(2006) 07 MP CK 0080

In the Madhya Pradesh High Court

Western Coalfields Ltd. and Others — APPELLANT

Vs

State of M.P. and Another — RESPONDENT

Date of Decision : 18-07-2006

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 10, 11, 18A, 4, 7
Land Acquisition Act, 1894 — Section 51
Mines and Minerals (Development and Regulation) Act, 1957 — Section 10, 11, 12, 18A, 4
Stamp Act, 1899 — Section 11, 2, 3, 33, 43

Citation : AIR 2007 MP 75 : (2009) 19 VST 459

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Mishra, J.—In these six writ petitions common question is involved whether the petitioners who is Govt. Company is liable to make the payment of stamp duty on a notification issued u/s 11 by the Central Government under the provision of Section 11 of the Coal Bearing Area (Acquisition and Development) Act, 1957 vesting land in the company.

2. The facts lie in narrow compass. Coal Bearing Area (Acquisition and Development) Act, 1957 enacted to safeguard the economic interest of India, greater public control over the coal mining industry and its development by providing for the acquisition by the State of unworked land containing or likely to contain coal deposits or of rights in or over such land, for the extinguishment or modification of such rights accruing by virtue of any agreement, lease, licence or otherwise, and for matters connected therewith. Vires of the aforesaid Act was upheld by the Apex Court in State of West Bengal Vs. Union of India, .

3. In exercise of powers under the Coal Bearing Area (Acquisition and Development) Act, 1957 properties were acquired as per notifications (P/5) issued Under Sections 9(1) and 11(1) of the Coal Bearing Area (Acquisition and

Development) Act, 1957 on 19-9-1963, 14-10-1971, 18-12-1971, 21-8-1978, 20-4-1983, 22-4-1983, 12-5-1987, 30-12-1988, 5-6-1991, 23-11-1963, 18-4-1978, 27-3-1974, 9-10-1979, 20-4-1986, 11-4-1986, 25-1-1988 and 10-5-1995 respectively, District Registrar issued notices calling for the details to levy duty under Indian Stamp Act, Item 35 of Schedule IA. General Manager of the Western Coal-fields Limited submitted reply (P/8) on 10-10-2001. It was pointed out that question of payment of stamp duty does not arise. Reliance was placed on letter (P/9) issued on 8-5-1997 by the State Government in which Government clarified that under the Coal Bearing Area (Acquisition and Development) Act, 1957 if land has been acquired as no lease-deed is executed registration was not necessary. It was necessary only for the leases executed under the Mineral Concession Rules, 1960 as per Article 35 of Schedule IA, stamp duty was payable on such leases. Reliance has also been placed on a communication (P/10) dated 27-1-1997 issued by the Inspector General of Registration in which it was clarified that these deemed leases have come into existence by operation of law. These have been renewed by the Government. There is no question of any lease deed to be executed by the lessees. As no lease deeds are to be executed, the registration fee and stamp duty cannot be levied. The District Registrar demanded a sum of Rs. 6,08,38,832/- as per order (P/4) dated 17-1-2002. Pursuant to the order demand was raised as per notice (P/16) u/s 146 of the M.P. Land Revenue Code, 1959 of the aforesaid amount. Recovery has been ordered in W.P. No. 359/ 2002. In remaining cases notice have been issued for assessment of stamp duty.

4. Petitioner has submitted that by virtue of Sections 4, 7, 9, 10, 11, 18A of the Coal Bearing Area (Acquisition and Development) Act, 1957 the property vests absolutely in the Central Government and thereafter in WCL, State Government has no right over the property. The lands acquired are urban land, no lease-deeds were executed. Section 33 or 43 of the Stamp Act has no application. Finding of the Collector that the royalty is paid in respect of the land is factually incorrect and is not in accordance with law. Calculation made by the Collector of stamp duty was factually incorrect. Notification issued by the Central Government is not an instrument which can be termed to be lease and liable to stamp duty. Proceedings initiated is highly belated. There is total non-application of mind by the Collector. Hence, the petition has been preferred.

5. In the return filed by the respondents, it is contended that the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "MMRD" Act) enacted by the Parliament are attracted to the activities of mining which is the legislation enacted as per Entry 54 of List 1 to the 7th Schedule to the Constitution of India. Thus, the field is governed by the MMRD Act, Sections 4 and 6 of the aforesaid Act are relied upon. It is necessary to obtain prospecting or mining lease licence as operations to be under licence or lease u/s 4. Possession of mining lease is sine qua non for undertaking mining activities. Section 5 provides restriction on the grant of prospecting licences or mining leases. Section 4 of the MMRD Act prohibits undertaking of any

