(1982) 10 CAL CK 0014

Calcutta High Court

Case No: A.O.D. No. 279 of 1963

Lodna Colliery Co. (1920) Ltd.	APPELLANT
Vs	
Mohan Lal Goenka and Others	RESPONDENT

Date of Decision: Oct. 13, 1982

Acts Referred:

- Coal Mines (Nationalisation) Act, 1973 - Section 18(5), 2(h), 2(h)(xii), 20, 23
- Constitution of India, 1950 - Article 226
- Transfer of Property Act, 1882 - Section 55(4)
- West Bengal Estates Acquisition Act, 1953 - Section 28, 29, 4, 5, 5(1)(i)

Citation: 86 CWN 229

Hon'ble Judges: R.K. Sharma, J; Chittatosh Mookerjee, J

Bench: Division Bench

Advocate: Ranadeb Chaudhuri, S.C. Bose and Tapan Kumar Mitra, for the Appellant;A.C. Bhabra, K. Khaitan and M.P. Chowdhury, for the Respondent

Final Decision: Allowed

Judgement

Chittatosh Mookelrjee, J.

On 2nd January, 1957 the plaintiff respondents had instituted O. C. Suit No. 2 of 1957 in the Subordinate Judge''s Court, Asansol against the defendant appellant, Lodna Colliery Company (1920) Ltd., inter-alia, for preliminary decrees directing the defendent to render accounts of coals raised and cokes manufactured from the properties described in the Schedules A and B of the plaint during the period September, 1942 to October, 1956 and other dues in terms of the two leases of rents, royalties, price of fuel, coal interest and other dues in terms of the two lease dated 26th October, 1911 and 19th June, 1913. The plaintiffs also prayed for declaring first charge on the said two properties in Schedules ''A'' and ''B'' together with all machineries, buildings, structures, tools, plants, stock of coal, all movable and immovable properties standing thereon for the amounts that would be found

due to the plaintiffs. If the defendant failed and neglected to render accounts, the plaintiffs prayed that a Commissioner be appointed for taking aforesaid accounts and thereafter for passing two separate final charge decrees for the amounts that would be found due to the plaintiffs against the properties mentioned in Schedules ''A'' and ''B'' respectively. The defendant company had contested the said suit. The defendant had, inter-alia contended that the plaintiffs who were auction purchasers of the interests of their original lessors, were not entitled to charge decrees and that the plaintiff''s claims were partly barred by limitation. The said suit was subsequently renumbered as Title Suit No. 15 of 1961/2 of 1957 of the Additional Court of the Subordinate Judge, Asansol.

2. On 22nd June, 1962, the learned Additional Subordinate Judge, Asansol decreed the said suit with costs in preliminary form. The learned Additional Subordinate Judge ordered the defendant to render accounts as prayed for during the period in suit. The learned Additional Subordinate Judge further ordered that the suit properties together with all machineries, buildings, structures, tools, plants etc. would remain charged for the amount that would be found due to the plaintiffs. The plaintiffs were also granted interest pendente lite at the stipulated rate. The defendant company being aggrieved, by the said judgment and decree passed in T.S. No. 15 of 1961/2 of 1957 preferred the instant first appeal. On the prayer of the defendant appellant, C.R. No. 4880 (F) of 1962 was issued upon the plaintiff respondents to show cause why pending the disposal of the said first appeal, the further proceedings in the trial court shall not remain stayed. On 4th July, 1964 a Division Bench disposed of the said Rule and had directed expeditious hearing of the appeal.

3. For all the reasons, we need not go in to at this stage, the appeal had remained pending undisposed of. On July 16, 1981 when the appeal was ultimately called for final hearing, the learned advocate for the appellant had submitted that he had no instructions to proceed with the appeal. The appeal was accordingly dismissed for non-prosecution. On 14th of July, 1982, however, the appellant company made an application for restoration of the appeal. On 20th July, 1982 after hearing both parties, we restored the appeal. As a condition for restoration, however, we had restrained the appellant initially for a period of fortnight from withdrawing or receiving from M/s. B. M. Bageria a sum of Rs. 2267927 95 p. Subsequenty, the said interim orders was extend and the application for interim orders filed by the respondents was directed to be heard along with the appeal.

