

(1961) 07 PAT CK 0008
In the Patna High Court
Case No : A.F.O.D. No. 573 of 1956

Pravesh Chandra Agarwala

APPELLANT

Vs

Narindar Singh and Others

RESPONDENT

Date of Decision : 31-07-1961

Acts Referred:

Land Acquisition (Mines) Act, 1885 — Section 3(1)
Land Acquisition Act, 1894 — Section 6

Citation : AIR 1962 Patna 14

Hon'ble Judges : Ramratna Singh, J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : L.K. Choudhary, for the Appellant; Lal Narayan Sinha and S.K. Mazumdar, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiya Singh, J.—This appeal by the plaintiff arises out of a suit instituted by him to recover from the defendants, Messrs Sindri Fertilisers and Chemicals Limited, defendant No. 4 (hereinafter referred to as the Fertilisers) and their sub-lessees, defendant Nos. 1 to 3, a sum of Rs. 13,950/- on account of damages for wrongful removal by them of sand from the bed of river Damodar. The plaintiff claims exclusive right to the sand as sub-lessee.

2. Shortly put the facts are these : On the 2nd December, 1940, late Raja Shiva Prasad Singh, the proprietor, granted by a registered instrument (exhibit 6) lease of the sub-soil rights of the entire pergana Jharia, including Mauza Sindri, and the river Damodar to Messrs Bhutan Bararee Coal Company Limited (hereinafter referred to as the Company) for 15 years commencing from 1st Bhadra 1348 B. S. to the end of Sravan 1363 B. S., which on his death was ratified and confirmed by his successor-in-interest, Shri Kali Prasad Singh, by an indenture dated the 5th January, 1951 (exhibit 5). By virtue of this grant, the Company acquired exclusive right of taking sand, morum, stones, materials, bricks etc. and had also the right to grant sub-lease of those rights. Pursuant to this right, the Company

sub-let their aforesaid right to one Mohipal Chandra Darolia from September, 1943, to 31st August, 1946, by a registered instrument dated the 22nd November, 1943, (exhibit 4/d), which was subsequently renewed up to the 31st August, 1949, by another registered instrument dated the 5th June, 1948 (exhibit 4/b). In his turn Darolia transferred his rights for the unexpired Period of the sub-lease to the plaintiff by a registered deed of conveyance dated the 16th June, 1947 (exhibit 4/c). On the expiry of the term of this grant on the 31st August, 1949, by an indenture of lease dated 1st July, 1951 (exhibit 4) the Company granted sub-lease in respect of the sub-soil rights of the entire prrgana Jharia to the plaintiff for a period of 3 years commencing from September, 1949, to 31st August, 1952, which was subsequently renewed by another indenture of lease dated the 1st May, 1933 (exhibit 4/a) for the residue of the term of their lease of the 2nd December, 1940 (Exhibit 6).

It is how the plaintiff came to acquire the rights of sub-lessee. His case is that he was in possession of those rights and had permitted various persons to remove sand from the bed of river Damodar for valuable consideration. The plaintiff complained that since after the 15th January, 1951, the defendants wrongfully removed huge quantity of sand from the bed of river Damodar commonly known as "Sindri Ghat" within the Pergana Jharia. When he protested, defendants 1 to 3 gave out that they had taken settlement of the right to remove sand from the bed of the river Damodar first from the Government of India and thereafter from the Fertilisers. The plaintiff asserted that neither the Government of India nor the Fertilisers had any right to the sand in the bed of the river Damodar and claimed exclusive right thereto. Accordingly, the plaintiff claimed tentatively Rs. 13,950/- as damages and mesne profit for wrongful removal of sand.

3. The Fertilisers, defendant No. 4, filed a written statement denying the right of the plaintiff and his predecessor-in-interest, and asserting their own rights, to appropriate and carry away the sand from the bed of the river Damodar. Their main defence is that the Government of Bihar acquired the entire village Rohraband Sindri and other villages, which include the bed of the river Damodar, under the Land Acquisition Act for the purposes of location of the factory for the manufacture of ammonium sulphate and allied industries and for the establishment of Bihar Grid Power Station and incidental purposes. The possession of the lands including the bed of river Damodar was delivered and handed over by the Special Land Acquisition Officer to the then Administrative Officer of the Fertilisers, who was authorised to take possession on behalf of the Government of India, on the 15th June, 1946. It is alleged that since then the Government of India remained in peaceful possession of the "acquired land, including river Damodar commonly known as "Sindri Ghat" by exercising various acts of Possession and statutory rights therein. By virtue of this acquisition the plaintiff lost all rights, if he had any, to the bed of river Damodar. It is pleaded that the suit is misconceived and is liable to be dismissed.

