



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 7614 OF 2014

STATE OF U.P. & ANR. ...APPELLANT (S)

VERSUS

NORTHERN COAL FIELDS ...RESPONDENT(S)

J U D G M E N T

1. The present appeal arises from the judgment and order of the High Court of Judicature at Allahabad dated 16.01.2013 in Writ (C) No. 50320/2010 wherein the Respondent's Writ Petition was allowed, orders dated 23.03.2010, 11.06.2010 and 31.07.2010 passed by the Divisional Forest Officer, Renukoot, District Sonebhadra, UP¹ were set aside, the State was directed not to realise further lease rent from the

¹ Hereinafter referred to as "DFO"

Respondent and to refund/adjust the amount paid by the Respondent for the year 2010-2011.

2. The facts of the matter, succinctly put, are that the Respondent is a Government Company which was incorporated with an object to carry on mining operations for extraction of coal and supply thereof to core sector and non-core sector and is carrying on two coal mine projects namely 'Krishnashila Project' and 'Bina Project' in the district of Sonebhadra. The DFO had issued letters dated 23.03.2010 and 11.06.2010 to the Respondent seeking the deposit of annual lease rent for the year 2010-2011 for the forest land which has been transferred on lease to the Respondent for 30 years and 23 years respectively. The Respondent deposited the said amount under protest which further led to the issuing of letter dated 31.07.2010 by the DFO stating that since the amount has been deposited under protest, which is against the conditions of transfer, the matter is being referred to the higher level of the Government for cancelling the said transfer. Thereafter, the Respondent preferred a Writ Petition before the High Court

challenging the above-mentioned letters and the demand of annual lease rent by the DFO.

3. Before moving further, we find it relevant to delve into the genesis of vesting of such rights in the Respondent. On 23.12.1980, the Central Government issued a notification under Section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957² of its intention to acquire the lands admeasuring 1657.16 hectares (approximately) as specified in the Schedule, and consequently, issued a declaration on 17.11.1981 acquiring the said land under Section 9 of CBA, 1957. The said declaration was published in the Gazette of India, dated 05.12.1981, vesting the land and rights described in the Schedule appended to the abovementioned notification absolutely in the Central Government free from all encumbrances under Section 10(1) of the CBA, 1957. Further, in exercise of powers under S. 11(1) of CBA, 1957, the Union Government, by its order dated 02.11.1982, directed that the lands and rights so

² Hereinafter referred to as “CBA, 1957”

vested shall, w.e.f. from 05.12.1981, instead of continuing to so vest in the Central Government, shall vest in the Government Company named Central Coalfields Ltd. (which was later formed into Northern Coal Fields Ltd. w.e.f. 28.11.1985, i.e. the Respondent).

4. Thereafter, the Respondent submitted a proposal for its 'Krishnashila project' of 235.99 hectares of land for obtaining approval of the Central Government for use of the land for mining purpose under the Forest (Conservation) Act, 1980³. Similarly, another proposal under the FCA, 1980 for usage of 258 hectares of forest land for mining purpose for 'Bina Coal Project' was submitted to the Central Government for obtaining its approval.
5. Accordingly, in pursuance of Section 2 of the FCA, 1980, the Central Government, *vide* its order dated 23.05.1996, granted approval for diversion of 258 hectares of forest land under 'Bina Project', which was communicated by the State Government to the Respondent *vide* letter

³ Hereinafter referred to as "FCA, 1980"

dated 28.06.1998. Similarly, the Central Government, with regard to the 'Krishnashila Project', *vide* its letter dated 06.07.2006, granted approval for diversion of 235.99 hectares of forest land in accordance with Section 2 of FCA, 1980, which was communicated to the Respondent by the State Government *vide* letter dated 27.07.2007.

