
(1989) 07 PAT CK 0011

Patna High Court

Case No: A.F.O.D. No. 84 of 1978(R)

Bharat Coking Coal
Ltd., Dhanbad

APPELLANT

Vs

Nandlal N. Shah

RESPONDENT

Date of Decision: July 18, 1989

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.P. Singh, J.

This appeal has been preferred by M/s. Bharat Coking Coal Ltd. (in short, to be stated as B.C.C.L.) against the judgment and decree passed by the 2nd Addl. Subordinate Judge, Dhanbad, dated 17th July, 1978 in Title Suit No. 25 /14 of 1974-78. The learned Additional Subordinate Judge decreed the suit filed by the respondent herein and granted a declaration sought for by the respondent-plaintiff that car No. BHR 243 belonged to respondent/plaintiff exclusively. Consequently it restrained the appellant, its agents, servants and employees from interfering in any manner with the respondent's possession of the aforesaid car.

2. The case of the respondent/plaintiff was that before the nationalisation of collieries, he was the proprietor of a colliery known as North Kessurgarh colliery which was subsequently amalgamated with Khas Joiramdihi colliery of which respondent/ plaintiff was a partner along with others. This amalgamation took place in or about the year 1966. According to the respondent/plaintiff, he deposited a sum of Rs. 2,000/- as security deposit in the year 1965 with the dealer of Fiat Cars, namely, M/s. Rajni Motors (P) Ltd., Dhanbad, and booked a Fiat Salloon Car. While booking the order, he described himself as the sole proprietor of North Kessurgarh Colliery. Though the car had been booked in the year 1965, on account of shortage of such cars, the order materialised only in the year 1972. On 1-9-1972, he took delivery of the car on payment of sum of Rs. 22,000/- and odd which amount he paid out of his personal fund. A sum of Rs. 22,000/- was drawn by cheque from the

personal account of the plaintiff and a bank draft obtained from the bank for making the payment and in addition a sum of Rs. 258,61 ps. was paid in cash. Since the car had been booked describing the plaintiff as proprietor of the North Kessurgarh colliery, the registration of the car had also been done in the same manner. Even though the aforesaid North Kessurgarh colliery did not exist after November, 1966 as it had been amalgamated with Khas Joiram Colliery, the plaintiff gave the same description while registering the car. The case of the plaintiff was that the car was used for the personal work of the plaintiff and/or his family members and was kept at the residence of the plaintiff. The car was maintained by the plaintiff at his own cost and even the driver employed was paid by him from his own personal fund. According to the plaintiff, the driver employed by him (defendant No. 2) had misbehaved but since he tendered apology the plaintiff continued him in service. However, on 9-4-1974 the driver took out the car as usual for getting some repair work done and thereafter did not return till about 3 p.m. It then transpired that he had driven the car to the office of defendant No. 1-B.C.C.L. An information was lodged with the police, but since no action was taken, a complaint petition was filed before the Sub-divisional Judicial Magistrate on 10-4-1974 against the aforesaid driver-defendant No. 2. The learned Sub-divisional Judicial Magistrate took cognizance and issued summons. Thereafter, a search warrant for seizure of the car was issued and on 16-4-1974 the car was seized by the police. When the son of the plaintiff applied for release of the car, the B.C.C.L. defendant No. 1 objected to the release of the car in favour of the plaintiff's son on the plea that the car belonged to defendant No. 1, namely, B.C.C.L. This application was made by the B.C.C.L. presumably on the strength of the provisions of Coal Mines (Nationalisation) Act, 1973 (hereinafter to be referred to as the Nationalisation Act). According to the plaintiff, since the car had been purchased by him out of his own personal fund and was his personal property, it could not be said to be included in the definition of mine in the Coal Mines (Nationalisation) Act, 1973. However, since the claim made by the B.C.C.L. raised a cloud about the title and ownership of the car, the plaintiff was compelled to file the suit for a declaration that the aforesaid car was his personal property and defendant No. 1 B.C.C.L. had no right to claim the same as also for a permanent injunction restraining the defendant No. 1-B.C.C.L., its agents, servants and employees from interfering in any manner with the possession of the aforesaid fiat car.

