

(1997) 12 BOM CK 0059

In the Bombay High Court

Case No : Civil Revision Application No. 61 of 1997

Smt. Kunda Raghuvir Gharse

APPELLANT

Vs

M/s. Timble Planting Private Ltd.

RESPONDENT

Date of Decision : 17-12-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Mines and Minerals (Development and Regulation) Act, 1957 — Section 24
Specific Relief Act, 1963 — Section 38

Citation : (1998) 3 ALLMR 65 : (1998) 4 BomCR 520

Hon'ble Judges : N.J. Pandya, J

Bench : Single Bench

Advocate : V.B. Nadkarni, S.A., A.N.S. Nadkarni and Y.V. Nadkarni, for the Appellant; F.M. Reis, for the Respondent

Judgement

N.J. Pandya, J.—The petitioner is the original defendant of Special Civil Suit No. 22/95 in the Court of Civil Judge, Jr. Division, Sanguem. The respondent/plaintiff had filed the said suit claiming the following relief, as contained in paragraph 33, page 50:

"(a) That by an order and decree in the nature of permanent injunction, the defendant be restrained from entering or interfering or undertaking any mining operations or disturbing the possession of the plaintiff or the suit property beyond the mining pit which exists and is as shown within brown colour on the plan annexed."

2. As can be gathered from the aforesaid para that a permanent injunction is sought restraining the defendant from doing the mining operations beyond the mining pit which exists.

3. So far as the area of the mining pit is concerned, initially there was some dispute. According to the plaintiff, with reference to the plan attached to the plaint by it, that an area was limited to the portion described in brown colour. Later on, the Mamlatdar along with Field Surveyor visited the said place and as

can be gathered from the additional areas marked "B", "C" and "D" were also found to have been covered by mining operation. The report being at page 211 and the map being at page 212.

4. For all essential purposes, therefore, the areas under the marked portions, on the date of the filing of the suit was the entire area covered by brown portion along with the portions marked "B", "C" and "D". The disputed portion, therefore remains is the one covered under letter "A".

5. As stated in the plaint, the disputed area is forming part of large property owned by the plaintiff/respondent and the right of an owner that the plaintiff has, is being invaded and threatened to be invaded by the defendant by bringing mining machinery on the spot and carrying out mining operations in the disputed area.

6. Ordinarily when a party approaches the Court with a case that his rights are being invaded, the Court will immediately protect his right by an interim relief and that is what exactly has been done. However, when the question is in form of such interim relief, the case put forth by the other side has to be considered. It is at this juncture, the Court is required to consider whether the invasion is totally unwarranted and wanton in character or there is some basis or semblance of right in the defendant.

7. It is an admitted position that the defendant/petitioner does have mining lease subsisting in her favour as on the date of suit. The lease was granted to her from 1-11-1957 and it has been renewed on three different dates. It related back to 1-11-1957. Dates of renewal for the period it has related back to 1-11-1957 are as under:

Lease 230 renewed on 23-9-1990;

Lease 229 renewed on 25-9-1990; and

Lease 234 renewed on 26-9-1990.

8. At this juncture, I may take into consideration the provisions of the Mines and Minerals (Regulation & Development) Act, 1957. The definition thereof is stated as under:

"Section 3, Clause (d):

"mining operation" means any operation undertaken for the purpose of winning any mineral;"

9. The mining is lease and nothing else. It is a legal permission for the lease-holders to carry out mining operation, meaning of which for the purpose of the aforesaid Act has been clearly defined.

10. It is also an accepted position that the area leased out to the defendant/petitioner is much larger and does include the disputed area and thus covered by lease.

11. The invasion thus complained of is neither unwarranted nor wanton in character. The operation to be carried out has been permitted to be so done and so far as the obligation of the lease-holder or the lessee is concerned, the provisions of the said Act along with the Rules framed thereunder will govern the case between the parties. So far as the ownership of the immovable property is concerned, the law would jealously determine the right of the owners. However, looking to the complicated character of the society which is greatly enhanced particularly with reference to the present day complex economic activities one would expect there to be some sort of curtailment of the constraint to be on the ownership right and this will be more so in relation to mineral under the relevant law existing in India, though the surface land may belong to a private individual mineral ownership belongs to the State, representing the people. It is people's property, represented by the State which is being dealt with under the said Act along with the Rules made thereunder and, therefore, as to be expected, the Act provides for certain constraints upon the right of the owner and also strikes a balance by providing remedial measures, including the measures for fixing damages.

12. In this background, if the controversy between the parties is assessed, one thing becomes clear as per the provisions of the Specific Relief Act, itself, when the suit is for permanent injunction and, therefore, to be gathered from section 38(3) of the Specific Relief Act, 1963. Promptly, my attention was drawn to Clause (b), which reads thus :

"(b) where there exists no standard for ascertaining the actual damage caused, or, likely to be caused by the invasion;"

This would mean that perpetual injunction can be granted where there exists no standard for ascertaining actual damage caused by accepting the principle that by granting interim relief, the Court has to look to the final relief that has been asked for and whether there is possibility of it being granted in the first place. This aspect would be required to be considered while dealing with the point of prima facie case.

