

(1971) 06 OHC CK 0007

In the Orissa High Court

Case No : Original Jur. Case No. 336 of 1970

Raisahab Chandanmull Indrakumar Private Ltd.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-06-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Government Grants Act, 1895 — Section 3
Specific Relief Act, 1963 — Section 6
Transfer of Property Act, 1882 — Section 108, 111, 116

Citation : AIR 1972 Ori 40

Hon'ble Judges : G.K. Misra, C.J; R.N. Misra, J; B.K. Patra, J

Bench : Full Bench

Advocate : N.C. Chakravarti, S.C. Roy, S.B. Choudhury, J.C. Roy and N. Roy, for the Appellant; G. Das, D.P. Mohanty and A.C. Mitra and A.G., for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—One Mr. T. P. Yeoman obtained a mining lease for coal of about 1300 acres located in the District of Sambalpur. valid for a period of thirty years with effect from October 1. 1917 from the Secretary of State for India in Council. This came to be known as the Ib. River Colliery. On 22-2-1920, Mr. Yeoman transferred a part of the lease-hold in favour of one Mr. M. H. Dutta and on June, 7. 1920 by an agreement between the Secretary of State for India in Council and Mr. Dutta the transfer was duly recognised. On August 21. 1931, the Hindu undivided family of Raisaheb Chandanmull Karnani carrying on business under the firm name and style of M/s. Chandanmull Indrakumar purchased the leasehold interest of Mr. Dutta in a court sale held by the High Court of Calcutta. On December 27. 1934, the Secretary of State for India in Council accepted M/s. Chandanmull Indrakumar as the transferee of the lease-hold interest (Annexure-C). Raisaheb Chandanmull Karnani died on February 2. 1943, but the joint family firm continued as before.

In the lease of 1917 (Annexure-A) there was provision for renewal at the option

of the lessee and such option was to be exercised six months prior to the expiry of the lease. Accordingly, on March 1. 1947, option was exercised and demand for renewal of the lease for a further period of thirty years was made. The joint family firm remained in possession as before and carried on mining operations on payment of rents and royalties and other charges as required under the contract. Title Suit No. 1897 of 1949 was filed in the Calcutta High Court for partition of the joint family properties by one of the coparceners. The lease-hold in question was included in the hotchpot. On January 28. 1950, the suit was decreed upon compromise. The colliery along with certain other properties was however, not divided as it was found inconvenient and it was stipulated that a company by the name of Raisahab Chandanmull Indrakumar Private Limited would be constituted and these properties including the lease-hold would be taken as belonging to the said company, and shares commensurate to the interest that each of the coparceners had in the family assets would be allotted to each of them by the Company.

It is contended that the Company was a family concern of Raisahab Chandanmull Karnani and was brought about only to provide a convenient method of enjoying the properties of the family which remained undivided. Administration and management of the colliery was taken over by the company from January 30. 1950. The State Government and its officers started dealing with the petitioner-Company qua the colliery and accepted payment of rent, royalty and other dues from the Company. On April 22. 1957, sanction of renewal of the mining lease (Annexure-G) was made in the name of the Hindu undivided family firm and was directed to date back and commence from. October 1. 1947. A part of the lease-hold was being worked out but the major portion remained virgin. The Company continued to pay rents, royalties etc.

Once in 1957 (Annexure-H) and again in April. 1963 (Annexure-L). notices were issued to the Company the first one by the Deputy Commissioner of Sambalpur and the second by the Deputy Secretary of the concerned Ministry of State Government to show cause as to why by operation of Rule 28-A of the Mineral Concession Rules of 1949 the renewal may not be taken to have become inoperative thus bringing about an end to the leasehold interest. The Company had showed cause and no further action had been taken. There was a criminal case against the Company and its officers for working the mines without a valid lease. That ended in acquittal. Thereafter rent, royalties etc. were accepted from the petitioner Company. On 6-2-70 the Secretary to Government in the Mining and Geology Department wrote to the Collector, Sambalpur saving.

"I am directed to say that the possession of the virgin area of the Ib River Colliery may be taken immediately as indicated in Government letter No. 125/M. G. dated 8-1-69. For this purpose it would be enough to walk over the area with beat of drums. Peas may be put as a mark of demarcation. One watcher may be posted to ward off any outside interference. Instructions will be issued separately for working this area.

On hearing from you the Director of Mines will depute an officer from head quarters to assist you in taking possession in the manner indicated above.

The fact of having taken possession may be recorded in the standard register. The officers concerned may also record the facts in their respective tour diaries.

As regards the area in actual physical" possession of the party separate instructions will issue to recover possession later.

This may please be treated as present and action taken may be reported to the Department."

On 28-2-70 the Additional District Magistrate, Sambalpur is alleged to have taken over possession of the virgin portion of the colliery. He made the following record (Annexure-P).

"In pursuance of Government of Orissa Mining and Geology Department Order contained in their letter No. 1063/MG. dated 6-2-70. I Shri G. Rao. Additional District Magistrate, Sambalpur have taken over possession of the virgin portion of the Ib River Colliery measuring 648.19 acres to day, the 28th February. 1970 in presence of the following witnesses.

(i) Taking over had been duly announced by beat of drums in the said area....."

