

(1979) 07 CAL CK 0021
In the Calcutta High Court
Case No : F.A. No. 694 of 1962

Oriental Coal Co.

APPELLANT

Vs

Panna Devi

RESPONDENT

Date of Decision : 31-07-1979

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 2(ff), 3(a), 3(b), 4, 5(1)

Citation : 84 CWN 500

Hon'ble Judges : S.M. Guha, J;N.C. Mukherji, J

Bench : Division Bench

Advocate : R.N. Mitra, Shyamal Sen and Dipak Ghosh, for the Appellant;Mukul Gopal Mukherji and Tapan Kumar Mitra and Amar Nath Banerji and Amaresh Chakravarti for the State (Additional Respondent), for the Respondent

Final Decision : Allowed

Judgement

N.C. Mukherji, J.—This is an appeal against the judgment and decree dated 30th May, 1962, passed by Shri P.K. Banerjee, Subordinate Judge, Additional Court, Asansol in O. C. Suit No. 14/35 of 1962/1961. The plaintiff is the appellant in this Court. The plaintiff brought the suit for recovery of commission and royalty and tentatively laid the claim of Rs. 58,924.29 NP. The case of the plaintiff is that the Maharaja of Burdwan was the proprietor of mouza Bahula including the Chaks Desdiha and Panuria. One Rai Saheb Mrityunjoy Cha-tterji was the lessee in respect of coal and coal mining rights in this mouza under the said Maharaja of Burdwan. The Rai Saheb granted sub-lease of this property to Trailakhya Nath Sampat Trust Estate which again by a registered lease dated 12th April, 1934 granted mining lease of the property fully described in the plaint schedule to Srimati Bijoli Prova Das. By a registered deed of Arpannama dated 20th November, 1934 and 24th April, 1935 Bijoli Prova dedicated unto the deity Sri Sri Karunamoyee Kali Mata the entire coal and coal mining right of the disputed property. By an indenture of under-lease dated 22nd March, 1938 the defendant Co. took from the deity Sri Sri Karunamoyee Kali Mata represented by the seba

Deben-dra Nalh Das, a sub-Lease of the disputed property for a period of 54 years commencing from 1st January, 1938. Under this indenture of lease the defendant Co. is bound to pay royalties on all coal raised and coke manufactured and despatched from lease-hold premises at 0-6-9 pice per ton of steam coal; 5-6 pice per ton of rubble coal; -10-per ton of soft coke; -14- per ton of Hard coke and 3-6 pice per ton of slack and dust coal. The royalty is payable by the 15th day of the month immediately following the month for which the royalty becomes due.

2. Further, the defendant is bound to pay Rs. 6000/- as minimum royalty for each year if the commission does not make up the minimum of Rs. 6000/-. By a registered kobala dated 10th October, 1945 the deity Sri Sri Karunamoyee Kali Mata represented by her Sebait Sri Debendra Nath Das and Srimati Bijoli Prova Das sold all the right, title and interest of the lessor in the property mentioned in the plaint schedule together with all arrear dues from the defendant to one Sawarmal Tantia. The plaintiff again purchased the right, title and interest of the said Sawarmal Tantia in the property mentioned in the plaint schedule by a registered kobala dated 16th January, 1951. The plaintiff, thus, became entitled to realise from the defendant royalties fuel coal etc. payable by the defendant under the terms of the indenture of lease dated 22nd March, 1938. The defendant having defaulted to pay up the dues, the plaintiff previously brought O.C. Suit No. 21 of 1952 and O.C. Suit 42 of 1955 for recovery of royalties etc. for the period upto May 1955. These suits were decreed in plaintiff's favour. The defendant has again defaulted in payment of royalties, coal etc. from 1st June, 1955 upto date. The plaintiff is entitled to recover the same with interest at the rate of 12% per annum. The plaintiff has already paid rent and works cess.

3. The defendant Co. contested the suit. The defence is that the rights of the plaintiff are that of an intermediary as contemplated in the West Bengal Estates Acquisition Act and accordingly vested in the State of West Bengal on the 1st Baisakh 1362 B.S. (15th April, 1955). It is claimed that some portions of the plaintiff's claim is barred by limitation. The terms of the indenture of lease as given in the plaint are challenged. Adverting to the question of delivery of fuel coal to the plaintiff the defendant submits that the same could not be delivered because the plaintiff herself did not make any demand/for fuel coal. She is in no case entitled to get the value of fuel coal that may be found due. Her claim for interest is also challenged. Her claim to cesses already paid is also challenged.

