Karanpura Development Co. Ltd. Vs State of Bihar

Suit No. 1034 of 1959

Court: Calcutta High Court

Date of Decision: Dec. 3, 1963

Acts Referred:
Constitution of India, 1950 â€" Article 14, 31A, 31B

Citation: 68 CWN 965 : (1971) 1 ILR (Cal) 459

Hon'ble Judges: A.N. Ray, J

Bench: Single Bench

Judgement

A.N. Ray, J.
This suit was instituted by Karanpura Development Co. Ltd. against the State of Bihar and various other Defendants

requiring the Defendants to interplead concerning their respective claims to the sum of Rs. 21,03,293.8 np. being rent and royalty for the period

from May 5, 1953 to May 4, 1959. The other prayer is that, upon delivering such rent and royalty in the aforesaid sum to such person or persons

as the Court may appoint less the costs of the Plaintiff in the suit and less commission, the Plaintiff be discharged from all liabilities to the

Defendants and each of them in respect of the rents and royalties payable by the Plaintiff in respect of the leases.

2. The Plaintiff alleges in the plaint that at all material times the Raja Bahadur of Ramgarh was the proprietor of Ramgarh estate being Touzi No. 28

of the Collectorate of Hazaribagh in the State of Bihar till the Touzi vested in the State of Bihar under the Bihar Land Reforms Act, 1950, and

notifications thereunder. The Plaintiff further alleges in para. 2 of the plaint that the Raja Bahadur granted several leases in respect of coal in the

said Touzi in favour of the Plaintiff on various dates. In para. 3 of the plaint the Plaintiff alleged that by a purported conveyance dated December

22, 1947, executed by the Raja Bahadur in favour of the Defendant No. 2, the Raja Bahadur purported to transfer or assign inter alia his right, title and interest as lessor under 9 leases of different dates in favour of the Defendant No. 2. By another purported conveyance dated January 24,

1949, executed by the Raja Bahadur in favour of the Defendant No. 2, the Raja Bahadur purported to transfer or assign his right, title and interest

under 22 coal mining leases all dated June 17; 1948, out of the leases referred to in para. 2 in favour of the Defendant No. 2. In para. 4 of the

plaint it is alleged that out of 31 coal mining leases purported to be assigned to the Defendant No. 2 by the Raja Bahadur as mentioned in para. 3

of the plaint by several purported conveyances, the Defendant No. 2 purported to transfer to different companies being the Defendants Nos. 3 to

II, its right, title and interest under 29 of such leases. In para. 4 of the plaint the Plaintiff alleges that the Plaintiff did not attorney tenancy to the

Defendants Nos. 3 to 11 or any of them. The Plaintiff further alleges that the said Defendants are claiming from the Plaintiff the rents and royalties

payable under the leases so purported to have been assigned or transferred.

3. In para. 5 of the plaint the Plaintiff alleges that by notifications of the Bihar Land Reforms Act, 1950, published in the Bihar Gazette of

November 3, 1951, June 7, 1952 and September 17, 1952, it was declared that the respective estates of the Raja Bahadur the Defendant No. 2

and the Defendants ""Nos. 3 to 11 in the said Touzi No. 28 and in all the leases referred to above had with effect from the dates of such publication

passed to and become vested in the Defendant No. 1, State of Bihar, under the provisions of the said Act. The Plaintiff alleges in para. 5 of the

plaint that the Defendant State of Bihar is claiming that Touzi No. 28 is vested in the State of Bihar as from November 3, 1951, and that as from

the said day it is exclusively entitled to all the rents and royalties payable in respect of all leases referred to in para. 2 of the plaint.

4. In para. 6 of the plaint it is alleged that a suit was filed in the Court of the Subordinate Judge at Hazaribagh by the Raja Bahadur against the

State of Bihar being Title Suit No. 24 of 1953. Judgment was passed in the said suit on July 18, 1956, declaring that the said Touzi vested in the

State of Bihar on and from January 26, 1955. The Plaintiff further alleges in para. 6 of the plaint that the Defendants Nos. 2 to 11 are claiming that

the Defendant State of Bihar is not entitled to claim any rents or royalties under the said leases for any period prior to January 26, 1955. The State

of Bihar preferred an appeal from the said judgment. The Plaintiff alleges that the Plaintiff was not a party to the said suit.

