

(1960) 08 CAL CK 0002

Calcutta High Court

Case No: None

Bengal Coal Co. Ltd.

APPELLANT

Vs

State of West Bengal
and OthersRESPONDENT

Date of Decision: Aug. 18, 1960**Acts Referred:**

- West Bengal Estates Acquisition Act, 1953 - Section 27, 29, 6

Citation: 64 CWN 1057**Hon'ble Judges:** Renupada Mukherjee, J; N.K. Sen, J**Bench:** Division Bench

Advocate: Prafulla Kumar Roy, Chandra Narayan Laik and Ajit Kumar Mukherjee, for the Appellant; S.M. Bose, Advocate-General, J. Majumdar, Somendra Chandra Bose, Biswanath Bajpayee, Narottam Chatterjee and Santi Ranjan Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Renupada Mukherjee, J.

The appellant of this appeal is Bengal Coal Company, Limited which is a joint stock company incorporated under the Indian Companies Act. In the trial court there was only one defendant, viz. the State of West Bengal. In the appeal filed in this Court some other persons were added as parties respondents. The appeal is being resisted by the State of West Bengal as also by the other respondents who have appeared in several batches. The present suit was the outcome of the vesting of a village called Bansia in Burdwan district in the State of West Bengal. The vesting admittedly took place on 15th April, 1955. According to the case of the plaintiff-company it held the village Bansgarah as a darpatnidar under a patnidar and it also had underground rights in respect of the same village under a mining lease from the Maharaja of Burdwan. According to further allegations of the plaintiff-company the lands of the village described in schedule B of the plaint were in khas possession of the plaintiff-company at the time of vesting and the company was working the underground minerals at the date of vesting by taking out

gravels and fire-clay. The plaintiff further alleged that the entire surface of the village is absolutely necessary for the company for extracting minerals like stone, gravels and fire-clay and this right of taking out the minerals was interfered with by some Forest Officers of the State of West Bengal who gave licenses to other people for extracting gravels from different portions of the disputed village. Accordingly, the plaintiff-company prayed for a declaration that the property in dispute is held by it by virtue of a mining lease under the defendant and the State of West Bengal is not entitled to get khas possession. There was also a prayer for a permanent injunction restraining the State of West Bengal from interfering with the possession of the plaintiff-company.

2. The suit was contested by the State of West Bengal. The defendant denied the allegation of the plaintiff-company regarding its underground rights and it contended that if the plaintiff-company had any right as an intermediary it was only in respect of the surface lands of the mouza. It was further contended on behalf of the State of West Bengal that the entire surface of the disputed mouza comprised a forest which the intermediary could not retain under the provisions of the West Bengal Estates Acquisition Act. The State of West Bengal further averred that the State had taken khas possession of the mouza from the date of vesting and the plaintiff-company has no possession of the village from that date.

3. Several issues were framed by the court below upon the pleadings and they were decided against the plaintiff-company and its suit was dismissed.

4. So the company has preferred this appeal.

5. The only point which calls for our determination in this appeal is whether the disputed mouza, including its surface and underground, has vested in the State of West Bengal by virtue of the provisions of the West Bengal Estates Acquisition Act or whether the appellant-company is entitled to retain possession of any portion of the village by virtue of any mining lease.

6. In order to appreciate the point in controversy raised in this appeal it will be necessary to refer to certain facts about which there is no dispute at present. The Maharaja of Burdwan was admittedly the zemindar in respect of the disputed village. As early as in 1859 the Bengal Coal Company Limited obtained a darpatni of this mouza from the then patnidar Girindra Chandra Nandi (vide Ext. 1). The patnidar granted a darpatni not only for the surface right but of the sub-soil right as well. Through some misapprehension the court below stated in its judgment that no right to the subsoil was conferred upon the darpatnidar by the patnidar. Of course, the patnidar had no right in law to grant a darpatni of the sub-soil unless he himself was in enjoyment of the subsoil right by virtue of his patni. There is no evidence in the present case to show whether the patnidar had the sub-soil right at the relevant date. We may assume that he did not enjoy that right. The Maharaja of Burdwan filed a title suit against the Bengal Coal Company, Limited and some other defendants in 1915, being T.S. No of 1915, in which a prayer was for a

declaration that the appellant-company and the other defendants had no right to take coal and fire-clay from the sub-soil of the two mouzas described in the plaint. The suit was compromised between the Maharaja of Burdwan and the appellant-company and by an indenture dated 28th August, 1917, the Maharaja granted a mining lease to the appellant-company for extracting coal and fire-clay of several mouzas including the disputed mouza (vide Ext. 11). This lease was admittedly subsisting on the date when the vesting took place by virtue of the operation of the West Bengal Estates Acquisition Act.

7. In the plaint the plaintiff-company contended that it is entitled to retain the disputed village in its khas possession by virtue of the darpatni lease of 1859 and the mining lease of 1917 for the purpose of working the minerals underneath the surface. The court below negatived that contention on the finding that the surface of the village was not held under a mining lease and the surface comprised a forest which the appellant-company could not retain in its khas possession by reason of the Exception occurring under sub-section (1) of section 6 of the West Bengal Estates Acquisition Act which will henceforth be described as the Act. The Exception runs in the following terms: --

Nothing in this sub-section shall entitle an intermediary or any other person to retain any land comprised in a forest.

8. In the opinion of the court below the surface of the disputed village comprised a forest and the surface was not included in the mining lease on which the appellant relies, and the appellant company was not entitled to keep any portion of the disputed village in its khas possession for the above reasons.