4. It is stated by a schme of compromise or arrangement for amalgamation between the defendant Co. and some other companies on the one hand and the petitioner Messrs. Oriental Coal Co, Ltd. a petition was filed in the High Court at Calcutta being Company petition No. 215 of 1961. The High Court was pleased to sanction the said compromise and arrangement of amalgamation of the defendant Co. and other companies. By this amalgamation all and singular lands, buildings, collieries, mines etc. of the defendant Co. stood transferred to and nested in the Oriental Coal. Co. Ltd. This company has since been added as party

defendant in this suit. The learned Additional Subordinate Judge decreed the suit in the preliminary form in part. Being aggrieved, the defendant has come in appeal.

5. The main point to decide in this appeal is whether the plaintiff has any right to claim the alleged dues of royalties, fuel, coal, cess etc. after the vesting of the rights of the intermediaries under the West Bengal Estate Acquisition Act and if not, is the suit maintainable ? Mr. Rabindra Nath Mitra, learned Advocate appearing on behalf of the appellant, submits that the learned Judge held against the plaintiff relying on the decision of AIR 1960 Calcutta 646-66 C.W.N. 304 (Katras Jharia Co Ltd. vs. State of West Bengal). The effect of that decision, according to Mr. Mitra has been nullified by the incorporation of section 5(2) in the West Bengal Estates Acquisition Act by Amendment Act of 1964. Sinha, J, held in the decision referred to above that.

Though under the amendment of 1957 the lessee and the sub-lessee has been expressly defined to be an intermediary and the provision of the Act was made applicable to such interest and that the under ground rights in mines and minerals or any other underground right that may have existed in the intermediary would vest in the State Government, yet a fresh notification in terms of Sec. 4 of the Act was necessary to vest in the State Government the underground rights of the lessees and sub-lessees.

After such a view was expressed by Sinha, J, the State Legislature in its wisdom added a new section being Sec. 5(2) by Amendment Act, 1964. Sec. 5(2) reads as follows :--

For the removal of doubts it is hereby declared that notwithstanding anything to the contrary contained in any judgement, decree or order of any court or tribunal or any other law, all rights and interest in mines and mineral of all intermediaries, being lessees and sub-lessees, in any notified area shall be deemed to have vested in the State with effect from the date of vesting mentioned in the notification u/s 4 in respect of such notified area.

6. Mr. Mitra submits with much emphasis that after the incorporation of this new section, it cannot be said that a fresh notification under sec. 4 is necessary as it has been most clearly stated That all rights and interests in mines and minerals of all intermediaries being lessees and sub lessees shall be deemed to have vested in the State with effect from the date of vesting mentioned in the notification under Sec. 4. Mr. Mitra contends that the new sub-section (2) nullifies the decision of Sinha, J. Mr. Mitra, in this connection submits that no fresh notification is necessary and the Legislature is quite competent to enact such a Legislation with retrospective effect. In support of his contention, Mr. Mitra refers to a decision, reported in 78 C.W.N. 44 (Dhemo Main Collieries and Industries Ltd vs. Commissioner, Burdwan Division). In this case, the question arose whether the Amending Act of 1957 and 1964 with retrospective effect were ultra vires of State Legislature and whether the provisions of the amendment are

repugnant to the provisions of Central Mines and Minerals (Regulation and Development) Act, 1957. It was held that "the retrospective amendment of the term "intermediary" in Section 2(i) of the West Bengal Estate Acquisition Amending Act 1957, made before the Central Mines and Minerals Regulation and Development Act, 1957, was within the legislative competence of the West Bengal State Legislature.

It was further held that "Section 5(2) of the Act as inserted by the Amendment Act of 1964 is not repugnant to any provision of the Central Mines and Minerals (Regulation and Development) Act 1957, and is not ultra vires. The amendment was expressly given retrospective operation and would be deemed to have been on the statute book from the date of the commencement of the original Act. Consequently, the interests of all intermediaries being lessees and sub-lessees of mineral-rights did vest in the State on the date of notification u/s Section 4 of the State Acquisition Act, 1951." Chittatosh Mookerjee, J, observed "I am unable to hold that inspite of clear declaration made by Sub-section (2), the interest of lessees and sub-lessees did not vest on the date of publication of the notification u/s 4. I am not prepared to restrict the curative provisions contained in Section 5(2).

7. Mr. Mukul Gopal Mukherji, learned Advocate appearing on behalf of the respondent, contends that though Section 5(2) has retrospective operation, yet a fresh notification u/s 4 of the Act is necessary and in the absence of such a notification it cannot be said that the lease in question vested in the State from the date of original notification under Sec. 4. In support of his contention Mr Mukherji relies on a decision, reported in 82 C.W.N. 552 (Jnanananda Industries - v- Sub-Divisional Land Reforms Officer). It was held that "the West Bengal amendment is invalid and void since the jurisdiction to legislate on that point was taken out of the competence of the said legislature."- It was also held that :

The underground rights of the lessees and under-lessees of the colliery could not vest in the State in the absence of a fresh notification and as such the claim of royalty on that basis by the Government of West Bengal was improper. Since the rights of the lessees and sub-lessees did not vest in the terms of the notification u/s 4 dated 15th April, 1955, the rights of the lessees were not affected although the definition of "intermediary" was amended by an Ordinance and subsequently by the Amendment Act of 1957." Chittatosh Mookerjee, J, finds as follows :--

