(2008) 09 MP CK 0039

In the Madhya Pradesh High Court

State of Madhya Pradesh and Another APPELLANT

Vs

Western Coalfields Limited and Another RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 10, 11, 9
Stamp Act, 1899 — Section 2, 3

Citation : (2009) ILR (MP) 1887 : (2008) 5 MPHT 285 : (2009) 1 MPLJ 239

Hon'ble Judges : Ramesh Surajmal Garg, J;R.K. Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.S. Garg, J.

The appellant-State being aggrieved by the judgment dated 18-7-2006 passed by the learned Single Judge of this Court in group of Writ Petition Nos. 359/02 (Western Coalfields Limited and Ors. v. State of M.P. and Anr.), 717/2002 (Western Coalfields Limited and Ors. v. State of M.P. and Anr.), 1742/2002 (Western Coalfields Limited and Ors. v. State of M.P. and Anr.), 1743/2002 (Western Coalfields Limited and Ors. v. State of M.P. and Anr.), 1744/2002 (Western Coalfields Limited and Ors. v. State of M.P. and Anr.) and W.P. No. 1745/2002 (Western Coalfields Limited and Ors. v. State of M.P. and Anr.) have filed these five Writ Appeal Nos. 1203/2006, (State of M.P. and Anr. v. Western Coalfields Limited and Anr.), 1204/2006 (State of M.P. and Anr. v. Western Coalfields Limited and Anr.), 1205/2006 (State of M.P. and Anr. v. Western Coalfields Limited and Ors.), 1206/2006 (State of M.P. and Anr. v. Western Coalfields Limited and Anr.) and 1207/2006 (State of M.P. and Anr. v. Western Coalfields Limited and Anr.) submitting inter alia that the orders passed by the learned Single Judge were absolutely unjustified and were running contrary to the provisions of Section 10 and Section 11 of the Coal Bearing Area (Acquisition and Development) Act, 1957 and the orders are also contrary to the provisions of the Indian Stamp Act, 1899 and the provisions of the Mines and Minerals

(Development and Regulation) Act, 1957.

The short facts necessary for disposal of the present appeals are that the appellants/State issued certain directions to the respondents demanding the stamp duty on the ground that transfer of the land by the Central Government in favour of the respondent Western Coalfields Limited amounts to execution of a lease and transfer, therefore, the order issued by the Government would be an instrument and appropriate stamp duty will have to be paid. The said notices were challenged in the different writ petitions.

The learned Single Judge after hearing the parties came to the conclusion that a juxtapose reading of Section 10 and Section 11 of the Coal Bearing Areas Act, 1957 would clearly provide that if there is statutory vesting then question of execution of the lease deed would not arise. The learned Single Judge also opined that from Section 3 of the Indian Stamp Act, it would clearly appear that the Government would not be liable to pay the duty chargeable in respect of such instrument in view of the proviso appended to Section 3 of the Indian Stamp Act.

Shri Ruprah, learned Counsel for the appellant/State after taking us through the pleadings of the parties and the provisions of the different Acts submitted that if there is vesting of the land or Coal Bearing Areas in the Central Government u/s 10 of the Act, then there would be no lease but in case the Central Government directs that the vesting would not be in favour of the Central Government but would be in favour of a Government Company then that would amount to a lease. In relation to Section 3 of the Indian Stamp Act, it was submitted that the learned Single Judge did not appreciate that the case of the respondent would not be covered by the provisions of Section 3 of the Indian Stamp Act.

On the other hand learned Counsel for the respondents submitted that if an instrument is executed by the Central Government in favour of a Government company/coal company only then the provisions of Indian Stamp Act would apply. According to him, Section 10 and Section 11 of the Coal Bearing Areas Act would clearly provide that a property would vest in the Central Government or may vest in the Coal Company. According to him, if there is a statutory vesting of the property either in the Central Government or in the Coal Company then no instrument or document is required to be executed. In the alternative, it is submitted by him that Section 3 of the Act comes to the rescue of the Government (Central Government in this case).

For a proper appreciation of the dispute between the parties a reference to Section 10 and Section 11 would be necessary. The said Sections read as under:

10. Vesting of land or rights in Central Government.-

(1) On the publication in the Official Gazette of the declaration u/s 9, the land or the rights in or over the land, as the case may be, shall vest absolutely in the Central Government free from all encumbrances.

(2) Where the rights under any mining lease granted or deemed to have been

granted by a State Government to any person are acquired under this Act, the Central Government shall, on and from the date of such vesting, be deemed to have become the lessee of the State Government as if a mining lease under the Mineral Concession Rules had been granted by the State Government to the Central Government, the period thereof being the entire period for which such a lease could have been granted by the State Government under those rules.