6. The Respondent, by virtue of Section 18A of the CBA, 1957, has been paying money equal to royalty as determined under Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957⁴. However, the letter dated 23.03.2010 and subsequent letter dated 11.06.2010 were issued to the Respondent demanding the deposit of "lease rent" amounting to Rs.1,24,23,015/- in accordance with Condition No. 7 of 'Krishnashila Project' and Rs.1,91,25,593/- in accordance with Condition No. 12 of 'Bina Project'.
7. Aggrieved by the said demand for "lease rent", the Respondent preferred the Writ Petition before the

⁴ "MMDR Act, 1957", hereinafter

High Court, which was allowed while observing that the entire area has been acquired under CBA, 1957 under which the State has no legislative competence as held in **State of West Bengal v. Union of India**.⁵ Therefore, where the State is denuded of any power to legislate in the matter or to exercise any executive power under Article 162 of the Constitution and no satisfactory basis has been disclosed by the State Government for claiming the lease rent from the Respondent, Condition No. 7 in Government Order dated 27.07.2007 which is unsupported by any legal basis, cannot be permitted to operate against the Respondent. The State of UP, being aggrieved by the said judgment, is in appeal before us.

8. Since the reasoning of the High Court is majorly based on the judgment in the case of **State of West Bengal (supra)**, we find it imperative to deal with the said judgment first. In the said Constitution Bench judgment, wherein the statutory scheme of CBA, 1957 was discussed in

⁵ AIR 1963 SC 1241

detail, the relevant question of law under consideration was whether the Parliament has legislative competence to enact a law for compulsory acquisition by the Union of land and other properties vested in or owned by the State. The said question was answered in the affirmative by the majority. It was held that the power to legislate for regulation and development of mines and minerals being under the control of the Union, would by necessary implication include the power to acquire mines and minerals, thereby upholding the constitutional validity of CBA, 1957, and in particular Sections 4 and 7. It must be noted that the said judgment only delved into the legislative competence of the Union and State in matters relating to acquisition of land, especially in context of mines and minerals, and did not deliberate upon the right of the State Government to claim lease rent by a Government Company under CBA, 1957 or other related acts. In the instant case, the legislative competence of neither the Union nor the State Government is under challenge. The matter at hand only pertains to the claim of lease rent by the State

Government and therefore, the rationale in judgment of **State of West Bengal (supra)** is of no avail to the Respondent.

9. Another case that has been dealt with in the impugned judgment is a decision by the Division Bench of the Patna High Court in **Managing Director, National Coal Development Corporation and etc. v. State of Bihar & Ors.**⁶ wherein a question arose as to whether the Petitioner-Company is liable to pay to the State of Bihar dead rent by reason of the provisions of Section 18A of CBA, 1957 or not. In the said case, the following was held –

“7. In the State counter affidavit in C.W.J.C. 2462 of 1979, it has been stated that a relationship of lessor and lessee exists between the State Government and the petitioner-company. This stand does not appear to be correct. As has been pointed out, the present cases do not attract Section 10(2) of the Acquisition Act inasmuch as there were no mining leases. Admittedly, these cases relate to virgin mineral which continues to be unworked till now. The case is governed by Section 10(1) and its language in no uncertain terms states that the entire interest of the

⁶ AIR 1984 Pat 280

State vests absolutely in the Central Government free from all encumbrances. The State is completely divested of all its rights and a relationship of lessor and lessee does not continue between the State and the Central Government (or for that matter the petitioner-company).

8. The next question is : does S. 18A of the Acquisition Act create a right in the State to realise Dead Rent? The language of Section 18A quoted above, while referring 'royalty' has omitted to include 'Dead Rent' in the Section. 'Royalty' and 'Dead Rent' are two separate and distinct liabilities payable by lessees and have been dealt with separately by two Sections of the Development Act, that is, Sections 9 and 9A. The rates are also detailed in the second and third schedules respectively. The rate of royalty is related to the quantity of coal to be extracted while Dead Rent is payable area-wise. Royalty is payable on the extracted mineral while Dead Rent on area having unworked mineral. The two expressions cannot be treated to refer to a common claim by the State. The distinction between the two has been appreciated and discussed in the decisions in *Bhorulal v. State of Rajasthan* (AIR 1956 Raj 161), *Sethi Marble Stone Industries v. State of Rajasthan* (AIR 1958 Raj 140) and *Surajdin Laxmanlal v. State of Madhya Pradesh* (AIR 1960 MP 129). The view of the Certificate Officer that royalty includes Dead Rent is, therefore, clearly illegal. It

must, therefore, be held that Dead Rent is not payable by reason of Section 18A.”

