

(1967) 12 CAL CK 0004

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 417 of 1963

Sk. Salamat and Another

APPELLANT

Vs

Equitable Coal Co. Ltd.

RESPONDENT

Date of Decision : 18-12-1967

Acts Referred:

Citation : 72 CWN 213

Hon'ble Judges : A.K. Das, J

Bench : Single Bench

Advocate : Murari Mohan Dutt and Ganendra Narayan Roy, for the Appellant; Ranadeb Chaudhuri and Bhabani Shankar Bagchi, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Das, J.—This appeal is directed against the judgment of the Subordinate Judge, Asansol, setting aside the judgment of the Munsif dismissing the plaintiff's suit. The plaintiff, Equitable Coal Company Limited brought this suit before the Munsif, Asansol for permanent injunction restraining the defendants from making any structures on the disputed lands and also for mandatory injunction directing the defendants to remove the structures already made. Plaintiff's case is that one Rebati Dassya and others were putnidars of mouza Jamuria under Maharaja of Burdwan. The putnidars transferred their interest in the mouza, including surface and underground rights to the plaintiff company in 1871 by a patta. The plaintiff company came in possession and commenced mining operations and continued in such possession, openly and adversely for more than 12 years prior to 1918. Consequent upon a certain decision affecting the putnidars' right of giving lease of underground minerals, the plaintiff company took a confirmatory lease to work the coal underneath the said Mouza from the Maharaja of Burdwan on June 6, 1918. The defendants have surface rights for agricultural purposes only but they started constructing pucca structures on the land. The lands are situated in the close proximity of the plaintiff's pits Nos. 5 and 6, and it has already obtained permission from the

Government authority to reopen the said pits. Hence the suit for injunction.

2. Defendants contested the suit denying that their lease was for agricultural purpose only. They also deny that the plaintiff company had right to extract coal from the underground of suit lands. They claim that there are buildings on the suit land and neighbouring lands for more than 12 years and the plaintiff company never objected to that. They further contend that the mining lease was granted long after the surface right was leased to the predecessors of the defendants and at that time, the existence of coal underneath was not known. Plaintiff therefore, is bound to maintain the support of the surface land.

3. The learned Munsif found that at one point of time, there was a severance of tenement in so far as the surface and subsoil of the suit land is concerned and the owner of the surface right as a neighbour had a right of support of their lands in their natural state. The holder of the mining right was therefore liable to provide support of their lands in their natural state. No injunction was therefore granted restraining construction. The learned Munsif also found that even if such support was not available, injunction cannot be granted. though the plaintiff company may not be liable to pay compensation, if the buildings collapse Construction of house was no invasion of mineral rights and the prayer for injunction was rejected.

4. The learned Subordinate Judge found that the act of construction of houses on the land amounted to a nuisance as it purported to abridge the right of the plaintiff company to extract coal in its entirety. He found that u/s 105 of the Coal Mines Regulation, 1957, the plaintiffs right to extract coal would be fettered by the construction, thereby affecting the plaintiff's right of enjoyment of the underground minerals. The defendants could not create extra burden of support on the plaintiff company by constructing houses and as such, the construction amounted to a nuisance. He, therefore, granted the injunction asked for.

5. The Courts below proceeded to decide the question on the assumption that the plaintiff company had the underground mineral right only and they considered the question from the point of view of any possible impediment to exercise that right. The learned Munsif found that by the grant of mining right to the plaintiff company and the surface right to the defendant at a later-date, there was a severance of the tenements and holders of the two tenements became neighbours of each other. Therefore, their rights and obligations inter se are those that exist between two neighbours under the general law, nothing more, nothing less. The first appellate court held that the owners of the surface right must use the land in a manner consistent with the rights of the holder of the underground right so as to enable him to carry on the mining operations in all reasonable manners. He ultimately concluded that construction of houses purported to abridge the right of the holder of the underground right to get full benefit of extracting the entire stock and as such it was a nuisance. The effect of construction would add to the burden of the holder of the underground lease in view of Regulation 105 of the Coal Mines Regulation, 1957 and he, therefore,

granted the injunction prayed for.

6. Plaintiff company's case is based upon the two leases, the first one of 1871 granted by the putnidar, Ext. 2A, and the second one, Ext 2 granted by the Maharaja of Burdwan in 1918. The second lease is merely a confirmatory one, consequent upon the judicial decision negating the putnidar's right to give settlement of underground rights. The lease of 1871, Ext 2A purports to settle both the surface and underground rights, for collecting fireclay from the surface and coal from underground. It clearly entitled the lessee to collect metals and minerals from both the surface and the underground and the plaintiff company had therefore been given both surface and underground rights. Ext 2, lease granted by the Maharaja recites the circumstances in which this confirmatory lease was executed and purports to give rights to all coal and fireclay "lying in and being in and within the said demised mines..... and to take up and occupy all surface lands". It further makes available all facilities to collect coal from underground and fireclay from surface. Plaintiff's clear case is that surface and subsoil rights including coal was leased to the plaintiff company in 1871 by the putnidar and subsequently confirmed by the Maharaja in 1918. Their case is that the defendants are entitled to surface rights for agricultural purposes only and for no other purposes. Their further case is that this settlement was taken by the predecessors of the defendant with full knowledge of the existence of coal underneath and the grantee's right to extract such coal. The contesting defendant Salamat claimed right by purchase in 1956 from Gobardhan Bagdi and another who possessed the lands for more than 12 years in assertion of their title. Any settlement to the defendant or his predecessors of the surface right is not inconsistent with the plaintiff's right to collect fireclay from the surface and the defendant's settlement is for agricultural purposes which is not in conflict with the plaintiff's right to collect fireclay from the surface and coal from underneath. Construction of buildings and other structures on the lands affect the plaintiff's right to quarry in terms of the lease and the plaintiff is therefore en-titled to the relief prayed for.