Power of Central Government to direct vesting of land or rights in a Government Company.-

(1) Notwithstanding anything contained in Section 10, the Central Government may, if it is satisfied that a Government Company is willing to comply, or has complied, with such terms and conditions as the Central Government may think fit to impose, direct, by order in writing, that the land or the rights in or over the land, as the case may be, shall, instead of vesting in the Central Government u/s 10 or continuing to so vest, vest in the Government Company either on the date of publication of the declaration or on such other date as may be specified in the direction.

(2) Where the rights under any mining lease acquired under this Act vest in a Government Company under Sub-section (1), the Government Company shall, on and from the date of such vesting, be deemed to have become the lessee of the State Government as if a mining lease under the Mineral Concession Rules had been granted by the State Government to the Government Company, the period thereof being the entire period for which such a lease could have been granted by the State Government under those rules and all the rights and liabilities of the Central Government in relation to the lease or the land covered by its shall, on and from the date of such vesting, be deemed to have become the rights and liabilities of the Government Company.

Section 10 refers to vesting of land or rights in the Central Government. According to Section 10 on the publication in the Official Gazette of the declaration u/s 9, the land or the rights in or over the land, as the case may be, shall vest absolutely in the Central Government free from all encumbrances. The effect of the vesting would be that the Central Government would become the absolute owner of the properties and would be entitled to deal with the property as it so desires, Section 11 provides regarding powers of the Central Government to direct vesting of land or rights in a Government Company. Sub-section (1) of Section 11, provides that the Central Government after recording its satisfaction that a Government Company is willing to comply, or has complied, with such terms and conditions as the Central Government may think fit to impose, direct, by order in writing, that the land or the rights in or over the land, as the case may be, shall, instead of vesting in the Central Government u/s 10 or continuing to so vest, vest in the Government Company either on the date of publication of the declaration or on such other date as may be specified in the direction.

Sub-section (1) of Section 11 nowhere uses the word "instrument" or "lease". It nowhere says that upon execution of an instrument the rights of the Central Government would stand transferred in favour of the Coal Company. Sub-section (1) of Section 11, instead of using the word "instrument" uses the word ''Order''. Section 11 provides that by issuing an order in writing the Central Government can direct vesting of the land in favour of a Government Company. Such an order would be statutory order and by no stretch of imagination can be termed to be an instrument.

The word "instrument" has been defined in Section 2(14) of the Indian Stamp Act, 1899 to say "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

In the present matter, undisputedly no document has been executed by the Central Government in favour of the Government Company or by the Government Company in favour of the Central Government. An order would not be an instrument. An instrument is to be executed for creating, transferring, extending, extinguishing or recording the right or liability of a party while by an order in case of present nature the property would vest in favour of a particular party.

The Government certainly was unjustified in demanding the stamp duty on vesting of the property in favour of the Government Company in view of a direction/order issued by the Central Government.

It also has to be seen in the alternative that Section 3 of the Indian Stamp Act protects the Government from paying duty chargeable in respect of an instrument.

Section 3 of Indian Stamp Act reads as under:

Section 3. Instruments chargeable with duty.- Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say,-

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;

(b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred of otherwise negotiated, in India; and

(c) every instrument other than a bill of exchange or promissory note mentioned in that Schedule, which not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or, to be done, in India and is received in India:

Provided that no duty shall be chargeable in respect of-

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.

The Proviso appended to Section 3 of the Indian Stamp Act provides that no duty shall be chargeable in respect of any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for the exemption, the Government would be liable to pay the duty chargeable in respect of such instrument. Assuming that the vesting order is to be understood to be an instrument then the Proviso to Section 3 of the Stamp Act would protect the Central Government so also the State Government. In any case the vesting would have its own effect and cannot be treated to be a lease executed by the Central Government in favour of the Government Company.

So far as the question of application of provisions of Mines and Minerals (Development and Regulation) Act, 1957 is concerned, in our opinion the provisions of the said Act would also not be applicable.

A mining lease is defined in Sub-section (3) of Section 3 to mean a lease granted for the purpose of undertaking mining operations, and it would also include a sub-lease granted for such purpose. A lease may be granted by the -State Government or may be approved by the Central Government but in case of a lease as is understood even under the Mines and Minerals Act, the person who is executing the lease or granting the lease would continue to have the, power of dispossession or authority of an owner to cancel the lease and resume the land. Vesting would however mean that the property would vest in a person in whose favour such an order has been made. Vesting would be permanent and it would be by an order under the Coal Bearing Areas Act. In case of a mining, lease deed has to be executed between the State Government and the other person, authorizing him to undertake mining operations etc. There is a great distinction between mining lease and vesting of the property in particular authority or a party.

Taking into consideration the totality of the circumstances and the provisions of law, we are of the considered opinion that the learned Single Judge was not unjustified in granting the relief to the respondents.

All the appeals are hereby dismissed.

There shall be no orders as to cost.