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(2007) 01 GAU CK 0066

In the Gauhati High Court

Tarapada Bhattacharjee APPELLANT

Vs

Coal India Ltd. RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:
Coal Mines (Nationalisation) Act, 1973 — Section 17, 18, 2, 3, 4

Citation : (2011) 1 GLR 619 : (2008) 1 GLT 604

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—This is a defendant''s second appeal. The Title Suit No. 86/93 was filed in the Court of the Munsiff No. 1, Tinsukia, having been decreed with an order to put the plaintiff into khas possession of the suit premises, the defendant unsuccessfully filed Title Appeal No. 13/96 before the learned Civil Judge (Senior Division), Tinsukia, which was dismissed vide judgment and order dated 16.11.98. The aggrieved defendant has challenged the same in this Second appeal.

2. I have heard Mr. A. Roy, learned Counsel for the Appellant.

3. The plaintiff instituted the aforesaid suit pleading, inter alia, that the plaintiff is a Government of India undertaking Company incorporated under the Companies Act, and on nationalization of the Coal Mines, the right, title and interest of the owner to the coal mines and other properties including the premises described in the schedule to the plaint of the erstwhile Assam Railway and Trading Company vested absolutely in the plaintiff company. Thus all workmen who were in employment of the Coal Mines become the employees of the plaintiff Company. That the defendant joined erstwhile Assam Railway and Trading Company on 7.2.45 as a clerk and contained to work in North Eastern Coal Field after nationalization in 1973 under the plaintiff and retired from the service on 1.7.84. That as an incidence of his employment under the plaintiff, the

defendant was allowed to occupy the quarter No. M-94 free of cost described in schedule. But after retirement from service, the defendant has not vacated the said quarter in spite of repeated requests and demands and refused to vacate the quarter. The defendant contested the suit by filing written statement and stated, inter alia, that the plaintiff has no right to sue, that the suit is not maintainable that the constitution of the plaintiff is not within the knowledge of the defendant, that the transfer of the suit premises in favour of the plaintiff. The defendant further submitted that since 1945 he was an employee of the erstwhile Foreign Company named ART. Co. under service condition and he was provided free quarter, free medical aid etc. that since nationalization of the aforesaid company in 1973, the defendant was made an employee of the plaintiff company and he superannuated from service in the year, 1984 and he was in occupation of the said premises. It is further alleged that the defendant became eligible to gratuity and other benefit on his superannuation, as per the nationalization Coal Wage Agreement-III dated November, 1983 and as per said agreement, the company is bound to provide employment to his unemployed son, the premises occupied by the defendant belongs to the Assam Railway and Trading Company and the Coal India Limited has no authority to seek eviction of the plaintiff and prayed for dismissal of the suit with cost.

4. On the basis of the pleadings of the parties, the learned trial Court framed eleven issues out of which Issue Nos. 2, 4 and 5, were as follows:

2. Whether the suit is maintainable in law and fact?

4. Whether the plaintiff is entitled to get a decree of khas possession of the suit premises by evicting the defendants and his dependents?

5. Whether the plaintiff has right to sue to file the suit?

5. During the course of the trial the plaintiff adduced two witnesses and exhibited certain documents. On the other hand, the defendant examined himself in support of his case. The learned trial Court at the end of the trial decided the aforesaid issues in favour of the plaintiff and passed a decree for khas possession of the suit premises by evicting the defendant and removing his belongings. An appeal having been preferred by the defendant, the learned trial Court also affirmed the decree passed by the learned trial Court in TA No. 13/96 vide judgment and order dated 16.11.98.

6. This appeal was admitted to be heard on the following substantial questions of law:

1. Whether the learned Court below erred in holding that the suit was maintainable and that the plaintiff had the right to sue by misconstruing Sections 3 and 5 of the Coal Mines (Nationalization Act, 1973) in the application to the present case?

2. Whether the plaint in the suit was verified in accordance with law?

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7. At the time of hearing Mr. Roy has rested his submission on the substantial question of law at point No. 1 as framed. The learned Counsel in his fairness has not pressed the substantial question No. 2 for obvious reason.