10. Insofar as the instant case at hand, we are only concerned with the observations pertaining to Section 10 of CBA, 1957 in the above judgment and not with the claim of dead rent under Section 18A thereof. However, before going into the applicability/utility of the above judgment, we find it pertinent to produce the relevant provisions of CBA, 1957, which are as follows:

“7. Power to acquire land or rights in or over land notified under Section 4.—(1)

If the Central Government is satisfied that coal is obtainable in the whole or any part of the land notified under sub-section (1) of section 4, it may, within a period of two years from the date of the said notification or within such further period not exceeding one year in the aggregate as the Central Government may specify in this behalf, by notification in the Official Gazette, give notice of its intention to acquire the whole or any part of the land or of any rights in or over such land, as the case may be.

(2) If no notice to acquire the land or any rights in or over such land is given under sub-section (1) within the period allowed thereunder, the notification issued under sub-section (1) of section 4 shall cease to

have effect on the expiration of three years from the date thereof.”

9. Declaration of acquisition.—(1) When the Central Government is satisfied, after considering the report, if any, made under Section 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 sub-section (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]:

[Provided that no declaration in respect of any particular land, or rights in or over such land, covered by a notification under sub-section (1) of section 7, issued after the commencement of the Coal Bearing Areas (Acquisition and Development) Amendment and Validation Act, 1971 (54 of 1971), shall be made after the expiry of three years from the date of the said notification:

Provided further that, where a declaration] relates to any land or to any rights in or over land belonging to a State Government which has or have not been leased out, no such declaration shall be made except after previous consultation with the State Government.

(2) [Every declaration] shall be published in the Official Gazette, and—

(a) in any case where land is to be acquired, shall state the district or other territorial division in which the land is situate and its approximate area; and, where a plan shall have been made of the land, the place where such plan may be inspected;

(b) in any case where rights in or over such land are to be acquired, shall state the nature and extent of the rights in addition to the matters relating to the land specified in clause (a); and

a copy of every such declaration shall be sent to the State Government concerned.

10. Vesting of land or rights in Central Government.—

(1) On the publication in the Official Gazette of the declaration under section 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.

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 under section 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 or 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.”

11. A bare perusal of Section 10 and 11 clearly brings forth a plain distinction in the nature of right conferred and liabilities accrued between sub-section (1) and (2) of Section 10, as also between sub-section (1) and (2) of Section 11. Further, Section 10(1) clearly provides that when the said provision is applied, the land or rights in or over the land shall vest absolutely in the Central Government free from all encumbrances. The words “free from all encumbrances” become of vital importance as it clarifies that from such point onwards, the Central Government becomes the absolute owner and has sole rights and claim over the land. However, when the State Government has already granted rights to any person under any mining lease and the Central Government subsequently acquires such land under Section 10(2), then the rights acquired by

the Central Government are limited to the capacity of a deemed lessee of the State Government. Therefore, the rights conferred under sub-section (2) of Section 10 are limited in nature as compared to sub-section (1) and such a distinction must be appreciated when determining the nature of acquisition by the Central Government. It must be noted that such a contrast in rights under Section 10(1) and (2) is rooted solely in the fact if the rights under any mining lease are granted to any person at the time of acquisition by the Central Government or not. The Central Government shall acquire the character of a deemed lessee of the State Government only if a mining lease granted by the State Government in favour of any person existed already before the Central Government acquired the land and rights over it.

12. Similarly, Section 11 which talks about the power of Central Government to direct vesting of land or rights in a Government Company draws an identical distinction between its two sub-sections. Section 11(1) specifically provides that, notwithstanding anything contained in Section

10, upon the satisfaction of the Central Government, the land or the rights in or over the land shall, instead of vesting in the Central Government under Section 10, vest in the Government Company from the specified date onwards. This means that sub-section (1) of Section 11 blanketly vests the land or rights in or over the land in the Government Company, as it vested in the Central Government, without any further stipulations. The nature of right that passes onto the Government Company shall be exactly identical to the right that existed with the Central Government itself. However, the language of sub-section (2) of Section 11 is direct and absolutely unclouded when it specifically talks about the situation “where any rights under any mining lease acquired under this Act vest in a Government company” and on the fulfilment of such pre-requisite alone, the Government Company shall become a deemed lessee of the State Government as if the State Government had granted a mining lease in the favour of that Government Company under the Mineral Concession Rules. This provision pre-supposes

the existence of a mining lease granted by the State Government prior to the Central Government acquiring it under the CBA, 1957. No relationship of a lessor and lessee shall come into existence between the State Government and the Government Company if there did not exist any mining lease under the Mineral Concession Rules, at the relevant point of time, when such right is being vested in the Government Company. Simply put, when there is no pre-existing lease at the time of acquisition by the Central Government and the rights are subsequently vested in a Government Company, then such Government Company does not become a deemed lessee of the State Government.