5. It is also alleged in the plaint that the Defendant State of Bihar instituted a suit in the Court of the Subordinate Judge at Hazaribagh being Title

Suit No. 53/8 of 1954/1956 against, inter alia, the Defendants Nos. 2 to 11 claiming declaration that the conveyances mentioned in paras. 3 and 4

of the plaint were sham and colourable and that no title passed to the transferees under such conveyances and that the properties covered by such

conveyances remained the exclusive properties of the Raja Bahadur until they passed to and became vested in the Defendant State of Bihar on

November 3, 1951, by virtue of notifications published under the provisions of the Bihar Land Reforms Act, 1950. The Plaintiff alleges in para. 7

of the plaint that the Defendant State of Bihar is contending that there was no consideration for any of the conveyances, that none of the

conveyances was intended to be given effect to and that each of the conveyances is sham, colourable and of no effect.

6. In para. 8 of the plaint the Plaintiff alleges that, in view of conflicting claims of the varipus Defendants the rents and royalties payable under the

leases referred to in para. 3 of the plaint, the Plaintiff has not paid any rent or royalty in respect of leases to any one for the period of six years prior

to May 4, 1959. On May 4, 1959, upon an application of the Defendant No. 3 in Suit No. 1598 of 1958 of this Court (Saunda Collieries Ltd. v.

Karanpura Development Co. Ltd.) 3rd undertaking was given on behalf of the Plaintiff to file an interpleader suit in an appropriate Court within

three months from May 4, 1959, interpleading the Defendant State of Bihar and the Defendant Nos. 3 to 11 who are claiming royalties from

certain collieries of the Plaintiff.

7. The Defendants filed written statement, and thereafter they filed additional written statements. The contention of the State of Bihar in the written

statement is that the State of Bihar is alone entitled to rents and royalties from the Plaintiff with effect from November 3, 1951. The contention of

the Defendant No. 2, Rajas-than Mines Ltd., is that the said Defendant is entitled to royalties under the leases assigned or transferred to the said

Defendant. The Defendant Saunda Collieries Ltd., being Defendant No. 3, contends in the written statement that the said Defendant by

conveyances dated August 13, 1949, purchased right, title and interest of the Defendant No. 2 in respect of 11 coal mining leases and by

conveyance dated September 1, 1950, transferred right, title and interest in, respect of 5 of the said 11 coal mining leases to the Defendant No. 9

and retained the other 6 leases. The Defendant No. 3 refers to Suit No. 1598 of 1958 and contends that the said Defendant is entitled to and

claims from the Plaintiff royalties payable under the leases so assigned or transferred to the said Defendant. The remaining Defendants filed written

statements on the same pattern.

8. Additional written statements were filed on behalf of the Defendants. The Defendants Nos. 6 and 7 jointly filed additional written statements.

The Defendant State of Bihar filed a separate additional written statement. The other Defendants filed a joint additional written statement. In the

additional written statement the State of Bihar alleged that, with reference to para. 6 of the plaint and Title Suit No. 24 of 1953 in the Court of the

Additional Subordinate Judge at Hazaribagh, it was held by judgment dated July 18, 1956, that the Ramgarh Estate Tonzi vested in the State of

Bihar on January 26, 1955, and not on November 3, 1951. The State of Bihar further alleges in the additional written statement that an appeal was preferred from the said decision and in the said appeal heard by the Patna High Court on January 16, 1961, the decree passed by the Additional

Subordinate Judge, Hazaribagh, was set aside by a Bench decision and it was held that the Touzi No. 28 vested in the State -of Bihar on

November 3, 1951. In para. 4 of the additional written statement the State of Bihar alleged that the interest of Raja Bahadur, the original lessor of

the Plaintiff company, as well as the alleged interest of the Defendants other than the State of Bihar in the said Ramgarh Estate Touzi No. 28,

became vested in the State of Bihar on November 3, 1951, and the State of Bihar alone is entitled to rent royalties accrued since that date.

9. The Defendants Nos. 2, 3, 4, 5, 9, 10 and ""11 in their additional written statements in para. 2 alleged that those Defendants are distinct and

separate proprietors having acquired separate proprietary right and they were separately and individually notified u/s 3(1) of the Bihar Land

Reforms Act by the State of Bihar Gazette dated June 7, 1951 and September 11, 1952, and it is this notification that operates on the right, title

and interest of those Defendants and not the notification dated November 3, 1951. The said Defendants further alleged that the Bench decision of

the Patna High Court was under appeal and the appeal is now pending in the Supreme Court.

10. The additional written statement on behalf of the Defendants Nos. 6 and 7 is of the same pattern as the additional written statement of the other

Defendants.

11. At the trial the following issues were settled:

(i) Did Touzi No. 28 vest in the State of Bihar ? If so, on what date and under what notification ?

