

(1960) 03 CAL CK 0039
In the Calcutta High Court
Case No : Matter No. 83 of 1959

Rajendra Collieries Ltd.

APPELLANT

Vs

Coal Controller and Another

RESPONDENT

Date of Decision : 04-03-1960

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 4, 7, 9

Citation : AIR 1960 Cal 736

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Advocate : R. Choudhury and P.C. Chowdhury, for the Appellant; G.P. Kar and A.K. Banerji, for the Respondent

Judgement

D.N. Sinha, J.—The facts in this case are shortly as follows : The petitioner, Rajendra Colliery Ltd., is a sub-lessee of approximately 1570 bighas of coal-bearing land in village Chordhara Thana Ramgarh, District Hazaribagh, in the State of Bihar. The petitioner company obtained a sub-lease from the lessee Messrs, Karanpura Development Co. Ltd., by an instrument of sub-lease dated September 1946. On or about 29th May, 1947 the petitioner made an application for a permit to open a coal mine in the said area as is required under, the Colliery Control Order, 1944. This order was subsequently replaced by the Colliery Control Order, 1945 and paragraph 14 of the said order runs as follows :

"No colliery shall be opened and no colliery, the working whereof has been discontinued for a period exceeding two months, shall be re-opened except with the previous permission of the Central Government in accordance with such directions as the Central Government may at the time of granting the permission or subsequently give, to the owner or owners "themselves."

2. Briefly speaking, the Central Government has the power to constitute a Board called the Coal Control Board and the functions of the Central Government under the Order are exercisable by the Coal Controller with the Government of India, Deputy Coal Controller (Distribution), Deputy Coal Controller (Production) and

the Joint Deputy Coal Controller (Distribution). In the application for permission to open a mine, it was stated that the petitioner company had obtained this virgin property from Messrs. Karanpura Development Co. Ltd. and intended to work the same. It was further stated that the property contained Kurse, Simana, Sirka and Argada qualities of coal, and the property had to be developed. It was also stated that the seams of coal were good seams and the geological plan was enclosed. On or about 11th July, 1947 the Deputy Coal Commissioner (Production), which I take it is the same as the Deputy Coal Controller (Production) granted permission under Clause 14 of the Colliery Control Order 1945 to open the "Rajendra Collieries and Co." A copy of the permission is annexure "A" to the petition. According to the petitioner, after the permission was obtained, prospecting work was carried out and a quarry was opened to work the Argada seam near the Damodar river. It was found however that the coal was of inferior quality, and therefore, it was abandoned sometime in 1950. Thereafter, several bore-holes and trial-pits were dug, to find out the location where the quarrying could be resumed effectively. I must mention here that the rules and regulations appertaining to Collieries, require that immediately after a mine is operated, returns must be filed showing details of the working and the coal must be graded after due inspection of the authorities. During all this time, the returns made by the petitioner company showed that no coal had ever been raised. It appears from the correspondence that although official inspection was made, no grading was ever done. On or about 16th December, 1955 the petitioner, company made an application to the Coal Board, purporting to be under Rule 39 of the Coal Mines (Conservation and Safety) Rules 1952, for permission to open a coal mine which had been closed for more than six months. A copy of this application is annexed to the petition and appears at pages 12-14. This application clearly shows that the petitioner company had opened up a quarry to work the Argada seam near the Damodar river, but subsequently abandoned it because the coal was found to be of inferior quality. It was stated that the quantity of coal had since been determined by means of several trial pits and bore-holes, and all arrangements regarding planned development of the mine had been completed. It was further stated that the raising will be started as soon as permission to re-open was granted. Copies of the plans that were annexed to the application have been made an annexure to the affidavit of Akhtar Zaman, respondent No. 1, the Coal Controller, affirmed on 3rd February, 1960. These maps clearly show that a quarry was opened near the Damodar river and after its abandonment certain bore-holes were opened, the positions whereof are shown on the maps, as also the location of the "proposed inclines", which means proposed quarries for Sirka and Simana Seams. These are situated away from the river. The reason why the mining of coal was abandoned has been clearly mentioned in the application and is as follows :

"Coal raised from quarry was of inferior quality and hence quarry working was abandoned. A detailed prospecting of the area was thereafter carried out as a result of which Sirka and Simana were subsequently proved in the property."