4. Undisputedly, Maharaja of Burdwan was the proprietor of Lot Sripur consisting of four mouzas and Goswamis and others were under the Maharaja of Burdwan were Patnidars of the said Lot Sripur. Subsequently, Burdwan Raj had also granted coal mining rights to the said Patnidars. The said Patnidars of Lot Sripur had granted by a registered document dated 7.7.1907 in favour of one Prankrishna Chatterjee in respect of the coal and coal mining rights measuring about 600 bighas in Lot Sripur

described in Schedule A of the plaint. The said Patnidars by another registered lease deed dated 17.10.1911, had granted similar coal mining rights in favour of said Prankrishna Chatterjee in another 541 bighas of land in the said Lot Sripur described in Schedule ''B'' to the plaint.

5. On 26th October, 1911 the said Prankrishna Chatterjee had granted a sub-lease of the coal and coal mining rights in the coal land in the Schedule ''A'' lands to M/s. Lodna Colliery Co. Ltd. for a period of 999 years. On 19th June, 1913 said Prankrishna Chatterjee granted another mining lease in favour of M/s, Lodna Colliery Co. Ltd. in respect of Schedule ''B'' lands for a period of 998 years.

6. M/s. Lodna Colliery Co. Ltd. went into voluntary liquidation and the liquidators by a registered Deed of Assignment dated 6th June, 1921 assigned and transferred in favour of M/s. Lodna Colliery (1921) Ltd., the said leasehold interests of the lessee in Schedule ''A'' and B properties under the two leases dated 26th October, 1911 and 19th June, 1913.

7. The learned Additional Subordinate Judge had upheld the claim of the plaintiff that as a result of auction purchases the interests of the lessors in respect of the said two leases dated 26th October, 1911 and 19th June, 1913 had devolved upon them and that the defendant company was liable to the plaintiffs for their dues under the aforesaid two leases for the period in suit. The learned Additional Subordinate Judge while considering the Issues 4, 5 and 6 and recorded "the defendant company does not dispute the story of acquisition by the plaintiff of the properties in suit. Neither has it denied that the defendant company has not paid any amount to the plaintiffs as rents and royalties etc. since they acquired the suit properties in court sale "(vide page 86 of the Paper Book of the appeal). The learned Additional Subordinate Judge in his judgment recorded that the learned advocate for the defendant company had further contended before him that the plaintiff''s claim was partly time barred. It was also contended that the plaintiffs were not entitled to get a charge decree because they were only auction purchasers of the lessors interest. The defendant company had also claimed remission in respect of the cesses already paid by the defendant company on behalf of the plaintiffs. We propose to examine the said two questions of limitation and the right of the plaintiffs to get a charge decree.

8. We are not inclined to allow the defendant appellant company to urge for the first time in this appeal that the plaintiff respondents did not at all acquire the lessors interest under the aforesaid two leases dated 26th October, 1911 and 19th June, 1913. In the first place the defendant company ought not to be allowed to make out a new case in appeal particularly after they had conceded in the trial court the plaintiffs case of acquisition of the lessors interests in the manner pleaded in the plaint. The defendant appellant ought not to be allowed to contend that their learned lawyer in the trial court did not in fact make any such concession about the acquisition of title by the plaintiffs. (It is well settled that in case a party disputes the

correctness of a fact recorded in its judgment by a court, the party could ordinarily apply before the said court itself for correction and/or review of the said recording. Unless such a procedure is resorted to, the superior court hearing an appeal or revision would not ordinarily permit a party to challenge the correctness or otherwise of a statement, of fact recorded by the trial court. The legal position may be otherwise with regard to a concession on a point of law. In this connection, see Bank of Biher v. Mahabir and others AIR 1964 SC 377 Paragraph 5).

