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(1923) 01 CAL CK 0053

Calcutta High Court

Case No: None

Haripada Bandopadya		APPELLANT
	Vs	
Equitable Coal Co. Ltd.		RESPONDENT

Date of Decision: Jan. 11, 1923

Citation: AIR 1923 Cal 335 : 76 Ind. Cas. 413

Hon'ble Judges: Panton, J; C.C. Gohse, J

Bench: Division Bench

Judgement

1. The question which, has been the subject of discussion In this appeal is, whether the grantee of mineral rights in a certain mouza is entitled by implication to such things as are strictly and reasonably necessary for the convenient working of the mines and, if that be so, whether on the facts of this particular case the Equitable Coal Company who were the grantees of the mining rights in the village Jamuria were entitled to construct a tramway line over the land which is the subject-matter of the suit for the purposes indicated above and whether in addition thereto, they were en tilled to erect sheds for the accomodation of the coolies working in the mines for the convenient working of the mines. The facts, so far as they bear on the question referred to above, have been set out in the judgment of the lower Appellate Court and we think it is unnecessary to repeat them; shortly stated, it appears that on the 22nd July 1871 the defendant Company were granted a dur-patni of the village Jatnuria except a small chak called Kamdulia, with all mining rights attaching thereto. The grantors were also mohiarridars of a small jama carrying an annual rent of Rs. 183-2 3/2 annas which stood in the names of Rammohan Roy and Chandra Narain Roy. The jama which was the subject of the mokurrari was situated within the ambit of the patni of which the dur-patni was granted to the defendant Company. The result of the arrangement was that, as patnidars, the Roys were entitled to receive rent from the defendant Company and as mokurridars of the jama referred to above, they were liable to pay rent to the dur-patnidars, the defendant Company. In the grant of the 22nd July 1871, after stating that the grantees were clothed with all sorts of mining rights in the

subject-matter of the demise, it is stated "you," that is, the grantees, "shall not be able to enhance the rate of the jama of Rs. 183-2-9 which stands in the names of late Ramnidhi Roy and Chandra Narain Roy within the said Lots; but you shall certainly be able to realise the duties that may be assessed in future or are in vogue at present from the Sudder." By the two documents bearing dates the 16th Chaitra 1280 and the 23rd Baisak 1286 respectively a dur-mokurari was granted of the land, which carried an annual rent of Rs. 183-2-9 to certain people who, for brevity''s sake, may be decribed as the Banerjees. The present appellant who was also the appellant in the Court below claims title from the Banerjees. It appears that the defendant Company have taken possession of a small portion of the land forming the mokurrari jama for the purpose of constructing a tram line on the land for carrying coal from the pit heads. They have further erected sheds for the accomodation of their coolies on the land in suit because, they allege, that the erection of the cocly steds is necessary for the convenient working of the mines. The plaintiff challenges this claim on the part of the defendant Company and he maintains that the defendant Company had no right whatsoever to exclude him permanently from possession of the land in question and that they had no right whatsoever to erect tramway lines on the land because they have other lands of their own whereon such tramway lines can be erected, and thirdly that the defendant Company had no right whatsoever to erect sheds for the accomodation of their coolies on the land in question. The plaintiff''s suit was decreed in the Court below except that he was not granted any decree for khas possession. Before, the lower Appellante Court, there were two sets of appeals, one by the plaintiff taking exception to that portion of the decree of the Court of first instance in which khas possession was refused to him and the other by the defendant Company in which the whole claim of the plaintiff was challenged and it was sought to be maintained that the defendant Company had a right to erect tramway lines on the land in question and also to erect sheds for. accommodation of their coolies. The lower Appellate Court has found that it was necessary to construct tramway lines over the land for the purpose of carrying coal from the two pit mouths. The lower Appellate Court has, however, found that the building of the miner''s residences was a necessary part of the coal mining business.

2. On second appeal before us, it has been argued by Mr. Bankim Chandra Mukherjee with great ability that, under the documents which were tendered as exhibits in this case, the defendant Company had no rights whatsoever to the land in suit, whether the rights related to the surface land or to the minerals below, except the right to receive rent of the mokurrari jama, and which rent was not to be ennanced, secondly, it is argued that the lower Appellate Court was wrong in holding that the defendant Company were entitled to take forcible possession of the land in question without notice to the plaintiff and without satisfying him that the lands were reasonably required for the convenient working of the mines for the purposes indicated above, and, lastly, it is argued that the lower Appellate Court was entirely in the wrong in holding that the covenants in the dar-mokurrari pattas

enured to the benefit of the defendant Company. So far as the last point is concerned, there has not been much argument before us because ex concessis the covenants in the dur-mokurrari pattas to which the defendant Company were no parties could not by any means enure to the benefit of the defendant Company who were grantees under the document dated the 7th Shraban 1278 B.S. corresponding with the 22nd July 1871. Those documents could only have been referred to and can only be referred to for the purpose of explaining the extent of the earlier grant. Therefore, it is quite unnecessary for us to go into the last point at any great length.