2. On April 7. 1970, the writ application was filed under Article 226 of the Constitution of India asking for various writs and directions all meant to protect the lease-hold interest of the Company and to restrain the opposite parties from interfering with the possession, enjoyment and working of the lease-hold by the petitioner. M/s. Western Bengal Coal Fields Limited, who is the lessee of the adjacent colliery and who obtained a coal-raising contract from Government in respect of the virgin area was added as opposite party No. 7 of its application, by Order No. 5 dated 26-5-70. On 21-5-70, status QUO ante was ordered to be maintained. After hearing parties, on 29-6-70 that direction was sustained till the disposal of the writ application.

3. Two counter affidavits have been filed -- one by the State of Orissa and the five public officers who were all opposite parties 1 to 6 and the second one by M/s. Western Bengal Coal Fields Limited opposite party No. 7. The allegations in relation to events upto March 1. 1947, are not disputed. The stand adopted by the State of Orissa and the public officers is that there was a valid exercise of the option of renewal. It is contended that the renewal was made in favour of the Hindu undivided family firm and not in favour of the Company -- the petitioner-- No lease deed upon renewal has been executed and the Company has, at no point of time, been recognised as the lessee. The public officers were not authorised to deal with the Company in respect of the lease and any payments made by the Company with reference to the lease are unauthorised and cannot enure to the benefit of the Company or give rise to any interest in the mining lease in favour of the Company. In terms of the lease deed, the State of Orissa

had a right of re-entry and possession has accordingly been taken of the portion of the leasehold which was lying virgin and action in accordance with law was proposed to be taken in regard to the worked out portion of the mining area. It is also contended that the Company has no locus standi to maintain the writ application, and as it has no title to the property a writ application at its instance cannot be sustained. It is also contended that the cause of action for the proceeding arises out of a contractual breach and, therefore, no relief is available under Article 226.

4. This application in due course came up for final hearing before a Division Bench of this Court consisting of my learned brother Patra. J. and myself. On behalf of the opposite parties it was contended that the mining lease was a Government grant and, therefore, in terms of Section 3 of the Government Grants Act of 1895, the terms of lease deed took effect according to their tenor not controlled by any law. Reliance was placed upon a Bench decision of this Court in the Case of Md. Serajuddin Vs. State of Orissa, . As we were prima facie not satisfied about the correctness of the decision in the aforesaid case we referred the matter to a larger Bench. This Full Bench has accordingly been constituted to hear the writ application.

5. In view of the respective contentions of the parties the following questions arise for determination in this case:

(i) Has the petitioner-Company any right., title or interest in the lease-hold? Is this writ application maintainable?

(ii) Is a mining lease a grant under the Government Grants Act of 1895?

(iii) Has the petitioner-Company been duly evicted or is the petitioner-Company entitled to remain in possession until evicted in due course of law?

6. As already indicated, there is no dispute that Raisaheb Chandanmull Indrakumar, the Hindu undivided family firm was the lessee in respect of the Ib River Colliery. In view of the admission of the State of Orissa we hold that there was valid exercise of the option for renewal and renewal in fact has been granted in April. 1957. If the Hindu undivided family firm had continued to be in existence and its leasehold rights were being interfered with, the dispute would have assumed a very different colour. But the Hindu undivided family got disrupted by a regular decree for partition. The properties that remained in joint including the colliery in dispute were taken over by a Private Limited Company (the petitioner) and shares therein in proportion to the interest each of, the coparceners held in the joint family assets were allotted to the various members of the family. It is not disputed that at all material points of time the Company has been and is constituted by members of the family and there is no outsider in it. It has been contended:

"The petitioner-Company at all material times was and is still a family concern of the said Raisaheb Chandanmull and your petitioner-Company was formed, only

with a view to effect a family settlement with regard to some of the joint family properties including the lease-hold interest in the said colliery of the said. Hindu undivided family of Raisaheb Chandanmull Karnani as it was not feasible to effect physical partition of those properties among the heirs and successors of the said Raisaheb Chandanmull Karnani. By reason of such arrangement, the joint family properties were neither transferred to any other persons nor were alienated or otherwise disposed of; but the same were held by the members of the joint family in accordance with their respective shares in the said Company. The shares of your petitioner-Company remained absolutely within the family members of the said Raisaheb Chandanmull Karnani."

7. At the hearing of the writ petition, however, a slightly different stand was taken. A deed of assignment by the members of the family in favour of the Company of their several interests in the mining lease has been produced. It is asserted on behalf of the opposite parties that the petitioner-Company is not entitled to take advantage of the renewal granted in 1957. The renewal was to enure in favour of the Hindu undivided family firm which had already gone out of existence. By the time of the alleged assignment, there was no valid lease -- the original lease had expired and the renewal had not been granted. Therefore, at that point of time there could be no assignment and the assignee -- the petitioner-Company -- derived no interest. It is also alleged that the assignment was subject to acceptance by the lessor and since the lessor's consent to the assignment had not been taken, the assignment, even if otherwise valid, is not operative.

8. All the opposite Parties have a common defence. The main argument for the opposite parties was made by Mr. Mitra appearing for the opposite party No. 7. He challenged the maintainability of the writ application on the ground that a writ of mandamus, to protect right to property would not be available unless the petitioner's right to the property is either found or admitted. It is well settled, contends Mr. Mitra, that ordinarily writ proceedings are meant to protect right to property, title where to is not in dispute; but if title of the petitioner is disputed, its existence cannot be adjudicated in a writ proceeding. Since it is the case of the opposite parties that the petitioner-Company has no interest in the lease-hold and the petitioner-Company is not in a position to produce any document of title in its favour in regard to the disputed property no relief can be granted to the petitioner in this proceeding and the petitioner should be relegated to the Civil Court to establish its title and thereupon ask for suitable reliefs. He places reliance upon a decision of their Lordships of the Supreme Court in the case of *State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo*, .