13. When the plaint that refers to different PARAS, namely paras 5, 14, 15,17, 21 and more particularly 22 as well as 28, at page 49 and the grievance made is that no damages are paid by the defendant.

14. That apart, whether the damages are required to be paid or not, if under the particular enactment the defendant has right to enter into a private property and carry out certain operation, the claim of the plaintiff to get permanent injunction will have to be obviously considered in the light of that enactment.

15. The trial Court dealt with the question with reference to absence of damages being offered and the finding that no process has been initiated as per Rules 72 and 73, the defendant can be permitted to open up new areas for carrying out mining operation.

16. By the time, the matter was carried by the petitioner by way of appeal against the order of interim injunction of the aforesaid nature granted by the trial Court, this, process under Rule 72 was completed and the amount of compensation of Rs 82,936/- was fixed by the competent authority. This fact has been noted by the learned District Judge in his order at page 155 and a specific reference is to be found at page 161. However, the matter is still at large before the higher authorities under the said Act, at the instance of the plaintiff/respondent. That also is an accepted position.

17. The learned District Judge, therefore, felt that unless the defendant/appellant before him has approached the Government authorities for getting proper price fixed, the injunction will have to be continued. This is one of his findings arrived at.

18. It is also found that the Government is not indemnified, as observed at page 173 and that the defendant should also approach the State Government to get the said amount of compensation re-assessed and satisfy the State Government that the said amount of compensation, offered is fair and reasonable, is also observed at page 174. Particular reference is also found at pages 168 and 169, para 6 of the record. Going by the copy of the lease deed, which was produced before the learned District Judge, it is found that there are certain terms contained which are required to be complied with. So far as rules are concerned, there is hardly any connection between, because as rightly pointed out by learned Advocate (or the respondent Rule 22 also contemplates consent of the owner. Provision to that effect is to be found in Clause (h) of sub-Rule (3) of Rule 22 and this rule has been substituted with effect from 20.2.1991. But, according to the learned Advocate for the respondent, this proviso of consent was already there right from the year 1987.

19. Attempt therefore before the District Court and also before this Court on behalf of the respondent to make out a case that even though there is subsisting lease and therefore, section 24-A will be attracted, it would be subject to requirement of the said consent, as set out in the lease deed as well as in the Rule 22.

20. Rule 22 clearly provides that prior to grant of lease, application for consent is required to be made. The lease itself is ordinarily expected to be in Form-K. In the prescribed form, no doubt there is a reference to the consent and copy on record also refers to the same at page 81 on record.

21. It is in this background, section 24-A was required to be considered by the learned District Judge, as well as by this Court. Learned District Judge has come to the conclusion that unless requirement of the lease deed in Form K stipulated at page 81 fulfilled section 24-A will have no applicability.

22. Section 24-A reads as under:

"Rights and liabilities of a holder of prospecting licence or mining lease:-

(1) On the issue of a prospecting licence or mining lease under this Act and the Rules made thereunder, it shall be lawful for the holder of such licence or lease, his agents or his servants or workmen to enter the lands over which such lease or license had been granted at all times during its currency and carry out all such prospecting or mining operations as may be prescribed;

Provided that no person shall enter into any building or upon an enclosed Court or garden attached to a dwelling house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so.

(2) The holder of a prospecting licence or mining lease referred to in sub-section (1) shall be liable to pay compensation in such manner as may be prescribed to the occupier of the surface of the land granted under such licence or lease for any loss or damage which is likely to arise or has arisen from or in consequence of the mining or prospecting operations.

(3) The amount of compensation payable under sub-section (2) shall be determined by the State Government in the manner prescribed."

23. The aforesaid provision of section 24-A has been introduced by an amendment in the year 1986. The time when, therefore, the lease came to be granted, the amendment was in force. So far as the consent is concerned, it, as per the proviso to sub-section (1). Sub-section (2) refers to the compensation to be paid on annual basis. Sub-section (3) refers to the final compensation to be paid at the end of mining operations. For this purpose, reference may be made to Rules 72 and 73, as referred to earlier.

24. It may be repeated here that the proceedings under Rule 72 have to be culminated in the aforesaid background, which is under challenge.

25. In this background, we have to consider the aforesaid provisions of the Specific Relief Act. Not only the stand for damages are provided, but a specific procedure has also been prescribed. Obviously, therefore, the question of getting interim relief in the nature of permanent injunction, at this stage certainly will not arise.

26. Looking from the point of prima facie case, also there is no substance in the plaintiff's case because while accepting the right of ownership the defendant when she is authorised under a statute, namely the aforesaid Act, and the requirement of the prescribed Rules as to compensation too having been fulfilled, the question of his right being invaded and, therefore, required to be protected under the aforesaid statutory background, cannot be said to be arising prima facie for the purpose of grant of injunction at this interim stage.