(ii) Are the notifications of the State of Bihar dated November 3, 1951, valid and binding on the parties to the suit ?

(iii) Whether the rents and royalties held in deposit in respect of the period May 5, 1953 to May 4, 1959, are payable to the Defendant No. 1 or

to the Defendants Nos. 2 to 11 I should state here that on behalf of the Defendants Nos. 2 to 11 an issue was suggested as to whether the

conveyances under which the Defendants Nos. 2 to 11 claimed were sham, colourable, fictitious or void or whether those Defendants were

benamdars of Raja Bahadur as alleged by the State of Bihar. Another issue was suggested on behalf of those Defendants as to whether the suit

was maintainable. Counsel for the State of Bihar contended that it was necessary to go into the question of title and the question as to whether the

conveyances were good or bad. Counsel for the Defendants other than the State of Bihar wanted to raise an issue as to maintainability of the suit

by contending that the Plaintiff was estopped from challenging the title of those Defendants. Counsel for the State of Bihar rightly relied on the

decision of the Judicial Committee in Krishna Prasad Lal Singh Deo v. Baraboni Coal Concern Ltd. L.R. 64 IndAp 311 in support of the

proposition that the doctrine of estoppel between the lessor and the lessee does not apply to disentitle a tenant to dispute the derivative title of one who claims to have since become entitled to the reversion and in that sense the principle only applies to the title of the landlord who "let the tenant

in" as distinct from any other person claiming to be reversionary. The contention further was that the doctrine of estoppel was operative only during

the subsistence of the relationship of landlord and tenant. At p. 319 of the report (1) it will appear that the principle of estoppel does not apply to

prevent a tenant from pleading that the title of the original lessor has since come to an end.

12. Counsel for the State of Bihar also rightly relied on the decision in Yeshwant Bhikaji Vilankar Vs. Sadashiv Govind Arekar, in support of the_

proposition that in a suit under Order 35 of the Code a tenant is not permitted to deny the lessors title at the commencement of the tenancy and,

therefore, in order that interpleader suit may lie, the claim of the party other than the landlord must be consistent with the title of the landlord at the

commencement of the tenancy in question. Having heard the parties I settled issues as indicated above.

13. The primary question in this suit is whether the Touzi No. 28 vested in the State of Bihar and, if so, on what date. The contention of the State

of Bihar is that the notification dated November 3, 1951, is valid and binding on all parties to the suit. Counsel for the State of Bihar contended

that the issue in the suit being as to whether rents and royalties held in deposit in respect of the period May 5, 1953 to May 4, 1959, are payable

to the State of Bihar or to the other Defendants, it was not necessary to go into any other question in view of admission made by the contesting

Defendants in their additional written statements that the said Touzi became vested in the State of Bihar by notifications dated June 7, 1952 and

September 11, 1952. That is the allegation in para. 2 of the additional written statement filed on behalf of the Defendants Nos. 2, 3, 4, 5, 8, 9; 10

and 11 jointly and in the separate additional written statement filed on behalf of the Defendants Nos. 6 and 7. Paragraph 2 is verified as

submission. Counsel for the said Defendants contended that an allegation verified as submission did not and could not amount to admission and,

secondly, it was contended that what those Defendants meant was purported notification and that the additional written statement should be

amended. Counsel for these Defendants wanted to submit in argument in answer to contentions made by the counsel for the State of Bihar that the

admission should not be read in that light and the written statement should be amended to read by introducing the word "purported" before the

word notification. Counsel for the State of Bihar opposed any such amendment and any attempt to retract from admission made. The contention of

the counsel for the State of Bihar was that it was an admission of fact and not of law and that a verification made as submission did not denude

allegations of the character and content of admission which will amount to admissions of fact or admissions of law. Pleadings regulate course and

conduct of a suit. Issues are raised on the pleadings and admissions contained therein. Any attempt to rob the pleading of its effect and character of admission at the stage or argument by suggesting the introduction of the word "purported" would amount to placing the additional written statement

on entirely a different footing and would thereby displace the party from the advantage of relying on admission made in the pleadings. In my view,

counsel for the State of Bihar is right in his contention that it is an admission of fact and, secondly, it is an admission which will disentitle those

Defendants to any claim in respect of any rent and royalty for the period covered in the suit.