Mr. Mitra alternately next contended that while the jurisdiction of this Court under Article 226 is wide enough and in a proper case even the title of the petitioner may be examined, this is not such a case and prejudice is likely to result upon our determining the question of title merely upon affidavits of parties. He placed before us the stand of the opposite parties that the public

officers acted without proper authority and/or under a mistaken impression of fact and law in overlooking the distinction between the Hindu undivided family firm and the Private Limited Company: Not realising the legal distinction between the Hindu undivided family firm and the incorporated Company, they continued to deal with the petitioner. In a properly constituted suit when these questions come up for examination, the opposite parties would be free to lead evidence explaining away their conduct in dealing with the petitioner and would be in a position to establish their stand that by their conduct no right has accrued or could accrue to the petitioner.

He next contended that voluminous documents have to be taken into account and a lot of oral evidence would be necessary to be brought before the Court in order to fairly adjudicate the question of title or existence of any interest of the petitioner-Company in the lease-hold. Mr. Mitra, therefore, stated that though he was not disputing the jurisdiction of this Court to examine the *aforesaid* State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo, *esaid* matter, it was appropriate that the discretion of this Court should not be exercised in favour of the petitioner in the facts of this case and the question of title should not be permitted to be examined in this writ application.

9. In *State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo*, their Lordships of the Supreme Court said at page 688 of the Reporter:

"Under Article 226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said Article even for purposes other than the enforcement of fundamental rights and in that sense, a party who invokes the special jurisdiction, of the High Court under Article 226 is not confined to cases of illegal invasion of his fundamental rights alone. But though the jurisdiction of the High Court under Article 226 is wide in that sense, the concluding words of the Article clearly indicate that before a writ or an appropriate order can be issued in favour of party. It must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Article 226."

This Court had not found by entering into the merits of the case that the petitioner has a right which could be protected by the Court: on the other hand, that matter was clearly left open. Relief was granted on the basis of long possession of the Muthadar, and their Lordships of the Supreme Court stated:

"Here possession of the property for however long a period it may be, will not clothe the possessor with any legal right if it is shown that the possession is under a grant from the State which is resumable. Such long possession may give him a legal right to protect his possession against third parties, but as between the State and the grantee, possession of the grantee under a resumable grant cannot be said to confer any right on the grantee which would justify a claim for a writ under Article 226 where the grant has been resumed."

The grant was a resumable one and had been resumed by the successor of the grantor. When title was not adjudicated and possession was taken upon resumption the grant being found to be resumable), their Lordships rightly negated relief to the Muthadar.

The facts of that case were very different from the present one and thus Mr. Mitra's contention cannot receive any support from what has been said in that case.

10. The legal position on this point has been indicated by their Lordships of the Supreme Court in *Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others*, thus:--

"The High Court is not deprived of its, jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief, question of fact may fall to be determined. In a petition under Article 226, the High Court has jurisdiction to try issues both of fact and law. Exercise of jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises question of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition."

We think it appropriate to leave the matter of title and/or legal interest of the petitioner-Company to be determined in a regularly constituted suit. Several aspects from rival standpoints had been placed before us by learned Counsel on both sides touching upon the question of title. It is only meet and proper that we say nothing in this judgment which may prejudice or embarrass the parties in any future litigation for title.

11. Would It, therefore, follow that the petitioner would not be entitled to any relief in this writ petition or is it possible for the petitioner to get any relief dehors the dispute of title?

There is no dispute that the petitioner-Company was in possession of the entire leasehold area though a Dart of it had -been worked out. It is contended by Mr. Chatterjee for the petitioner that the petitioner Company is entitled to relief even if the question of title is left open to be decided in a suit. We now proceed to examine the correctness of this contention. The stand adopted by Mr. Mitra is that re-entry has been in accordance with the terms of the lease and as such no objection can be taken to the action of the lessor. He has also contended that the petitioner is a rank trespasser and is not entitled to any protection on its alleged possession.

Possession in this country is protected and relief is available u/s 6 of the Specific Relief Act to protect possession against illegal dispossession made even by the true owner. The legislature has, however, specifically excluded relief u/s 6 of the Act against the State Government. Therefore, when possession is taken by the

State Government, grievance cannot be made by the petitioner until it has established its better title to the property and, therefore, becomes entitled to possession. Since we are not examining the question of title in the writ petition there would be no scope for giving any relief to the petitioner on the basis of possession.

He next contended that a mining lease is a Government grant, and, therefore, in terms of Section 3 of the Government Grants Act, the clause regarding re-entry has to operate according to its tenor unaffected by any law in force. In view of this contention of Mr. Mitra it becomes necessary to examine first whether a mining lease is a Government grant and after resolving this dispute it would be proper to proceed with the examination of the rival contentions in regard to availability of relief on the basis of possession. Section 3 of the Government Grants Act XV of 1895 provides:

"All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, Statute or enactment of the Legislature to the contrary notwithstanding."