4. Of the other 3 defendants, only defendant No. 3 contested the suit and, by a

separate written statement, supported defendant No. 4. He alleged that defendant No. 4 and not the plaintiff are the real proprietors and that he had taken settlement of the right to lift and carry away sand from defendant No. 4 on payment of Rs. 7000/-.

5. The learned Subordinate Judge held that defendant No. 4 had the right to the sand of the bed of river Damodar and the plaintiff was, therefore, not entitled to any damages. He accordingly dismissed the suit.

6. The defendants-respondents had disputed the right and title of the plaintiff, and his predecessors-in-interest. This was, however, not pressed at the time of hearing in this Court and the finding of the court below in favour of the plaintiff was not challenged. The only question that was canvassed is whether after the acquisition of the lands, including the bed of river Damodar under the Land Acquisition Act, the right and title of the plaintiff to the sand remained intact and unimpaired. It is admitted that in the year 1946 Government of Bihar acquired village Rohraband and other villages including the bed of river Damodar by a proceeding under the provisions of the Land Acquisition Act (Act I of 1894) and Land Acquisition (Mines) Act (Act XVIII of 1885). Mr. L. K. Choudhary, appearing for the appellant, however, contended that the minerals, including sand etc., were excluded from the land acquisition proceedings and hence the Government of Bihar had acquired no right and title to the minerals including sand.

Thus, the important question that falls for determination is whether the minerals were excluded from the acquisition proceedings and the answer depends upon the true and correct interpretation of the notification issued by the Government of Bihar in this behalf. The relevant notification was issued by the Government of Bihar on the 9th March, 1946 (exhibit C). It runs as follows :

"Government of Bihar and Orissa Revenue Department. Declaration The 9th March, 1946

No. 1659 R. Whereas it appears to the Government of Bihar that land is required to be taken by Government at the Public Expenses for a Public purpose viz. for the location of a factory for the manufacture of Ammonium Sulphate and allied industries, establishment of the Bihar Grid Power Station and incidental purposes such as quarters for officers and subordinate employees, constructions and improvements of roads etc. in the villages of (1) Sindri No. 190 (2) Domgarh No. 189 and (3) Jamdobha or Raghudi No. 188 the entire land in these villages, Pargana Jharia Zila Manbhum it is hereby declared that for the above purpose measuring more or less 6884 bighas 15 kathas 4 chitaks of standard measurement equivalent to 2280-65 acres bounded on the

North by villages Saharpura No. 174 and Chatatanr No. 187, thana Jharia.

East by village Rohrabandh No. 169 thana Jharia.

South by villages Ichhar No. 12 Murabagh No. 21 and Kargali No. 22 of thana Raghunathpur. West by villages Chatatanr No. 187, Asanbani No. 192 and

Sarisakundi No. 191 all of Jharia thana are required within the aforesaid villages of Sindri No. 190, Domgarh No. 189 and Jamadobha or Raghidihi No. 188.

Mines of coal, iron, stone, slate or other minerals lying under the land any particular portion of the land except only such parts of the mines and minerals as it may be necessary to dig or carry away, or use in the construction of the work for the purpose of which the land is being acquired are not needed.

This declaration is made under the provisions of Section 6 of Act I of 1894 and Section 3, Clause (1) of Act XVIII of 1885 to all whom it may concern.

A plan of the land may be inspected in the office of the Additional Deputy Commissioner Dhanbad.

By order of the Governor of Bihar.

Sd. F. E. A. Taylor. Secretary to Government".

7. It will be observed that the aforesaid declaration was made u/s 6 of the Land Acquisition Act (Act I of 1894) and Sub-section (1) of Section 3 of the Land Acquisition (Mines) Act (Act XVIII of 1885). Sub-section (1) of Section 3 of Act XVIII of 1885 provides as follows:

"When the appropriate Government makes a declaration u/s 6 of the Land Acquisition Act, 1870, that land is needed for a Public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate or other minerals lying under the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed."

It is manifest that the aforesaid provision of law empowers the appropriate Government to except from acquisition mines of minerals and in accordance with this provision mines of coal etc. were excluded from the acquisition proceeding, as will appear from the following clause in the said notification :

"Mines of coal, iron, stone, slate or other minerals lying under the land any particular Portion of the land except only such parts of the mines and minerals as it may be necessary to dig or carry away, or use in the construction of the work for the purpose of which the land is being acquired are not needed."

