

PETITIONER:

M/s. HINDUSTAN STEEL LIMITED, ROURKELA

Vs.

RESPONDENT:

SMT. KALYANI BANERJEE AND OTHERS

DATE OF JUDGMENT 04/12/1972

BENCH:

MUKHERJEA, B.K.

BENCH:

MUKHERJEA, B.K.

GROVER, A.N.

CITATION:

1973 AIR 408 1973 SCR (3) 1

1973 SCC (1) 273

CITATOR INFO :

R 1976 SC2520 (17,22)

ACT:

Bihar Land Reforms Act-Sec. 10-Effect of on the existing leases whether the petitioners had become lessees of the Govt.-Whether the controller of mining leases can terminate the original lease before the expiry of the term. Constitution of India, Art. 226-Disputed questions regarding title to property-Whether can be raised in a petition under -Art. 226.

HEADNOTE:

The original proprietor of an Estate granted a mining lease to one Pran Chatterjee in 1919. Chatterjee assigned his interest to one Mukherjee in 1937. The original petitioners before the High Court as heirs and successors of Mukherjee granted a sub-lease to one Rungta in, 1951. In 1955 the Estate vested in the State of Bihar under Lands Reforms Act 1952. In- 1959, the Controller of Mining Leases in exercise of the powers under Rule 6 of the Mining Lease (Modification of Terms) Rules 1956 passed an order making lease of 1919 terminable on 20th September 1961. After issuing of royalty Rungta for his failure to pay the arrears of royalty, the lease of the part of the Estate was granted to the appellant. On the Writ Petition filed by the heirs and successors of Mukherjee, Patna High Court. cancelled the lease in favour of the appellant. On the appellant's contention that the State of Bihar could validly terminate the original lease and grant a mining lease to the appellant and further that the original proprietor had no proper title and since the title itself was in dispute, no Writ petition. would lie,

Allowing the appeal,

HELD : That by virtue of Sec. 10 of the Bihar Lands Reforms Act, 1950 the original lessees had become the lessees of the State Govt. and the said Act does not put an end to the title of the original petitioners. The controller of Mining Lessees had no authority in law to terminate the lease. [6D]

Bihar Mines Ltd. v. Union of India, A.I.R. 1967 S.C. 887 followed.

Held further, that the petition raised disputed question of

title and the petitioners had failed to produce clear conclusive and unimpeachable documentary evidence to prove the title of the original proprietor, and hence the Writ petition was not competent [13 C-D]

Sohan Lal v. Union of India [1957] S.C.R. 738 relied upon.

Mohd. Hanit v. State of Assam [1969] 2 S.C.C. 782 distinguished.

Further held, that the entries in the village record of rights (Register) were not conclusive evidence on the point of title. [10D]

Lodna Colliery Company (1920) Ltd. v. Bhola Noth Roy, All.R. 1964 S.C. 918, Nirman Singh & Ors. v. Lal Rudra. partab Narairo Singh & Ors. 53 I.A. 220 and Sri Marudaswarar Temple v. Dhanalakshmi Ammal 2-L63ISup.C.I./73

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and Ors. Civil Appeal No. 236 of 1961 judgment delivered on January 10, 1963 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1787 of 1971.

Appeal by certificate from the judgment and order dated September 17, 1971 of the Patna High Court in Civil Writ Jurisdiction case No. 740 of 1968.

L. N. Sinha, Solicitor-General of India, Santhosh Chatterjee and G. S. Chatterjee for the appellant.

V. S. Desai and N. R. Khaitan for the respondent Nos. 1 to 3

U. P. Singh for the respondent Nos. 4 to 6.

The Judgment of the Court was delivered by

MUKHERJEA, J.-This appeal with leave is directed against a judgment and order of the High Court of Patna in connection with a writ petition of respondents Nos. 1 to 3 (who will herein after be referred to as the "petitioners by which the High Court quashed and cancelled two leases granted by the State of Bihar in favour of M/s. Bharat Marble Company, a partnership firm and the present appellant M/s. Hindustan Steel limited. The facts and circumstances out of which the petition arose are as follows.