It is stated that the wide terms in which provision has been made in Section 3 of the Act make it clear that the tenor of the covenant in the lease would take effect notwithstanding any rule of law, statute or enactment of the legislature. Reliance is placed on the decision of this Court in *Md. Serajuddin Vs. State of Orissa*, where with reference to a mining lease and the contention that protection of the Transfer of Property Act was available to the lessee it has been said :--

"Grants by the Government are usually construed most favourably for the Government and that appears to be the reason why application of some laws are generally excepted in such case. u/s 2 of the Government Grants Act. application of the provisions of the Transfer of Property Act, has been excepted specifically as follows:

This being so, in our opinion, the provisions of Section 111(g) and Section 114 of the Transfer of Property Act have no application to a grant of this nature because though this may not be a grant of land in perpetuity, it is certainly a grant by transfer of interest in land, and as such, the impugned grant is completely-covered by the provisions of the Government Grants Act. In *Secretary of State for India Vs. Nistarini Annie Mitter*, it has been held that-

"leases granted by the Crown are outside the operation of the Transfer of Property Act. There is no distinction between grants by virtue of the prerogative rights of the Crown and grants made as a mercantile transaction for profit."

This decision was followed with approval in *V. Pedda Rangaswami Shreshti v. Shri Vishnu Nimbaker*. AIR 1946 Mad 180 and this view finds support from the decisions in *Gaya Prasad Vs. Secy. of State*, ; *Rupan Singh and Another Vs. Akhaj Singh and Others*, and *Manindranath Dinda Vs. Amiya Pal Choudhury* and

Others, .

As we hold this lease to be covered by the provisions of the Government Grants Act of 1895, all the provisions, restrictions, conditions and limitations contained in the said lease shall be followed and take effect according to their tenor, notwithstanding any rule of law, statute or enactment of the Legislature to the contrary, as provided for u/s 3 of the said Act."

We are of the view that a mining lease is not covered under the Government Grants Act. The interpretation out on Section 3 of the Act is also not correct. Lord Wright, delivering the judgment of the Privy Council in the case of AIR 1946 127 (Privy Council) , after referring to Section 3 of the Act stated:--

"These general words cannot be read in their apparent generality. The whole Act was intended to settle doubts which had arisen as to the effect of the Transfer of Property Act. 1882, and must be read with reference to the general context and could not be construed to extend to the relations between a sanad holder and his tenants. Still less could they be construed to limit the statutory competence of the Provincial Legislature under the Constitution Act."

This view of the Judicial Committee was expressly approved by their Lordships of the Supreme Court in the case of The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others, . While dealing with Section 3 of the Act, their Lordships have said:--

"The contention is that as the grant is of a free-hold estate without any reservation, it must to take effect according to its tenor, be construed as granting exemption from assessment to revenue. But that will be extending the bounds of Section 3 beyond its contents. The object of the Act as declared in the preamble is to remove certain doubts "as to the extent and operation of the Transfer of Property Act, 1882, and, as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority".

Section 2 enacts that the provisions of the Transfer of Property Act do not apply to Crown grants. Then follows Section 3 with a positive declaration that "all provisions, restrictions, conditions and limitations over" shall take effect according to their tenor.

Reading the enactment as a whole, the scope of Section 3 is that it saves "provisions, restrictions, conditions and limitations over" which would be bad under the provisions of the Transfer of Property Act, such as conditions in restraint of alienations or enjoyment repugnant to the nature of the estate, limitations offending the rule against perpetuities and the like."

The Mines and Minerals (Regulations and Development) Act of 1957 and the Mineral Concession Rules, 1960 made under the aforesaid statute regulate mining leases. Prior to this Act there were specially made statutory provisions to regulate these leases. Mining leases are thus not grants of the ordinary type.

Special laws have been made regulating grant, the terms and the rights and liabilities of the lessor and the lessee. Validity of the terms of a mining lease must be strictly determined with reference to the special statute and a mining lease on the pretext of being a Government grant cannot be inconsistent with the provisions of the Act or the Rules or in derogation thereof. By application of provisions of Section 3 of the Government Grants Act, such terms which are not in conformity with the provisions of the Act and the Rules cannot be given effect to and must be found to be bad in law.

12. If full effect is given to the contention of Mr. Mitra, it would mean that Section 3 of the Government Grants Act would limit the statutory competence of the Legislature to legislate on a subject assigned to it by the Constitution. Mr. Mitra relies upon a Bench decision of the Madras High Court in the case of State of Madras and Others Vs. T.M. Oosman Haji and Co., Madras and Others, . Their Lordships of the Madras High Court were examining the effect of Section 3 of the Government Grants Act with reference to the provisions of the Madras City Tenants Protection Act. In doing so they referred to the decision of the Privy Council as also the case of their Lordships of the Supreme Court which have been already referred to by us. They also took into account a Bench decision of the Calcutta High Court in the case of Azizus Subhan Vs. Union of India (UOI) and Others, and the decision of a learned single Judge of their own Court in the case of Nallanna Gounder Vs. Muthuswamy Gounder and Another, , but ultimately held:--

"Thus as between the Government and the grantee, the terms of the grant would prevail notwithstanding any other law to the contrary. It is true, as pointed out in the said Privy Council decision and the Calcutta decision just referred to, that Section 3 of the Government Grants Act cannot be construed as to limit the statutory competence of the Provincial Legislature under the Constitution Act. Thus a legislature can by express words, or by necessary implication, take away the effect of Section 3 of the Government Grants Act while enacting a particular legislation. But for Section 3 of the Government Grants Act, the Madras City Tenants Protection Act would apply to tenancies in respect of Government lands. The express provision contained in Section 3 of the Government Grants Act, taken along with the absence of any provision in the Madras City Tenants Protection Act extending the Act to Government lands, either expressly or by necessary implication, can only lead to one inference, namely, that the provisions of the Madras City Tenants Protection Act cannot be invoked contrary to the terms of the Government grants."