2. Defendant No. 1-B.C.C.L. filed a written statement in the suit contesting the claim of the plaintiff. According to defendant No. 1-B.C.C.L. the North Kessurgarh Colliery did not cease to exist as a separate unit and, in fact, was an independent mine at the time of nationalisation. According to defendant No. 1, the deposit of Rs. 2,000/- while booking the car, was made from out of the fund of the aforesaid colliery. It was really the colliery which had placed order for the car and the plaintiff had placed the order for the car as its proprietor. Thereafter, on 1-9-1972, the plaintiff took delivery of the car from the dealer, but payment of price was made out of the funds

of the colliery and not out of the fund of the plaintiff. The car was, therefore, never the personal property of the plaintiff and its price was not paid out of his personal fund. That is why the car was registered in the name of North Kessurgarh Colliery. In this view of the matter, the car was included in the definition of the word "mine" in the Nationalisation Act and consequently when the mine vested in the Central Government, the ownership of the car also vested in the Central Government and, thereafter, in the B.C.C.L, defendant No. 1. The story about the driver having driven the car to the office of the B.C.C.L. was not true and really the officials of B.C.C.L. defendant No. 1 were on the look out for the car which was the property of defendant No. 1.

3. The legal position according to the defendant was that North Kessurgarh Colliery was taken over by the Central Government under Ordinance No. 1 of 1973 w.e.f. 31-1-73. The Ordinance was replaced by an Act being the Coal Mines (Taking over of the Management) Act, 1973 and subsequently the Nationalisation Act, 1973 came into effect from 1-5-1973. The right, title and interest of the erstwhile owner in the mine vested in the Central Government. According to the defendant-B.C.C.L. the word "mine" included the car in-question and as such ownership of the car vested in the Central Government and consequently in the B.C.C.L.

4. The plaintiff/respondent herein produced oral and documentary evidence in support of his case. The appellant/defendant B.C.C.L. apart from filing a written statement contesting the claim, did not adduce any evidence before the trial court. The trial court on an appreciation of the evidence on record, came to the conclusion that the respondent/ plaintiff was the proprietor of North Kessurgarh Colliery in the year 1965 when he had placed order for the car in-question after depositing Rs. 2,000/-. The trial court held that the respondent/ plaintiff had successfully established that North Kessurgarh Colliery had been amalgamated with the Khas Joramdih Colliery and further that in the year 1972 when the order materialised the respondent/plaintiff after paying a sum of Rs. 22,000/- and odd from his personal fund, took delivery of the car. Though the car was registered in the name of North Kessurgarh Colliery with the respondent/defendant as its proprietor, the insurance policy was taken in the name of the respondent. The defendant-B.C.C.L. did not produce any evidence in support of its case. It had not produced the list of assets which had been prepared at the time of the take over of the coal mines nor did it produce any books of account, register, and connected documents of the nationalised colliery to show that the car in-question was maintained and was used for the purposes of the mine. On the other hand, respondent-plaintiff had adduced evidence to establish that the car was in the personal use of respondent/ plaintiff and was always lying at the residence of the respondent/ plaintiff. The trial court further noticed that even in the written statement of the defendant- B.C.C.L., there was no assertion that the car was ever used for the purpose of the mine. There was good evidence to establish that the price of the car had been paid out of the personal fund of the respondent/ plaintiff and that the car was kept at the residence

of the respondent/ plaintiff and was used by the plaintiff and his family members. In view of these findings, he held that the ownership of the car did not vest in the Central Government and such a car was not included within the definition of "mine" u/s 2(h)(vi) of the Act. The mere fact that the car was registered in the name of M/s. North Kessurgarh Colliery I/c. Nandlal N. Shah (plaintiff) was not sufficient to hold that the ownership of the car vested in the B.C.C.L. having regard to the entire facts and circumstances and evidence on record.