9. Apart from the aforesaid initial hurdle, we are bound to observe that the defendant company did not also controvert the evidence given by the plaintiffs about their acquisition of title to the suit properties. The trial court in its judgment has recorded that the predecessors of the plaintiffs had obtained a money decree against Prankrishna Chatterjee and in execution of the said decree had auction purchased the suit properties on 11th February, 1928. One Nagar Mal Rajghoria had obtained a charge decree in respect of the suit properties against said Prankrishna Chatterjee, his sons, brothers etc., and one Benoy Krishna Mukherjee. The said decree-holder had transferred his rights in favour of Mohon Lal Goenka, who was one of the plaintiffs and thereafter he had auction purchased the suit properties. Subsequently, the said plaintiff No. 1 had agreed to share the property with the other plaintiffs. It also transpired in evidence that after acquiring the suit properties, notices on behalf of the plaintiff were given to the defendant company which were acknowledged on behalf of the defendant. There were negotiations between the parties and in fact on 24th February, 1943 the defendant company had purported to send a royalty statement to the plaintiffs (vide Ext. 11).

10. Therefore, we proceed to examine whether the plaintiffs, claim for the suit period or any part thereof was barred by limitation. There is no substance in the contention raised on behalf of the defendant appellant that the plaintiffs being auction purchasers, were not entitled to the benefits of the charge in the lessors favour under the two mining leases dated 26th October, 1911 and 16th June, 1913. The said clauses relating to creation of charge upon the ''A'' and ''B'' schedule properties for payment of dues by the lessee were not mere personal covenants. Therefore, as a result of auction purchases made by the plaintiffs, they had acquired the entire right, title and interest of the lessors in the said two leases including the said right to have charge upon the said properties as securities for payment of the dues by the lessees. We respectfully agree with the Division Bench decision in Sheo Nandan Lal v. Zainal Abedin ILR 42 Cal. 849 that "there is no authority for the contention that the charge such as one mentioned in section 55(4) of the Transfer of Property Act is merely a personal right which cannot be transferred to an assignee. The debt could undoubtedly be transferred and there is no reason why the security in the debt could not also be transferred with it". The learned Subordinate Judge rightly held that when the royalty receiving interests of the lessors were assigned and transferred in favour of the plaintiffs, the security by way of charge for payment of the dues under the aforesaid two leases had also passed in their favour.

Therefore, the Article 132 of the Limitation Act, 1908, corresponding to Article 62 of the Limitation Act, 1963, would apply.

11. Mr. Ranadeb Chaudhuri, learned advocate for the defendant, has submitted that the interests of the plaintiffs under the aforesaid two mining leases had vested in the State with effect from the date mentioned in the Notification issued u/s 4 of the West Bengal Estates Acquisition Act, 1953, i.e., 15th of April, 1975 corresponding to 1st Baisakh, 1362 B. S. Mr. Chaudhuri has further submitted that upon publication of the said Notification u/s 4, on and from the date of vesting, the alleged rights of the plaintiffs in sub-soil including rights in mines and minerals had vested (vide section 5(1) (i) of the West Bengal Estates Acquisition Act).

12. The definition of the expression "intermediary" in section 2(i) of the West Bengal Estates Acquisition Act, 1953 was amended retrospectively by the West Bengal Act 4 of 1957 and the said expression "...in relation to mines and minerals includes a lessee and a sub-lessee" The West Bengal Act 22 of 1964 with retrospective effect inserted the following sub-section (2) in section 5 of the West Bengal Estates Acquisition Act;

for the removal of doubts it is hereby declared that notwithstanding anything to the contrary contained in any judgment, decree or order of any court or Tribunal or any other law, all rights and interests in mines and minerals of all intermediaries, being lessees and sub-lessees in any notified area shall be deemed to have vested in the State with effect from the date of vesting mentioned in the Notification u/s 4 in respect of such notified area.

The plaintiffs themselves were assignees of mining lease granted in favour of their prodecessors-in-interest.