We find it difficult to accept the ultimate conclusion of their Lordships of the Madras High Court. In our view even if no provision is made in the Mines and Minerals (Regulation and Development) Act of 1957 to exclude the application of Section 3 of the Government Grants Act, by necessary implication the Government Grants Act does not apply to such a lease. We are also of the view that Section 3 of the Government Grants Act does not have that wide and

general application as their Lordships of the Madras High Court think it has. It, therefore, follows that the Division Bench of this Court was not correct when it held that a mining lease was a Government grant and in construing its terms all the provisions, restrictions, conditions and limitations contained in the lease shall be valid and take effect according to their tenor notwithstanding any rule of law, statute or enactment of the Legislature to the contrary.

13. Once the conclusion is reached that the lease in question is not a Government grant, it would follow that the State of Orissa would rank as an ordinary lessor and would have its rights worked out only in that capacity.

14. Mr. Mitra justified the action of the State Government in taking possession under the re-entry clause. In the original lease of 1917 the right of re-entry was provided thus:--

"If any rent or royalty hereby reserved shall be in arrear or remain unpaid for the space of six calendar months next after the day whereon the same ought to be paid (whether the same shall have been formally demanded or not) or if the lessee shall commit any breach or act in contravention of any of the covenants and agreements contained in these presents and on the part of the lessee to be observed and performed or if the lessee shall fail (except owing to causes beyond the control of the lessee) during the consecutive years of the said term to get from the said lands so much of the said minerals as at the rates of royalty hereinbefore mentioned would produce royalties for those years equal in " amount to the said certain half-yearly rent payable during that period then and in any such case it shall be lawful for the local Government on behalf of the Secretary of State at any time thereafter and although advantage may not have been taken of some previous default of a like nature into and upon the said premises or any part thereof in the name of the whole to re-enter and thereupon this present lease and the said term and the liberties. Powers and privileges hereby granted shall absolutely cease and determine but without prejudice to any right or remedy of the Secretary of State in respect of any breach of any of the covenants and agreements contained in these presents or for the recovery of any" rent or royalty remaining unpaid."

The right of re-entry has obviously to be exercised during the currency of the lease and not after the lease had lapsed by efflux of time. Re-entry in the year 1970. 23 years after the lease had expired, cannot be asked to be protected by the covenant of re-entry provided by the contract of lease. We would accordingly negative the contention of Mr. Mitra that the forcible entry made by the State of Orissa can be justified under the re-entry clause. Even if it is assumed that there has been a renewal, it may also be noticed that the re-entry is not purported to be over a part of the lease-hold in the name of the whole. It is the settled rule of law that re-entry by a lessor is permissible only on the basis that its effect is in respect of the entire lease-hold though physical entry may be confined actually to a part of it. Indisputably, in this case distinction was made between the worked out area and the virgin area and re-entry was confined to the virgin area

and the worked out portion was expressly excluded. This action of re-entry even if it was otherwise permissible is not in accordance with law, as the re-entry, is limited to a part of the lease-hold.

15. Mr. Mitra next contended that as the provision of Section 6 of the Specific Relief Act expressly excludes the State Government from its purview it would necessarily follow that if Government takes over possession of some property, the person dispossessed would not be entitled to relief of restoration of possession until title of the aggrieved Party is found. Since we were not examining the question of title. "Mr. Mitra contended, the writ petition was liable to be dismissed.

Mr. Mitra made an attempt to impress upon us that the State Government had a right to obtain possession of the virgin area -- either under the re-entry clause of the lease or under the English common law which is to the effect that a lessor may resume possession of the premises upon the determination of a tenancy whether by efflux of time, forfeiture or for any other cause and may for that purpose use such force as may be necessary and no more, to turn out a trespasser out of his property. Reliance has been placed for the common law Rule on Woodfall on Landlord and Tenant (26th Edition. Article 227). Clerk and Lindsell on Torts (12th Edition Articles 457- 459). (Hemmings. v. Stock Poges Golf Club (1920) 1 KB 720 and Aglionby v. Cohen. (1955) 1 Q. B. 558).

We are not impressed with the contention of Mr. Mitra that the English common law rule of re-entry by a lessor into the lease-hold was existing law at the time of commencement of the Indian Constitution of 1950 and as such has been saved under Article 372 of the Constitution. In the case of Lallu Yeshwant Singh v. Rao Jagdish Singh. AIR 1968 SC 620. their Lordships of the Supreme Court have stated thus:

"Reference was made to a number of English authorities in this behalf but it is not necessary to deal with them because the law in India on this subject is different. u/s 9 of the Specific Relief Act it is well settled that question of title is irrelevant in a suit under that section. As the structure of Section 326 of Qanoon Mal, read with Section 163 of Qanoon Ryotwari, is similar, there is no reason why Section 326 should be interpreted differently.

In Midnapur Zamindary Co. Ltd. v. Naresh Narayan Roy. AIR 1924 PC 144 at P. 147 the Privy Council observed:

"In India persons are not permitted to take forcible possession: they must obtain such possession as they are entitled to, through a Court."

In K.K. Verma and Another Vs. Union of India and Another, , at P. 360. Chagla. C.. J. stated that the law in India was essentially different from the law in England. He observed:

"Under the Indian law the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession

after termination of the tenancy his possession is juridical and that possession is protected by statute. u/s 9 of the Specific Relief Act a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who: has been thrown out of possession cannot go to Court u/s 9 and claim possession against the true owner".