By a registered document dated 11 July 1919 one Kumar Amardeyal Singh, who was the proprietor of Ladi Estate at the relevant time granted a lease in favour of one Pran Kristo Chatterjee. The lease which gave a perpetual Mokarari Settlement was in respect of various minerals including iron ore and related to a large tract of land in District Palamau covering an area of 2227 acres in village Adar and 1303 acres in village Gore. Both the two villages Adar and Gore appertained to Kumar Amardeyal Singh's estate, bearing Touzi No. 130, Survey No. 143 and Touzi No. 161, Survey No. 91 respectively of the Collectorate of Palaman. In 1937 the heirs of the original lessee under the document of 11 July 1919 assigned and transferred their interest under the lease to one Vyomkesh Mukherjee. In 1949, Vyomkesh Mukherjee died leaving behind the petitioners as his heirs and successors. On 21 September 1951 the petitioners granted a Sub-lease under the aforesaid lease of 11 July 1919 to one Madan Gopal Rungta. The latter, however, was obstructed in his working of the mines under the Sub-lease by the Deputy Commissioner of Palamau in December, 1952. On 16 April 1953 Madan Gopal Rungta entered into an agreement by which he agreed to pay royalty to Government of Bihar for working the mining rights covered by the Sub-lease. In January, 1955 the whole of Ladi Estate

vested in the State of Bihar under the Bihar Land Reforms Act, 1950.

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In 1959 the Controller of Mining Leases initiated a case for the modification of the terms of the lease dated 11 July 1919. On 28 September 1959 after hearing the petitioners and also after hearing Madan Gopal Rungta who held a power of attorney on behalf of the said petitioners, the said Controller in purported exercise of his powers under Rule 6 of the Mining Lease (Modification of Terms) Rules, 1956 modified the lease under the aforesaid registered document of 11 July 1919 and made it terminable with effect from 20 September 1961. It is, stated on behalf of the appellant that this order of termination was made at the instance of Madan Gopal Rungta who pleaded that the lease should be made terminable after the expiry of the sub-lease granted in his applications for grant of mining leases in respect of Gore in the Official Gazette. On 10 September 1962 Madan Gopal Rungta and his son Tribeni Prasad Rungta both applied for grant of a mining lease of the area. Certain other parties had also applied for mining lease in the area prior to this stage. On 13 November 1962 a notice was issued to Tribeni Prasad Rungta under Sec. 7 of the Bihar and Orissa Public Demands Recovery Act demanding a sum of Rs. 66,317.93 by way of dead rent and royalties which are alleged to have accrued during the period when Madan Gopal Rungta was working the mines under the aforementioned sub-lease. On 1 April 1963 the appellant M/s. Hindustan Steel Limited applied for the grant of mining lease for an area of 67.26 acres within the area. Some time in 1963 Tribeni Prasad Rungta made an application under Art. 226 of the Constitution of India challenging the certificate proceedings mentioned before and the High Court allowed the application and quashed the proceedings on 23 November 1964. On 22 July 1965 the Government of Bihar acting with the approval of the Central Government granted a november 1966 a lease was granted in favour of Bharat Marble Company. On 2 September 1968 one S. K. Jain purporting to act on behalf of the petitioners filed a writ petition 'in the High Court of Patna in which it was prayed that the two leases in favour of the appellant and Bharat Marble Company should be quashed and cancelled. Soon after this writ petition had been filed, in April 1970, one of the petitioners died. On 17 September 1971 the High Court granted a writ in favour of the petitioners before them and cancelled the two leases. M/s. Hindustan Steel Limited have now come on appeal against the judgment and order of the Patna High Court by which the two lease were cancelled. The petitioners trace their title to the lease granted by Kumar Amardeyal Singh in favour of Pran Kristo Chatterjee who in turn