In the ultimate analysis the question in this case turns upon the construction of the reservation or exception contained in the aforesaid declaration. It is quite plain that the Government did not acquire the mines of minerals. The question upon this exception is what is included in the terms "mines of coal, iron stone, slate or other minerals lying under the land". Basing his arguments on the said clause Mr. Choudhary contended that the Government acquired only the lands and not minerals and since minerals included sand, the right and title of the plaintiff to the sand of the river Damodar remained, notwithstanding the acquisition proceedings, intact and unaffected and the Government cannot justly

lay any claim to the sand of the river Damodar and, therefore, the removal of the sand by the defendants was wholly unauthorised and wrongful and the plaintiff, who had the exclusive right to the same, was entitled in law to recover damages and compensation from defendant No. 4 and their settlees. On the other hand, the learned Government advocate, on behalf of the respondents, put forward the contention that even on the assumption that the mineral included sand, the sand of the bed of river Damodar, which is the bone of contention here, was not excluded from the acquisition proceedings. He pointed out that what was excluded from the land acquisition proceedings was not minerals properly so called but "mines of coal, iron stone, slate or other minerals lying under the the land."

I think, the contention of the learned Government advocate is right and must be accepted as correct. The argument of Mr. Choudhary overlooks the important qualifying words in the disputed clause. The exception does not comprise everything which comes under the description of minerals. The words of the execution clause which are quite plain, in their ordinary and natural meaning, show quite clearly that minerals in general were not omitted from the acquisition proceedings, but the mines of minerals. The mines to be acquired are further qualified by the expression "lying under the lands" and these qualifying words rather afford key to the interpretation of the said notification. The Government did not exempt all mines in general but only such mines as lay under the ground. To put simply, the exception comprises not minerals, but mines of minerals, and even as to mines, not all mines of minerals but only such mines as lay under the ground.

There is a clear distinction between mines and minerals. "Mine", according to the dictionary meaning, means a subterranean cavity of excavation in the earth from which ores, precious stones, coals or other mineral substances are taken by digging. The important operation involved in mine is, therefore, excavation beneath the earth. The word "minerals" according to its etymology means those products which are derived from a mine. In its widest sense the term mineral comprises every one of the productions which constitute what is called the crust of the earth. In this sense sand may be regarded as a mineral but the governing word in the exception clause is "mines". Therefore, strictly speaking, the minerals, which have been excepted from acquisition, must be a mineral which is got from a mine and not what is got from a quarry. As has been pointed out in *Bell v. Wilson* (1865) 12 LT 529 :

"a mine, properly speaking, is that mode of working for minerals in any sense by which you dive into the bowels of the earth, and then from the depth to which you go, begin to work either horizontally or in a diagonal form, for it is not necessary that it should be absolutely a horizontal working, but still what may be called lateral workings. That is a mine; the people who are working it are working underground, working under the cover of the superincumbent earth, whereas a quarry is worked sub dio by casting away the surface and working the

stone or whatever other article may be in the course of working."

Similarly in the case of *Lord Provost and Magistrates of Glasgow v. Faric* (1888) 13 AC 657 at p. 687), Lord Macnaghten observed as follows:

"Now the meaning of the word "mines" is not, I think, open to doubt. In its primary signification it means underground excavations or underground workings. From that it has come to mean things found in mines or to be got by mining, with the chamber in which they are contained. When used of unopened mines in connection with a particular mineral it means little more than veins or seams or strata of that mineral. But however the word may be used, when we speak of mines in this country, there is always some reference more or less direct to underground working."

"Now the word "minerals" undoubtedly may have a wider meaning than the word "mines". In its widest signification it probably means every inorganic substance forming part of the crust of the earth other than the layer of soil which sustains vegetable life. In some of the reported cases it seems to be laid down, or assumed, that to be a mineral a thing must be of commercial value, or workable at a Profit. But it is difficult to see why commercial value should be a test, or why that which is a mineral when commercially valuable should cease to be a mineral when it cannot be worked at a profit. Be that as it may, it has been laid down that the word "minerals" when used in a legal document, or in an Act of Parliament, must be understood in its widest signification, unless there be something in the context or in the nature of the case to control its meaning. It has also been held that the use of the word "mines" in conjunction with "minerals" does not of itself limit the meaning of the latter word. At the same time, it cannot be disputed that the term "minerals" is not unfrequently used in a narrower sense, and one, perhaps, etymologically more correct, as denoting the contents or products of mines. Nor indeed are the authorities all one way in preferring the wider meaning of the word "minerals".

For example in *Church v. Inclosure Commissioners* (1862) 11 CB 664, Williams, J. observed and apparently the rest of the Court agreed, that

"minerals in the ordinary sense" meant "minerals which could be worked in the ordinary way underground leaving the surface or crust unaffected."

