

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

INTERLOCUTORY APPLICATION NO. 3 OF 2009

IN

SPECIAL LEAVE PETITION (C) NO.20238 OF 2006

M/s. Maruti Clean Coal & Power Ltd. ... Petitioner

Versus

Alok Nigam & Anr. ... Respondents

J U D G M E N T

J.M. Panchal, J.

1. By filing this Interlocutory Application, M/s.

Maruti Clean Coal & Power Limited which has established a coal washery of 10 M.T.Y. capacity on Khasra Nos.850/30, 850/24, 850/31, 850/28, 850/27 and 850/32 of Village Ratija, District Korba leased by the State of Chhattisgarh through Chhattisgarh

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State Industrial Development Corporation ('CSIDC' for short), has prayed to direct M/s. South Eastern Coal Field Limited ('SECL' for short) to start supply of coal immediately and issue Transit Passes/Delivery Orders through the washery of the petitioner on behalf of linked and other customers on instructions/requests from all such customers/purchasers of coal.

2. In order to understand the scope and ambit of the prayer made by the petitioner, it would be relevant to

notice certain facts. M/s. Maruti Clean Coal & Power Limited is a company registered under the provisions of the Companies Act. It applied for the allotment of about 15 hectares (37.91 acres) of land of village Nawagaon Khurd

(now Ratiya), District Korba, ('the land' for short) for setting up a Coal Beneficiation Plant with a capacity to wash 10 million tons of coal per annum. The land demanded was adjacent to already existing two coal washeries one of which was set up by ST-CLI in which one Aryan Coal Beneficiation Pvt. Ltd. has 26% holdings and another Coal Washery set up belongs to Aryan itself. The officials of

the Revenue, Forest and Industry Departments of the State conducted a thorough inspection of the land demanded by the petitioner. After being satisfied that the land demanded was not forest land and requirements of environmental laws

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were complied with by the petitioner, the officials recommended to the State to allot the land to the petitioner. Pursuant to the said recommendation, a lease deed dated December 5, 2002 for a period of 99 years was executed in favour of the petitioner by the State of Chhattisgarh through CSIDC. The purpose for which the

lease deed was executed was to enable the petitioner to set up a coal washery. Pursuant to the said lease deed, the

petitioner was put in possession of the land. However, subsequently, SECL claimed title to the land and alleged that the land did not belong to the State Government and, therefore, could not have been leased by the State to the petitioner.

In March/April 2003, one Mr. B.L. Wadhwa, a public spirited citizen instituted WP (C) No.1264/2003 before the High Court of Chhattisgarh at Bilaspur to prevent the petitioner from setting up its coal washery on the land allotted to it by the State Government on the ground that the land allotted were forest land. The High Court, by an ex parte order dated April 24, 2003, directed the petitioner to maintain status quo regarding the land allotted to it and not to cut trees standing on the land

till further orders. In view of the dispute pertaining to the title of the land between SECL and the State 4

Government, the Union of India, vide letter dated May 7, 2003 sent through the Ministry of Coal, gave the petitioner two options (1) to wait until title issue is decided; or (2) to proceed on the assumption that the title vests in SECL and on that basis, to request the SECL to allot the land to the petitioner.

It was also mentioned in the said letter that in the event the petitioner chose the second option, Coal India Limited and SECL would be requested by the Ministry to initiate action for leasing the land to the petitioner. The record shows that by letter dated May 9,

2003, the petitioner elected the second option. The petitioner filed an application for vacation of the stay

order. The High Court, by order dated May 9, 2003, modified its earlier order and allowed the petitioner to continue with the construction of the main building but restrained it from installing the machineries. Meanwhile,

the SECL wrote a letter dated June 27, 2003 to the Ministry of Coal stating that it had no objection in leasing the

land to the petitioner subject to certain conditions including the condition that the fact that the land belonged and belongs to SECL is acceptable to the petitioner. Feeling aggrieved by order dated May 9, 2003,