8. It is submitted by Mr. Roy that although Section 3 of the Coal Mines (Nationalization) Act, 1973, (for short the "Act"), provides for vesting all the rights, titles and interest of the owners in relation to Coal Mines specified in the schedule to the Central Government free from all encumbrances, as per Section 5 certain orders are required to be passed in writing by the Central Government in respect of properties on such terms which the company is willing to comply with or has complied with and in such an event the Government may impose direction by an order in writing that the right, title and interest of the owner in relation to the Coal Mines referred in Section 3 shall stands continued to vest in the Central Government. According to the learned Counsel, there having no such order produced by the plaintiff/respondent, it cannot be said that the quarter in question is a landed property and the quarter is under occupation of the defendant stood vested in favour of the plaintiff/respondent. Submitting in the aforesaid manner it is contended by the learned Counsel that accordingly the plaintiff has no right to sue.

9. The defendant in the written statement did not deny the vesting of the suit property in favour of the plaintiff although at paragraph-7 of the written statement he made evasive denial by not admitting such statement made by the plaintiff being not within his knowledge by purring the plaintiff to strictest proof thereof. However, it is submitted in the pleading by the defendant that the premises occupied by the defendant belongs to Assam Railway and Trading Company (in short the "ARTC"). The learned Counsel further referred the same solitary statement made by the PWs that there are certain dispute between ARTC and the plaintiff. Regarding vesting of the properties, the learrted counsel submits that it cannot be said in the facts and circumstances of the case that such vesting with the Coal Mines has been completely given them right to file the suit.

10. I have given my anxious consideration to the submissions made by the learned Counsel for the parties. The Coal Mines (Nationalization) Act, 1973, was enacted for the purpose of nationalizing the coal industries. Section 3 of the Act provides that on the appointed date the right, title and interest of the owner in relation to Coal Mines specified in scheduled stood transferred and shall vest absolutely in the Central Government free from all encumbrances.

11. Section 8 of the Act provides for payment of compensation to the owner of the Coal Mines whose property has been nationalized. Section 18 of the Act provides that it is the obligation of the Central Government to make payment of compensation to the owner of the Coal Mines through the Commissioner of payment as may be appointed u/s 17 of the Act. In the schedule of the Act, the name of Assam Railways and Trading Company Limited, Margherita, has been incorporated at Serial No. 5 for which necessary compensation has been

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earmarked at Rs. 48,84,000.00. Thus, it is absolutely clear from the aforesaid statutory provision that the Coal Mines belonging to Assam Railway and Trading Company Limited, Margherita, were nationalized and the provisions of Section 3 became operative on and from the appointed date, i.e., 1.5.73.

12. The word "mine" has been defined in Section 2 of the Act as "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes--

(i) All boring and bore holes;

(ii) All shafts, whether in the course of being sunk or not;

(iii) All levels and inclined planes in the course of being driven;

(iv) All open cast working;

(v) All conveyors or aerial ropeways provided for bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom; (vi) All lands, buildings, works, adits, levels, planes, machinery and equipments, instruments, stores, vehicles, railways, tramways and sidings in, or adjacent to, a mine and used for the purposes of the mine;

(vii) All workshops (including buildings, machinery, instruments, stores, equipment of such workshops and the land on which such workshops stand) in, or adjacent to, a mine and used substantially for the purposes of the mine or a number of mines under the same management;

(viii) All coal belonging to the owner of the mine, whether in stock or in transit, and all coal under production in a mine;

(ix) All power stations in a mine or operation primarily for supplying electricity for the purpose of working the mine or a number of mines under the same management;

(x) All lands, buildings and equipments belonging to the owner of the mine, and in, adjacent to or situated on the surface of, the mine where the washing of coal obtained from the mine or manufacture, therefrom, of coke is carried on;

(xi) All lands and buildings (other than those referred to in Sub-clause (x), wherever situated, if solely used for the location of the management, sale or liaison offices or for the residence of officers and staff, of the mine;

(xii) All other fixed assets, movable and immovable, belonging to the owner of a mine, wherever situated, and current assets, belonging to a mine, whether within its premises or outside.

13. Thus, the aforesaid statutory provisions make it abundantly clear that whatever properties the ARTC had owned at Makum Coal Field, Lakhimpur, possessed including the immovable assets vested upon the Central Government as per Section 3 of the Act.

