KING PAL SINGH

v.

STATE OF U.P. AND ORS.

NOVEMBER 8, 1996

[M.M. PUNCHHI AND K. VENKATASWAMI, JJ.]

Tenancy and Land Laws :

U.P. Zamindari Abolition and Land Reforms Act, 1950: Sections 4, 6, 7 and 107.

Intermediaries—Rights of—To work mines in their estates—Held: extinguished and vested in the State Government.

Section 107(2) proviso—Mining Lease—Terms and conditions of—Power to regulate—Conferred on State—Under S.15 of MMRD Act—Held: extended to extinguish or prohibit rights of intermediaries—'Regulation' included 'Prohibition'—Mines and Minerals (Regulation and Development) Act, 1957, S.15.

Section 107(2)—Mining Lease—Terms and conditions of—Laid down by Mines Tribunal for intermediaries—Held: effective from date of vesting and not from date on which parties agreed to execute lease.

Mines and Minerals—Dead Rent—Levy of—No evidence produced regarding quality or quantity of minerals removed during period in question—Held: In the circumstances levy of dead rent at maximum rate was proper—Dead rent not payable with regard to quantity of mineral won over.

Words and Phrases :

"For the time being in force"—Meaning of—In the context of S.107 (2) proviso of the U.P. Zamindari Abolition and Land Reforms Act, 1951.

"Regulation"—Meaning of—In the context of S.15 of the Mines and Minerals (Regulation and Development) Act, 1957.

A The appellants land stood transferred to and vested in the State free from all encumbrances vide Sections 4 and 6 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. In the light of the aforesaid provisions the Collector issued notices to the appellants stating that they should stop mining as they had lost all rights in the mines and minerals. The High Court, however, directed the respondents to B consider the applications of the appellants for grant of lease under Sections 106-108 of the Act.

Pursuant to the direction of the High Court, the respondents sent drafts of mining lease containing details of terms and conditions in accordance with U.P. Minor Minerals (Concession) Rules, 1967 and C the Rules framed under the Mines and Minerals (Regulation and Development) Act, 1957. The appellants raised objections regarding certain terms and conditions contained in the proposed leases. The differences were referred for adjudication to the Mines Tribunal appointed under Section 110 of the Act. The Tribunal negative all the claims of the appellants. The High Court dismissed the writ petition D filed by the appellants. Being aggrieved the appellants preferred the present appeal.

On behalf of the appellants it was contended that under Section 7 of the Act the rights of the appellants to work the mines would E continue and such rights did not cease and vest in the State though the titles to the land had gone to the State; that the rights to work the mines were governed by Chapter VI of the Act only; that the phrase "for the time being in force" occurring in the proviso to Section 107(1) of the Act showed that inasmuch as there was no central enactment laying down any provision regulating the operation of mines in respect F of minor minerals on the date when the Act came into force, the subsequent enactments either Central or State could not restrict the rights of the appellants by fixing the period in the terms and conditions of the proposed leases; that the Rules were only prospective and could not bind the appellants; that the `Regulation' contemplated under G Section 15 of the Central Act could not amount to `prohibition' or extinguishment of the rights of the appellants; that the terms and conditions mentioned in the proposed mining lease could not be from the date of vesting and it must be from the date on which the parties agreed to execute the lease; and that the payment of dead rent must relate to the probable value of the minerals extracted and not with H reference to area.

On behalf of the respondents it was contended that in the absence of records regarding the quality or quantity of the minerals extracted the authorities had to levy the dead rent at the maximum rate with reference to area. A

Dismissing the appeal, this Court

B

HELD: 1.1. In view of the consequences of vesting of the estate pursuant to the Notification under Section 4 of the U.P. Zamindari Abolition and Land reforms Act, 1957 and the clear and unambiguous provisions of Sections 6 and 107 of the Act, there is no doubt about the vesting of the mines and minerals with the State Government. Therefore, the rights of intermediaries to work the mines in their C estates were extinguished and vested in the State. [627-B,F]

Bagwan Das v. *State of U.P. and Ors.*, AIR (1976) SC 1393, relied on.

D

1.2. The contention that 'Regulation' cannot mean 'Prohibition' is not acceptable. The present case is not an extreme case of 'Prohibition' but one of 'Regulation' and, therefore, the terms and conditions of the mining lease do not exceed the area of 'Regulation' contemplated under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957. The power to regulate conferred on the E State under Section 15 of the Central Act extended to extinguish or prohibit the rights of intermediaries. [627-F, 629-A, 626-C-D]

State of Tamil Nadu v. *Hind Stone*, [1981] 2 SCC 205, relied on.