In other words, "mine" denotes underground work ing as distinguished from quarry which denotes superficial or open workings for iron ores or other minerals. Mine, therefore, implies diving into the bowels of the earth from which one gets coal or other mineral that arc usually found not at the surface or near the surface but at a considerable depth below. Therefore, what is got on the surface or superficial quarrying, even if tin"s process involves some digging, is not comprised in the word mine. 8. Learned counsel for the appellant referred to the decision of the Single Judge of Calcutta High Court in the case of *Midnapur Zemindari Co. Ltd. Vs. Bengal Nagpur Railway Co. Ltd.*, . The learned Judge laid down the test to be applied for determining whether a particular mineral fell

within the exception. If the exemption of the mineral tended to swallow up the ground, it would not be excluded from the minerals comprised in the grant. This decision affords but little assistance in this case. The reservation of the sand in the instant case would hardly destroy the effect of the declaration. Another case, to which reference was made by him, is the case of *Keshardeo Goenka and Others Vs. Emperor*, . Their Lordships have laid down therein that the term "mine" is not a definite term but is susceptible of limitation or expansion according to the intention with which it is used and its primary signification can always be enlarged if that is the intention of the contracting parties or the legislature. This case also does not support his contention. The soundness of the aforesaid proposition of law is not in doubt. It is always a question of fact whether or not a particular kind of work comes within the mischief of the ordinary definition of mine.

Although the primary lexicographical meaning the word "mine" standing alone is an underground excavation made for the purpose of getting minerals, the particular significance of the word as used in a statute or contract may be varied largely by the context (See per Kay, J. in *Midland Rly. Co. v. Haunchwood Brick and Tile Co.* (1882) 20 Ch D 552). The question is whether in the instant case it was the intention of the Government to give expanded meaning to the word mine so as to include even the minerals not obtained by digging underneath the ground but by simple quarrying on the surface. I have pointed out above that the word "mine" afforded key to the construction of the reservation clause and gave indication of the intention of the Government, but the matter does not rest there. There is another expression used in the exception clause which shows that the mine was not used therein in the widest sense but in the limited sense as commonly understood and that expression is "lying under the land".

There are, therefore, two governing words in the disputed clause, namely, "mines" and "lying under the land". These two expressions make it sufficiently plain that the minerals, which were reserved to the landlord of the land acquired, are the minerals which are products of mines and those mines must lie under the ground. The significance of the expression "lying under the land" admits of no doubt whatsoever. In the case of the AIR 1945 56 (Privy Council) their Lordships of the Privy Council have observed that "the natural meaning of the words "lying under" or "underlying" between which there is no difference, is lying vertically under." Therefore, the mines of minerals lying under the land as in the exception clause can mean nothing else than mines of minerals lying vertically under the land. Thus, we derive but little assistance from the cases relied upon by Mr. Choudhary.

If we consider the meaning of the words "mine" and "minerals" in the context in which they have been used in the reservation clause, bearing in mind the qualifying words, it is hardly necessary to resort to the dictionary meaning of "mines" or to the meaning given to it by judicial authorities. Whatever significance may attach to the words "mines" either etymologically or

lexicographically or according to usages, the mines in the exception clause must be mines lying under the land, that is lying vertically under the land. Therefore, the reservation of minerals in the disputed clause includes every substance which can be got from underneath the surface of the earth. The sand is manifestly not mineral lying under the land. The sand in this case is a sand lying on the surface of the bed of the river Damodar. Quite obviously, therefore, sand did not fall within the terms of the clause of reservation. Having regard to the context, "mines" cannot be interpreted to include minerals not got by mining. To do so would be to give it a strained meaning not warranted by the plain language used in the disputed clause. I am fortified in the view I take by the decisions in the cases of (1888) 13 AC 637 and (1865) 12 LT 529 referred to above. In the first case the expression which was interpreted by the House of Lords was:

"the undertakers shall not be entitled to any mines of coal, iron-stone, slate, or other minerals under any land purchased by them."

It was held in that case that common clay forming the surface or subsoil of land was not included in the reservation. In the second case, in the deed of conveyance of the fee-simple of lands in Northumberland" all mines and seams of coal, am! other mines, metals and minerals within and under the said lands" were reserved from the grants. It was held by their Lordships that free stone was not included in the exception, the apparent intention of the parties to the conveyance being to except only those products which in the district are habitually obtained from mines and their being evidence that such was not the case with regard to free-stone. It may be observed that the decision in the second case, aforesaid, was followed in the first. The expressions, which we are called upon to interpret, are in *pari materia* with the expressions involved in these cases and there is no reason to interpret the expression used in the instant Case differently.

9. In sum, sand is not included in the exception and accordingly the plaintiff cannot claim the sand under the exception. I must hold, therefore, that the plaintiff has no subsisting right to the sand of the bed of the river Damodar. I would, therefore, uphold the decision of the learned Subordinate Judge, though on different grounds, and dismiss this appeal with costs.

Ramratna Singh, J.

10. I agree.