The Hon''ble Supreme Court held that by virtue of the Act of 1972, all lands, a temporary acquisition, have not vested in the Company when they were not falling within the definition of mine and this is a question of fact whether the land vested in the Company under the Act of 1972 or not. Learned Single Judge also took note of the decision of the Hon''ble Supreme Court delivered in the case of Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, .

6. The learned Single Judge, after considering the evidence as produced by the parties and considered by the two authorities below, held that the appellant's claim that the land in question was used for mining purpose was based on assumption and the appellant failed to produce any document to prove its claim whereas the respondent has placed voluminous evidence on record including continuation of their possession since 1946 and even after the Act of 1972 also and it also placed on record the requisite land revenue receipts by which land revenue were paid and also the certificate of competent authority evidencing the Raiyati rights of the respondent over the property in question. Being aggrieved against that order, the appellant has preferred this appeal.

7. Learned counsel for the appellant vehemently submitted that all the courts below as well as the learned Single Judge miserably failed to appreciate the fact that this vesting was by the operation of law and only dispute raised by the respondent was that name of the respondent-Company was not in the Schedule of properties appended to the Act of 1972 which properties were acquired or vested in appellant and as per the provisions of the Act of 1972, if any body had any grievance or wanted to dispute acquisition and vesting of properties, he should have submitted a petition before the Central Government who alone could have decided this issue. Since respondent did not object to the acquisition or vesting of the properties of the Company at any point of time, either before enforcement of Act or thereafter. And the respondent never denied the title of the appellant. It is further submitted that once property vested in the Company by operation of law and by vesting order passed under the Act, it became public premises. It is further submitted that cause of action for filing the petition under the Public Premise(Eviction of Unauthorised Occupants) Act, 1971, accrued only when the appellant came to know that the respondent encroached upon the appellant's land and therefore, they filed this petition before Estate Officer. It is also submitted that respondent never claimed the hostile title against the appellant in appellant's knowledge. However, learned counsel for the appellant fairly admitted that period of limitation for recovery of possession of immovable property, for the Government is 30 years and for others, is 12 years, obviously from the date of accrual of cause of action.

8. Be that as it may, learned counsel for the appellant vehemently submitted that all the Courts below as well as the learned Single Judge had committed serious error of law by holding that the property did not vest in the appellant's Company

which is an error apparent on the face of record and the Courts below as well as learned Single Judge failed to take note of the Statutory provisions made under the Act of 1972 which includes the Schedule of the properties under the Act.

9. Learned counsel for the respondent vehemently submitted that it is not in dispute that property was purchased by the respondent as back as in the year 1946 and the Company was in possession of the property in question since 1946. It was wrongly alleged that property vested in the appellant-Company was by virtue of Act of 1972 and the appellant came with specific case that the respondent encroached upon the land before 10 years of initiation of proceedings under the Act of 1971 and that fact was found to be absolutely wrong and there was no other legal right to the appellant to take possession from the respondent if the appellant was in possession of the property prior to 1972 and after 1972 and he claimed his title over the land before all the authorities concerned which recognized the appellant's title to the property. Not only this, all the courts below as well as the learned Single Judge carefully considered this fact that the appellant itself wanted to purchase this land and when they found that purchase may cost them, only then they adopted this device.

10. Learned counsel for the appellant again relied upon a judgment of the Hon'ble Supreme Court delivered in the case of Bharat Coking coal Ltd. Vrs. Karam Chand Thapar & Bros Pvt. Ltd.,(Supra) wherein case of Madan Lal (Supra) was reconsidered. Learned counsel for the respondent also relied a judgment of Hon'ble Supreme Court delivered in the case of Government of Andhra Pradesh Vrs. Thummala Krishna Rao and another(Supra).

11. It appears from all three orders passed by the authorities below as well as by this Court in the impugned order that the appellant failed to discharge its onus by producing any evidence to show that the land in question was mining land under the definition of the Act of 1972 so as to vest in the appellant's Company because it is a question of fact whether the land in question was mining land or not and that could have been proved only by evidence and not by mere fact that now the appellant came to know that there is mineral underneath this land. Apart from above, the appellant's Core Committee, in the year 2005, recommended for purchase of this property from none other than respondent itself and even if, all contentions of the appellant are accepted then the judgment of the Hon'ble Supreme Court, delivered in the case of Government of Andhra Pradesh Vrs. Thummala Krishna Rao and another(Supra) clearly indicates that in such circumstances where there is serious dispute of title, the summary proceeding is not a proper remedy being a summary procedure wherein the authority, exercising its power under the Act, has no jurisdiction to decide the disputed title of land in question. However, the case of Bharat Coking coal Ltd. Vrs. Karam Chand Thapar & Bros Pvt. Ltd.(Supra) also applies to the facts of this case and further more it was the duty of the appellant itself to show that under which provision of law, its claim which could have been enforced by it when admittedly the period of limitation for taking possession of the property by

Company is 12 years and the appellant may be a Government Company but is Company only. At this place, Section 27 of the Indian Limitation Act, 1963, which declares that at the determination of the period limited by the provision of the Act of 1963 for instituting a suit of any property is right of such property extinguished. It is also settled law that rights cannot remain in abeyance, once, one party's right is extinguished its right vested in some one obviously, who is in possession of the property.

12. Therefore also, we do not find any merit in the present L.P.A. which is accordingly dismissed.