

(2003) 07 JH CK 0026
In the Jharkhand High Court
Case No : LPA No. 602 of 2001

Project Officer (Agent) Maheshpur Colliery of B.C.C. Ltd. and Another APPELLANT

Vs

The IVth Additional District Judge and Others RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 2

Citation : (2004) 2 JCR 133

Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : A.K. Mehta, for the Appellant; Sidheshwar Prasad and A.K. Singh for Respondents 3a and 3b, for the Respondent

Final Decision : Allowed

Judgement

1. Heard counsel for the appellants and counsel for the legal representatives of original respondent No. 3.

2. This appeal is filed on behalf of the Bharat Coking Coal Limited challenging the decision of the learned Single Judge dismissing the writ petition filed by the appellants. The appellants initiated proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for an order of eviction in respect of 30 decimals of land which according to the appellants, was in unauthorized occupation of original respondent No. 3. The original respondent No. 3 resisted the proceedings on the plea that the appellants had entered into an agreement for the purchase of the land in question on payment of compensation and having done so, they could not invoke the provisions of the Public Premises Act. The Estate Officer found that the land was the surface of a mine, a part of original lease hold granted for mining purposes to the erstwhile owner of the mine and the right, title and interest of the erstwhile owner having vested in the appellants, the appellants were entitled to invoke the provisions of the Act and since respondent No. 3 did not have any right to resist, the claim of the

appellants was liable to be allowed. Thus, an order of eviction was passed. The original respondent No. 3 filed an appeal before the Appellate Authority under the Act, the Appellate Authority being the District Judge. The Appellate Authority also held that on the basis of the agreement for sale relied on by original respondent No. 3, he could not successfully resist the claim of the appellants. He as a fact found that the land was the subject matter of a lease for a mining purpose and was in fact the surface of a mine and had been recorded as gairabad malik land in the record of rights. More or less contradicting himself, the Appellate Authority came to the conclusion that the surface right of village Sinidih had not been the subject of the lease granted in favour of ex-colliery owner and the right could not be said to be vested in the Central Government under the Vesting Act. Holding that the land involved did not come under the purview of the Premises Act in spite of the extended definition of Coal Mine as defined u/s 2(h) of the Coal Mines Nationalisation Act and since there was a substantive question of title involved, the proceeding under the Premises Act was not maintainable. Thus, he purported to reverse the decision of the Estate Officer and dismissed the proceeding initiated by the appellants.

3. The appellants challenged the decision of the Appellate Authority in CWJC No. 3095 of 1999. The learned Single Judge referred to the decision of the Supreme Court in Bharat Coking Coal Limited v. Madan Lal Agarwal (1997) SCC 177 and the definition of mines u/s 2(h) of the Coal Mines Nationalisation Act. He did not properly advert to the effect of the finding rendered by the Appellate Authority in paragraph 15 of his order to the effect that the land was part of a mining land and was the surface of a mine. Propounding that there was a possible case of adverse possession available to be set up by original respondent No. 3 and his heirs, the learned Judge declined to interfere with the decision of the Appellate Authority and dismissed the writ petition giving liberty to the aggrieved party to move the appropriate Civil Court for relief. Feeling aggrieved by the decision of the learned Single Judge, this appeal is filed by the Bharat Coking Limited.

4. Learned counsel for the appellant submits that on the finding by the Appellate Authority that this land was the subject matter of a mining lease of the year 1908, the learned Single Judge should have held that the land had vested in the Central Government under the Nationalisation Act and consequently, occupation by any one of that land had to be treated as unauthorized occupation within the meaning of Public Premises Act and the appellants were entitled to an order of eviction under that Act. Counsel pointed out that in paragraph 15, the Appellate Authority had himself clearly found the facts that justified the order of eviction passed by the Estate Officer and the interference by the Appellate Authority was based on untenable reasoning and after contradicting himself on the question as to whether the land was the subject matter of the original mining lease. He further submitted that the learned Single Judge was in error in not properly applying his mind to the relevant findings and the facts and circumstances of the case. Therefore, this was a case where the decision of the learned Single Judge and that of the Appellate Authority were liable to be interfered with. Obviously,