5. Learned counsel for the appellant/ defendant No. 1-B.C.C.L. did not challenge the finding of fact recorded by the trial court. Moreover, a perusal of the documentary evidence on record, which has been fully discussed by the trial court, leaves no room for doubt that the price of the car had been paid by the respondent/plaintiff from out of his own personal fund. The relevant documents of unimpeachable nature have been proved by the officers of the Bank and it cannot be doubted in view of such unimpeachable documentary evidence that a sum of Rs. 22,000/- was drawn from the personal account of respondent/ plaintiff for the preparation of a demand draft which was handed over to the dealer while taking delivery of the car. He, however, submitted that in view of the provisions of the Nationalisation Act, 1973, particularly, the definition of "mine" it must be held that the car in-question was included within the definition of "mine". It must be held that the car in-question was included within the definition of "mine" and as such the ownership of the car also vested in the Central Government under the Act.

6. This takes me to a consideration of the relevant provisions of the Act. Section 3 of the Act provides that on the appointed day, "the right, title and interest of the owners in relation to the coal mines" specified in the schedule shall stand transferred to and shall vest absolutely in the Central Government free from all encumbrances. The provision leaves no room for doubt that only the right, title and interest of the owners in relation to the coal mines specified in the schedule stood transferred to and vested absolutely in the Central Government. The other assets of the owners continued to be the property of such owners. One can visualise that some of the coal mines were owned by individuals and some were owned by legal persons like companies or partnership firms. The personal assets of such owners did not vest in the Central Government and only their right, title and interest "in relation to the coal mines" vested in the Central Government. Section 2(h) defines a "mine" and the definition is an inclusive definition. Thus whatever is included within such definition must be deemed to be a mine within the meaning of the Act. Learned counsel appearing on behalf of the respondent/plaintiff contended - that the relevant part of the definition was Clause (vi) of Section 2(h) which provides as follows : --

"All lands buildings, works, adits, levels, planes, machinery and equipments, instruments, stores, vehicles, railways, tramways and sidings in, or adjacent to, a mine and used for the purposes of the mine."

On the other hand counsel appearing for the appellant/defendant- B. C. C. L. submitted that Clause (xii) was the relevant provision to be considered which is as follows:--

"All other fixed assets, moveable and immoveable belonging to the owner of mine, wherever situated and current assets belonging to a mine, whether within its premises or outside, and also any mine lawfully due to such owner in relation to the mine in respect of any period prior to the appointed day."

7. It was urged on behalf of the appellant that the car in question was fixed asset of the owner in relation to the mine, and, therefore, was included in the definition of "mine" under the Act. He placed considerable reliance on Sub-clause (xii) of Section 2 of the Act in support of this submission.

On the other hand it was contended by the respondent that the car being a vehicle, the relevant Sub-clause (vi) and not Sub-clause (xii). Before a "vehicle" can be said to be included in the definition of "mine", it must be established as a fact that the vehicle was "in, or adjacent to, a mine and used for the purpose of the mine". It was further submitted that the scheme of Section 2(h) disclosed that Sub-clause (xii) only related to those fixed assets which were not covered by Sub-clauses (i) to (xi) since Sub-clause (xii) began with the words "all other fixed assets", meaning thereby fixed assets other than those specified in Sub-clauses (i) to (xi). The learned counsel urged that if any other interpretation was put on, Section 2(h) of the Act, it may result in drastic consequences not contemplated by the Act. For in that event, where a mine is owned by a sole proprietor all his personal assets will also be covered by Sub-clause (xii) and as such may also be claimed by the Central Govt. as having been vested in it u/s 3 of the Act. In any event, such a wide interpretation of Sub-clause (xii) of Section 2(h) of the Act will render Sub-clauses (i) to (xi) redundant.

