

(1983) 03 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 741 of 1979

Narain Prasad Singh and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-03-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 3
Transfer of Property Act, 1882 — Section 8

Citation : AIR 1983 Patna 244 : (1983) PLJR 395

Hon'ble Judges : S.K. Jha, J; Ashwini Kumar Sinha, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh, Baxi and S.R.P. Sinha, for the Appellant;
Laxman Saran Sinha, A.K. Roy and J.P. Shukla, for the Respondent

Final Decision : Allowed

Judgement

Ashwini Kumar Sinha, J.—By this writ application under Article 226 of the Constitution the petitioners have prayed for quashing Annexure-8 to the writ case dated 12th Feb., 1979, by which petitioner No. 2 has been directed to get the schedule of the lands corrected in accordance with the map and by which the petitioners have also been directed to stop forthwith the mining operation in the pits including plot No. 14/2650 under Khata No. 36 in village Charka Pathal, having an area of 13.18 acres.

2. The area of plot No. 2650 is 13.18 acres, as mentioned in the body of the lease deed, whereas the area of that plot enclosed by red ink in the map is said to be 9.38 acres. The short question in the instant case is as to which one will prevail.

3. Shorn of other details, the relevant facts for the determination of the point in question are as follows:-- Petitioner No. 1 is an authorised agent of petitioner No. 2 in respect of mining operation carried on the leasehold. Petitioner No. 2 applied for mining lease in respect of mica. On receipt of that application and on consideration thereof, the respondent-State made an order for the grant of lease

of the area measuring 210.29 acres comprised in various plots including that plot No. 14/2650 under Khata No. 36 in village Charka Pathal, having an area of 13.18 acres. After the order for the grant of lease was passed by the State of Bihar, the lease deed in accordance with the requirement of Rule 31 of the Mineral Concession Rules, 1960, was executed inter partes and registered. The relevant extract, order to appreciate the submissions advanced at the Bar, is as follows :

"Whereas the lessee has applied to the State Government in accordance with the Mineral Concession Rules, 1960 (hereinafter referred to as the said Rules) for a mining lease for mica in respect of the land described in Part I of the Schedule hereinafter written"

Part I does not give either Khata No. or Khesra No. or area or class of land. It only gives the boundary, whereas the land schedule in respect of the lease granted over 210.29 acres for mica in favour of petitioner No. 2 gives the entire details i.e., Khata Nos., Khesra Nos., the area and also the nature of the land. This land schedule which is a part of the lease deed specifically mentions the area of plot No. 14/2650 as 13.18 acres. It appears that on the application filed by some third party complaining of encroachment at the instance of the petitioners in the working of the mines, the District Mining Officer (respondent No. 4) under his letter dated 31st Aug., 1978, stopped the mining operation over plot No. 14/2650 till demarcation. The Director of Mines (respondent No. 3), in his turn, asked the District Mining Officer (respondent No. 4) to hold an enquiry with regard to the alleged encroachment and accordingly an overseer was directed to go to the spot. Without waiting for the report, the Director of Mines directed the District Mining Officer to personally hold an inspection. It seems, as is apparent from Annexures 4 and 5, that the Overseer and the District Mining Officer, each on his part, noticed no encroachment at the instance of petitioner No. 2 over any area and in fact found that having regard to the boundary specified and the plot numbers mentioned in the lease deed the area of 210.29 acres was short of 3.80 acres under the delineation, that is to say, plan drawn up following the boundary and that the plot Nos. represented and comprised an area of 206.49 acres in place of 210.29 acres. Thereafter as it appears from Annexure-6, the District Mining Officer being satisfied that there was no encroachment permitted the petitioners to continue their operation within the leasehold area. However, it was directed that when called upon petitioner No. 2 will have to execute a rectification deed. What is more important follows now i.e. Annexure-7 to the writ case, which is the report of the Deputy Director of Mines (Vigilance). This Annexure-7 was given after detailed enquiry and the Deputy Director of Mines (Vigilance) also did not find any fault on the part of the petitioners. It will be pertinent to quote relevant lines from Annex -7: (Being in vernacular is omitted herein -- Ed). Thus, though the recommendation by the Deputy Director of Mines (Vigilance) was to correct the map in accordance with the land schedule in the lease deed, what followed is the impugned annexure. A counter-affidavit has been filed on behalf of the State of Bihar and averments of

facts in the writ case have not been denied at all. The counter-affidavit runs mainly in one relevant paragraph, which is as follows:--

"That along with his application for lease, the petitioner No. 2 filed a map signed, by himself and the area applied for is enclosed with red ink in the said map. The area of plot No. 2650 enclosed by red ink is only 9.38 acres while the area mentioned in body of the lease deed is 13.18 acres. The said map signed by the petitioner No. 2. and the then District Mining Officer is also attached with the lease deed and forms part of it. Accordingly the State Govt. passed an order to correct the land schedule of the deed in accordance with the sanctioned map attached with the lease deed which is on scale and which was supplied by petitioner No. 2 himself and which is signed by the then District Mining Officer and the petitioner No. 2."

4. Learned counsel appearing for the petitioners has submitted that the map being repugnant to the terms of the grant, the terms of the grant must prevail in law and as in the instant case the lease deed mentioned the area of plot No. 14/2650 as 13.18 acres this must prevail over the map, even though the map shows a lesser area. In my opinion, there is much force in the submission advanced by the learned counsel for the petitioners. It is well settled that in such cases where the map differs from the terms of the grant, the terms of the grant must prevail. The right of the grantee must be expressed in his title and when so expressed will not be limited by the map. Reference may be made to the case of *Home v. Struben* (1902 App Cas 454). To the same effect the case of *Ghulam Sibtain v. Mt. Kaniz Khatoon* AIR 1920 Pat 383 may be referred which has been approved in the case of AIR 1929 69 (Privy Council) .

5. Learned counsel appearing for the respondents has, on the other hand, submitted that what was granted to the grantee was described in Part 1 of the Schedule alone and as Part 1 of Schedule does not give the area of plot No. 14/2650 as 13.18 acres the grantee for the purpose of what was granted in the mining lease cannot fall back upon the land schedule which was not a part of Part 1. In my opinion the submission advanced has no substance in law for the reasons already mentioned above.

6. In the result, the application succeeds and Annexure-8 is quashed. The respondents are restrained from interfering or intercepting in any way with the mining operations conducted by the petitioners over the leasehold including plot No. 14/2650 in village Charka Pathal under Khata No. 36, having an area of 13.18 acres, in pursuance of the lease granted to petitioner No. 2. However, there will be no order as to costs.

S.K. Jha, J.

7. I agree.