
(1967) 09 PAT CK 0007
In the Patna High Court
Case No : C.W.J.C. No. 258 of 1966

Trivedi Brothers and Co. and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 05-09-1967

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 227, 31

Citation : (1968) 16 BLJR 336

Hon'ble Judges : R.L. Narasimham, C.J;K.B.N. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.L. Narasimham, C.J. and K.B.N. Singh, J.—In this application under Articles 226 and 227 of the Constitution, the petitioners have challenged the validity of the order of the District Mining Officer, Dumka, Santal Parganas (Annexure B), calling upon them to pay royalty for the minor minerals in accordance with the rates prescribed by the Bihar Minor Mineral Concession Rules, 1964, with effect from the 27th October, 1964.

2. The proprietor of mauza Malpahari in the district of the Santal Parganas was the Raja of Nasipur, who leased out certain areas in this village to petitioner No. 2 on the 12th April 1939. That petitioner, by a sub-lease dated the 7th November, 1952, settled the disputed block with petitioner No. 1 for a period of thirty years in accordance with the terms and conditions specified in that document. Petitioner No. 1 was carrying on the business of quarrying stones in the said mauza on the strength of the sub-lease. The interest of the Raja of Nasipur vested in the State of Bihar under the provisions of the Bihar Land Reforms Act on the 18th August, 1955. In accordance with Section 10 of that Act, on such vesting, the lease in favour of petitioner No. 2 must be deemed to have been made by the State Government with him for the remainder of the term of the original lease. Section 10 did not deal with the case of a sub-lessee for a lessee. This omission was rectified by the Legislature first, by an Ordinance

known as the Bihar Land Reforms Ordinance, 1964, inserting a new Section 10-A in that Act and making certain consequential amendments to Section 10 of the Act. That Ordinance was, subsequently, replaced by an Act of the Bihar Legislature entitled the Bihar Land Reforms Act, 1964 (Bihar Act 4 of 1965). By virtue of Section 10-A, the sub-lessee of a mine from a lessee is deemed to have become the lessee of the Government from such date as may be notified in this behalf by the State Government, and thereafter the provisions of Sub-sections (2) and (4) of Section 4 became mutatis mutandis applicable to his lease. The first proviso to Sub-section (2) of Section 10 stated that, when a deeming lease is created by that Act, the terms and conditions of that lease could be modified in accordance with the provisions of the Central Act for the time being in force regulating the modification of existing minor leases. The second proviso was inserted to that sub-section by the amending Act of 1965, in consequence of which, as regards minor minerals the terms and conditions specified in the Rules made by the State Government were made applicable.

3. The law of the Central Government dealing with the modification of existing mining leases is the Mines and Minerals (Regulation and Development) Act, 1957. Section 9(1) of that Act dealt with the mining lease created before the commencement of the Act and Sub-section (2) dealt with a mining lease granted after the Commencement of this Act. But Section 14 of that Act expressly stated that Sections 9 to 13 (including Section 9) shall not apply to mining leases in respect of minor minerals. As regards those, the State Government was conferred power by Section 15 to make rules. The Bihar Minor Mineral concession Rules was made in exercise of this power and the schedules to those Rules provide for the rates of royalties payable in respect of various classes of minor minerals.

4. Petitioner No. 1 admitted in paragraph 8 of his application that he had become direct lessee of the State Government. The minerals that are extracted are, admittedly, minor minerals. Hence, it was open to the State Government, by virtue of the amendments made to Sections 10 and 10-A of the Land Reforms Act by the said ordinance and the amending Bihar Act of 1965, to modify the Existing terms and conditions of the lease and to call upon petitioner No. 1 to pay royalty at the rate prescribed in the schedule to the Bihar Rules. Doubtless, this rate could not be levied from a date prior to the date on which Section 10-A was inserted in the Land Reforms Act. But, here the demand has been made only from the 27th October, 1964 and it is not denied that, by that time the relevant amendments had already come into force.

5. The constitutional validity of Section 10-A was also challenged in this writ application; but it was rightly not pressed at the time of hearing. Sub-clause (e) of Clause (1) of Article 31A of the Constitution makes such a statutory provision immune from attack on the ground of violation of fundamental rights conferred by Articles 14, 19 and 31.

6. For these reasons, this application is dismissed but without costs.