27. What could be the amount of compensation, can be and is a matter of dispute. On what basis it should be fixed that is a matter of the dispute. According to the plaintiff, principles of the Land Revenue or the Land Acquisition Act have been taken into consideration while granting compensation to the

defendant under Rule 72. This being within the ambit of the competent authorities under the said Act, I will not dilute any further.

28. At this juncture, I would mention that on behalf of the defendant, it was urged that if the Court so felt, the defendant may be put to terms so far as the disputed compensation is concerned, may be the said sum of Rs. 82,936/- or whatever amount may be even multiple thereof.

29. Learned Advocate appearing on behalf of the respondent had tried to make out a distinction on the basis of the phrase as prescribed and appearing in section 24-A, sub-section (1). It relates to such prescription of mining operations as may be prescribed. So far as mining operation is concerned, Rule 30 clearly indicates as to what could be the mining operations under the Rules and therefore, it cannot be said that mining operations are not prescribed under the Act and hence, section 24-A is not attracted.

30. On behalf of the petitioner, case of Haripada Bandopadhyaya v. Equitable Coal Co. Ltd., AIR 1923 Cal 335 was cited where with reference to the relevant mining clause, it is held that a right of using the surface to which the mine owner may be entitled by implication, is confined to such things as are reasonably and strictly necessary for the convenient working of the mines. The mine owners have no other rights of any description whatsoever unless these rights are to be found within the four corners of the grant. With reference to the aforesaid described section 24-A, the aforesaid judgment will clearly indicate the extent to which the mining operations are necessary and in the background, as already was done, so if the area covered as lease is required to be occupied as new original land subject to the requirement of the Act and the Rules as to payment of compensation, they can do so, and that is what exactly has been done.

31. The next authority in the case of Shanker Prasad Goenka and Another Vs. The State of Madhya Pradesh, , where the situation arising out of a conflict between statutory material on one hand and terms of contract of lease on the other, has been dealt with. As expected, obviously, the finding is that the statute will prevail. This will be an answer to the aforesaid submission as to contents of the lease deed.

32. Lastly the case of M/s. Aphali Pharmaceutical Ltd. v. State of Maharashtra and others : 1989(44)ELT613(SC) has been relied upon. The relevant markings are at pages 2237. The Schedule may be used in construing provisions in the body of the Act. Though a Schedule to the Act was considered to be part of the Act, it ordinarily contained deletion and on containing deletion a subsisting which would generally be referred to as the body of the Act, was held to be prevailing over the Schedule. This situation ,if necessary can be compared with the aforesaid argument advanced on behalf of the plaintiff/respondent with reference to the position of Rule. Therefore, there is no doubt between rule and the statute, latter that will prevail.

33. On behalf of the respondent decision in Pallava Granites Industries India (P)

Ltd. Vs. Government of Andhra Pradesh and others, was cited where it has been clearly held that before grant of lease, consent of the private owner is necessary. Obviously, on facts, this authority will not apply here. There is already a grant of lease. The lis between the parties as on today is not with regard to the grant or otherwise of the lease. What are their rights and liabilities flowing from it, is a question and, therefore, this authority is not applicable to the present case.

34. The second authority cited in the case of N. Umapathy Vs. B.V. Muniyappa, where by way of mining lease, property belonging to the Government was granted to the appellant. However, the possession of the respondent under a lease is granted, a lessee of a mining lease cannot be given possession, unless respondent is ejected in accordance with due process of law. It is certainly is not a situation, here.

35. The net result, therefore, is the courts below instead of applying their mind to the applicability of the relevant statutory material to the rights claimed by the plaintiff with reference to the aforesaid Act and the Rules framed thereunder, have misdirected themselves in exercise of their jurisdiction. This, therefore, calls for interference of this Court.

36. While allowing the revision petition in favour of the petitioner, recalling the earlier offer of putting the petitioner to terms, I hereby direct that they shall deposit in the trial Court a sum of Rs. 1,20,000/- within a period of two weeks from today. The amount shall stand invested in the name of the Nazir of the trial Court, in a Nationalised Bank, initially for a period of one year. As and when it is required to be disbursed to either of the parties in accordance with the order of compensation or in accordance with the outcome in the suit, the same shall be paid along with the interest earned thereon. In other words, whosoever be the recipient of the amount either the plaintiff or the defendant they shall receive if along with the interest earned on the same, by virtue of the aforesaid investment.

37. It is clarified that this amount is fixed keeping in mind requirement of payment of compensation per annum, as per section 24-A, read with Rule 72. It is further clarified that it is an ad hoc amount fixed by the Court and it is not binding to either of the parties," while agitating the claim before the competent authority. Accordingly the orders of the Court below are set aside. Injunction is vacated.

38. After the order was dictated, learned Advocate for the respondent requested for stay of the order for a period of six weeks. On behalf of the appellant it was urged that if the Court is satisfied, may do so, subject to the interim relief that is granted in this matter.

39. Accordingly, stay is granted and, if shall be subject to the interim relief, granted by this Court, in this matter.

40. Revision allowed.