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assigned his, right to the petitioners', predecessor-in-title. claim that their predecessor-in-title Vyomkesh Mukherjee had exercised his rights under the deed of assignment and had in fact raised iron ore until 1949 when he died. The petitioners claim have remained in possession of the lease-hold property when interest of the proprietor vested in the State of Bihar under Bihar Land Reforms Act, 1950 and they became the lessees in the State of Bihar on the same terms and conditions as were contained in the original lease of 1919. The order of the Control of Mining Leases is, according to the petitioners, completely illegal and null and void. The Government of Bihar, they contend acted illegally in inducting the present appellant as lessee

of property which forms a part of the original lease-hold property 1919. It was on this basis that the petitioners asked the High Court to quash the two leases granted by the Government of Bihar and also to protect them in their possession and enjoyment of the lease-hold property. The only defence that was put up by the State of Bihar before the High Court of Patna was that the petitioners before the Patna High Court had defaulted in the payment of rents and royalties with effect from the date of vesting present appellant, however, put up a strong defence on the following grounds :-

(a) The original lease of 1919 did not give any mining rights to Kumar Amardeyal Singh so that he could not grant a valid mining lease in favour of Pran Kristo Chatterjee.

(b) In any event, even if the petitioners could trace any title from the original lease of 1919, after the Bihar Land Reforms Act of 1950 they became lessees under the State of Bihar and their lease has been terminated by the Controller of Mining Leases so that the State of Bihar was quite within its rights to execute the leases in favour of the present appellant and of Bharat Marble Company.

(c) In any event the appellant has been granted a mining lease by the Government of Bihar and is now admittedly in possession under that lease. Therefore, since the appellant is now in possession and has raised a serious question regarding the title of the petitioners, the appellant cannot be thrown out by an order obtained in a Writ petition.

On these rival contentions the four cardinal issues that arise for decision are

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(1) Could Kumar Amardeyal Singh, the proprietor of Ladi Estate, grant a mining lease ?

(2) What was the effect of the Bihar Land Reforms Act, 1950 upon the right, and title, if any, of the petitioners ?

(3) Assuming that the petitioners became lessees under the State of Bihar by reason of the Bihar Land Reforms Act, could the Controller of Mining Leases terminate their lease ?

(4) What is the effect of the possession that has been enjoyed by the appellant since the grant of the mining lease on 22 July 1965.

It will be more convenient if we dispose of issues Nos. 2 and 3 first.

For considering the effect of the Bihar Land Reforms Act, 1950 on the petitioners' title we shall proceed on the assumption that they were in enjoyment and possession of a valid mining lease which had been originally granted by Kumar Amardeyal Singh in 1919. Sec. 10 of the said Act which deals with subsisting leases of mines and minerals is in the following terms:-

10. Subsisting leases of mines and minerals.-(1) Notwithstanding anything contained in this Act, where immediately before the date of vesting of the estate or tenure there is a subsisting lease of mines or minerals comprised in the estate or tenure or any part thereof, the whole or that part of the estate or tenure comprised in such lease shall, with effect from the date of vesting, be deemed to have been leased by the State Government, to the holder of the said subsisting lease for the remainder of the term of that lease, and such holder shall be entitled to retain possession of the lease-hold property,.

(2) The terms and conditions of the said lease by the

State Government shall mutatis mutandis be the same as the terms and conditions of the subsisting lease referred to in sub-section (1), but with the additional condition that, if in the opinion of the State Government the holder of the lease had not, before the date of the commencement of this Act, done any prospecting or development work, the State Government shall be entitled at any time before the expiry of one year from the said date to determine the lease by giving three months' notice in writing:

Provided that nothing in this sub-section shall be deemed to prevent any modifications being made in the

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terms and conditions of the said lease in accordance with the provisions of any Central Act for the time being in force regulating the modification of existing mining leases.

(3) The holder of any such lease of mines and minerals as is referred to in sub-section (1) shall not be entitled to claim any damages from the outgoing proprietor or tenure-holder on the ground that the terms of the lease executed by such proprietor or tenure-holder in respect of the said mines and minerals have become incapable of fulfilment by the operation of this Act."