3. So far as the fitst point is concerned, we think, on examination of the words used in the document of the 7th Shraban 1278 B.S., corresponding with the 22nd July 1871, that the contention must fail, by the dar-patni potta of 1871, whatever mining rights were in the land which was the subject-matter of the demise to the defendant Company were granted to them. No reservation of any sort, so far as the mining rights were concerned, was made in the grant itself. The only reference there was to the rent which formed the subject-matter of the mokurrari jama, was to be found in the concluding portion of the grant and that related only to the question as to whether the rent of the jama was enhancible or not. But it is argued by Mr. Mukherjee that the mokurraridar as such had certain mining rights in the land which formed the subject-matter of the mokurrari jama because, according to the law as understood before the decision of their Lordships of the Judicial Committee in Hari Narain Singh v. Sriram Chakravarti 6 Ind. Cas. 785 : 37 I.A. 136 : 14 C.W.N. 746 : 11 C.L.J. 653 : 7 A.L.J. 633 : 20 M.L.J. 69: 12 Bom. L. R. 495 : 8 M.L.T. 51 : (1910) M.W. N. 309 : 37 C. 723 (P.C.), a mokurraridar was entitled to underground rights in the land which was the subject of the mokurrari and, therefore, when the dur-patni Was created there was nothing to show that the mokurraridar parted with the mining rights to which they were entitled under the law as then understood. To that the simple answer is, that a question like this must always depend upon the construction of the particular governing document. If apt words are not used and if reservations are not made, then it does not lie in the mouth of the grantor to contend that the grarnt is not so extensive as on an ordinary interpretation of the words used in the grant it would seem to be so. We are of opinion that there is no substance whatsoever in the first contention and that it must fail.

4. So far as the second point is concerned, it is settled law that a right of using the surface to which the mine owner may be entitled by implication is confined to such things as are reasonably and strictly necessary for the convenient working of the mines. The principle according to which such a right is allowed would not, therefore, justify any use of the surface or any deposit upon it of the minerals worked to a greater extent or for a longer period than is necessary; or any attendance upon the land of unnecessary persons; or any use of the surface for manufacturing purposes. The leading case on the point is the case of Earl of Cardigan v. Armilage 44 Ind. Cas. 269 : 12 S.L.R. 116 : 22 C.W.N. 377 : 16 A.L.J. 281 : 27 C.L.J. 345 : 20 Bom. L.R. 566 : (1918) M.W.N. 587 : 45 C. 666 : 45 I.A. 41 (P.C.). See in this connection the summary

of decisions in Macswiuney on The Law of Mines, Quaries and Minerals, 5th Edition at page 284. See also the case repotted in Rzmeswar Malia v. Ram Nath Bhuliacharjee 33 C. 462 : 3 C.L.J. 103. That being the principle underlying those cases, it now becomes necessary to consider the actual finding of fact arrived at. by the lower Appellate Court on the facts in this case, as stated above, it has been found that it was necessary to construct tramway lines over the land for carrying coal from the two pit heads. This is a finding of fact which cannot be disturbed in second appeal. Mr. Mukherjee, however, argues that the lower Appellate Court has not taken into consideration the fact that the defendant Company had other lands of their own whereon they could, have constructed the tramway lines. We do not know, on the facts found, whether, as a matter of fact, the defendant Company had other equally convenient lands. It is sufficient for the purposes of this appeal, so far as this sub-point is concerned, to observe that the matter cannot be re agitated at this stage of the case, having regard to the clear and distinct finding that it was necessary to construct tram lines over the land in question for the purpose of carrying coal from the two pit heads. There remained, therefore, the question as to whether the erection of the sheds for the accommodation of the coolies on the land was reasonably necessary for the convenient working of the mines. On that point the finding, as we read the judgment of the lower Appellate Court, is open to serious exception and the finding is set forth in the following lines: "The building of miners" residences is a necessary part of coal mining business." This finding, we think, is insufficient for the purpose of satisfying us that the erection of the sheds for the accommodation of the coolies on the land which is the subject-matter of the suit was reasonably necessary for the convenient working of the mines and we think that the ends of jestice require that the matter should be remitted to the lower Appellate Court for a clear and specific finding whether, having regard to all the circumstances of the case, the erection of the sheds for the accommodation of the coolies on the site in question was strictly and reasonably necessary for the convenient working of the mines. The finding on this point will be returned to this Court on the evidence on the record and on such evidence as the parties may be advised to bring farward, within one month from the date of the arrival of the record in the Court below.

5. There is one other small point to which it is necessary to refer subject to what has been laid down above as being the principle deducible from the decided cases on, the subject, namely, that the mine owner is only entitled to so much of the surface lard as may be strictly and reasonably necessary for the convenient working of the mines, the mine owners have no other rights of any description whatsoever unless these rights are to be found within the four corners of the grant in their favour. It follows, therefore, that the mine owners are not entitled to permanently exclude the owners of the surface from possession of all properties not covered by the grant in their favour. With these remarks the record will be transmitted to the lower Appellate Court for a finding on the point referred to above. Such finding, as

mentioned above, will be returned to this Court with in one month from the date of the record reaching the lower Appellate Court. The appeal will then be placed before us for final disposal,

6. Let the record be sent down without delay.