

CASE NO.:
Appeal (civil) 8129 of 2003

PETITIONER:
North Eastern Coalfields Coal India Ltd.

RESPONDENT:
Mubarak Ali & Ors.

DATE OF JUDGMENT: 21/04/2005

BENCH:
ASHOK BHAN & A.K. MATHUR

JUDGMENT:
J U D G M E N T

A.K. MATHUR, J.

This appeal is directed against the order dated 27th September, 2002 passed by the Division Bench of the Gauhati High Court in WA 355/1999 whereby the Division Bench set aside the Order dated 7th September, 1999 passed by the learned single Judge in Civil Rule No. 3516/1997. Aggrieved against this Order, the present appeal has been filed by the appellant. Brief facts which are necessary for disposal of this appeal are:

That the appellant is a successor-in-interest of the erstwhile Assam Railways and Trading Company Ltd. (for short ARTC) engaged in coal mining operation which was acquired by Central Government under the provisions of the Coal Mines (Nationalization) Act, 1973 (hereinafter referred to as the Act). The land involved in the proceeding was covered by the Dag nos. 3042, 3043 and 3044 of Margherita town, Mouza- Makum. It may be relevant to mention here that ARTC was the erstwhile Company incorporated at London and it was operating this coal mines but after the Coal Mines (Nationalization) Act, 1973 coming into force the Central Government by virtue of sub-section (1) of Section 5 Central Government directed that right, title and interest of all mines referred to in Schedule under Section 3 shall vest in Coal Mines Authority limited a Govt. Company incorporated in Companies Act. The North Eastern Coalfields Coal India Limited is its subsidiary therefore the appellants become its patta holder of the land in question. The dispute in the present case arose, when the Additional Deputy Commissioner, Tinsukia made the land 'Sarkari' (Govt.) by order dated 22nd May, 1996 and Government settled the area of 1 Bigha, 3 khattas, 10 Lachas land out of the aforesaid land in favour of the private individual Dr. Mubarak Ali, Respondent No.1 on behalf of Munaf Memorial Hospital-cum-Research Centre by letter dated 2nd June, 1997. Therefore, this was challenged by the appellant before the High Court that the declaration of the land of the appellant as a "Sarkari" was ultra vires and illegal. It was alleged that no notice was given to the appellant before declaring the land as "Sarkari". The learned Single Judge after going through the matter came to the conclusion that the Appellant-Company is lessee being the successor of the ARTC & the lease could not be terminated without following proper procedure. Learned Single Judge referred to the definition of Mine under Section 2(h) of the Act and held that all the land and property used for the operation of the mine vests in the Central Government as a result of the nationalization. It was further observed that the Appellant had already deposited the land Revenue on local rates, etc. in both of Makum and Tirap Mouza amounting to Rs.2,01,267.74 and cleared all the arrears of land revenue. Therefore, learned Single Judge came to the conclusion that the appellant had

deposited the land revenue and the Government had recognized it as a lessee, the act of declaring the aforesaid land as 'Sarkari' by the Govt. was not legal. Learned single Judge also held that the respondent \026 state failed to point out any provision which empowered the State Govt. to delete the name of the appellant as recorded Pattadar for non-payment of the land revenue. It was observed that the appellant had paid the land revenue therefore it could not be declared faut, Ferrar, the learned Single Judge by Order dated 7th September, 1999 set aside the order of the Additional Deputy Commissioner, Tinsukia and also the allotment in favour of respondent No. 1. A Letters Patent Appeal was filed by State before the Division Bench and the Division Bench reversed the Order of the learned Single Judge holding that the land in question, was not covered under the definition of the expression 'Mine' under Section 2(h) of the Act and no land revenue was paid for a period of five years therefore Govt. rightly declared this land as 'Sarkari' (Govt.). It was also held by the Division Bench that the appellant was not lessee of Government & left it open to the appellant to approach a competent Civil Court for adjudication of its right in accordance with law. Aggrieved against this Order, the present Special Leave Petition was filed by the appellant.

At the outset, it may be made clear that the Coal Industry was nationalized under the Coal Mines (Nationalization) Act, 1973 and a Notification was issued under this Act for the purposes of acquisition of rights of owners in respect of coal mines mentioned in schedule under Section 3; whereby the right, title and interest of the owners in respect of coal mines specified in the schedule stood vested absolutely in Central Government free from all encumbrances and in that one of the coal mines belonging to the Assam Railway Trading Coal Company was included. Therefore, so far as the rights, title of the erstwhile company, i.e., Assam Railway Trading Coal Company are concerned, all stood vested in the Central Govt. Therefore, it is clear that all the assets of the erstwhile company and their land and buildings and all other mining operation stood vested in the Central Govt.