As the lease in favour of the petitioners was subsisting on the date of vesting of the Ladi Estate, the lease, with effect from the date of vesting, became nationally a lease granted by the State Government to the petitioners for the remainder of the term of that lease and the petitioners became entitled to retain possession of the lease-hold property. There can be no manner of doubt that the Bihar Land Reforms Act, 1950 could not have put an end to the title of the petitioners. The only effect of that Act was this, that instead of being lessees under Kumar Amardeyal Singh and his successors, the petitioners became lessees directly under Government on the same terms and conditions on which the original lease had been granted to their predecessor in-interest by Kumar Amardeyal Singh. The statute itself is very clear on this point; the position has, however, been reaffirmed by a decision of this Court in the Bihar Mines Ltd. v. Union of India.(1)

The next issue that we have to deal with is as to the question whether the order dated 28 September 1959 of the Controller of Mining Leases modifying the petitioners' lease under the registered document of 1919 and directing that the said lease would terminate on 20 September 1961 was valid and effective in putting an end to the lease in September, 1961. The appellant sought to rely on this order before the High Court. But this also is a very lame stick on which the appellant relied. A Division Bench of the Patna High Court has held that the order of the Controller of Mining Leases was invalid and of no legal effect whatsoever. This finding has been confirmed by this Court in the Bihar Mines Ltd. v. Union of India(") where it has been held that it is not the effect of Sec. 10 of Bihar Land Reforms Act that a subsisting lease continues under the Government with the Government substituted as the lessor in place of the original lessor. It has further been held that Sec. 10 in effect creates a new statutory lease which comes into existence on the date when the estate is vested in Government.

(1) AIR 1967 S.C. 887.

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We now come to consider issue No. 1 as to the competence of Kumar Amardeyal Singh to grant a mining lease. A copy of the original registered document of 11 July 1919 IV which Kumar Amardeyal Singh is reported to have granted the mining

lease in favour of Pran Kristo Chatterjee, has been annexed to the petition before the High Court. It is not anybody's case that the document of II July 1919 did not grant a lease of mineral rights to the said Pran Kristo Chatterjee. What is seriously challenged by the present appellant is the title of Kumar Amardeyal Singh to give such a grant. We shall deal with the items of evidence on which the petitioners rely to establish the title of Kumar Amardeyal Singh in his respect and also the objections of the appellant to those items. The first evidence on which the petitioners rely is a letter addressed by the Government of Bihar in November, 1967 to the Deputy Commissioner of Palamau and Daltonganj. The letter was on the subject of ten applications of different parties for grant of mining leases for limestone and dolomite in village Berma, P.O. Daltonganj in the District of Palamau. The State Government communicated an order to the Deputy Commissioner in the following terms

"Orders: In view of the judgment of the Supreme Court passed in Civil Appeal Nos. 172-174 of 1963 in Bihar Mines Ltd. v. Union of India and others, M/s. Quamruddin and Sons are alone entitled to remain in possession of the area in question for the period mentioned in the lease deed granted in their favour by the ex-proprietor of Ladi Estate. The area applied for by the aforesaid applicants are, therefore, not available for settlement. The applications are accordingly rejected.

By order of the Governor of Bihar

Sd/- C. P. Singh Deputy Secretary to Government".

The argument made on behalf of the petitioners is, more or less on the following lines. As a result of a Supreme Court decision, Government recognised in 1968 the competence of the expropriator of Ladi Estate to grant mining leases. It was because there was already an existing lease granted by the ex-proprietor of Ladi Estate in the area concerned that Government ordered the Deputy Commissioner that the area was not available for settlement with the various applicants for mining lease mentioned in that letter. This, it is argued, is a clear recognition by the State of Bihar of the competence of Kumar Amardeyal Singh to grant, as proprietor of Ladi Estate, mineral leases to others. Incidentally, one of the applicants who was refused mining lease as a consequence of that order, happens to be M/s. Bharat Marble Company.

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Therefore, it is argued, neither the State nor the appellant can now be allowed to resile from this position. The appellant meets this point by saying that the appellant who has been granted a lease by the Government of Bihar in July 1965 cannot be bound by an admission made by Government in November, 1967. No estoppel as against a lessee can arise from any admission made by the lessor after the lease has been granted.