Against the heading "Type of mine-pit, Incline or Quarry" -- the entry is, "Previously quarry. At present a number, of inclines to be sunk". It has been clearly stated in the application that the date of first opening of the mine was 12-7-1947 and the date of closure was "sometime in 1950" and that the average output during the period of previous working was "nil". On or about 10th June, 1957 came into operation, a Central Act known as the "Coal Bearing Areas (Acquisition, and Development) Act (XX of 1957)". The preamble states that it is an Act "to establish in the economic interests of India, greater public control over the Coal Mining Industry and its development, by providing for the acquisition by the State of unworked land containing or likely to contain coal deposits or rights in or over such land, for the extinguishment or modification of such rights accruing by virtue of any agreement, lease, licenses or otherwise, and for matters connected thereto."

3. The provisions of Section 4 of the Act are important and the relevant part is set out below:

"4 (1) Whenever it appears to the Central Government that coal is likely to be obtained from land in any locality it may, by notification in the Official Gazette, give notice of its intention to prospect for coal therein.

* * * * * (4) In issuing a notification under this section the Central Government shall exclude therefrom that portion of any land in which coal mining operations are actually being carried in conformity with the provisions of any enactment, rule or order for the time being in force or any premises on which any process ancillary to the getting, dressing or preparation for sale of coal obtained as a result of such operations is being carried on are situate."

4. Section 5 lays down that on the issue of such notification, any prospecting license or any mining lease will cease to have effect, for so long as the notification is in force. Section 6 provides for compensation which is to be paid for damages caused by any action taken u/s 4. Section 7 confers power upon the Central Government, if it is satisfied that coal is obtainable in the land notified, to give notice of its intention to acquire the whole or any part of the land or any rights in or over such land. u/s 8, any person interested may prefer objection. The objection is made to the competent authority in writing, who gives the objector an opportunity of being heard either in person or by legal practitioner, and thereafter makes a report to the Central Government. u/s 9, the Central Government is given power, after considering the report, to make a declaration that the land or any rights therein, which were notified for acquisition, should be acquired. Section 13 provides for award of compensation where a prospecting license ceases to have effect or rights under a mining lease are acquired. By a notification dated 24th July 1957 published in the Gazette of India on the 3rd August, 1957 being S.R.O. No. 2505, the Central Government issued a notice under Sub-section (1) of Section 4 of the said Act, giving notice of its intention to prospect for coal inter alia in the village of Chordhara, Hazaribagh to the extent of 3183.51 bighas. This affects the colliery of the petitioner. On the 24th

September, 1957 an application for permission to re-open the mine was rejected on the ground that production from the colliery will not be required in the Third Five Year Plan period and that transport-facilities might not be available. Thereafter, the petitioner company continued correspondence and on the 29/30 November, 1957 the Coal Board appears to have granted permission for re-opening the colliery. It is explained in the affidavit filed before me that this permission was granted through inadvertence, because the petitioner never brought it to the notice of the Coal Board that the land in question was already the subject matter of a notification under Sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act (XX of 1957). On the 4th May, 1958 the Central Government issued a notification u/s 7 of the said Act, expressing its intention to acquire the area. On the 22nd September, 1958 the petitioner company filed objection u/s 8, which was duly heard. On the 20th March, 1959 a declaration was made u/s 9 of the said Act for acquisition of the said land. The petitioner company has now come to this court complaining against the acquisition. The main objection, as propounded by Mr. Choudhury is that this Coal Bearing Areas (Acquisition and Development) Act is an Act which is intended to be utilised for the acquisition by the State of "unworked land containing or likely to contain coal deposits". This, he says, is clearly laid down in the preamble to the Act. He argues that the intention of the legislature was to enable the Central Government to acquire land in which there was likelihood of there being coal deposits, but which has never been worked before. In other words, where nobody has opened up any mines, the Central Government can step in and start prospecting and, thereafter, if the prospecting is successful, open and work a mine. He points out however, that where mines have already been opened upon any land, it cannot be called "unworked land", and in that case the Central Government has not been given power under the Act to step in and oust someone who has been working a mine. There is no doubt that in the preamble to the Act the expression "unworked land" does appear. The word, "land", however, has not been defined in the Act and the question is as to what is the exact meaning of the expression "unworked land". Since the word, "land" has been used in the context of a mine, it obviously includes not only surface land but all that lies below it, namely all mines and minerals, including coal. According to Mr. Choudhury, land which can be acquired under this Act must be virgin land, namely where nobody has ever thought of prospecting or opening up a mine. In my opinion, the meaning of the expression "unworked land" will have to be gathered from the substantive provisions in the Act. After all, the preamble of the Act only states the object of the enactment and is useful as a background and nothing more. It cannot control the substantive provisions in the body of the Act where the provisions are clear and unambiguous. There is, however, indication in the body of the Act as to what kind of working is intended to be within the scope of the Act. Section 4(1) lays down the method of issuing a preliminary notification declaring an intention to prospect for coal in any area. The first condition precedent is that it must appear to the Central Government that coal was likely to be obtained from land in any locality. Sub-section (4) of

