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

Court: Calcutta High Court

Date of Decision: Oct. 13, 1982

Acts Referred: Coal Mines (Nationalisation) Act, 1973 â€" Section 18(5), 2(h), 2(h)(xii), 20, 23
Constitution of India, 1950 â€" Article 226
Transfer of Property Act, 1882 â€" Section 55(4)
West Bengal Estates Acquisition Act, 1953 â€" 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.