

(1964) 11 PAT CK 0005

In the Patna High Court

Case No : Misc. Judl. Case No. 369 of 1963

Tirbeni Prasad Rungta

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-11-1964

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 6
Mines and Minerals (Development and Regulation) Act, 1957 — Section 16, 16(2)
Mines and Minerals (Regulation and Development) Act, 1948 — Section 29, 7
Mining Lease (Modification of Terms) Rules, 1956 — Rule 6

Citation : AIR 1965 Patna 274

Hon'ble Judges : H. Mahapatra, J;A.B.N. Sinha, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh and Tarini Prasad, for the Appellant; B.D. Singh, for the Respondent

Judgement

1. A rule nisi in the nature of prohibition was issued to the State of Bihar, the Certificate Officer, Daltonganj, and the District Mining Officer, Ranchi cum Palamau to show cause why the proceedings in Miscellaneous Case No. 101 of 1961-62 shall not be quashed and why the respondents will not be prohibited from taking any further steps against the petitioner in that proceeding. Return has been made by the State of Bihar.

2. The petitioner stated that on the 11th of July, 1919, Kuar Amar Dayal Singh, proprietor of Ladi estate, a Jagirdar, granted a mokarrari mining lease in respect of iron ore in two villages Adar and Gore to one P. K. Chatterji by a registered instrument. The lessee assigned the same to one Bymokesh Mukherji on whose death his three daughters granted a sub-lease to Madan Gopal Rungta, the father of the petitioner, for ten years under a registered instrument dated the 21st September, 1951 (Annexure "C" to the application). Madan Gopal Rungta expired on the 15th October, 1962, and his son the petitioner succeeded him and was working the mines on the basis of the sub-lease, through his agents. On the 30th of November, 1962, the petitioner's authorised agent received a notice

purporting to be u/s 7 of the Bihar and Orissa Public Demands Recovery Act calling upon him to pay Rs. 66,317.93 nP. a copy of the certificate on the basis of which that proceeding was initiated was also attached to that notice, from which it appears that on the 26th November, 1962, on the requisition of the District Mining Officer a certificate was filed for recovery of that money from Madan Gopal Rungta on account of dead rent for the period from the 14th November, 1951 to the 20th September, 1961. There was a reference to the lease dated the 11th July, 1919 in that certificate. A petition u/s 9 of the Public Demands Recovery Act was filed before the Certificate Officer disclaiming the petitioner's liability and the validity of the certificate. That was overruled, and the petitioner was threatened that the certificate debt would be realised by distress action". This led him to this Court to make an application under Articles 226 and 227 of the Constitution of India.

3. While the petitioner's father was working the mines under the sub-lease, he was prevented from doing so by the Deputy Commissioner of Palamau on or about the 2nd December, 1952 on the ground that the proprietor of Ladi estate had no right to grant any mining lease to Pran Krishto Chatterji. Soon thereafter, in March 1953, there was an arrangement between the Government and Madan Gopal Rungta for the working of the mines, on the latter's executing an agreement in writing that he would work the mines and despatch Iron ores therefrom without any prejudice to the Government's right over the mines and subject to the result of the examination of Madan Gopal Rungta's claim under his sub-lease. An agreement to that effect was executed by him on the 16th of April, 1953, and he continued the mining operation. On the 28th of January, 1955, the estate bearing touzi Nos. 161 and 130 of the Palamau Collectorate vested in the State of Bihar under the Bihar Land Reforms Act. Whatever might have been the position prior to this vesting, all the proprietary interest, even if it included the underground mining rights, came to be possessed by the State Government and all the liabilities of the lessee to the proprietor-lessor were to be discharged in favour of the State Government.