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14. Interpreting the aforesaid definition of Section 2(h) of the Act, the Apex Court in the case of Bharat Coking Coal Ltd. Vs. Madanlal Agrawal, of the judgment held as follows:

The two key words for the purpose of interpreting Section 3 are ''mine'' and ''owners''. If we look at the definition of a ''mine'' u/s 2, the definition is designed to cover:

(1) All properties "belonging to the mine" whatever be the nature of these properties, as also specified properties "belonging to the owner of the mine". Thus, for example, Section 2 is an omnibus clause which covers all fixed assets, movable and immovable, belonging to the owner of a mine wherever situate and current assets belonging to a mine whether in its premises or outside. Section 2 covers all coal belonging to the owner of the mine. Section 2 covers all lands, buildings and equipment befouling to the owners of a mine, and in, adjacent to or situated on the surface of the mine, where washing of coal or manufacture of coke is carried on.

(2) In addition, the definition of ''mine'' also covers all those assets which are required for a proper functioning of the mine irrespective of whether these assets ''belong'' to a mine or not. Thus, for example, Section 2 covers all lands, buildings, machinery and equipment, instruments, stores, vehicles, railways, tramways etc. adjacent to a mine and used for the purpose of the mine. Therefore, all these assets if they are lying adjacent to a mine and are required for the proper functioning of the mine would be acquired irrespective of whether they belong to the ''owner of a mine'' or not. Similarly u/s 2 all power stations in a mine operated primarily for supplying electricity for the purposes of working the mine or a number of mines under the same management will be acquired irrespective of whether the power stations belonged to the mine or owner of the mine, or not. Sub-clause (xi) of Section 2 provides that all other [other than those in Sub-clause (x)] lands and buildings wherever situated, if solely used for the location of the management, sale or liaison officers or for the residence of officers and staff of the mine are also acquired. Unlike Sub-clause (x), Sub-clause (xi) does not contain the words "belonging to the owners of the mine". Therefore, the definition clause of ''mine'' covers at least two different kinds of property; (i) properties which belong to the mine and (ii) properties which are used by the mine for a proper functioning of the mine. The first category of properties would be properties which are of the ownership of the mining company. The second category of properties need not necessarily be of the ownership of the mining company. These could also be properties which are leased by the mining company or in possession of the mining company and used by it.

15. In view of the aforesaid statutory provisions, the submissions of the learned Counsel that some part of the property belonged to ARTC is not vested u/s 3 of the Act, cannot be accepted. The provisions of Section 5 of the Act would come into play when the Central Government and the Company agrees to the extent as

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indicated therein. In the absence of such an order, it must be that there is no such arrangement between the Company and the Government. The provisions of Section 5 of the Act are independent of Sections 3 and 4 starting with non-abs ante clause. In that view of the matter, there is no scope that the said properties were vested in terms of Section 3 of the Act after passing of the Act.

16. On scrutiny of the case of the defendant appellant to the extent of his right, it is undisputed fact that the quarter in question was allotted to him as an incidence of service. The defendant appellant who joined in the erstwhile ARTC on 7.2.45 retired from service on 1.7.84. The quarter in question being allotted to him as incidence of service, it is his duty and obligation to vacate the same after 1.7.84. When nothing has been done in spite of demands made by the plaintiff, the plaintiff filed the aforesaid TS No. 29/93. Apart from raising the plea of non-vesting of the properties with the plaintiff, no substantive right to stay in the quarter has been pleaded nor such right has been found by both the Courts below.

17. In view of the aforesaid discussions, the substantial question of law so framed is answered in negative and against the appellant. Consequently, the appeal fails and stands dismissed.

At this stage, Mr. Roy, learned Counsel for the appellant, prays for allowing him six months time to vacate the quarter in view of the fact that the defendant appellant has been staying the in the quarter for a long span of time and in the mean time he has to make some other arrangement. Considering the above submission, the defendant appellant is granted time to deliver the vacant possession of the quarter. The defendant appellant shall furnish undertaking before the learned trial Court within four weeks from today specifically stating that the appellant would vacate the suit premises within a period of six months from the date of this judgment. In the event of failure to furnish such undertaking, the plaintiff is entitled to put the decree into execution.

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