reconnaissance permit, prospecting or mining operation. Section 6 provides maximum area for which a prospecting licence or mining lease may be granted. Section 8 provides that a mining lease may be granted for a maximum period of 30 years and Section 9 lays down that person undertaking mining activity has to pay royalty in respect of any mineral removed or consumed by him at the rate which has been specified in the second schedule of the Act in respect of that mineral for the time being. Sections 10 to 12 lay down the procedure for obtaining mining lease. No mining can be undertaken in violation of the MMRD Act. It is submitted that a conjoint reading of Sections 9, 10, 11 and 12 of the MMRD Act, makes it clear that the Central Government can acquire land bearing coal and may exploit the same either itself or may transfer its rights to a Government company. Such orders of vesting rights in the Government Company have nowhere been exempted from stamp duty under any provision of the Coal Baring Area Act or any other Act. If it would have been the intention of Parliament to exempt such orders from stamp duty, it would have been very easy for them to make provision in the coal bearing Area Acquisition Act, 1957 itself, as has been done in case of the Land Acquisition Act, 1894. No such provision as made u/s 51 of the Land Acquisition Act 1894 has been made in the Coal Bearing Area Acquisition Act of 1957. Even an award is an instrument. Thus, order passed by the Central Government u/s 11 is an instrument liable to stamp duty under Article 35 of Schedule 1A of Stamp Act. Thus, the order which deemed to be lease is chargeable to stamp duty. Thus, the order passed by the District Registrar is proper. No case for interference is made out in these petitions.

6. Shri P. S. Nair, learned Sr. Counsel appearing with Ms. J. Chana and Shri Shreyus Dharmadhikari submitted that there is exemption u/s 3 of the Stamp Act, in case document is executed by or on behalf of or in favour of the Government as provided in second proviso to Section 3, thus the order of vesting of the property passed u/s 11 is exempted from payment of stamp duty if any leviable. His main submission is that it not a lease under Article 35 of the Schedule 1A of Stamp Act. No lease has been executed, as such order passed, notices issued by the District Collector of stamp are based on misinterpretation of provision of Section 11(2) of the Acquisition Act of 1957. He has relied upon the decision of the Apex Court in Harishchandra Hegde Vs. State of Karnataka and Others, to contend that the Coal Bearing Area Acquisition Act is special Act has to prevail over MMRD Act. No lease-deed has been executed, hence, there is no question of payment of Stamp duty. Thus, the order passed by the District Magistrate be set aside.

7. Shri Kumaresh Pathak, learned GA appearing on behalf of the respondents has supported the order and has made strenuous effort to support the order passed by the District Collector of Stamp. He has taken this Court to various provisions of the Coal Bearing Area Acquisition Act and MMRD Act and has further submitted that the order passed u/s 11(1) is deemed to be lease under Sub-section (2) of Section 11. Thus, when it is deemed to be a lease the order is an instrument as defined u/s 2(14) of the Stamp Act, is chargeable to the Stamp

Duty as lease under Article 35 of the Schedule 1A of Stamp Act. Thus, he has supported the order passed by the Collector and has submitted that Section 3 of the Stamp Act is not attracted to the order passed u/s 11(1) of the Coal Bearing Area Act.

8. In order to appreciate rival submission, it is necessary to consider various provisions of Coal Bearing Area Acquisition Act, Section 4 provides for issuance of preliminary notification with respect intention to prospect for coal in any area and powers of competent authorities thereupon to enter upon and survey any land in such locality; to dig or bore into the sub-soil to do all other acts necessary to prospect for coal in the land. Section 7 deals with power to acquire land of rights in or over land notified u/s 4. Section 9 deals with declaration of acquisition. Section 9 provides that in case the Central Government is satisfied, after considering the report, it any, made u/s 8 that any land or any rights in or over such land should be acquired, a declaration shall be made by it to that effect, and different declarations may be made from time to time in respect of different parcels of any land, or of rights in or over such land, covered by the same notification under subsection (1) of Section 7, irrespective of whether one report or different reports has or have been made (wherever required) under Sub-section (2) of Section 8. Every declaration shall be published in the official gazette as provided in Sub-section (2) of Section 9. There is special power in case of urgency as provided u/s 9A. Section 10 deals with vesting of land of rights in Central Government. Section 10 is quoted below:

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.

Section 11 deals with power of Central Government to direct vesting of land or rights in Government company which contains non-obstante clause enabling the Central Government to issue notification to the effect that the land of 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 as may be specified in the direction. Section 11 is quoted below:

11. 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 of the land covered by it shall, on and from the date of such vesting, be deemed to have become the rights and liabilities of the Government company.

Section 18A provides for payment to State Government in lieu of royalty as it is deemed to be a lease, Section 18A ensures that sum of money as would have been payable as royalty by a lessee had such land or rights been under a mining lease granted by the State Government. Royalty is payable by lessee which is not paid by Govt. company, Section 18A is quoted below:

18A. Payment to State Government in lieu of royalty.- Notwithstanding anything contained in this Act, where any land or any rights in or over land belonging to a State Government (other than the rights under a mining lease granted or deemed to have been granted by the State Government to any person) vest in the Central Government u/s 10 or in a Government Company, u/s 11, the Central Government or the Company as the case may be, may pay to the State Government such sum of money as would have been payable as royalty by a lessee had such land of rights been under a mining lease granted by the State Government.