Section 4 however, is of importance and has already been set out above. It has been provided that in issuing a notification u/s 4, the Central Government was to exclude therefrom that portion of any land in which coal mining operations were "actually being carried on in conformity with the provisions of any enactment, rule or order for the time being in force". The second heading of exclusion is that of any premises where any process ancillary to the getting, dressing, etc. of coal is carried out. We are, however, not concerned in this case with the second heading. Therefore, the intendment is quite clear that the Central Government could acquire any land, except where coal mining operations were actually being carried on in conformity with the provisions of any enactment, rule or order for the time being in force. It will be remembered that all mines and minerals, and the working thereof, are controlled by Central Statutes, rules and regulations. No mines and minerals can be worked, or even no prospecting therefore can be made, without compliance with these Central Statutes, rules and regulations. Thus, the exclusion envisaged by Sub-section (4), is intended to apply to land where mining operations are actually being carried on. There is, however, a further qualification, namely that such mining operations must not only be carried on actually, but carried on in conformity with the provisions of any enactment, rule or order. Mr. Choudhury has argued that the words, "mining operations" are very wide. He has referred me to Halsbury's Laws of England, 3rd Edn. Vol. 26, para 1122 at page 561. In para 1120 at page 559 it is stated that the expression "mine" in the Mines and Quarries Act, 1954 (English), meant an excavation or system of excavation made for the purpose of, or in connection with, getting, wholly or substantially by means involving the employment of persons below ground, of minerals, whether in their natural state or Otherwise. The expression "quarry" means an excavation or system of excavation made for the purpose of, or in connection with, the getting of minerals, whether in their natural state or in solution or suspension or products of minerals -- "being neither a mine nor merely a well or bore-hole or a well and bore-hole combined." For the purposes of the English Act, the working of a mine includes the driving of a shaft or outlet for the mine and the working of a quarry includes the removal of the over-burden. The word, "mining operation" is not defined under Act XX of 1957. Indeed, the word, "mine" has been defined in several Acts, Rules and Regulations but so far as I can see the expression "mining operation" has only been defined in the Mines and Minerals (Regulations and Development) Act, 1957 and means any operation undertaken for the purpose of winning any mineral. Mr. Choudhury tried to argue that this indicates that mining operations must be taken to include every kind of operation, beginning from the prospecting stage. In my opinion, this is going too far, so far as Act XX of 1957 is concerned. Coming to the facts of this case, we find that the petitioner company, after having obtained permission of the Coal Controller to open the "Rajendra Colliery" in 1947, started a quarry on the Argada Seam near the river Damodar. In 1950, however this quarry was abandoned, as appears from the admission made by the petitioners themselves. As is stated by Halsbury the working of a quarry means the removal of the overburden. As long as the