In *Yar Muhammad and Another Vs. Lakshmi Das and Others*, at p. 4, the Full Bench of the Allahabad High Court observed:

"No question of title either of the plaintiff or of the defendant can be raised or gone into in that case (under Section 9 of the Specific Relief Act). The plaintiff will be entitled to succeed without proving any title on which he can fall back upon and the defendant cannot succeed even though he may be in a position to establish the best of all titles. The restoration of possession in such a suit is, however, always subject to a regular title suit and the person who has the real title or even the better title cannot, therefore, be prejudiced in any way by a decree in such a suit. It will always be open to him to establish his title in a regular suit and to recover back possession.....

Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause. As observed by Edge. C. J. in *Wali Ahmad Khan v. Aiudhia Kandu*. ILR 1891 All 537, at P. 556:

"The object of the Section was to drive the person who wanted to elect a person into the proper court and to prevent them from going with a high hand and ejecting such persons." "

Their Lordships ultimately stated in Para 15 of the judgment:

"In our opinion, the law on this point has been correctly stated by the Privy Council, by Chagla. C. J. and by the Full Bench of the Allahabad High Court, in the cases cited above."

The law in India was, therefore, not what Mr. Mitra contended for. It would follow that the dictum laid down by the Full Bench of the Allahabad High Court has also received clear approval of their Lordships of the Supreme Court. The petitioner being in possession could not be ousted from the lease-hold without assistance of the Court.

Support was sought to be gathered for Mr. Mitra's contention from the following observation in a very old case of the Madras High Court in 1864 Mad 313:

"The plain object (of Section XV--now corresponding to the provisions of Section 6 of the Specific Relief Act of 1963) is to discourage proceedings calculated to lead to serious breaches of peace and to provide against the person who has taken the law into his own hands deriving any benefit from the process. It was

intended to obviate the effect of the possible application of English law to such cases."

It has been argued that this view has been more or less adopted in the following cases: *Krishnaray Yeshvant v. Vasudev Apaji Ghotikar & Co.*, ILR (1884) 8 Bom 371; *Ram Harak Rai v. Shodihal Joti*, ILR (1893) All 384; *Wali Ahmad Khan v. Ajudhia Kandu*, ILR (1891) All 537.

Mr. Mitra built UP his arguments on this aspect by putting reliance on the rule of English common law of re-entry and the exclusion of the application of Section 6 of the Specific Relief Act against the State Government. We think, we need do no more than advert to what has been said in two decisions of their Lordships of the Supreme Court to reject this contention of Mr. Mitra.

In the case of *Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta*, , the majority view of their Lordships was stated thus:

"Some of the doctrines of Common law of England were administered as the law in the Presidency Towns of Calcutta. Bombay and Madras. The common law of England was not adopted in the rest of India. Doubtless some of its principles were embodied in the statute law of our country. That apart, in the Mofusil, some principles of common law were invoked by courts on the ground of justice, equity and good conscience. It is, therefore, a question of fact in each case whether any particular branch of the common law became a part of the law of India or in any particular part thereof."

In the exclusion of the State Government from the purview of Section 9 of the repealed Specific Relief Act of 1877 (corresponding to the present Section 6) we do not find statutory recognition of the principle of re-entry referred to above as obtaining in the Common Law: nor do we find any other material on the record of this case to hold as a fact that this particular branch of the Common Law had become a part of the Law of India.

We propose to refer now to a different portion of the judgment in *State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo*, . At P. 689 of the Reporter *State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo*, their Lordships stated:

"In dealing with this argument, we have assumed without deciding that though a suit u/s 9 of the Specific Relief Act would have been incompetent against the appellant, a similar relief can be claimed by the respondents against the appellant under Article 226".

In the case of *United Collieries Ltd. and Another Vs. Engineer in Chief, South Eastern Rly. and Others*, , the lease granted under the Mineral Concession Rules of 1960 was held not to be a lease of statutory character. The liberties, privileges and powers granted by the mining lease were not statutory warranties and were nothing more than contractual rights and privileges. An act done by Government

(the lessor) in exercise of the purported rights under the lease was held not to be an act done or purported to be done in exercise of sovereign powers. Their Lordships stated:--

"When the action of the respondents (State Government) is in the exercise or the supposed exercise of the powers under the lease, there can be no question of any invasion on the petitioner's right under Article 19 or of any acquisition or taking possession of the property attracting Article 31. The dispute which the petitioners have raised is really as to the construction of Clause 2 of Part IV of the Schedule and the nature and extent of the rights given to them under the terms of the lease, and the directions they are seeking, are for the purpose of enforcing the terms of the contract, or to put it other way, for preventing a breach of the terms by the lessor namely, the State and its representatives. In this respect the position of the State acting as a lessor is not different from that of a private lessor claiming to exercise certain rights given to him under his lease deed."

We have already found that the Government Grants Act does not cover a mining lease. The re-entry clause did not clothe Government with any powers of taking possession without assistance of the Court. Government is in the same position as an ordinary lessor and is, therefore, bound by the law which governs the relationship of lessors and lessees, and as lessor it could re-enter only in accordance with law.

15A. By 1970 when possession was taken. 23 years of the renewed period of the lease had lapsed, whether it is the Hindu undivided family firm of Chandanmull Indrakumar or it is the petitioner-Company. possession of the lease-hold had remained during this entire period of 23 years with the erstwhile lessee and Government and its officers have by their dealings accepted the petitioner as the lessee.

For convenience the dealings of Government and its officers with the the petitioner in respect of the leasehold are put below in a tabular statement.