13. Having clarified the legal position and interpretation of the two provisions, we now move to the factual analysis of our case. It is undisputed that by virtue of the notification in the Official Gazette dated 05.12.1981, the land and rights vested absolutely in the Central Government free from all encumbrances under Section 10(1) of the CBA,1957. This means that

the Central Government became the absolute owner of the land and rights over the land from 05.12.1981 onwards.

14. Further, the Government Order dated 02.11.1982 published by the Government of India, which was produced as Annexure P-1 before us, clearly provided that in exercise of the powers conferred by Section 11(1) of the CBA, 1957, the Central Government had directed the vesting of such land and rights in the Government Company, with effect from 05.12.1981. It is to be noted that the rights in the Government Company were vested specifically by virtue of sub-section (1) of Section 11 and at that time, there did not exist any mining lease as provided under sub-section (2). As explained above, the rights under Section 11(1) are vested in the Government Company in the exact nature as they existed in the Central Government at the time. Therefore, when the Central Government's right was free from all encumbrances and completely absolute, the Government Company also acquired an absolute right over the land. No question of a qualified right in the capacity of a

deemed lessee of the State Government arises in such a situation. This is by virtue of the fact that when Central Government acquired such rights and also when it was further vested in the Government Company, there was no pre-existing mining lease in favour of any person and, therefore, Section 10(2) and Section 11(2) become inapplicable in the given case. Thus, the land vested in the Government Company free from all encumbrances, subject to the conditions imposed by the Central Government. Therefore, the State Government is not entitled to claim itself as a deemed lessor of the Government Company in the given situation and the demand for “lease rent” becomes completely unwarranted.

15. The findings of the Patna High Court in Paragraph 7 of the judgment in the case of **Managing Director, National Coal Development Corporation (supra)** is in lines with our analysis as even in that case, it was held that Section 10(2) is not attracted because there existed no mining lease prior to acquisition. The situation therein was also governed by Section

10(1) and hence, it was rightly held that the State Government is divested of all its rights and a relationship of lessor and lessee does not continue between the State and the Central Government (or for that matter the petitioner-company).

16. There is another judgment of this Court in **Mahanadi Coalfields Ltd. v. State of Odisha**⁷ that was placed before us during the course of arguments. However, since in the said judgment, the dispute was with regards to the payment of premium and compensation, as opposed to the demand for “lease rent” in our case, the judgment, being distinguishable on facts, is not applicable to the case at hand. Moreover, in the said case, the right of the State Government to claim compensation/premium under section 18A of the CBA, 1957, was recognized by virtue of State Government being a “person interested” under Section 2(d) of the Act. Herein, there arises no question of an “interested person”. The said judgment did not delve into the question at hand

⁷ (2023) 4 SCC 343

currently, that is the distinction between the nature of right acquired under Section 11(1) and (2), and there was no discussion whether there was a pre-existing mining lease at the time of acquisition or vesting of rights or not. Hence, the said judgment, is clearly distinguishable on facts.

17. Lastly, we also observe that the State Government has raised multiple contentions that no prior consultation of the State Government was made for the transfer or acquisition of the reserved forest block in question under CBA, 1957. The said contention is unfounded in view of notification dated 23.12.1980 under Section 7, declaration dated 17.11.1981 under Section 9, Gazette publication dated 05.12.1981 under Section 10 and Government Order dated 02.11.1982 under Section 11 of the CBA, 1957 which were never challenged by the State Government for any infirmity. Therefore, this contention is of no avail to the Appellant-State now.
18. Having held that the State Government's demand for "lease rent" was not supported by any

statutory provision, such a demand cannot be sustained in law. The appeal is accordingly dismissed, albeit for reasons different than the one provided by the High Court in the impugned judgment.

19. There shall be no order as to costs.

.....**J.**
(VIKRAM NATH)

.....**J.**
(PRASANNA B. VARALE)

NEW DELHI
OCTOBER 3, 2024