8. That submission urged on behalf of the respondent is attractive, but, must be rejected in view of the judgment of the Supreme Court reported in, [Union of India \(UOI\) and Others Vs. United Collieries Ltd. and Others](#), . In that case, the question arose as to whether the staff car belonging to the owners in relation to the coal mine in question, and placed at the disposal of its Technical Adviser to be used as a staff car, was included in the enlarged definition of "mine" as contained in Section 2(h)(xii) of the Act. Their Lordships held that such a car fell within the definition of "mine" as contained in Section 2(h)(xii) of the Act.

It was contended that the specific question in the manner raised in this appeal was not raised before the Supreme Court and, therefore, the Court had no occasion to consider whether the words "all other fixed assets" in Sub-clause (xiii) refer to fixed assets other than those mentioned in Sub-clauses (i) to (xi) of Section 2(h). It was urged that from the judgment of the Supreme Court, it appears that Clauses (vi), (xi) and (xii) were extracted in the judgment, but, while the distinction between the language used in Sub-clauses (xi) and (xii) was noticed and discussed, there was no

reference to Sub-clause (vi) in the discussion. Be that as it may, I am bound by the decision of the Supreme Court. It has been clearly held that the staff car, a vehicle, fell within the definition of "mine" as contained in Section 2(h)(xii) of the Act. The ratio is what is decided by the judgment, and it does not matter in what manner the argument was formulated for the consideration of the court. The submission urged on behalf of the respondent must, therefore, be rejected.

9. This, however, does not resolve the issue raised in the appeal, Sub-clause (xii) of Section 2(h) postulates a "fixed asset", Section 3 of the Act provides for the vesting of right, title and interest of the owners only in relation to the coal mines specified in the schedule. It does not divest such owners of their right, title and interest in relation to any other business or their personal assets which are unrelated to the coal mines. Logically, therefore, in the context of Section 3, the fixed assets must mean "fixed assets in relation to the specified coal mines". So interpreted, it could not result in any drastic consequence as apprehended by learned counsel appearing for the respondent, such as the vesting in the Central Government of all the assets of the owner including his personal property unrelated to the specified mines. Even in *United Collieries case* (supra), the Supreme Court observed that fixed assets in general comprise those assets which are held for the purposes of conducting the business, in contra-distinction to those assets which the proprietor holds for the purpose of converting into cash. It must be remembered that in that case, the Supreme Court was concerned with a vehicle which was owned by the owner of the specified mine and which was being used as the staff car of the Technical Adviser. It cannot be said that the staff car used by the Technical Adviser of a colliery is not a vehicle which is being used for the purpose of conducting the business. In my view, reading Section 2(h)(xii) in the context of Section 3 of the Act "fixed assets" must mean those assets which are held by the owner of the specified mine for the purpose of conducting his business, which in the instant case, must mean the business of mining coal; those fixed assets must be excluded which have no relationship with the business of mining coal, such as the personal assets of the proprietor or his assets in relation to any other business unrelated to the specified coal mine. In the instant case, the findings of fact recorded by the trial Court have not been challenged before me. It has been found that the car had been acquired by the respondent from his own personal fund. The car was always in his personal use and there was no evidence whatsoever to suggest that it was being used for the purpose of coal mining business. Moreover, the appellant who had in its possession all relevant records did not produce any material to dispute the categorical case of the respondent, supported by evidence, that the car was maintained by the respondent at his own cost and that he personally paid the salary of the driver. In these circumstances, it must be held that the car was not a fixed asset in relation to the business of coal mine or the coal mining business of respondent/plaintiff, and was, therefore, not covered by the enlarged definition of "mine" as contained in Section 2(h)(xii) of the Act read in the context of Section 3 of the Act. Consequently, right,

title and interest in relation to the car in question never vested in the Central Government under the Act.

10. It must, therefore, be held that the trial court rightly decreed the suit of the respondent/plaintiff and this appeal deserves to be dismissed. The same is accordingly, dismissed with costs.