
(2007) 05 JH CK 0029

In the Jharkhand High Court

Case No : Appeal from Appellate Decree No. 33 of 1990

Srimati Sulochna Devi and Others

APPELLANT

Vs

Coal India Limited and Another

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, 100
Coal Mines (Nationalisation) Act, 1973 — Section 3, 3(2), 3(3), 3(3)
Criminal Procedure Code, 1973 (CrPC) — Section 144, 145

Citation : (2007) 2 BLJR 2738 : (2007) 4 JCR 116

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Indrajeet Singh, for the Appellant; Rajesh Lala, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—The appeal u/s 100 C.P.C. by the plaintiffs/appellants is directed against the judgment and decree dated 23.12.1989 passed by 7th Additional District Judge. Dhanbad in Title Appeal No. 13 of 1989 affirming the judgment and decree dated 23.2.1989 passed by Sub judge 2nd Court, Dhanbad in Title Suit No. 5 of 1974.

2. On 19.8.1991, this appeal was heard under Order 41 Rule 11 CPC and the following order were passed:-

This appeal will be heard on the following substantial question of law:

Whether the appellant was entitled to compensation for the machinery and stock of coal lying at the Durga Boka Pahari Colliery on the date of nationalization of the collieries.

Since the respondents have appeared, no notice need to be issued. Call for the records.

The cross-objection will be heard along with this appeal on the following

substantial question of law:-

Whether the finding of the court below that Durga Boka Pahari Colliery was part of Bajna Colliery can be sustained on the basis of the evidence led on behalf of the parties.

Liberty is given to the appellant to raise other substantial question of law, if available.

3. The plaintiff/appellants instituted the aforesaid suit for declaration that Shri Durga Boka Pahari Colliery has neither vested in the Central Government nor its management has been taken over and further for a declaration that the action of the defendants/respondents in interfering with the possession of the plaintiff and stopping the sale of coal raised by him is illegal and unwarranted. The plaintiff also prayed for a decree of permanent injunction restraining the defendants, their agents or servants from interfering with the possession and working of the plaintiff and sale of the coal in any manner.

4. Plaintiff's case is that he is the owner of M/s Debiana Coal Company, Shree Durga Pahari Colliery situated in Debiana Pargana in the district of Dhanbad which was previously owned and possessed by one Narayan Prasad Mukherjee. Plaintiff's further case is that the aforesaid colliery originally belonged to Sri Narayan Prasad Mukherjee who owned and possessed the underground mineral right over 150 bighas of land. Sri Mukherjee was working mostly open cast mining adjacent to the rivulet where Badjna colliery belonging to M/s Oriental Coal Company situate on the other side of the village, Debiana. Before taking over the management under the Coal Mines (Taking over of Management) Ordinance, 1973 which was followed by the Coal Mines (Taking over of Management) Act, 1973 and later on vesting of the collieries under the Coal Mines (Nationalization) Act, 1973 a dispute arose between the aforesaid two collieries, namely, Shri Durga Boka Pahari colliery belonging to Shri Mukherjee and Martina colliery belonging to M/s Oriental Coal, company. In the year, 1960 the plaintiff- appellant alleged to have purchased right, title and interest of Sri Narayan Prasad Mukherjee. Thereafter, a proceeding u/s 144 Cr.P.C. which was subsequently converted into a proceeding u/s 145 Cr.P.C. was initiated and the matter ultimately came to High Court where plaintiff's possession over the colliery was confirmed. Plaintiff-appellant's further case is that after Coal Mines (taking over of the Management:) Act, 1973 came into force, the management of his colliery, namely, Sri Durga Boka Pahari Colliery was not taken over by the Coal Mines Authorities but in spite of that the respondents were trying to interfere with the possession of the plaintiff-appellant. Hence the suit.

5. The defendants respondents appeared and contested the suit by filing written statement stating, inter alia, that the suit was barred by the provisions of Mines and Minerals (Regulation and Development) Act, 1957 and Mineral Concession Rules, 1960. Defendants' case is that Shri Durga Boka Pahari colliery has vested in the Central Government by virtue of Nationalization Act 1973. It was alleged

that the story of transfer of Durga Boka Pahari Colliery is false and it is a mere paper transaction manufactured and concocted by some imposter in collusion with said Narayan Prasad Mukherjee. Defendants' further case is that Sri Durga Boka Pahari colliery was really a part of Badjna colliery belonging to M/s Oriental Coal Company and as Badjna colliery vested in the Central Government after Nationalization, this Bokapahari colliery also vested in the Central Government. According to the defendants Bokapahari colliery was a part and parcel of Badjna belonging to Oriental Coal Company Limited.

6. The trial court framed as many as 10 issues and after deciding all the issues, it dismissed the suit holding that the plaintiff is not entitled to declaration as sought for in the plaint.

7. The plaintiff, being aggrieved by the said judgment and decree of the trial court preferred an appeal before: the District Judge, Dhanbad being Title Appeal No. 13/89 . The appellate court, after re-appreciation of the entire evidence and after hearing the parties, confirmed the findings recorded by the trial court and dismissed the appeal.