13. Therefore undisputedly after the date of vesting mentioned in the Notification u/s 4 of the West Bengal Estates Acquisition Act, 1953 estates and rights of the plaintiffs in the aforesaid mines and minerals had vested in the State free from all encumbrances. The section 28 of the West Bengal Estates Aquisition Act did not apply in case of the plaintiffs because on the relevant date they themselves were not directly working the mines and minerals leased out by their predecessor-in-interest The plaintiffs were also not "working lessees" but the defendant company was the holder of sub-leases and the defendant company itself was working the mines in question. Therefore, with effect from the notified date, the defendant company u/s 29 of the West Bengal Estates Acquisition Act shall be deemed to have become holders of leases granted by the State Government on the same terms and conditions as of the two subsisting leases in its favour. In my judgment in the case of Dhemo Main Collieries and Industrie Ltd. v. Commissioners, Burdwan Division and others 78 C. W. N. 44, I have examined at length the aforesaid provisions relating to miner, and minerals contained in the West Bengal Estates Acquisition Act, 1953. Mr. Bhabra, learned advocate for the plaintiff respondent, has not disputed

that the plaintiffs were intermediaries in relation to the mines and mining rights in Schedules ''A'' and ''B'' properties and their entire interests in the said properties had vested in the State on and from the date mentioned in the notification u/s 4 of the West Bengal Estates Acquisition Act. With effect from the Date of vesting, the defendant company was no longer liable to pay to the plaintiffs the dues under the aforesaid two mining leases because the plaintiffs had ceased to be the lessors. With effect from the date of vesting, the defendant company deemed to have become holders of leases granted by the State Government on the same terms and conditions as of the subsisting leases in the manner set out in section 29 of the West Bengal Estates Acquisition Act, 1953.

14. In our view, the above vesting of the interests of the plaintiffs under the West Bengal Estates Acquisition Act did not affect their right to recover in accordance with law their arrear dues under the aforesaid mining leases up to the day preceding the date of vesting, i. e., up to 14th of April, 1955. Section 8 of the West Bengal Estates Acquisition Act has, inter-alia, provided that all arrears of rents and cesses together with interest thereon and other amounts lawfully recoverable by any intermediary on the date of vesting from any person, in respect of any interest of such intermediary which vests u/s 5, and all sums due from such person in respect of any decree for arrears of rent in respect of such interest, whether having the effect of a rent decree or money decree and whether obtained before of after the date of vesting, and the execution of which is not barred by limitation, shall continue to be recoverable by such intermediary.

15. Accordingly, vesting of the intermediary interast of the plaintiffs with effect from 15th of April, 1956 did not deprive them of their rights to recover from the defendant company their dues under the aforesaid two mining leases in respect of the period prior to such vesting. The defendant company in its turn continued to remain liable for their obligations as the lessee towards the lessors under the said two lease deeds for the pre-vesting period, notwithstanding that with effect from the vesting by operation of law the defendant company shall be deemed to be holder of mining leases granted by the State Government.

16. It is not disputed by the defendant company that under the aforesaid two mining leases assigned in its favour the defendant was liable to pay royalties etc. to the lessors so long as the said leases subsisted. The said lease deeds further provided "all the movable and immovable properties of the lessee shall stand and remain charged with the payment of the royalty, commission and minimum royalty and all other moneys payable "under the two lease deeds and such charge shall be deemed to be the first charge thereon and the Jessee shall not be entitled to transfer or otherwise deal with the demised premises without first paying to the lessor all moneys due to him....." (vide paragraph 9 of the registered Indenture between Prankrishna Chattarjee, the predecessor-in-interest of the plaintiffs and M/s. Lodna Colliery Co. Ltd. the predecessor in interest of the defendant dated 26th

October, 1911-Ext. A) Thus by act of parties the movable and immovable properties of the lessee described in Scheduls A and B of the plaint were made security for payment of moneys under the said two lease deeds, They thereby clearly intended to create charge upon the said movable and immovble properties for the payments of the said moneys. Mr. Bhabra, learned advocate for the respondents, rightly pointed out that the said provisions for creation of first charge in the two lease deeds were collateral to the covenant for granting mining leases. The said clauses relating to creation of charge were severable from the other clauses in the two lease deeds. Mr. Chaudhuri, learned advocate for the appellant, himself pointed out that the defendant company was a working lessee and by operation of section 29 of the West Bengal Estates Acquisition Act the defendant must be deemed to be the holder of fresh leases under the State on the same terms and conditions. Thus, the defendant company''s interests did not vest as a result of the Notification made u/s 4 of the West Bengal Estates Acquisition Act, 1953. Therefore, publication of such notification u/s 4 did not have the effect of annulling agreements between the lessor and the lessee either to pay moneys according to the lease deeds for the pre-vesting period or to furnish the suit properties as security by way of charge for due payment of the said pre-vesting dues of the defendant lessee.

