

(1997) 02 PAT CK 0023
In the Patna High Court
Case No : L.P.A. No. 341 of 1996 (R)

State of Bihar and Others

APPELLANT

Vs

R.M.C. Dill and Co. (P) Ltd. and Others

RESPONDENT

Date of Decision : 28-02-1997

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2
Mineral Concession Rules, 1960 — Rule 24
Mines and Minerals (Development and Regulation) Act, 1957 — Section 13

Citation : AIR 1998 Patna 20 : (1997) 1 PLJR 884

Hon'ble Judges : Nagendra Rai, J; M.Y. Eqbal, J

Bench : Division Bench

Advocate : Rajesh Kumar, for the Appellant; D.K. Chakravorty and R.S. Majumdar, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai and M.Y. Eqbal, JJ.—This letters patent appeal is directed against the order dated 11th October, 1996(R) passed by a learned single Judge of this Court in CWJC No. 1539/96(R) by which he has quashed the order dated 10-5-96 contained in Annexure-6 to the writ application filed by the respondent No. 1 issued by the Divisional Forest Officer Saranda Division, Chaibasa, Singhbhum West (appellant No. 1) directing the respondent No. 1 to stop mining activity as the period of the mining lease granted to it has come to an end and has directed the appellants not to debar the respondent No. 1 in continuing the mining operation in broken area of 19.615 hectares till the orders are made on the renewal petition filed by the respondent No. 1 as per Rule 24-A of the Mineral Concession Rules, 1960 (hereinafter referred to as the rules).

2. The only question for consideration is as to whether in view of the provisions contained in Section 2 of the Forest Conservation Act (hereinafter referred to as the Act) restricting use of "forest land for non-forest purpose without the prior approval of the State Government, the respondent No. 1 can be allowed to

continue the mining operation after the expiry of the lease by virtue of the provision contained under Rule 24-A(6) of the Rules as amended by notification No. GSR 724(E) dated 27-9-94.

3. The admitted facts are that the respondent No. 1 was granted mining lease for an area of 270 acres or 110 hectares for mining iron ore in Karampada reserved forest in the district of Singhbhum West. On 4-4-75 the lease was executed for a period of 20 years w.e.f. 10-5-76. Respondent No. 1 started mining operation and broke up a total area of 19.615 hectares prior to 25.10.80 when the Act came into force. Before the expiry of the periods of lease the respondent No. 1 applied for renewal of mining lease on 19-9-94 in terms of the provisions of the Mines and Minerals (Regulations and Development) Act 1957 (hereinafter referred to as the Mines Act) and the rules framed thereunder.

4. According to the respondent No. 1 it applied for renewal of mining lease prior to the expiry of the terms of the lease and the same has not been disposed of by the State Government and as such in view of the provision contained in Section 24-A(6) of the Rules as amended in 1994 the period of lease shall be deemed to have been extended by further period till the State Government passes an order thereon. As the lease of the respondent No. 1 extended by the aforesaid deeming provision the appellant No. 1 the Divisional Forest Officer has no authority in law to stop the mining operation by taking recourse to the provision contained under the Act.

5. The case of the appellants is that admittedly after coming into force of the Forest Conservation Act no mining lease can be granted or renewed without prior approval of the Central Government in view of the mandatory provision contained u/s 2 of the Act as in the case of respondent No. 1 no prior approval has been granted by the Central Government and consequently the lease has not been renewed, it cannot be allowed to carry on the mining operation by taking recourse to the provision of Section 24-A(6) of the Rules. In other words, the provision of Section 24-A(6) has to yield to the mandatory provision contained in u/s 2 of the Act.

6. The learned single Judge has allowed the writ application of the respondent No. 1 on the ground that the Conservation Act is applicable to the surface area and till an order is passed on the renewal of lease as per Rule 24-A of the Rules the respondent No. 1 cannot be debarred to operate the mining operation on the broken area of 19.615 hectares.

7. Learned counsel for the appellants submitted that the view taken by the learned single Judge is erroneous in law in as much as Section 2 of the Act in clear terms prohibits use of forest land for non-forest purpose without prior approval of the Central Government and renewal of mining lease is for non-forest purpose and as such the lease cannot be renewed by the State Government without complying with the requirement of Section 2 of the Act. He also submitted that provision of Rule 24-A(6) provide for deemed extension of lease

in case of non-disposal of the application for renewal of mining lease within the time by the State Government is controlled by Section 2 of the Act in view of the mandatory clause in the said section.

8. Learned counsel for the respondent No. 1 on the other hand contended that once a portion of the lease mining area has been broken the provision of Section 2 of the Act is not attracted with regard to the broken area and the lease shall be deemed to be extended for a period till the decision of the matter by the State Government in terms of provision of Section 24- A(6) of the Rules as amended.

9. The Act has been enacted to provide for the conservation of the forest and matters connected therewith or ancillary or incidental thereto as well as to maintain the ecological balance and to prevent the deforestation. The Apex Court in catena of cases has held that the provision of Section 2 of the Act is mandatory and no forest land can be used for non-forest purpose.