West Bengal Legislature is competent, under Entry No. 18 of List II in Schedule VII of the Constitution, to enact laws in respect of every kind of rights in land both surface and underground including mineral leases granted by intermediaries and their lessees. Entry No. 23 of List II confers Legislative competence to the State Legislature to regulate mines and minerals development but such competence would be taken away when Parliament by law makes a declaration in terms of entry No. 54 of List I only to the extent of the declaration. In respect of matters not covered by the declaration the State Legislature would continue to enjoy Legislative competence. The West Bengal Estate Acquisition Act, 1951 does

not in pith and substance, relate to regulation of mines and minerals development within the meaning of Entry No. 23 of List II or Entry No. 54 of List I. Merely because the said Act may incidentally affect mining rights, the same does not involve any repugnancy between the said Act and any Central Statute for regulating mines and mineral development.

We fully agree with the reasonings offered by Chittatosh Mookerjee, J, and hold that the Amendment Act of 1957 or of 1964 is not invalid and void. On this point we disagree with the decision made by M.N. Roy, J, in *Janananda Industries v. Sub Divisional Land Reforms Officer* 82 C.W.N. 552. We also accept the findings arrived at by Chittatosh Mookerjee, J, that no second notification is necessary. On this point also we differ from the decision arrived at by M.N. Roy, J.

Mr. Mukherji next refers to a Bench decision of this Court, reported in 81 C.W.N. 361 (*Sub-divisional Land Reforms Officer V. Ukhara Forest and Fisheries Ltd.*). In this case, their Lordships were considering the effect of the introduction of sub-section (aa) of section 5(1). The word forest appearing in Section 5(1) (a) (ii) and the definition of "forest" in Section 2(ff) of the West Bengal Estates Acquisition Act, 1953, were omitted with retrospective effect by the West Bengal Estates Acquisition Second Amendment Act, 1957 and West Bengal Estates Acquisition Amendment Act, 1957. By the said Second Amendment Act, Sub-section (aa) was added to Section 5(1) which included "forests" lands in any estate which would vest in the State. It was held that "in the absence of a fresh notification issued u/s 4, after the insertion of Sub-clause (aa) in Section 5(1) of the West Bengal Estates Acquisition Act, 1953, the forest lands did not vest in the State and the notifications which were issued in 1954 and 1956 would not apply." Their Lordships considered the fact that by the Second Amendment Act the definition of forest was omitted with retrospective effect. So, at the time when the notification u/s 4 was issued there was no forest, Though Section 5(1) (aa) was incorporated by the very Amendment Act with retrospective effect, yet their Lordships held that "a fresh notification was necessary." Mr. Mitra, learned advocate appearing on behalf of the appellant and Mr. Amar Nath Banerji, learned advocate appearing on behalf of the State, submit that it is true that by Section 3(a) of the Amendment Act the word "forest" and the definition of forest were omitted with retrospective effect, but by Section 3(b) of the said Amendment Act Clause (aa) was inserted with retrospective effect providing for the acquisition of forest by the State. Therefore, it cannot be said that the word "forest" did not exist at all at the material point of time. What was omitted retrospectively by Sec. 3(a) of the Amendment Act was inserted simultaneously with retrospective effect by Section 3(b) of the said Act. The same Act omitted one word from a clause and inserted it with further elaboration in a new clause. In the case, reported in 81 C.W.N. 361 *Sub-divisional Land Reforms Officer V. Ukhara Forest, etc.* in the word "forest" was omitted with retrospective effect and that being so, it could be argued and was argued that when the notification u/s 4 was issued, at that time the word "forest" was not on the statute, though Section 5(aa) was incorporated by the said Amendment Act. That only

empowered the State to take possession of forests only after a proper notification. In the present case, there is no such difficulty. As has been already stated, the provisions of Section 5(2) are very clear which were incorporated mainly for the purpose of nullifying the decision reported in 66 C.W.N. 304. Katras Jharia Co. -v-West Bengal. We therefore, hold that the decision in 81 CWN 361 Sub-divisional Land Reforms Officer V. Ukhara Forest has no application in the present case. On a consideration of the facts and circumstances of the case and the position in law we are of the opinion that in the present case there was no necessity of issuing a fresh notification and because of the provision of Section 5(2) it must be held that the sub-lease.vested in the State from the date of notification u/s 4 of the Act.

8. In the result, the appeal succeeds on contest. The judgment and decree passed by the learned Subordinate Judge are set aside. The suit is dismissed. There will be, however, no order For costs in this appeal. The appellant will be entitled to withdraw the amount deposited by it in the Court below.

Sudhindra Mohan Guha, J.

I agree