7. We may now consider the effect of the grant of mining right with or without any surface right. There is no dispute that the Mining Regulations put some restrictions on the operation of mines for extracting coal and both the courts below have referred to these Regulations. Regulation 105 prohibits working, extraction of coal, reduction of pillars etc. at any point within 45 meters of any Railway, building or other permanent structures, not belonging to the owners of the mine. Clause (1) provides that the operations should not be under-taken within the prohibited area without the prior permission in writing of the Chief Inspector of Mines and it is clear from cl. (3) that such permission shall not ordinarily be granted as the stability of the structures may be endangered and the mine owner must wait for removal of such structures. The learned Munsif concludes that such Regulations do not bind the defendant but only the mine owner and therefore the construction should not be interfered with, irrespective of whether the defendant is entitled to compensation for eventual collapse or

not. The approach in my view is not correct. The proper question is whether such construction is interfering with the enjoyment of the full benefit by the mine owner and the answer is obvious. He cannot, for the Mining Regulations will not allow it, nor is the mine owner expected to take the known risk of subsidence of the surface, resulting in damage to the structure and even possible loss of life. The defendants hold lease of the surface with knowledge of coal underneath and they cannot therefore do any act calculated to affect the mine owner's right to extract the entire coal. To that extent, he is also bound by the Mining Regulations also and he cannot add either to the burden or adversely affect the mine owner's right based on an earlier lease. Agricultural operation on the surface does not affect the operations of the mine or even the collection of fireclay from the surface and the subsequent surface lease therefore does not grant right of construction to the prejudice of the owner of the mines. Mining Regulations are undoubtedly for providing safety measures in the operation of collieries but they are not intended to affect the mine owner's right to collect the entire mineral, provided safety measures are taken but construction of structures would stand in the way of receiving the entire benefit. The learned Munsif has referred to section 76 of the B.T. Act to say that an agricultural tenant is entitled to construct houses, whether brick or masonry but then this right cannot be exercised so as to prejudice the right of the holder of the mineral right and in total oblivion of the right of the mine owner to collect the entire stock. The lease to the mine owner in 1871 is in respect of both the surface and the underground and this is confirmed in 1918 by the Maharaja and any settlement thereafter to the defendant or his predecessor cannot be in derogation of the right of the lessee. Lease for agricultural purposes is not in conflict with the rights secured by the earlier leases and this right cannot be compromised or affected by such leases for agricultural purposes. This view is in consonance with that expressed in Mac Swinney's treatises on Quarries and Minerals, referred to by the learned Subordinate Judge. It is stated that "A grant of mines, therefore, carries with it, prima facie the power to dig them. And in like manner a grant of the surface involves, prima facie, the right to have that surface preserved in the natural state." The learned author further observes that "the owner of the mineral has a right to take always the whole of the minerals in his land, for such is the natural course of user of mineral; and a servitude to prevent such an user must be founded on something more than mere neighbour-hood." It is true that he must not in the uses of his property do an injury to his neighbours, if it can be avoided but this principle does not apply here. We have found that the plaintiff has the underground right to collect coal and the surface right to gather fireclay. Construction of structures is likely to restrict the mining operations and otherwise affect these rights and the defendant cannot therefore increase the burden by such construction. Halsbury in volume 26 at page 413, Article 858 has stated as follows:

Upon the severance of mines from the surface, whether by grant or exception, working powers and liberties are usually expressly granted or reserved, but in

the absence of express provision, there is incident, by implication of law, to the ownership of mines a power to get and carry away the minerals; and on the same principle an express power will give rise to an implication of all incidental liberties necessary for the exercise of the power. An implied liberty will not be curtailed by the terms of an express power which may be exercisable to a greater extent or for a longer period.

There is prima facie incident to the ownership of mines, subject to planning legislation, power on the part of the mineowner to enter upon the surface, to dig pits and get the minerals.

8. Halsbury in the same volume at page 318, Article 669, points out that "Whereas the word "mine" means primarily an underground excavation, the word "quarry" implies surface workings, leaving no roof overhead". It has also been pointed out that the rules which apply to mines apply similarly to quarries. In the present case, however, the right to take the minerals as also the surface right to take fireclay was granted expressly in the lease of 1871 and subsequently confirmed by the lease of 1918. The defendants are liable to use their surface right in a manner consistent with the mining right of the plaintiff company "to take away the whole of the minerals in his land, for such is the natural course of user of minerals". The learned Subordinate Judge has found that the construction by the defendant abridges the plaintiff company's right to collect the entire stock. It is not correct to say that the plaintiff company may neglect the structures, for the Mining Regulation prohibits extraction of coal within a distance of 45 meters from such structures and the plaintiff company's right is therefore abridged by such construction. The first appellate court is therefore right in holding that the construction curtails the legal right of the plaintiff company to collect the whole of the materials and the defendants therefore cannot impose further burden on the plaintiff company by erecting the structures. Such construction prima facie interferes with the right of the plaintiff to collect the minerals and the appellate court is therefore right in granting in-junction restraining further construction and further directing removal of the construction already made.

In the result, this appeal fails and it is dismissed.

In view of the circumstances, I make no order as to costs of this appeal.