8. Mr. Indrajeet Sinha, learned Counsel appearing on behalf of the appellants assailed the impugned judgment and decree passed by the courts below as being erroneous and perverse in law. Learned Counsel drew my attention to the relevant provisions of Nationalization Act, 1973 and submitted that Sri Durga Bokapahari colliery never vested in the Central Government inasmuch as the name of this colliery did not find place in the schedule of the Act or notification subsequently issued by the Central Government. Learned Counsel submitted that the trial court recorded a finding that both Durgapahari colliery and Badjna colliery are two separate and independent collieries. Relying on the decision of the Supreme Court in the case of Bira Kishore Naik Vs. Coal India Ltd. and Others, , learned Counsel submitted that even if the lease in favour of the plaintiff appellant was terminated, the right in the colliery remained and it did not vest in the Central Government. Learned Counsel lastly submitted that both the courts below have wrongly recorded concurrent finding that Durga Bokapahari colliery is not part and parcel of Badjna colliery and in that view of the matter the Plaintiff is not entitled to the relief sought for in the suit.

9. Mr. Rajesh Lala, learned Counsel appearing on behalf of the respondents, on the other hand, firstly submitted that Oriental Coal Company purchased Durga Bokapahari colliery much before the plaintiff alleged to have purchased from Mr. Mukherjee. Learned Counsel further submitted that in 144 Cr.P.C. proceeding plaintiff's possession had been declared so far surface of the colliery is concerned and not in respect of his right in the colliery. Learned Counsel put reliance on a decision of the Supreme Court in the case of Bharat Coking Coal Ltd. Vs. Madanlal Agrawal, .

10. Before appreciating the rival contentions of the learned Counsels for the parties I would first like to refer the relevant provisions of the Ordinance and the

Act referred to hereinabove.

11. Coal Mines (Taking over of Management) Act, 1973 was enacted for taking over the management of the coal mines in the public interest pending nationalization of such mines. The Act came into force with effect from 31st March, 1973. Immediately thereafter Coal Mines Nationalization Act, 1973 was enacted which provides, inter alia for acquisition and transfer of right, title and interest of the owners in respect of the coal mines specified in the schedule with a view to re-organising and re-constructing such coal mines so as to ensure rational coordinated and scientific development and utilization of coal resources consistent with the growing requirement of the country. The Act came into force with effect from 30th May, 1973. Section 3 deals with acquisition of rights of owners of the coal mines. Sub-section (1) provides that on the appointed day the right, title and interest, of owners relating to the coal mines specified in the schedule shall stand transferred to and shall vest absolutely in the Central Government free from all encumbrances. Sub-section (2) of Section 3 was amended in the year, 1976 which provides that no person other than the Central Government or the Govt. Company or Corporation owned, managed or controlled by the Central Government or a person to whom sub-lease has been granted by the Government, shall carry on mining operation. Sub-section (4) of Section 3 provides that where mining lease has been terminated under Sub-section (3) of Section 3, it shall be lawful for the Government or the Govt. Company or Corporation owned and controlled by the Central Government to obtain a prospecting license or mining lease in respect of the colliery or part of the land covered by the mining lease which stands so terminated.

12. It is, therefore, clear that all collieries which have been mentioned in the schedule of the 1973 Act or which have been notified subsequent thereto, have vested in the Central Government free from all encumbrances and no private individual shall have the right to carry on mining operation on the lease hold area.

13. The moot question, therefore, which falls for consideration is whether Durga Bokapahari colliery allegedly owned by the plaintiff is part and parcel of Badjna colliery belonging to Oriental Coal Company .

14. The case of the plaintiff-appellant is that by virtue of sale deeds of the year, 1951 (Exts 4/h and 4/I), Beni Madhav Mukherjee transferred the suit land in favour of the plaintiff. The case of the defendant, on the other hand, is that Beni Madhav Mukherjee had already transferred the aforesaid land to Oriental Coal Company who is the predecessor-in-interest of the defendant as far back as in the year, 1928. In support of that the defendants exhibited the khewat of mouja Debiana as Ext. 30 which shows that Durga Bokapahari colliery stood in the name of one Gurudas Mukherjee and his brother. The trial court held that so far possession of the land is concerned, it was confirmed by the High Court in 145 Cr.P.C. proceeding. The trial court further held that the lease of plaintiff stood terminated by virtue of operation of the Nationalization Act, 1973 and, therefore, he is not entitled to any declaration to that effect. After deciding all the issued

against the plaintiff, the trial court dismissed the suit.

15. The appellate court recorded its finding on the following two issues.

(i) Whether Durga Bokapahari colliery vested in the Central Government as per Section 3 of Nationalisation Act, 1973?

(ii) Whether Durga Bokapahari colliery was independent colliery and not part of Badjna colliery?

16. While deciding point No. (i) the appellate court, after discussing the relevant provisions of the Act, agreed with the finding of the trial court that Durga Bokapahari colliery vested in the Central Government no sooner the Nationalisation Act was passed. On point No. (ii) the appellate court held that Bokapahari colliery was an independent colliery and never part of Badjna colliery as alleged by the defendant.

17. The substantial question of law formulated for consideration in the cross objection is as to whether the finding of the appellate court that Bokapahari colliery was part of Badjna colliery can be sustained on the basis of the evidence led on behalf of the parties. In my opinion since the appellate court has recorded a finding after re-appreciation of the entire evidence, such finding needs no interference by this Court. If admittedly Bokapahari colliery was an independent colliery and vested in the Central Government by virtue of Nationalization Act, 1973 then it is for the appellant to approach the Commissioner for payment of compensation. Needless to say that the Commissioner shall decide whether Bokapahari colliery owned and possessed by the plaintiff vested in the Central Government. The Commissioner shall also decide whether the appellant plaintiff is entitled to any compensation.

18. With the aforesaid observations and directions this appeal and the cross objection are dismissed.