17. The sub-section (1) of section 5 of the West Bengal Estates Acquisition Act, 1953 has, inter-alia, provided that everyone of the rights of the intermediaries in the vested estates and lands would be extinguished. The State is not bound by any of the rights and obligations of the intermediaries in respect of their vested lands and estates because the State in the exercise of its paramount powers and in accordance with law had vested all estates and rights of intermediaries. But in relation to properties which do not vest u/s 4 read with section 5 of the West Bengal Estates Acquisition Act, private parties continue to remain bound by their respective obligations to each other. Only to the extent their rights and obligations are repugnant to the provisions of the West Bengal Estates Acquisition Act, the same are no longer enforceable. In the instant case, by act of parties the lessee had furnished its movable and immovable properties described in the A and B schedule properties as security for payment of the dues to the lessor. Therefore, the said charge under the lease deeds in respect of properties which did not vest were not automatically extinguished by reason of publication of a notification u/s 4 of the West Bengal Estates Acquisition Act. Mr. Bhabra has rightly submitted that at least so far as the buildings, machineries, plants, tools and movable properties furnished as security for the dues payable by the lessee, the West Bengal Estates Acquisition Act had no legal effect. The said properties were not liable to vest and the lessee by operation of law contemplated by section 29 of the West Bengal Estates Acquisition Act did not cover the said buildings, machineries, plants, tools and movable properties of the working lessee. Therefore, vesting of their rights and interests under the West Bengal Estates Acquisition Act, 1953, did not deprive the plaintiffs of their right to recover the moneys payable by the defendant under the aforesaid

lease deeds for prevesting period and also to enforce the charge at least so far as the defendants buildings, machineries plants tools and movable properties were concerned.

18. The more pertinent question would be what if. the legal effect of acquisition of the rights of the defendant company in respect of the coal mines under the provisions of the Coal Mines (Nationalisation) Act, 1973. Admittedly, the defendant colliery in question was specified in the schedule of the said Nationalisation Act, 1973. On and from the appointed'' day the right, title and interest of the defendant in relation to the said coal mines u/s 3(1) of the Coal Mines (Nationalisation) Act, 1973 stand transferred to and vested absolutely in the Central Government free from all encumbrances. The expression "mine" u/s 2(h) of the said Nationalisation Act, 1973 inter-alia includes all lands and buildings and equipments belonging to the owner of the mine and adjacent to or situated on the surface of the mine where the washing of coal obtained from the mine or manufacture therefrom, of coke is carried on. Subject to the explanation u/s 2(h) (xii) of the said Act all other fixed assets, movable and immovable belonging to the owner of a mine whereever situated and current assets belonging to a mine whether within its premises or outside is included in the expression "mine".

19. In the above view, Mr. Bhabra has fairly conceded that by reason of the said subsequent event of vesting of the mines under the Coal Mines Nationalisation Act the charge in favour of the lessor under the two aforesaid leases has become unenforceable. The charged properties now stand transferred and vested absolutely free from all encumbrances. The said charge in plaintiff''s favour was undoubtedly an encumbrance. But Mr. Bhabra, however has submitted that Coal Mines (Nationalisation) Act, 1973 in effect provided for compulsory acquisition and, therefore, in terms of subsection (2) of section 73 of the Transfer of Property Act, 1908, the plaintiff have become entitled to claim payment of their decreetaI dues out of the amount due to the defendant company as compensation under the Coal Mines (Nationalisation) Act, 1973. In other words according to Mr. Bhabra the said doctrine of substituted security would be applicable and by reason of subsequent events for the purpose of the security for their dues, but the plaintiffs are entitled to proceed against the aforesaid compensation money in lieu of the properties charged under the aforesaid two leases in question.