Sl. No. Correspondence by Subject matter Date

1. Deputy Collector of Mines. Sambalpur. Grant of minins lease for fire-clay in Ib River Colliery area 24.11.55 4.2.56 2.4.56
2. Deputy Secretary to Government Grant of renewal "in the name of the old concern" (Annexure-G) 22.4.57
3. Deputy Collector Acceptance of dead rent: also indicating non-compliance of renewal terms (Annexure-H) 28.12.57
4. -do- Asking for payment of rent and royalty 11.2.58
5. -do- Asking for annual return 18.2.58
6. Deputy Collector Payment of dead rent 4.9.59 13.2.62 8.9.62

7. Deputy Secretary to Government Show-cause notice for cancellation 20.4.63

8. Collector Payment of dead rent 27.3.65

It is not disputed that rent, royalty and other dues in respect of the mining lease have been received from the petitioner until the year 1969. From the very grant order of renewal in 1957 it is clear that Government were aware of the fact that the Company was already in existence and was in physical possession of the mining area. That is why in the letter Annexure-G it has been clearly stated:--

"I am directed to convey sanction of Government to the renewal of the mining lease cited above in the name of the old concern of Raisaheb Chandanmull Indrakumar subject to the general terms and conditions laid down....."

Even before the renewal was granted, in 1955-56 the Company was treated as the lessee of the mining area and on that footing the mining lease for fire clay found in the area covered by the colliery lease was offered to the petitioner. From 1957 until 1969, rent and royalty demanded from the petitioner have been paid and accepted by the opposite parties. In 1963 a notice of show-cause was given to the Company by the State Government. The material portion thereof may now be extracted :--

"Whereas M/s. Chandanmull Indrakumar Private Limited filed an application on 10.3.43 for renewal of the lease:

Whereas the renewal was granted in the State Government letter No 2984/MG. dated 22-4-57 addressed to Raisaheb Chandanmull Indrakumar with effect from 1-10-47:

Whereas the grantee did not comply with the terms and conditions of the grant and the orders granting the renewal of the mining lease stood revoked under Rule 28-A of the Mineral Concession Rules of 1949;

Whereas in pursuance of a compromise agreement dated 30th January. 1950, the lease was transferred to a Private Limited Company styled as Raisaheb Chandanmull Indrakumar Private Limited with effect from the said date without the permission of the State or the Central Government;

Whereas the original lease having expired on 30th December. 1947, and there being no valid lease on 30th January. 1950 there was no question of any transfer of the area covered under the lease.

Now, therefore, you having no locus standi to work the mine are hereby required to vacate the colliery by 6th May. 1963 failing which legal action will be taken".

The petitioner explained that it had made the security deposits, paid the fees for surveying, for preparation of maps and Other expenses and there remained nothing more to be done by the petitioner-Company. It also indicated that it had been depositing rents and royalties from time to time which had been accepted by Government; Rule 28-A of the Mineral Concession Rules had no application to

the present case as the renewal was deemed to be effective from 1-10-47 when the Rules were not in force and ultimately requested for withdrawal of the notice. In paragraph 26 of the writ petition it has been stated that the petitioner was prosecuted u/s 21 of the Mines and Minerals (Regulation and Development) Act of 1957 but the said prosecution ended in acquittal. This fact has not been denied. On 27-3-65 the Collector of Sambalpur called upon the Managing Director of the petitioner-Company to make payments of dead rent in respect of the colliery by crossed bank drafts through the State Bank of India, Sambalpur, payable to the Collector or the Officer in-charge, Mines, Sambalpur. Pursuant to the demand, payments were made.

Until January, 1969 the State Government and its officers had been dealing with the petitioner as the lessee and it was only on the 8th January, 1969 that the Deputy Secretary to Government wrote to the Collector of Sambalpur to the following effect:--

"I am directed to Invite a reference to your confidential letter No. 1254/Mines dated 22-1-68 on the above subject and to say that M/s. Raisaheb Chandanmull Indrakumar Private Limited had no legal right as no lease was granted "or renewed in their favour. Possession means effective control. Hence you may take steps to go over the virgin area, measure it, fix the boundary thereof and post necessary personnel, ward off any outside interference if necessity would arise with a view to maintain an effective control over the said area. As regards action to be taken in respect of the remaining areas, separate instructions of the Government will be issued soon."

This seems to provide a landmark in the dealings of the State Government and its officers towards the Company. Thereafter, the Mining Officer, Sambalpur wrote a letter to the Director of the petitioner-Company on 5-4-69. It reads thus:

"There appears to be no lessee as M/s. Raisaheb Chandanmull Indrakumar Private Limited in respect of Ib River Colliery in this district.

It is, therefore, not possible to accept payment of any dead rent from M/s. Raisaheb Chandanmull Indrakumar Private Limited.

The demand draft bearing No. BER/ DD/57950 dated 27th March, 1969 for Rs. 4,357.50 on the Central Bank of India, Brabourne Road, Calcutta issued to the Central Bank of India in my favour and sent with your letter is returned herewith..

Then came the Government direction dated 6th February, 1970 which gave rise to the present dispute. Two letters of the Mining Officer of February, 1970 would show that monthly returns under the Mineral Concession Rules had been filed by the petitioner-Company and had been accepted earlier by the Mining Officer but they were sent back to the petitioner by the covering letters dated 19-2-70 on the plea that there was no lessee by the name of M/s. Raisaheb Chandanmull Indrakumar Private Limited.