4. While the position remained so, on the 28th September, 1959, the Controller of Mining Leases for India, by his order purported to have been made under Rule 6 of the Mining Lease (Modification of Terms) Rules, 1956, modified the terms and conditions of the sub-lease dated the 21st September, 1951 in favour of Madan Gopal Rungta and ordered that a "dead rent shall be payable at the rate of Rs. 5/- per acre per annum for iron ore only". There were other alterations, but we are not concerned with them. Following this, the certificate proceedings were initiated under the Public Demands Recovery Act in which the Government claimed Rs. 61,808.90 nP as the dead rent, since the petitioner's father did not discharge that liability.

5. In the counter-affidavit filed on behalf of the State of Bihar, it has been mentioned that royalty of Rs. 17,184/- was due for the period from the 14th November, 1951 to the 30th June, 1954, and a dead rent of Rs. 4,219.64 nP was

due for the period from the 1st July, 1954 to the 27th September, 1959, and the modified dead rent for the period from the 28th September, 1959, to the 20th September, 1961 came to Rs. 40,405.29 nP. The total of all these three items came to Rupees 61,808.93 nP. which was the certificate debt mentioned in the certificate. I should like to point out here that although the counter-affidavit referred to a part of the certificate debts to be royalty for 8 period, the certificate itself mentioned otherwise. It is not open to the State Government In a proceeding in relation to a certificate to make any alteration in regard to the nature of the certificate debt as mentioned in the certificate itself without amendment of the certificate.

6. The real question to be determined in the present case is whether the State Government was entitled to any dead rent from the petitioner's father. As I have stated before the Controller of Mining Leases for India modified the terms of the sub-lease to include a condition of payment of dead rent at the rate of Rs. 5/- per acre per annum for iron ore, and this is the basis of the certificate demand for realisation of the accumulated dead rent against the petitioner's father. This modification was made under Rule 6 of the Mining Leases (Modification of Terms) Rules, 1956. Rule 6(1) reads as follows:

"The Controller shall in respect of every existing mining lease prepare a statement of the modifications and alterations which he proposes to make in the terms and conditions of the lease so as to bring the lease into conformity with the Act and the Mineral Concession Rules."

"Existing mining lease" is defined under Rule 2 (c) as "a mining lease granted before the 25th day of October, 1949 and subsisting at the commencement of these rules". These Mining Lease (Modification of Terms) Rules, 1956 were made u/s 7 of the Mines and Minerals (Regulation and Development) Act, 1948 (Act 53 of 1948). That section of the Act authorises the Central Government to make rules by notification in the Official Gazette for the purpose of modifying or altering the terms and conditions of any mining lease granted prior to the commencement of that Act, that is, the 25th October, 1949, so as to bring such leases in conformity with the rules made under Sections 5 and 6. The present sublease was in 1951 and therefore could not be covered by any of the rules that were made u/s 7 of Act 53 of 1948. Sub lease is of course, included in lease. But, even on that basis, rules framed u/s 7 of the Act 53 of 1948 could not be applied to the sub-lease under consideration. I should, however, point out that in the subsequent Act of 1957 (Act 67 of 1957), namely, Mines and Minerals (Regulation and Development) Act, 1957, Section 16 (1) provided that "all mining leases granted before the 25th day of October, 1949, shall, as soon as may be after the commencement of this Act, be brought into conformity with the provisions of this Act and the rules made under Sections 13 and 18." Clause (2) of that section authorises the Central Government to make rules by notification in the Official Gazette, for the purpose of giving effect to the provisions of Sub-section (1). Section 29 of this Act provides as follows :

"All rules made or purporting to have been made under the Mines and Minerals (Regulation and Development) Act, 1948, shall, in so far as they relate to matters for which provision is made in this Act and are not inconsistent therewith, be deemed to have been made under this Act as if this Act had been in force on the date on which such rules were made and shall continue in force unless and until they are superseded by any rules made under this Act."