9. After hearing Mr. Roy on behalf of the appellant-company and the learned Advocate-General on behalf of the State of West Bengal, we are of opinion that the relevant provisions of the Act have not been properly applied by the court below in this case. Mr. Bose, the learned Advocate-General, did not dispute before us that the mining lease of 1917 which had been granted by the Maharaja of Burdwan to the appellant-company subsisted at the date of vesting. He, however, submitted that this mining lease was granted to the appellant-company expressly in respect of coal and fire-clay and no other mineral or underground deposit. Such a lease of mines and minerals is governed by section 29 of the Act. In the present case we are concerned with sub-section (1) of that section the relevant portion of which runs in the following terms: --

All leases of mines and minerals in a notified area granted by an intermediary and subsisting immediately before the date of vesting shall, with effect from such date, be deemed to have been granted by the State Government to the holder of the said subsisting lease on the same terms and conditions as of the subsisting lease with the additional condition --

(i) in cases where the holder of the lease had not in the opinion of the State Government done any prospecting or development work before the date of vesting, -- that he shall be

allowed one year's time from the date of vesting, to begin prospecting or development work, and if he fails to do so the State Government shall be entitled to terminate the lease at any time after the expiry of such period by giving three months' notice in writing, unless sufficient cause is shown to the satisfaction of the State Government.

(ii) in other cases, -- that if the holder of the lease has developed or done any prospecting work in respect of any part of the land included in the lease but has, in the opinion of the State Government, failed to do any prospecting or development work within three years from the date of vesting in respect of the remaining part of the land included in the lease, the State Government shall be entitled to resume the whole or any portion of such remaining part of the land together with the minerals lying thereunder, after giving three months' notice in writing, but in so resuming, the State Government shall have regard to the reasons for such failure and to the requirements, as appear to it to be reasonable, for the future development of the mining concern of the lease.

10. From the evidence adduced before us we are of opinion that no mining operation for extracting coal has taken place beneath the surface of the disputed mouza. It is, however, in evidence that fire-clay has been extracted from this mouza under the mining lease of 1917. The case will, therefore, be governed by the provisions of clause (ii) of sub-section (1) of section 29 of the Act. As the mining lease was subsisting at the date of vesting and as fire-clay was being extracted by the appellant-company by virtue of the terms of the mining lease, it is not open to Government to cancel the lease and to take the entire land of the mouza in its khas possession in supersession of the lease. The Government should be deemed to have granted a lease to the appellant-company on the same terms and conditions as of the subsisting lease with the additional conditions mentioned in section 29 of the Act. The fact that the surface of the mouza is covered by a forest will be absolutely immaterial and the Exception under sub-section (1) of section 6 of the Act to which we have already referred will lose its operation by virtue of section 27, Chapter IV, of the Act which runs in the following terms : --

Provisions of Chapter IV to override other provisions of the Act. --. The provisions of this Chapter shall have effect notwithstanding anything to the contrary elsewhere in this Act.

11. Section 29 of the Act occurs in Chapter IV. That being the case, the mining lease will be binding upon the State Government subject to other provisions of section 29 and also other sections of the Act.

12. The learned Advocate-General conceded in a way that the mining lease of 1917 cannot be straightaway cancelled by the State except by applying the provisions of section 29 of the Act. He submitted that if the suit had been instituted only for this relief, the suit might not have been contested by Government. The written statement, however, shows that that was not the attitude of the State in the court below and it was stated in paragraph 9 of the written statement that the defendant-State had taken possession of the forest lands of the mouza and the plaintiff-company is not entitled to have any

declaration of title or confirmation of possession.

13. A question was canvassed in this court by the learned Counsel for both parties whether in spite of section 29 of the Act, the State Government had the power to grant temporary licenses for extracting gravels to third parties. Mr. Bose submitted on behalf of the respondent-State that the mining lease of 1917 confers only the right of extracting coal and fire-clay upon the appellant-company and it does not confer any right upon it to collect gravels. Mr. Roy submitted on behalf of the appellant-company that clause 7 of the indenture of lease makes a reservation of all minerals, excepting coal and fire-clay in favour of the lessor, but it provides that if lease of any other minerals was to be granted by the lessor, the first offer should be made to the lessee, viz., the appellant-company. In view of this provision in clause 7 of the lease, Mr. Roy contended that it is not open to the State to grant a license to any third party for collecting gravels from the disputed land. This contention of Mr. Roy cannot be accepted for two reasons. In the first place, clause 7 of the indenture of lease of 1917 speaks of a lease and not of a temporary license. It is true that in the context of the present case, a license for collecting gravels is not materially different from a lease for the same purpose. However, the indenture speaks of a lease for collecting other minerals and not of a license. Secondly, assuming that the State Government is granting temporary licenses to other people for collecting gravels in violation of one of the terms of the lease of 1917, that would give a cause of action to the appellant-company for suing for damages. The present suit is not certainly a suit for recovery of any damages.

14. From our foregoing findings we must hold that the dismissal of the suit outright by the trial court is erroneous in law and so the decree passed by that Court cannot be sustained.

15. We, accordingly, set aside the judgment and decree passed by the court below and substitute the following decree in their place: --

The suit of the appellant-company is decreed in a limited manner in the following way. It is declared that the mining lease granted in favour of the company by the Maharaja of Burdwan on 28th August, 1917, which was marked Ext. 11 in the trial court, was a subsisting lease at the date of vesting. It is also declared that the State Government should be deemed to have granted a lease to the appellant-company on the same terms and conditions as of the above lease controlled by other provisions of section 29 of the Act. The respondents are restrained from interfering with such possession of the appellant-company of the disputed properties as it is entitled to exercise under the mining lease mentioned above as controlled by section 29 of the West Bengal Estates Acquisition Act.

In view of the pleadings of the parties and the limited relief granted to the appellant-company, we direct that all parties will bear their own costs in this Court as also in the court below.

N.K. Sen, J.

I agree.