The petitioners next rely on (i) a copy of Register 'D' in respect of village Adar, P.O. Daltonganj appertaining to Touzi No. 130 as well as (iii) another copy of Register of village Gore appertaining to Touzi No.-161 to establish that Kumar Amardeyal Singh was a proprietor and not merely a jagirdar. It is contended on behalf of the petitioners that once the status of Kumar Amardeyal Singh as a proprietor is established there can be no question that he must also have been the proprietor of the underground mineral rights. For the proposition that the right of property of zemindars or proprietors extends to sub-soil minerals of the land held by them, the petitioners rely on the authority of a decision of

this Court in the Lodna Colliery Company (1920) Ltd. v. Bhola Nath Roy(1) in which Raghubar Dayal J. delivering the judgment of this Court made the following observation

"We are, therefore, of opinion that the right of property of the persons with whom resumed invalid Lakhraj land had been settled being the same as of the zemindars, extends to the sub-soil minerals of the land held 'by them."

In the same case after referring to the preamble to Regulation II of 1973, Raghubar Dayal J. observed:

"It is thus clear from the above declarations that the zemindars, the proprietors of estates, were recognised to be the proprietors of the soil..... The right of the zemindars to the sub-soil minerals under their land follows from their being proprietors of the soil and has been recognised in a number of cases between the zemindars and persons holding land under a tenure from them."

It is argued on behalf of the petitioners that the extracts from Register 'D' prove that Kumar Amardeyal Singh was really a proprietor of Ladi Estate though he has been described in some documents as 'jagirdar. It is contended on the authority of the Supreme Court decision just cited that all zemindars as proprie-

(1) AIR 1964 S.C. 918.

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ture of revenue-paying estates have rights over underground minerals and are entitled, therefore, to grant a lease in respect of those rights.

The learned Solicitor-General appearing on behalf of the appellant countered this plea of the petitioners by saying, that entries in Register 'D' can never be conclusive as to title. Our attention was drawn to Sec. 4 of the Land Registration Act, 1876 which though a Bengal Act (18 of 1876) is, the Act applicable to Bihar. Sec. 4 of that Act describes the various registers which the Collector, of every district has to prepare and maintain. Register 'D' is described in that Section as an intermediate register of changes affecting entries in the general and mouzawar register. The Land Registration Act mentions the purposes as well as the contents of the four registers mentioned in Sec. 4. The intermediate register called Register 'D' it appears, is kept for the purpose of recording all changes effected in the entries which stand in the other three registers, namely Register 'A' of revenue-paying lands, Register 'B' of revenue-free lands as well as the Mouzawar Register 'C' of all lands, revenue-paying and revenue-free, so that by a reference to Register 'D' correct upto-date information as to Registers 'A', 'B' and 'C' on all points recorded therein may be obtained at any time. The names and addresses of the proprietors of every estate which comprises lands situate in a district are to be found in Register 'A'. It is clear therefore that Register 'D' will ordinarily show changes in the names of proprietors which are to be posted in Register 'A' as a result of mutation proceedings. Ordinarily, a proprietor will take good care to have his name registered under the Land Registration Act in the Collectoes registers for, otherwise, he cannot be entitled to claim rent from his tenants since, under Sec. 78 of the Land Registration Act no one is bound to pay rent to any person claiming such rent as proprietor or manager of an estate unless his name is registered under the Act. All the same, even when a name is posted in a register as proprietor as a result of a mutation proceeding the person whose name is posted cannot claim that lie automatically establishes his title as proprietor of the estate concerned.

In *Nirman, Singh & Ors. v. Lal-Rudra Partab Narain Ors.* (11) the Judicial Committee of the Privy Council held that proceedings for the mutation of names are not judicial proceedings in which title to and proprietary rights in immovable property can be determined. The Privy Council further held that mutation proceedings are in the nature of fiscal enquiries' instituted in the interest of the State for the purpose of ascertaining which of several claimants for the occupation of certain denomination of immovable property may be put into occupation of it with greater confidence that

(1) 53 T.A. 220.

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the revenue for it will be paid. The Privy Council clearly held that revenue authorities have no jurisdiction to pronounce upon the validity of claims of title so that orders in mutation proceedings cannot be treated as conclusive evidence of proprietary title. The learned Solicitor-General relied also on a decision of this Court in *Sri Marudesar Temple v. Dhanalakshmi Ammal and Ors.* (1) where this Court held that a certified copy of the revenue extract showing a land as entered in the name of a particular temple is not conclusive of the right of the temple to the land, for a revenue record merely shows that the Government regards the person in whose name the land is entered as responsible for payment of revenue. "Such an entry may, prima-facie, be good evidence of possession and even of the right to hold the land, but in law it is not conclusive."