10. The Apex Court in the case of *Ambica Quarry Works v. The State of Gujarat*, 1987 SC 1073, has considered the provision of the Act as well as the rules. The question for consideration in that case was as to whether after coming into force of the Act in 1980 the appellants of the aforesaid case were entitled to renewal of their leases in accordance with the provision of Gujarat Minor Mineral Rules, 1966. The renewal of the lease was refused on the ground that after coming into force of the Act the same cannot be granted without prior approval of the Central Government. The Apex Court held as follows:

"Where the State Govt. rejected the application made after coming into force of the Act, for renewal of mining lease, rejection being in conformity with the purpose of the Act, was not open to challenge notwithstanding the fact that Rule 8(b)(i) of the Gujarat Minor Mineral Rules, 1966, provided for renewal of lease. What is to be remembered is that the Act was an Act in recognition of the awareness that deforestation and ecological imbalances as a result of deforestation have become social menaces and further deforestation and ecological imbalances should be prevented. That was the primary purpose writ large in the Act. Therefore the concept that power coupled with the duty enjoined upon the authorities to renew the lease stands eroded by the mandate of the legislation as manifest in the Act. The primary duty was to the community and that duty took precedence. The obligation to the society must predominate over the obligation to the individuals."

The view taken in the aforesaid case was again reiterated by the Apex Court in the case of *Rural Litigation and Entitlement Kendra Vs. State of U. P.*, .

11. There is no dispute that the grant of lease for mining iron ore is for non-forest purpose. There is also no dispute that this lease has been granted with regard to an area falling within the reserved forest. " "

12. The only question for consideration as noticed above is as to whether in view of the aforesaid provision contained in Section 2 of the Act the respondent No. 1

can be allowed to proceed with the mining operation by taking recourse to the provision contained in u/s 24-A(6) of the Rules, which runs as follows:

"(1). For Sub-rule (6) the following shall be substituted, namely - If an application for renewal of a mining lease made within the time referred to in Sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government pass order thereon."

The provision of Section 2 of the Act proceeds with non obstante clause and meaning thereby that any contrary provision shall give way to the provision contained under the said section.

13. A Division Bench of this Court has considered the question as involved in this case in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Another, . There also the question involved was the renewal of the mining lease with regard to an area falling within Saranda Forest Division and the Forest Authority stopped the petitioner from carrying on the mining operation. The petitioner of that case challenged the same on the ground that in view of the provision contained in u/s 24-A(6) of the Rules prior to amendment the lease will be deemed to be extended and as such he is entitled in law to carry on the mining operation. This Court relying upon the judgment of the Apex Court held that mining operation cannot be allowed unless a fresh lease is granted in favour of the writ petitioner of that case after obtaining prior approval of the Central Government in terms of the provision of Section 2 of the Act.

14. Recently in the case of Divisional Forest Officer and Others Vs. S. Nageswaramma, . the Apex Court held that Section 2 of the Act prohibits the mining operation if the mines are situated within the forest area. It is a total prohibition unless the State Government grants mining lease with the prior concurrence of the Central Government. In that case renewal was granted after coming into force of the Act without approval of the Central Government and the Apex Court held that the aforesaid renewal without compliance of Section 2 of the Act was not permissible in law. Again in the case of I. N. Godavarman Thirumulkpad v. Union of India in Writ Petition (Civil) No. 202/95 contained in Annexure-7 to the writ application the Apex Court considered the scope of the provision of the Act and held that the provisions of the Act will apply to all the forests irrespective of the nature of the ownership or classification thereof. The word "Forest" must be understood according to its dictionary meaning. This description covers all the statutory recognised forests, whether designated or reserved, protected or otherwise for the purpose of Section 2(1) of the Forest Conservation Act. The term "Forest , Land" occurring in Section 2. will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. The Apex Court also held in view of the aforesaid definition of the Forest without approval any non-forest activity cannot be done within the area of any forest and, accordingly, ordered all on going activity within any forest in any State

throughout the country, without the prior approval of the Central Government, must cease forthwith.

15. Thus, the law is well-settled that any non-forest activity in the forest area without prior approval of the Central Government is banned. For grant of mining lease or renewal of mining lease for non-forest activity, the provision of Section 2 of the Act has to be complied with before grant or renewal of mining lease. There is no distinction as to whether the mining area has been broken or not, even if the area has been broken in terms of earlier lease unless mining lease is renewed after complying with the requirement of Section 2 of the Act meaning thereby after prior approval of the Central Government no mining operation can be carried out by any person by taking recourse to the legal fiction as contained in Section 24-A(6) of the rules. In other words, the provision of Section 2 of the Act will prevail over the provision of the Mining Act and the Rules and Rule 24-A(6) has to yield to the provision of the Act.

16. Admittedly, in the present case the renewal application of the respondent No. 1 is pending before the State Government and no prior approval has been granted and as such there is no valid lease in favour of the respondent No. 1 and the legal fiction cannot be restored to in view of the mandatory provision of Section 2 of the Act and in mat view of the matter the Divisional Forest Officer (appellant No. 1) has rightly restrained the respondent No. 1 to cany out the mining operation on the ground that there was no valid lease existing in favour of the respondent No. 1. The learned single Judge, in our view, has wrongly hold that as a part of the mining area has been broken by the respondent No. 1 prior to coming into force of the Act it cannot continue with the mining operation even if the lease is not renewed after prior approval of the Central Government by taking recourse to the legal fiction in terms of the provision of Section 24-A(6) of the Rules. 17. In the result, this appeal is allowed and the order of the learned single Judge is set aside and respondent No. 1 is directed to not carry on the mining operation till the mining lease is renewed after complying with the provision of Section 2 of the Act. In the facts and circumstances there shall be no order as to cost.