

(2012) 08 JH CK 0190

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1046 of 2005

M/s. Bharat Coking Coal Ltd.

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Citation : (2012) 4 JLJR 560

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : A.K. Mehta, for the Appellant; Shamim Akhtar, SC (Mines) for the State, for the Respondent

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. The petitioner has prayed for a declaration that it is not liable to pay surface rent in view of the letter No. 43024/6/99-PRIW dated 20.03.2002 annexed as annexure-2 issued by the Ministry of Coal, Government of India and further for commanding upon the respondent nos. 3 and 4 to refrain from realization / collection of the surface rent in respect of the lands held by the petitioner company for mining purposes having been acquired either on account of the vesting under the provisions of the Coal Bearing Areas (Acquisition and Development) Act 1957, Coal Mines (Nationalization) Act, 1973 and Coking Coal Mines (Nationalization) Act, 1972 or under the provisions of Land Acquisition Act, 1894. The petitioner has further prayed for restraining the respondents from taking any coercive steps / measures for realization of the aforesaid amount by resorting to the Certificate Proceedings, annexed as Annexure-3.

2. As per the counsel for the petitioner relying upon the letter dated 20.03.2002, it is submitted that the right, title and interest of the petitioner company in relation to the coal mines or the coking coal mines as specified in the schedules, stood transferred and vested absolutely in the Central Government free from all

encumbrances and neither the Central Government nor a Government company like the petitioner in which the rights are vested, are tenants of the State Government, required to pay the land rent or surface rent. The petitioner has also sought a direction upon the respondents restraining them from realization of surface rent in respect of the land held by the petitioner company for mining purposes.

3. It is the contention of the petitioner company that in view of the specific instruction issued by the Ministry of Coal, Government of India as contained in Annexure-2, the petitioner stopped making payment of the surface rent, whereafter, certificate proceedings under the Bihar & Orissa Public Demands Recovery Act, 1914 were initiated which are annexed as Annexure-3 in which final order has been passed by the Certificate Officer directing the petitioner company represented by Director (Finance) to deposit the demand failing which warrant of arrest can be issued against him.

4. It is submitted on behalf of the counsel for the respondents, by referring to the averments made in the counter-affidavit and by relying upon the judgment of the Hon'ble Supreme Court of India reported in Central Coalfields Ltd. Vs. State of Jharkhand and Others, , that a similar issue was raised by another coal company as to whether the said company is liable to pay surface rent and the Hon'ble Supreme Court while upholding the judgment of the High Court wherein the appellant was allowed to avail of alternative remedy by filing appeal, has directed the said appellant company to approach the appellate authority under the Bihar & Orissa Public Demands Recovery Act, 1914. Paragraphs-10 and 11 of the aforesaid judgment are quoted herein-below:

10... As observed by the Division Bench, the powers of the Appellate Authority under the Bihar and Orissa Public Demands Recovery Act, 1914 are very wide and the appellant may raise all contentions including as to the jurisdiction of the State Government and / or its officers in initiating certificate proceedings against the Company. Regarding the earlier decision in National Coal Development Corpn¹. The High Court was right in observing that the contention regarding alternative remedy was neither raised nor considered nor a finding had been recorded thereon. In view of the said fact also it would be appropriate if the appellant Company is granted liberty to approach the Appellate Authority by filing appeals under the Bihar and Orissa Public Demands Recovery Act, 1914.

11. Since the appellant Company had filed petitions, intra-court appeals and the appeals in this Court, it would be in the interest of justice and we direct, that if appeals under the Bihar and Orissa Public Demands Recovery Act, 1914 are filed within a period of two months from today, the Appellate Authority will entertain them without raising any objection as to limitation. The appellate Authority will hear the parties and decide the appeals in accordance with law as expeditiously as possible preferably within three months from filing of the appeals without being influenced in any manner by the observations made by the learned Single Judge, the Division Bench or by us in the present appeals. We may clarify that

we are disposing of the appeals upholding the preliminary objection of the State Government regarding availability of alternative remedy of appeals and we may not be understood to have expressed any opinion one way or the other on merits and all contentions of all parties are kept open.

5. Since the same issue is raised in the present writ application, the direction passed in the similar matters by the Hon''ble Supreme Court of India in the case of Central Coalfields Ltd. (Supra), can also be issued in respect of the petitioner company.

6. Accordingly, since the Certificate Authority has passed the final order which has been brought on record in the present writ application as annexure-3, the petitioner is allowed to approach the Appellate Authority who shall hear the parties and decide the appeal in accordance with law, as expeditiously as possible preferably within a period of three months from the filing of the appeal.

7. It is submitted on behalf of the counsel for the petitioner that the appeal may be barred because of limitation as the petitioner was pursuing its remedy before this court. As the petitioner has been directed to approach the Appellate Authority following the decision of the Hon''ble Supreme Court of India in the case of Central Coalfields Ltd (Supra), the Appellate Authority shall consider the question of limitation sympathetically in view of the fact that the petitioner has been pursuing its remedy before this court by way of this writ application wherein an interim order was passed in favour of the petitioner vide order dated 10.03.2005 restraining the respondents from taking any coercive steps. With the aforesaid observations and direction, this writ petition stands disposed of.

It is made clear that this court has not gone into the merits of the case and it is open to the Appellate Authority to decide the issue without being prejudiced by the fact that the petitioner had moved this court or any observation made herein above.