surface of the mine comes within the definition of a mine and hence the order of the Estate Officer directing eviction was well within this jurisdiction and was fully justified. He also pointed out that the only argument advanced by original respondent No. 3 before the Estate Officer was based on an agreement for sale entered into with the appellants and the sale deeds taken by the appellants from certain others with a view to avoid delay and complication over the matter of continuing the mining operations by resorting to open cast mining. In that situation, the Appellate Authority was not justified in entering a finding that the land was not the subject matter of the original mining land even though earlier he had held that it was part of the mining land. Counsel for the legal representatives of original respondent No. 3, on the other hand, contended that respondent No. 3 had been in possession of the land for well over the statutory period and had perfected a title by adverse possession and in that situation, the proceeding for eviction under the Public Premises Act was not sustainable. He submitted that there is no reason to interfere with the decision of the learned Single Judge.

5. It is clear from the findings of the Estate Officer and the Appellate Authority that the land in question is the surface of a mine. In fact that aspect is practically admitted. The land was originally leased out for mining purposes is the finding by both by the Estate Officer and in paragraph 15 of his judgment by the Appellate Authority. Even otherwise, when it is conceded that it is the surface of a mine, going by the decision of the Supreme Court in *Kali Prasad v. Bharat Coking Coal Ltd.* AIR 1989 SC 1530 the land in question comes within the definition of mine in Sections 2(h)(iv) and 2(h)(vi) of the Coal Mines Nationalisation Act. Thus, it is clear that the land in question is a part of a mine or is a mine in terms of Nationalisation Act. On the basis of that conclusion, it has necessarily to be held that the land is vested in the Central Government under the Nationalisation Act and consequently vested in the appellants as made over to it by the Central Government. The vesting under the Nationalisation Act was free of all encumbrances and any right that the original lessee had stood extinguished.

6. Even though, original respondent No. 3 came forward with a contention that he had raiyati right over the land when he negotiated with the appellants for the purchase of the land, he could not get raiyati clearance since the land was found to be not raiyati land. Therefore, this was part of a mine which had at best come into his unauthorised occupation. In view of the Nationalisation Act and the vesting therein, any pre-existing right in any one came to an end since vesting was free of all encumbrances. Therefore, once the land belongs to the Central Government or that had become vested in it on the basis of Nationalisation Act, any person in occupation of that land has to be considered as unauthorised occupant within the meaning of the Public Premises Act. The Estate Officer, in our view, therefore, was justified in ordering eviction of original respondent No. 3 on the basis that his occupation was unauthorised. The Appellate Authority, in our view, had failed to appreciate the scope of the Public Premises Act and also not comprehend the scope of the Nationalisation Act. Thereby, the Appellate

Authority had committed a jurisdictional error in interfering with the decision of the Estate Officer.

7. The learned Single Judge, in our view, did not properly advert to the effect of the finding of the Appellate Authority that the land was a mine. Even though, learned Single Judge referred to the decision in Madanlal Agarwal, in our view, the learned Single judge was not justified in proceeding to leave the appellants to file suit on the ground that original respondent No. 3 has the right to raise a plea of adverse possession. In the face of the relevant provisions of Nationalisation Act and the finding that the land was a part of a mining lease and even otherwise it was the surface of a mine, it is clear that on the basis of vesting under the Nationalisation Act, the appellants are entitled to initiate proceedings under the Public Premises Act. The learned Single Judge should have held that the Estate Officer was justified in ordering eviction and the Appellate Authority had interfered with the findings of the Estate Officer without properly considering the scope of the relevant Acts and the statutory provisions. The learned Judge was also not justified in propounding that a possible case of adverse possession could be set up by respondent No. 3 in the circumstances of this case. Thus, by refusing to interfere, the learned Single Judge has failed to exercise the jurisdiction vested in him by law.

8. In this situation, we allow this appeal and setting aside the decision of the learned Single Judge and that of the Appellate Authority reversing the order of the Estate Officer ordering eviction, we restore the decision of the Estate Officer. In the circumstances, we make no order as to costs. If the legal representatives of original respondent No. 3 have any right to claim any compensation before the appropriate Civil Court, it may be open to them to avail of that remedy, if permissible in law after vacating the property.