On the strength of these authorities the learned Solicitor General contended that the entries in the Register 'D' on which the petitioners rely cannot be taken as conclusive evidence as to the title of Kumar Amardeyal Singh. In our opinion, there is considerable substance in this contention of the learned Solicitor General. It is true that the extracts from Register 'D' are strong prima-facie evidence in support of the petitioner's claim that Kumar Amardeyal Singh was a proprietor of Ladi Estate but it is not possible to treat this evidence as conclusive on the point.

We now come to the last issue as to the effect of the possession enjoyed by the appellant since the grant of the mining lease to the appellant by the Government of Bihar on 22 July 1965. As for the fact of possession by the appellant of the area covered by the mining lease it appears that the petitioners have admitted that fact before this Court in connection with the appellant's application for stay of the order dated 17 September 1971 of the Patna High Court. In its petition before this Court the appellant in paragraph 5 and 6 states as follows

"5. That after the termination of the alleged lease in favour of Respondents Nos. 1, 2 and 3 w.e.f. September 19, 1961 the State Government notified the area under Rule 58 of the Mineral Concession Rules, 1960 to make a fresh grant. Notification was published in Official Gazette on 11-12-1961. The appellant in response to the said notification applied for the area. Mr. M. G. Rungta and Mr. T. P. Rungta, father and son also applied separately for the area. The mining lease for the area was finally granted by the Government of Bihar to the appellant by order dated 22-7-1965 under the

(1) Civil Appeal No. 236 of 1961: Judgment delivered on 10 January, 1963.

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Mineral Concession Rule, 1960 and the mining lease was executed in favour of the appellant on 17-10-1966.

6. After having got the possession of the area, the appellant commenced preliminary mining operations in the area. The appellant has so far invested over Rs. 1,50,000 on machinery and equipment, etc. The iron ore (magnetite) extracted from the mines are being directly used by the appellant itself in its coal washeries for beneficiation of the coal for use in steel plants."

In reply to these averments of the appellant, the petitioners have more or less admitted the appellant's claim of possession. In paragraphs 4 and 5 of the affidavit filed, on their behalf in reply to the appellant's petition, the petitioners merely say (i) that the allegations contained in paragraphs 5 and 6 of the appellant's petition are matters of record and (ii) that they do not admit the allegations and put the appellant to strict proof thereof. In paragraph 7 of the same affidavit, however,, the petitioners make a positive statement in the following language:-

"I say that as far as I am aware the petitioner has only commenced the prospecting operations in the same area and has not commenced any real mining operation".

In other words, the petitioners admit that the appellant has already been carrying on prospecting operations in the disputed area which is impossible unless the appellant has been in possession of the land. It is also significant that in their writ application before the High Court the petitioners have asked for a rule nisi calling upon the appellant to show "why, if the circumstances so require, the petitioners be not restored into possession' of the disputed lands. It seems clear to us that the appellant had actually been put into possession of the land in respect of which Bihar Government gave the appellant a mining lease and also that the appellant has been carrying on mining operations in that area. According to the appellant the fact that it is in possession of the disputed land should' be a strong reason for not throwing the appellant out of possession of the disputed land in a summary proceeding like a Writ petition. It was argued that since the appellant has raised a serious question as to the validity of the petitioners' title and since it has proved its present possession of the disputed lands, the appellant should not be disturbed without adjudication of the question of' title in a proper action. The learned Solicitor-General relied strongly on the decision of this Court in *Sohan Lal v. the Union of India*("). In that case where a serious dispute on questions of fact between the parties was raised and particular the question.-

(1) [1957] S.C.R. 738.

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arose as to whether one of the parties had acquired any title to the property in dispute, this Court held that proceedings by way of ,a writ were not appropriate in a case where the decision of the ,Court would amount to a decree declaring a party's title and ordering restoration of possession. This Court further held that the proper remedy in such a case is by way of a title suit in a civil court and the alternative remedy of obtaining relief by a writ of mandamus or an order in the nature of mandamus could only be bad if the facts were not in dispute and the title of the property in dispute was clear.