It is not under dispute that all the lands and appurtenant building belonged to the erstwhile mining company and it was leased out to Assam Railway Trading Corporation. Therefore, after the Nationalization Act came into force, all the property belonging to the erstwhile company stood vested in successor, i.e. Central Govt. and the Order of Additional Deputy Commissioner passed without making any reference to any provision of law & declaring it a Fout Ferrar by order dated 22nd May, 1996 cannot be sustained. In fact the order says that the ARTC as per the information given by the SDO) Margherita is not in existence and they have no objection if the said land is used for public utility purposes by the District Administration. Therefore, Additional Deputy Commissioner, on information received from SDO came to the conclusion that ARTC be declared as Fout Ferrar and the land be declared as 'Sarkari'. This order has been passed by the Additional Deputy Commissioner in total ignorance of the law. After the Nationalization Act came into force company's assets movable and immovable stood vested in the Central Govt. If he had given a notice to the Coal India or its subsidiary, things would have been clear. In fact, the Govt. of India has passed the order on 9th July, 1973 and vested all these properties of the various private mines in a Govt. Company under the Mines Act. The order dated 9th July, 1973 of the Govt. of India, Ministry of Steel & Mines, Deptt. Of Mines reads as under:

"ORDER

G.S.R. 345 (E) \026 In exercise of the powers conferred by the Sub-Section (1) of Section 5 of the Coal Mines

(Nationalization) Act, 1973 (26 of 1973), the Central Government hereby directs that the right, title and interest of the owners in relation to all the coal mines referred to in Section 3 of the said Act, except the coal mines specified against serial numbers 45 to 219 (both inclusive) 227, 235, 237, 260, 265, 275, 441, 483 and 583 of the Schedule to the said Act, shall with effect from the 9th July, 1973, vest in the Coal Mines Authority Limited, Calcutta, a Government Company incorporated under the Companies Act, 1956 (1 of 1956), and having its registered office at Calcutta, in the State of West Bengal."

A perusal of this order makes it clear that all the companies mentioned in the schedule to the Act of 1973 were taken over by the Central Govt. and all their right, title and interest of all the private company stood vested in Central Government and Central Govt. vested it in its company Coal Mines Authority Limited, Calcutta. Therefore, the finding given by the Additional Deputy Commissioner, Tinsukia that since the ARTC is Faut Ferrar i.e. already, abandoned and resumed the land to the State was ex facie illegal order de hors the provisions of the Act and notification of the Central Government. Therefore, the order passed by the Additional Deputy Commissioner declaring ARTC as Faut Ferrar and resuming land was absolutely illegal, without jurisdiction and the same is set aside.

The question whether land revenue was paid or not, as per material placed before us, it appears that land revenue upto 1996-97 was deposited by Challan in treasury. Even if, some land revenue was due to the State then too also a proper notice should have been given to the company to deposit land revenue and failing which it would have been possible for the govt. to take appropriate action. Neither the authorities nor the Division Bench has made reference of any provision of law whereby they can take over the land vested in the Central Govt.

Next question is whether whole of area comprising this area leased out to ARTC come within the definition of 'Mine' as defined under Section 2(h) of the Act or not? This is secondary question. The first question was whether the order of the Additional Deputy Commissioner resuming this land was proper or not. We have already held above that the order of Additional Deputy Commissioner was illegal, then question arises how much area will be covered for mining operation; whether whole or part is a matter of inquiry. In fact, High Court has proceeded to examine the matter assuming the order of Additional Deputy Commissioner being valid. But that is not correct. It is open to authorities to examine the question whether whole leased area which has vested in Central Government falls in definition of 'Mine' as defined in Section 2(h) of the Act or not. This is a matter of inquiry and if State has any doubt then a proper inquiry be conducted after notice to the appellant.

In this connection, a reference may be made to a decision of this Court in Bharat Coking Coal Ltd. Vs. Madan Lal Agrawal Reported in (1997) 1, SCC 177. Wherein their Lordships has interpreted the expression 'Mine' as defined in Section 2(h) and also considered the effect of Section 3 and Section 26 and it was observed that :

"All properties or assets which fall within the definition of 'mine' in Section 2(h) and which are used for over a period of time and not temporarily, as necessary for proper functioning of mine, irrespective of whether or not belonging to owner of the mine, would vest in the Central Govt. by virtue of Section 3. Hence,

even though lands and buildings solely used for the purposes of office or residence of officers and staff of the mine did not belong to the owner of the mine but belonged to a director of the owner-company right, title and interest therein, vested in the Central Govt."

Therefore, the effect of Section 3 has already been considered by this Court and it had been held by this Court that all the properties by virtue of this Section vest in the Central Govt. and the definition of mine as defined in Section 2(h) is wide enough to include any land, building used for the purposes of residence of officers, staff of mine shall vest in the Central Govt.

However, if there is any doubt about area, State can make inquiry after due notice to appellant in the light of aforesaid decision of this Court. It will also be open for State to recover lease money if it is due to State.

The view taken by the Division Bench is not correct, we set aside the Judgment and order dated 27th September, 2002 of the Division Bench of the Gauhati High Court and affirm the order of the learned Single Judge with no order as to costs.