20. It is the case of both parties that the Central Government, u/s 8 of the Coal Mines. (Nationalisation) Act, 1973, had given in cash and in the manner specified in Chapter-VI a sum of Rs. 94,66000 for the vesting of the right, title and interest of the defendant company in relation to the coal mines It has also transpired from the interlocutory applications filed before us, that the plaintiff company had preferred u/s 20 of the said Act against the defendant company a claim before the Commissioner of Payments under the Coal Mines (Nationalisation) Act, 1973 and the Commissioner by his order dated 7.1.79 has admitted the plaintiffs said claim to the

extent of a sum of Rs. 2372262.33 p. We understand that on 27th July 1882 the appellant company has obtained a Rule under Article 226 of the Constitution from a learned single Judge of this court inter-alia, challenging the said admission of the plaintiff respondent''s aforesaid claim by the Commissioner of Payments. We do not propose to decide whether or not the Commissioner of payments has in accordance with law admitted the plaintiff''s claim for a sum of Rs. 2372262.33 p. We also express no opinion about the merits of the writ petition filed by the appellant.

21. The defendant appellant has disclosed that the defendant company and one Mr. V. C. Jain, a shareholder and Director of the defendant company, have filed a writ petition in the Supreme Court of India interalia, challenging the acquisition of their rights in the aforsaid coal mines. They had prayed before the Supreme Court that pending the hearing and final disposal of the writ petition the respondents be directed to hand-over to the petitioner company the amount of interest accruing on the amounts of compensation standing to the credit of the defendant company in the deposit account. Under orders of the Supreme Court dated 4th May, 1982 with the Commissioner of Payments had paid the defendant company a sum of Rs. 2267927.25 p. towards the 2/3rd interest accruing on the amount standing to the credit of the defendant company''s deposit account subject to an oral undertaking given to the Supreme Court by the petitioners of the said writ petition that they will hand-over 2/3rd amount of interest or any part thereof as may be required to make up the shortfall, if any, determined by the respondents 5 and 6.

22. We understand that after the said sum of Rs. 237226233. p. was received by the defendant company under orders of D. K. Sen, J. passed in connection with a suit brought by the present plaintiffs, the said sum was ordered to be held by Mr. B. M. Bageria, Solicitor and Advocate. While restoring the present first appeal we had restrained the appellant company from receiving from Mr. B. M. Bageria the sum and the said restraint order is still continuing.

23. Mr. Bhabra for the respondent has submitted that the aforesaid sum of Rs. 2372262.33 p. forms part of the substituted security for the due payment of the defendant''s dues for the suit period. Mr. Bhabra has submitted that the plaintiffs are entitled to enforce their claim for the dues decreed in preliminary form in the instant suit not only against the principal amount specified against the defendants coal mines in the 5th schedule of the Coal Mines (Nationalisation) Act, 1973 but also against the interest accruing on the said amounts.

24. It is not within the scope of this appeal to decide whether or not both the said principal amount of compensation and also the interest accruing on the said amount u/s 18(5) of the said Nationalisation Act are to be disbursed to meet the liabilities of all the secured and unsecured creditors whose claims have been admitted by the Commissioner. By reason of subsequent change of circumstances the charge declared by the preliminary decree has become unenforceable. Undoubtedly, in order to shorten the course of litigation and to do complete justice

between the parties, the court may take notice of subsequent events. But before the court takes notice of the said subsequent events relating to the nationalisation of the suit properties, the plaintiffs ought to pray for amendment of their pleading indicating the manner in which the relief on the basis of the altered circumstances might be moulded. Undoubtedly, if such a prayer for amendment of the plaint be allowed, the defendant company ought to be also given leave to file additional written statement.