quarry was being worked, that is to say, any part of the overburden was being removed, it could be said that mining operation was being actually carried on. According to the returns given by the company itself, no coal was raised or graded in the quarry. It is, however stated now that some coal was raised, but as the quality was not satisfactory it was abandoned. 18 will be remembered that the permission that was sought, to reopen the colliery, related not to the Argada Seam but the Sirka and Simana Seams, which had never been worked before. Subsequently, some bore-holes were made in order to find out a suitable site for opening a quarry or quarries for these seams. As has been stated by Halsbury, a bore-hole or a well is neither a mine nor a quarry. It is strictly speaking a prospecting operation which cannot be called an operation of mining. One cannot extract minerals through bore-holes, except for prospecting work. It is when the prospecting work ends and permission is obtained to operate a mine that actual mining operation can be commenced. In my opinion, a wider meaning cannot be ascribed in this case, because Sub-section (4) of Section 4 does not refer to mere mining operation, but such operation as was carried on "in conformity with the provisions of any enactment, rule or order for the time being in force". The position, therefore, is that at the material time the company was the sub-lessee of land in which, by a previous permission obtained to open a colliery, a quarry was opened and then abandoned. Since the quarry was abandoned, it cannot be said that at the material time there was any actual mining operation going on. Indeed, the company does not intend to operate the old quarry. It intends to open a new quarry. For doing so, the law requires that a fresh permission has to be obtained, because two months have elapsed from the time when the previous operation was abandoned. What then was the position when the notification u/s 4 was published? The petitioner company proposed to open quarries on the land, which it could not do without permission, because under the Colliery Control Order it would be necessary to obtain a fresh permission before any mining operation could be undertaken. Under Clause 14 of the Colliery Control Order, 1945 the working of a colliery having been discontinued for a period exceeding two months, no mining operation could be recommenced without permission of the Coal Controller. Therefore, it can never be said that at the time when the notification u/s 4 was issued, any mining operation was being actually carried on by the petitioner company "in conformity with the provisions of any enactment, rule or order for the time being in force". In fact, the provisions of the Colliery Control Order, which was in force, or the provisions of the Coal Mines (Conservation and Safety) Rules, 1952 require that without obtaining the permission of the Coal Controller, or the Coal Board no mining operation could be carried on legally. I am unable to accept the argument advanced on behalf of the petitioner, that the expression "unworked land" in the preamble should be given the widest meaning, so that when any land is worked in any manner, even though such working may be abandoned, it should be held that the land could no longer be acquired compulsorily by the Central Government under the Act. In my opinion, the provisions in the body of the Act are quite clear. The Central Government cannot acquire any land where mining operation is actually being

carried on under the provisions of any enactment, rule or order for the time being in force. No mining operation can be carried on without previous permission of the authorities concerned. If there is no permission, then in fact, the operations, if carried on, are illegal and would not operate as a bar to action under the Act. In this case, when the notification came to be published, permission had been asked for but not granted. Therefore, it cannot be said that any actual mining operation was going on in accordance with law. There was, therefore, no bar to issuing the notification u/s 4. The question then is as to whether any significance attaches to the permission having been subsequently granted. As has been pointed out in the affidavits, this permission was granted by mistake, because the petitioner company did not bring it to the notice of the authorities in Calcutta that the area concerned was already the subject-matter of a notification u/s 4. This appears to be correct. In the correspondence that was carried on, by or on behalf of the petitioner company with the Coal Board or the Coal Controller, there is no mention of that fact. In my opinion, however, a subsequent permission could not invalidate a notice given u/s 4, in accordance with law. Once that notice is lawfully given, the Central Government would have jurisdiction to proceed under Sections 7 and 9. Even if the Coal Controller has in the meantime granted permission, that would not affect the right of the Central Government to proceed under those sections of the Act. After all, all that the petitioner did was to sink certain boreholes, and it is at this stage that the Central Government has taken over the land.

5. For the reasons aforesaid. I do not think that any ground has been made for interference. In my opinion, the action of the Central Government is in accordance with law. The application, therefore, fails and should be dismissed. The rule is discharged. Interim orders, if any, are vacated. There will be no order as to costs.