14. Counsel for the State of Bihar, however, contended that the State of Bihar was also making a claim that with effect from November 3, 1951,

the State of Bihar was entitled to rents and royalties by virtue of notification. It is necessary at this stage to give a short chronology of the

legislation. The Bihar Land Reforms Act received assent of the President on September 11, 1950. The Act came into force on September 25,

1950. The Patna High Court, by judgment delivered on March 12, 1951, held the Act to be bad and violative of Article 14 of the Constitution. On

June 18, 1951, there was first amendment of the Constitution by incorporating Articles 31-A and 31-B which had the effect of putting the Act

beyond challenge on the ground of contravention of any Article in Pt. Ill of the Constitution. On November 3, 1951, there was the first notification

published in the Gazette. The notification actually bears date October 21, 1951. In the notification the name of the Raja Bahadur of Ramgarh is

mentioned as proprietor. The Supreme Court by judgment dated May 2, 1952, upheld the validity of the Bihar Land Reforms Act excepting

Section 23(a) & (b) thereof. It is not necessary in the present case to go into those two sections. On June 7, 1952 and June 11, 1952, there were

further notifications by the State of Bihar whereby the Defendants Nos. 2 to 11 were notified.

15. The relevant sections are Section 2(i), Section 2(o), Section 3 and Section 4. "Estate" is defined in Section 2(i) as follows:

Estate means any land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and

maintained under the law for the time being in force by the Collector of a district and includes revenue-free land not entered in any register and a

share in or of an estate;

The term "proprietor" is defined in Section 2(o) which is as follows:

"Proprietor" means a person holding in trust or owning for his own benefit an estate or part of an estate, and includes the heirs and successors-in-

interest of a proprietor and, where a proprietor is a minor or of unsound mind or an idiot, his guardian, committee or other legal curator.

Section 3 is as follows:

Notification vesting an estate or tenure in the State. (1) The State Government may from time to time, by notification declare that the estates or

tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State.

Section 4 is as follows:

Consequences of the vesting of an estate or tenure in the State. Notwithstanding anything contained in any other law for the time being in force or

in any contract, on the publication of the notification under Sub-section (1) of Section 3 [or Sub-sections (1) or (2) of Section 3A] the following

consequences shall ensure, namely, (a) Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of a

building comprised in such estate or tenure and used primarily as office or cutchary for the collection of rent of such estate or tenure, and his

interests in trees, forests, fisheries, jalkars, hats, bazars and jerries and all other sariati interests as also his interest in all sub-soil including any rights

in mines and minerals, whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of a lessee or mines and

minerals, comprised in such estate or tenure (other than the interests of raiyats or under-raiyats) shall, with effect from the date of vesting, vest

absolutely in the State free from all encumbrances and such proprietor or tenure-holder shall cease to have any interests in such estate or tenure

other than the interests expressly saved by or under the provisions of this Act.

(b) All rents cases and royalties accruing in respect of lands comprised in such estate or tenure on or after the date of vesting shall be payable to

the State and not to the outgoing proprietor or tenure-holder and any payment made in contravention of this clause shall not be binding on the State

Government....

16. Counsel for the Defendants Nos. 2 to 11 contended that unless the names of the proprietors were given in the notification the estate would not

vest in the State of Bihar and the proprietors could not be affected by any notification which would not contain their names. Counsel for the State

of Bihar placed in the forefront Section 3(1). Under that Sub-section the State Government may, from time to time, by notification declare that the

estates or tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State. The contention of

the counsel for the State of Bihar is that vesting takes place for the date of notification in the Official Gazette. In short, the emphasis is that the

estate itself has vested and it is not the mere right, title and interest of any particular proprietor whose name is mentioned in the notification that has

vested. It is necessary once again to emphasize the language of legislation that the State Government may by notification declare that the estates or

tenure of a proprietor or tenure-holder have passed to and become vested in the State.

17. Counsel for the State of Bihar contended that the action which the State Government takes in notifying the estate u/s 3 of the Act is an

administrative and not a judicial action. In other words, the counsel contended that vesting is an anterior fact before the notice is sent. The vesting,

it is contended, takes effect by the notification declaring the same. Counsel for the State of Bihar contended that the vesting is a settled fact before the notice is sent to the proprietor. In my view, the counsel for the State of Bihar is right in his contentions, first, that the estate passes to and

becomes vested in the State and, secondly, that the vesting takes place of the publication of the Official Gazette. In other words, the vesting is

anterior to any notice being sent to the proprietors of the estate. There again the counsel for the State of Bihar rightly contended that the sending of

the notice is no condition or condition precedent to the vesting, because vesting is a fact already achieved whereof the information is sent to the

proprietors.