Mr. B.L. Wadhwa filed SLP (C) No.22531 of 2003. This Court, by order dated November 24, 2003 stayed further 5

construction on the land. Subsequently, the said SLP was tagged with IA No.857-858 of 2003 filed by Mr. Wadhwa and

one Mr. Deepak Aggarwal respectively. This Court, by judgment dated April 10, 2006 in case of T.N. Godavarman Thirumulpad vs. Union of India & Ors. (2006) 5 SCC 28, dismissed the application of Mr. Deepak Aggarwal observing that it was filed with mala fide intention. The interim

order passed staying further construction was vacated. On

the pronouncement of judgment by this Court, the petitioner filed an application in the writ petition pending before

the High Court of Chhattisgarh with a prayer to dismiss the writ petition. The record shows that the said application

was heard with two other connected petitions and judgment

was reserved. However, the judgment could not be pronounced by the High Court. Therefore, the petitioner

filed an application for vacating the interim orders dated

April 23, 2003 and May 9, 2003. Listing of the said application was refused by the Registry on the ground that

in the main matter, judgment was reserved. Meanwhile, the

petitioner completed construction of the main building.

The order for purchase of machineries to be installed was already placed.

3. On December 9, 2004, SECL filed Civil Suit No.90-A of 2004 against the State of Chhattisgarh and the petitioner

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contending, inter alia, that the land allotted to the petitioner company by the State of Chhattisgarh through

CSIDC had vested in SECL and that SECL is the owner and in

possession of the land in question. Various other litigations and proceedings were initiated by several

parties pertaining to the land allotted to the petitioner

company. The Ministry of Coal, by letter dated December

30, 2005 advised SECL to implement the instructions dated

May 7, 2003 mentioned in para (b). The petitioner

thereupon addressed a letter dated June 14, 2006 to SECL to

inform the petitioner about the lease premium/rent to be

deposited. The record of the case further shows that in

spite of instructions issued by the Ministry of Coal and

request made by the petitioner, SECL did not initiate steps

for leasing the land to the petitioner.

Therefore, the

petitioner has filed Special Leave Petition No.20238 of

2006 challenging validity of order dated April 24, 2003 as

modified by order dated May 9, 2003 in WP No.1264 of 2003

pending before the High Court of Chhattisgarh.

In the

aboveresferred special leave petition, the Court has issued

notice and the said SLP is pending for final disposal.

Thereupon, the petitioner company filed Transfer Petition

No.53 of 2007 in this Court to direct that all the connected matters including the suit, writ petitions and/or

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appeals be heard together and transferred to the High Court

of Chhattisgarh at Bilaspur.

The said Transfer Petition

was allowed. Pursuant to the directions given by this

Court, the number of Civil Suit was changed from 90-A of

2004 to Civil Suit No.1-A of 2008.

The said suit and all

other connected writ petitions, appeals etc. are pending

adjudication before the High Court of Chhattisgarh at

Bilaspur.

4. During the pendency of proceedings before the High

Court of Chhattisgarh, the Prime Minister's Office vide

letter dated June 26, 2007 to the Secretary, Ministry of

Coal approved and recommended SECL to move an appropriate

application before the High Court of Chhattisgarh seeking

permission of the Court for leasing the land to the

petitioner company for establishment of a coal washery.

Having regard to these directions, the Ministry of Coal

issued a letter dated July 4, 2007 to M/s. Coal India Ltd.

which is parent company of SECL, stating that in view of

the decision by the competent authority, SECL should take

appropriate action to lease the land to the petitioner

company. Therefore, M/s. Coal India Ltd. addressed a

letter dated July 5, 2007 to SECL directing it to take all

necessary actions for execution of lease deed in favour of

the petitioner company.