The petitioners sought to rely on the case of *Mohd. Hanif v. State of Assam*(,.) in support of their proposition that since they have adduced sufficient evidence to show at least prima-facie title in respect of the disputed lands

they are entitled to be protected from ouster from their lands by an executive action on the part of the State Government. In the case of Mohd. Hanif (1) the Government of Assam sought to resume certain lands which had been ,originally settled by the British Crown with, one Capt. S. N. Manley who had sold his right and title in the land to the predecessor in-interest of Mohd. Hanif. Mohd. Hanif filed an application in the Assam High Court under Art. 226 of the Constitution of India. The High Court dismissed Mohd. Hanif's petition on the ground that his petition raised disputed questions of title and that he should therefore be relegated to a suit in the civil court. Mohd. Hanif appealed against the decision of the High Court. to his Court which allowed the appeal and held that the object of a proceeding under Art. 226 is to ensure that the law of the land is implicitly obeyed and that various authorities and tribunals act within the limits of their respective jurisdiction. This Court further held that though ordinarily in a proceeding under Art. 226 of the Constitution the High Court is not concerned with the mere determination of the private rights of the parties, the Article provides a remedy against the violation of the rights of the citizens against the State or the statutory authority.

The case of Mohd. Hanif (1) is, in our opinion, easily distinguishable from the instant case. That was clearly a case of executive interference with the possession of the petitioner Mohd. Hanif. Here, however, the petitioners do not have possession of the mineral rights for the protection of which they invoked the High Court for assistance in their writ petition. If the petitioners have to be given any relief in the instant case, it would be necessary to disturb the existing possession of the appellant. No support for ,such an order can be found in the decision in Mohd. Hanif's case.

(1) [1969] 2 S.C.C. 782.

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Having regard to the view that we have taken of this case we cannot uphold the decision of the Patna High Court. We notice that the Patna High Court in more than one place in its judgment has used the expression "Prima-facie" in describing the state of affairs in connection with the right of Kumar Amardeyal Singh to grant a lease in respect of mineral rights. Apparently, the High Court felt that on the materials before it, it could not come to the conclusion that the title of the petitioners had been established conclusively. The main foundation of the petitioners title was the mining lease given by Kumar Amardeyal Singh in 1919. The party who is now in possession of the disputed lands has thrown doubt about the competence of the Kumar Amardeyal Singh to grant such a lease. The petitioners have failed to produce any clear, conclusive and unimpeachable documentary evidence in support of their contention that Kumar Amardeyal Singh was "proprietor" who could have granted such a lease. That is why the High Court did not come to a definite conclusion regarding the title of the petitioners and remained content by saying that the petitioners had shown prima-facie title. These are not circumstances in which,, in our opinion, the petitioners can be put into possession by the High Court by displacing the appellant.

In our opinion, therefore, the appellant should succeed in this appeal. Accordingly, we set aside the judgment and order dated 17 September 1971 of the Patna High Court and allow the appeal. In the peculiar facts and circumstances

of this case we direct that the parties should bear their own respective costs..

Before parting with the case, however, we ought to make it clear that this judgment is not to be taken as a determination of the question of title of the petitioners. We cannot disregard the fact that ever since the grant of the mining lease by Kumar Amardeyal Singh in 1919 the petitioners and their predecessor-in-interest have actually enjoyed the title-. They even gave a sub-lease to Madan Gopal Rungta so that until a new lease was granted by the Government in favour of the appellant the petitioners were in possession of the disputed lands either directly or constructively through Madan Gopal Rungta. It is quite likely that when the Bihar Land Reforms Act came and the Controller of Mining leases passed an order cutting short the duration of the lease of the petitioners, the petitioners were not so alert as to asserting their rights against

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the Government of Bihar who found the field clear to give 'a fresh lease in favour of the appellant. The fact remains that the petitioners have shown clear possession of the disputed lands from 1919 to 1965 and they have also shown strong prima-facie title. Therefore, we are not prepared to deprive the petitioners of an opportunity to prove their title in a suitably framed suit.

Appeal allowed.

S.B.W.

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