By this provision, the rules made u/s 7 of the previous Act were saved, and those rules will be deemed as rules made under Sections 13, 1G and 18 of the Act G7 of 1957. Their applicability to a particular lease or sub-lease will be examined with reference to Section 10 which authorises the bringing of all mining leases granted before the 25th day of October, 1949 into conformity with the provisions of the Act and the rules. The sub-lease in the present case being of a later date could not be subject to that provision of 1957 Act. Even with reference to Sub-section (2) of Section 16 of the 1957 Act, the Central Government is not empowered to make rules for the purpose of giving effect to the provisions of Sub-section (1) In the case of any lease granted after the 25th October, 1949. Rule 6 (1) of the Mining Lease Rules, 1956, authorises the Controller of Mining Leases to modify an "existing mining lease." The definition of that expression in the Rules clearly keeps out the present sub-lease. There cannot, therefore, be any doubt that the Controller of Mining Leases for India had no jurisdiction whatsoever to make any order of modification in the conditions of the present sub-lease under Rule 6 of the Mining Leases (Modification of Terms) Rules, 1956. It is only by that order that the State of Bihar claims to be entitled to any dead rent from the petitioner's father. If that order was without jurisdiction, there is no basis whatsoever for the present certificate claim of the State. Accordingly, the certificate itself and its filing u/s 6 of the Bihar and Orissa Public Demands Recovery Act were without any jurisdiction or legal basis.

7. The Bihar and Orissa Public Demands Recovery Act is a special statute that creates a special tribunal under the name--certificate officer--and vests a special jurisdiction in him; so also a special jurisdiction has been provided for the Collector to file a certificate to recover any public demand, as defined in the Act, through a process different from the normal way under the common law. The special jurisdiction is dependent upon the existence of a public demand. Where no such demand exists the initial jurisdiction of the Collector or the Certificate Officer under the Act cannot be invoked.

8. The State contended that a part of the certificate debt was royalty due for the despatch of iron ores during the period 14th of November, 1951 to the 30th of June, 1954. Assuming it was so, that also has no legal basis. The vesting of the estate took place in January, 1955, and thereafter the State became entitled to royalty from the mining lessees if those leases were not otherwise modified u/s 10 of the Bihar Land Reforms Act. Prior to that, the State was not entitled to such royalty, unless they claimed their mining rights on some other basis. In the present case, the counter affidavit filed on behalf of the State does not disclose

any such thing. Reference has been made in the counter affidavit to a title suit No. 18 of 1933 in the court of the Subordinate Judge of Palamau in which the Government's underground rights were declared against the proprietor of the estate, but that related not to Ladi estate but to some other estate.

9. If the Government takes stand on the interim arrangement that was made between (sic) and the petitioner's father in March-April, 1953 as a result of which the petitioner's father continued to work the mines, the position is, in 110 way, any better. The royalty, which was agreed to be paid by the petitioner's father in that arrangement, could be due subsequent to April, 1953, The period for which Rs. 17184/- was sought to be recovered, as stated in the counter-affidavit as royalty, related for a large portion, prior to March, 1953.

10. For all the reasons given above, the dues on account of dead rent which constitute the certificate debt did not exist against the petitioner's father, and therefore, there was no public demand within the meaning of that expression under the Bihar and Orissa Public Demands Recovery Act. The certificate was thus without Jurisdiction and the proceedings therefrom must be quashed.

11. Learned Counsel for the petitioner also contended that the certificate having been filed at a time when the certificate debtor Madan Gopal Rungta was dead, the proceedings were also illegal. In answer to the notice u/s 7 of the Public Demands Recovery Act, the present petitioner had entered appearance when the notice addressed to his father was served on him and filed his objection. In a way, he took the position of a certificate debtor and did not challenge the certificate on that ground. It will not be proper in the present proceedings to entertain this objection, but all the same for reasons other than that, the proceedings based on the certificate in question are liable to be quashed.

12. The result therefore, Is that the rule is made absolute and the certificate proceedings in Misc. Case No. 101 of 1961-62 including the order dated the 24th April, 1963 of the court of the Certificate, Daltonganj, are quashed, and the respondents are prohibited from taking any further step for realisation of the amount of dead rent covered by the certificate. The petitioner will be entitled to a sum of Rs. 100/- as cost of this application from respondent No. 1 the State of Bihar.