25. When facts are not disputed without amendment of the pleadings, the court may take notice of the legislative changes. In the first place, we have already referred to the provisions of the Coal Mines (Nationalisation) Act, 1973, under which unless a claim is made u/s 23 of the Act, the Commissioner cannot investigate such claim against the owner of the coal mine. The Commissioner has been vested with the jurisdiction to admit and also to decide the further question of disbursement of any amount in favour of a claimant out of the amount of the compensation payable could arise. In fact the plaintiffs have already taken steps before the Commissioner of Payments. The defendant company has also disputed the plaintiffs claim that the aforesaid sum of Rs. 2372262.33 P. received by the defendant, can be considered as a substituted security in place of the ''A'' and ''B'' schedule properties. Additional facts are necessary to decide whether the said sum of Rs. 2372262.33 P. represents 3/4th of the interest accrued on the amount standing to the credit of the deposit account only in respect of the properties described in the A and B schedule properties of the plaint. It appears from the copies of the papers of the writ Petition No. 3474 of 1980 filed by the defendant company in the Supreme Court of India that in the application for ad-interim orders the two petitioners had prayed that the respondents be directed to hand-over the amount of such interest which had accrued in respect of the compensation both for the coking coal mines and non-coking coal mines of the petitioner. The petitioners in paragraph (4) of their writ petition before the Supreme Court claimed that they carried on business in mining coking as well as non-coking coal in the different mines mentioned therein. For the foregoing reasons, on the present materials, we are unable to decide whether the amount of interest received by the defendant, the appellant company was only in respect of the compensation payable for nationalisation of the suit properties. Only after further evidence is adduced, the court may be able to decide whether the said interest received by the defendant company or any part thereof could be considered as "transferred security" and whether a charge in favour of the plaintiffs could be declared in respect of the sum or any part thereof.

26. For the foregoing reasons, we propose to remand the case. We affirm the finding of the trial court that the plaintiffs are entitled to recover royalties and other dues payable under the two leases dated 26th October, 1911 and 19th June, 1913 up to the day preceding the vesting of the plaintiffs interest under the West Bengal Estates Acquisition Act, i. e., up to 14th of April, 1955.

27. The plaintiffs would be entitled to recover payments of the dues under the aforesaid two lease deeds as claimed in the plaint up to 14th of April 1955. Their claim in respect of the period commencing from 15th of April 1955 shall stand disallowed. The defendant company would be liable to render accounts in the manner ordered by the trial court. By reason of subsequent legislative changes the charge decrees in respect of the ''A'' and ''B'' schedule properties have become inappropriate and the charge in respect of the said properties declared by the trial court cannot stand. The plaintiffs, however, would be at liberty to pray for declaring the said charge upon the transferred security, if any. For this reason, the plaintiff''s would be at liberty to apply for amendment of the plaint praying for appropriate relief in respect of any property to which the original charged properties might have been converted. If within three months from the date of the service of the notice of arrival of records upon the plaintiff''s lawyer in the trial court, the plaintiffs apply for amendment of the plaint, the trial court will pass appropriate orders on the said amendment application. In case, the plaint is allowed to be amended, the defendant would be given opportunity to file an additional written statement. The court will frame additional issue and determine whether or not the plaintiffs are entitled to charge decree in respect of the alleged substituted security in accordance with law.

28. In our view, atleast a part of the sum of Rs. 2372262.33 P. ought to be retained by Mr. B. M. Bageria, Advocate until the court below considers the plaintiffs'' application, if any, for amendment of the plaint in order to seek relief in respect of the said amounts. Sufficient reason has not been made out for restraining the defendant company from receiving payment of atleast half of the said amount. In addition, to the reasons already given we may indicate that the plaintiffs have tentatively valued their suit at Rs. 250000/-. Accounts are yet to be taken in respect of the moneys payable by the defendants to the plaintiffs. The plaintiffs'' claim has been purported to be admitted by the Commissioner of Payments under the Coal Mines (Nationalisation) Act, 1973. For the foregoing reasons, we direct that for a period of six months the defendant appellant will remain restrained from receiving half of the said sum of Rs. 2372262.33 P. from Mr. Bageria. The defendant, however, may receive payment of the balance half of the said amount without prejudice to the rights and contentions of the parties. The plaintiffs would be at liberty to apply before the trial court for temporary injunction in respect of the said half of the sum of Rs. 2327262.33 P which would be retained by Mr. Bageria at the first instance for three months in terms of our order made today. If such an application is made by the plaintiffs, the trial court will consider the materials preduced and dispose of the said application in accordance with law. In case, the plaintiffs fail to apply for amendment of the plaint, the court below will not pass any charge decree in plaintiff''s favour but grant them other reliefs indicating hereinbefore.

29. We accordingly, allow this appeal, set aside the judgment and decree of the trial court and remand the case to again dispose of the suit in accordance with law and in accordance with the directions contained in our judgment. The appellant will pay

the costs of this appeal to the respondent. Hearing fee may be assessed at 20 g.m.s.

R.K. Sharma, J.

I agree.