18. Counsel for the contesting Defendants contended that in Sub-sections (1) of Section 3 the word "proprietor" or "tenure-holder" occur and,

therefore, it was apparent that notice was necessary to be given to the proprietors in order to deprive the proprietors of the estate covered by the

notification. I am unable to accept that contention. The language of the section is that the estate becomes vested in the State. Counsel for the

Defendants relied on the decision in Kameshwar Singh and Ors. v. The State of Bihar and Anr. AIR 1951 Pat. 91 (115). Reliance was placed on

the observations appearing the report. In dealing with Section 3, Das J. said:

Two points need to be stated here, one is that the Sub-section gives the State Government an unfettered discretion or power to declare that the

estates or tenures of a proprietor or tenure-holder have passed and become vested in the State so that it may pick and choose ; the second is that

the declaration is in respect of the estates or tenures of a proprietor or tenure-holder, in "" other words, if the proprietor or tenure-holder has only a

share in the estate or tenure, it is that share which vests in the State. If the proprietor or tenure-holder has shares in more estates or tenures than

one, all those shares pass on the making of the declaration in respect of that proprietor or tenure-holder. Extracting these observations the counsel

for the Defendants co-intended that this decision held that the transference to State ownership was not estate by estate, or tenure by tenure, but

rather proprietor by proprietor, or tenure-holder by tenure-holder, and therefore, in the absence of the-mention of "proprietor" in the notification

there could not be any vesting. As I read the decision, it does not support the contention of the Defendants. The section declares that the estate of

a proprietor or tenures of a tenure-holder has become vested and as long as the estate is declared to be vested or to have become vested the

share or interest of a proprietor in the estate has become or is vested in the State.

19. This question was considered in the Bench decision of the Patna High Court in Rebati Ranjan and Another Vs. The State of Bihar and Others,

. Counsel for the State of Bihar relied on this decision. It was contended in that case that the State Government had no jurisdiction to acquire the

estate unless they correctly mentioned the names of the proprietors in the notification. Dealing with that contention it is held that Section 3 does not stipulate that Government should conduct a judicial enquiry into the question as to who is the proprietor of the estate which is to be notified. The

section nowhere expressly states that the correct specification of the proprietor''s name is a condition precedent to the jurisdiction of the State. If

the correct mention of the proprietor''s name is a condition of vesting there is no reason why the Legislature should not have expressly said so. In

that context it was held in the Bench decision of the Patna High Court:

In my opinion, the identity of the estate is the only relevant matter to be investigated on the question whether the title of the estate has passed to

and become vested in the Government. It is not a relevant consideration whether the name of the proprietor or tenure-holder has been correctly

specified in the notification. In other words, the mention of the proprietor''s name in the notification is merely descriptive. It is not a condition of

jurisdiction. Even if the name of a wrong proprietor is mentioned in the notification the title to the estate will pass and become vested in the

Government so long as the identity of the estate is clear enough.

20. Counsel for the State of Bihar further contended that in the recent Supreme Court decision in Guru Datta Sharma Vs. State of Bihar, a

question arose under the Bihar Forest Act as to the effect of not mentioning the right name. He relied on it only in support of the proposition that

the absence of a name, if the name was at all material, would not have the effect of taking away the vesting of estate by reason that the estate is

declared by the notification to have vested.

21. Counsel for the State of Bihar placed reliance on Sections 26 to 30 of the Bihar Land Reforms Act and contended that the purpose of these

sections was to determine under the Act as to who were the proprietors in order to enable payment of compensation. Counsel brought into aid

those sections to show that whoever was the proprietor, would have the right to come and apply for the compensation. Because the estate vested

the counsel for the State of Bihar in my view rightly contended that the step taken u/s 3(1) is an administrative and not judicial act which has the

effect of vesting the estate and persons who claim to be proprietors are sufficiently protected in the manner of obtaining compensation. These

sections also show that any mistake in the names and description of the proprietors can also be corrected. I am of opinion that the contentions of

the counsel for the State of Bihar are correct and the State of Bihar is entitled to succeed. I therefore answer the issues:

(i) Yes.

(ii) Yes.

(iii) Payable to the State of Bihar.

22. Counsel for the Plaintiff submitted that the Plaintiff was entitled to retain costs. In my view, the Plaintiff is entitled to retain its costs. The State of

Bihar is entitled to receive rent limited for the period May 5, 1953 to May 4, 1959, in respect of the leases mentioned in the suit. Plaintiff is entitled to claim costs and commission in terms of prayer 5. There will also be an injunction in terms of prayer 2. If there be any dispute as to the amount, it

will be open to the State of Bihar to advance its contentions in proper proceedings. The State of Bihar is entitled to costs against losing the

Defendants Nos. 2 to 11. Certified for two counsel.