9. The aforesaid Sub-section (2) of Section 11 provides that the Government company shall, on and from the date specified under Sub-section (1) of Section 11 deemed to be a lessee of the State Government as if a mining lease under the Mineral Concession Rules granted by the State Government to Government company. In fact no lease deed has been executed it is only the statutory legal fiction created under Sub-section (2) of Section 11 that Govt. company is deemed to be lessee and some equivalent to royalty which is payable by lessee is ensured in other form u/s 18A which sum in fact is not royalty which is payable, but, the amount in lieu of royalty.

10. In my opinion, land absolutely vests in the Central Government or

Government company. It is only for limited purpose of mining operation to ensure that the mining is done in effective manner, though the land vest in the company, it is by legal fiction created that Govt. company is deemed to be lessee. An order u/s 11(1), in favour of the company vesting the land in it, issued by the Central Government cannot be termed to be a lease executed by the Central Government in favour of the Government company as apparent from reading of Section 11(1) which is only an order in writing which has been issued to the effect "the instead of vesting the land in Central Government u/s 10 or continuing to vest" so vest in the Government company, when land vests in the Government or in Government company it is a public land, not the land of the State Government, vesting of land is absolute, it cannot be treated to be land of the State Government, Government cannot lease out this area subsequently. Thus, it cannot be said that an order passed u/s 11(1) of vesting of the land in Govt. company instead of Central Government is a creation of lease, there was no prior lease existing. By virtue of Section 10(1) of the Coal Bearing Areas Acquisition Act, the land vest absolutely in the Central Government on the date on which the declaration u/s 9 was published in the official gazette. There was absolutely vesting of the land in the Central Government and this absolute vesting was made in favour of the company u/s 11(1) by passing an order (P/6). The land absolutely vests in the company instead of Central Government by virtue of interaction of Sections 10 and 11 of the Coal Bearing Areas (Acquisition and Development) Act, 1957. Thus, the Collector of stamp has erred in law in holding it to be a lease as provided under Article 35 of the Schedule 1A of the Stamp Act. Provisions of Sections 4, 6, 9, 10, 11, 12 of MMRD Act, no doubt, provides that there has to be existence of lease to carry out mining operation, in the instant case, there was no lease, land absolutely vested in the Govt. company. However, for limited purpose of regulating the mining legal fiction was created and u/s 18A sum equivalent to royalty which would have been payable in case it was a lease is payable, no document in the shape of lease was executed, order of vesting the property, in the Government Company cannot be treated as lease under the Stamp Act or under the MMRD Act.

11. Apart from the decision, order u/s 11(1) cannot be treated as lease even if for the sake of argument it is assumed that the document is a lease then Section 3 of the Stamp Act comes in the way of the respondent. Second proviso to Section 3 of the Stamp Act makes it clear that no duty shall be chargeable in respect of any instrument executed by, or on behalf of or in favour of, the Government but for this exemption the Govt. would be liable to pay the duty chargeable in respect of such instrument. Section 3 is quoted below:

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, 1988;

(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 or 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.

It is clear that the document has been executed by the Government and ''government'' used u/s 3 of Stamp Act includes Central Government and State Government both, as also observed by the Allahabad High Court in Basti Sugar Mills Co. Ltd., Basti and Another Vs. The Union of India (UOI) and Others, , that the Government u/s 3 includes Central Government as well as State Government. It was held that affidavits executed by or on behalf of Govt. was not chargeable to stamp duty. It is clear that in view of exemption contained u/s 3, even if document is held to be lease for the sake of argument chargeable under Article 35 of Schedule 1A of Stamp Act, no duty could be claimed by the Registrar of stamp, as such the impugned order cannot be allowed to sustain.

12. In Bharat Coking Coal Limited Vs. State of Bihar and Ors, the Apex Court has held that once the acquisition is made under the Coal Bearing Areas (Acquisition an and Development) Act, 1957, requisite declaration was issued by the Central Government, it was not open to the Slate Government to grant lease as the land vests in the Central Government.

13. In Purshotam H. Jadye and Others Vs. V.B. Potdar, the question came up for consideration whether an award can be appropriately described as an instrument which provided for the payment of gratuity. In the instant case, question is of chargeability of the order passed u/s 11(1) by the Central Government of vesting the property in Government company as a lease. Thus, the decision has no relevance.

14. In view of aforesaid discussion, in my opinion, the order passed u/s 11(1) of vesting of the land in Government Company, cannot be treated to be a lease under Article 35 of Schedule 1A of Stamp Act. Even otherwise if it is considered to be a lease, it is exempted u/s 3 of the Stamp Act having been executed by Govt. Consequently, the impugned order/notices cannot be allowed to be stand.

15. Resultantly, writ petitions deserve to be allowed. Writ petitions are hereby allowed. The impugned order and notices arc hereby quashed. Parties to bear their own costs as incurred in these writ petitions.