On July 9, 2007, SECL issued a

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letter to the Chairman-cum-Managing Director of CMPDI

requesting to make assessment of the land required to be

leased out. In view of the directions contained in letter dated July 5, 2007 of Coal India Limited, SECL filed an application on July 16, 2007 before the High Court of Chhattisgarh at Bilaspur in WP No.3094 of 2007 seeking permission to execute a lease deed in favour of petitioner's company. It was also mentioned in the said application that the petitioner company had agreed to take the land on lease for establishment of a coal washery and agreed to pay the lease money to SECL. Subsequently, on August 9, 2007, an additional affidavit was filed enumerating three conditions precedent to the execution of lease deed in favour of petitioner-company. The record shows that the petitioner-company showed willingness to abide by those conditions but no lease deed is executed between the petitioner-company and SECL. In the title suit filed by SECL, an order was passed by the High Court directing the parties to appear before Mr. Gopal Subramaniam, the then learned Additional Solicitor General of India, to explore the possibilities of a settlement. The record does not indicate that any settlement had taken place between the parties.

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5. The grievance made by the petitioner in the instant application is that it has expended almost Rs.100 crores to set up a 10 million ton washery. It is averred in the application that the buildings have been constructed and expensive state of art machineries and equipments have also been purchased and installed. The petitioner has mentioned that trial run was also done in the wahsery nearly two years ago and the petitioner is not able to operate the washery only due to refusal by SECL to issue Transit Passes/Delivery Orders for transport of coal purchased by the linked and other consumers through the petitioner's wahsery before delivery to such purchasers. According to the petitioner, the only ostensible reason for SECL to

refuse grant of Transit Passes/Delivery Orders is the dispute as to the title of the land between the State of Chhattisgarh and SECL. The claim advanced by the petitioner is that washing of the coal before consumption has significant environmental benefits and is also in the public interest and as there is significant shortage of coal washeries, the petitioner's washery should be permitted to operate. Under the circumstances, the petitioner has filed this application and claimed relief to which reference is made earlier.

6. The respondents have filed affidavit in opposition.

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7. This Court has heard the learned counsel for the parties at great length and in detail. The Court has also considered the documents forming part of the instant application as well as SLP (C) No.20238 of 2006.

8. During the course of hearing of the application, it was made clear by the learned counsel for the petitioner that the petitioner company is ready to take the land on lease from SECL and pay rent to the said company. The record shows that several cases have been clubbed together and Civil Suit No.1-A of 2008 relating to title of the land leased to the petitioner company by the State Government is pending disposal. The averments made by the petitioner that on the leased land, the petitioner has expended almost Rs.100 crores to set up a 10 million tons washery and has installed expensive machineries could hardly be controverted by the respondents. The petitioner company is neither claiming title to the land nor asserts that the coal coming to its company for wash belongs to it. By a scientific process, the petitioner washes the coal brought to the factory by the purchasers. Once SECL sells coal to the highest bidder and the bidder pays the price, the property in coal would stand transferred to the purchaser

and the purchaser would be free to deal with the quantity of coal purchased like any other prudent purchaser.

Here,
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the petitioner-company is not concerned at all with the title of the coal in question. The building constructed and machineries installed have remained unused since long causing great financial loss to the petitioner-company. It is relevant to notice that as on date, there is no order subsisting which restrains the petitioner from operating the washery in question. The assertion made by the petitioner that it has received all necessary approvals for running the washery including the approval from the Ministry of Environment, Electricity Department, Commercial Tax Department, licence under the Factories Act etc. is not disputed by any of the respondents. Therefore, this Court is of the opinion that the prayer made by the petitioner-company in the instant application deserves to be granted, of course, subject to certain conditions.

9. For the foregoing reasons, the application partly succeeds. M/s South Eastern Coal Field Ltd. is hereby directed to start supply of coal and issue Transit Passes/Delivery Orders through the washery of the petitioner on behalf of linked and other customers based on instructions/requests from them. It is clarified that the grant of this interim relief will be subject to the result of Civil Suit No.1-A of 2008 pending in the High Court of Chhattisgarh at Bilaspur. It is also clarified that if

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issue of title is held in favour of M/s. South Eastern Coal Field Ltd., it would be open to the said company to lease the land to the petitioner-company or to take other steps with reference to the said land in accordance with law. Subject to abovementioned clarifications/observations, rule is made absolute. There shall be no order as to costs.