It would thus appear that from 1950 until 1969 the petitioner had been treated

as the lessee. Though Government had demanded possession in 1963 on the basis that the petitioner was not the lessee, in 1965 the Collector of Sambalpur asked for payment of the dues in respect of the lease. The Hindu undivided family firm remained in possession of the lease-hold for a little more than two years after the deemed renewal in 1947, and for about 20 years the petitioner-Company had been in admitted possession of the lease-hold. In such circumstances, can it be said that the petitioner is a rank trespasser? The fact that an unauthorised person was allowed to be in possession and enjoyment of a valuable lease-hold for such a long time and was treated as a lessee goes a long way to tilt the measure of equity in favour of the petitioner.

The dictum laid down by their Lordships of the Supreme Court in *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, , applies with full force to the facts of the present case. It has been held:

"Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced *ex contractu* by a person who acts upon the promise; when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation may be enforced against it in appropriate cases in equity. In *Union of India v. M/s. Indo-Afghan Agencies Ltd.*, this Court held that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government. This Court held that the following observations made by Denning J., in *Robertson v. Minister of Pensions* (1948 2 All ER 667) applied in India:

The Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action".

16. The manner in which in the present case action has been taken by Government leaves no doubt in our minds that it has been extremely high-handed and Government has arrogated to itself a power which it does not have.

17. In view of the long possession of the petitioner over the lease-hold, the several transactions in which Government and its subordinate officers accepted the petitioner-Company as lawfully entitled to work the mines and be in possession as the lessee and the general dealings of the parties spread over two decades lead us to conclude that the petitioner's possession was not that of trespasser and that Government was not justified in acting in the manner it has to dispossess the petitioner from the virgin area of the lease-hold.

18. The question that remains for consideration is whether the petitioner would

be entitled to any relief in this application. Under our constitutional setup, Rule of Law is paramount and like citizens, the State is also bound to act in keeping with the Rule of Law. As was laid down in the case of Bishan Das and Others Vs. The State of Punjab and Others, :

"Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law. The facts and the position in law thus clearly are (1) that the buildings constructed on this piece of Government land did not belong to Government, (2) that the petitioners were in possession and occupation of the buildings and (3) that by virtue of enactments binding on the Government, the petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property."

The machinery of the State is bound to work in tune with the Rule of Law so that our nascent democracy can thrive and the Constitution may successfully work. The State cannot take the law into its own hands, be the judge of its own cause and execute its own decisions particularly in the field of its commercial activities and demand to be treated differently from a citizen. The State like the individual is bound by the law and must act in accordance with it. Even if the right to relief in this case arises out of an alleged breach of contract -- because the petitioner pleads that it has been accepted as the lessee and the State of Orissa has committed breach of the contract -- as the action challenged is of a public authority and the impugned act seems to be contrary to fair play and the mischief complained against may not have been possible to be worked out by an ordinary individual but has been possible because the mighty machinery of the State Government has been called in aid to perpetrate the mischief, we are satisfied that it is a fit case where relief to the petitioner should be granted. As was indicated by their Lordships of the Supreme Court in Mohammed Hanif Vs. The State of Assam, :

"It is obvious that the remedy provided under Article 226 is a remedy against the violation of the rights of a citizen by the State or statutory authority."

19. One aspect upon which argument was advanced at the Bar may in passing be now noticed. Mr. Chatterjee contended that as the action of taking possession by the State Government on ultimate analysis is only an executive action, it is liable to be struck down unless it is supported by authority of law. He relies upon expression of the same view in two decisions of the Supreme Court in the case of State of Madhya Pradesh v. Bharat Singh, AIR 1967 SC 1170 and Satwant Singh v. A.P.O., New Delhi AIR 1967 SG 1836. In the later case it was said:

"One of the aspects of rule of law is that every executive action, if it is to operate to the prejudice of any person, must be supported by some legislative authority."

Mr. Mitra has no quarrel with this dictum, but when Mr. Chatterjee pointed out that there was no law authorising the State to take over possession all by itself/ Mr. Mitra has raised the various pleas we have already taken note of and have negatived.

20. Mr. Mitra for the opposite parties next contended that possession has already been taken and the opposite party No. 7 has been asked to raise minerals under a raising contract; as such the question of putting the petitioner back in possession does not arise. We do not think that there is much force in this contention. Dispossession in this case is said to be on 28-2-70 and it was by walking over a part of the virgin area and announcing the fact by beat of drums. This writ application was filed on 7-4-70. By then admittedly no rights had been created in favour of the opposite party No. 7. The State of Orissa had notice of the writ petition as a copy of it had been served on the learned Advocate-General at the time it was filed. During the pendency of the writ petition the raising contract was given to the opposite party No. 7. As such, it is bound to be subject to the results of the writ petition. Again, if the dispossession of the petitioner is not in accordance with law and, therefore, the petitioner is entitled to be put back to possession by annulling the act of dispossession, the raising contract granted to the opposite party No. 7 subsequent to the filing of the writ petition cannot stand in the way of directing restoration of possession.

21. We would, accordingly, allow this writ application, direct a writ of mandamus to issue to the opposite parties to put the petitioner in possession of the virgin area said to have been taken possession of on 28-2-70 and restrain them from interfering with the possession of the petitioner over the Ib River Colliery in any manner until the petitioner is evicted in due course of law.

22. The writ application is allowed with costs. Hearing fee is assessed at Rs. 500/-.

G.K. Misra, C.J.

23. I entirely agree.

B.K. Patra, J.

24. I agree.