F

2.1. The terms and conditions which were required to be determined could not be only for the future. Necessarily they had to be for the whole period for which the lease was to be granted. As the legislature has conferred a right on the intermediaries, who were operating the mines on date of vesting it had further created the Mines Tribunal for settling the terms. Therefore, it is logical to hold G that the terms to be laid down by the Tribunal would be in respect of the past as well as the future. Nobody could imagine that the Tribunal would be created the day on which the rights were abolished and that it would determine the right without loss of any time. The phrase 'for the time being in force' should be given a meaning that fulfils the object of the provision, the purpose being that at the time of H

settling the terms the Mines Tribunal would take into account the provisions of the Central Act. [629-BD]

2.2. The appellants have not produced the records regarding quality or quantity of the minerals removed by them during the period in question. Necessarily, therefore, the authorities have to levy the dead rent at the maximum rate. Dead rent is not payable with regard to the quantity of minerals won over. [629-E,H]

D.K. Trivedi and Sons **v.** *State of Gujarat,* **[1986] Supp. SCC 20, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3224 of 1983 Etc.

From the Judgment and Order dated 10.8.79 of the Allahabad High Court in C.M.W. No. 2261 of 1978.

Satish Chandra, B.D. Aggarwala, Pramod Swarup, H.K. Puri, Raj Kr. Mehta, T.N. Singh, R.B. Mishra and Ashok K. Srivastava for the appearing parties.

The Judgment of the Court was delivered by

K. VENKATASWAMI, J. In all these appeals a common question of law arises for our consideration. A common argument was addressed by counsel concerned and that is why they are disposed of by this common judgment.

The U.P. Zamindari Abolition and Land Reforms Act, 1951 (hereinafter called 'the Act') came into force on and from July 1, 1952. On the publication of a Notification under Section 4 of the Act all the estates stood transferred to and vested in the State free from all encumbrances. Section 6 of the Act speaks of consequences of such vesting in the State. It says that on the publication of Notification under Section 4 all rights, title and interest of all the intermediaries in every estate in such area including land and in all sub-soil in such estate including rights, if any, any mines and minerals whether being worked or not shall cease and be vested in the State of Uttar Pradesh free from all encumbrances. In the light of the above provision, it appears the Collector, Agra issued notices to the appellants stating that they should stop mining as they have lost all

rights in the mines and minerals. The Collector, further took steps to auction the right to win the minor minerals. At this stage, the appellants challenged the actions of the Collector by moving the High Court.

The High Court by an order dated March 18, 1955 held that the appellants were entitled to take advantage of the provisions of Chapter VI of the Act and consequently a direction was given to the State Government and the Collector, Agra, for considering the applications of the appellants for grant of lease under Sections 106-108 of the Act.

Pursuant to the said judgment of the High Court, the Collector, Agra, sent letters dated 8.1.1964 offering the terms and conditions of the proposed leases to the appellants. Along with those letters drafts of mining lease containing the details of terms and conditions were also enclosed. *Inter alia*, the lease was offered for a period of 15 years and the terms and conditions proposed were in the light of U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter called "the Rules") as well as the rules framed under the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter called "the Central Act". The appellants raised objections regarding certain terms and conditions contained in the proposed leases. Initially the aggrieved parties moved the High Court by filing writ petitions and the High Court while dismissing the same on 9.2.1965 directed the parties to come to settlement regarding terms and conditions on which the leases have to be given to the appellants and in case they could not settle the terms, the differences can be referred to Mines Tribunal to be appointed under Section 110 of the Act. As the parties could not come to a settlement, the Collector on 12.10.1966 filed on application under Section 107(2) of the Act for settlement of the terms of the leases. Before the Mines Tribunal, the following were placed as area of controversy:-

"(A) *Period of lease*

Proposal of State Government	Objection of Opposite Party.
The lease shall be for a period of fifteen years with effect from 1.7.1952.	The lease should be perpetual and permanent.

(B) *Payment of Royality or Dead Rent.*

The rate of royality or dead rent shall be charged in accordance with the maximum rate prescribed under First Schedule (Rule 22) of the U.P. Minor Mineral (Concession) Rules 1963, with effect from 1.7.1952.	The question of making payment of royality or dead rent for the past years does not arise at all. The rate of dead rent indicated in the draft lease deed is excessive and there is no guiding principle to determine the same.
(C) *Commencement and Execution of the lease*	
The lease shall be deemed to have been executed with effect from July 1, 1952.	The terms and proposed lease deed should be prospective and not retrospective.

The Mines Tribunal, which was presided over by a District Judge and an expert Member along with him, after considering elaborately the arguments and the materials placed before it negatived all the claims of the appellants holding that the leases could not be perpetual and permanent, that the appellants are bound to pay royalty/dead rent as the case may be and that the leases will necessarily be from the date of vesting of the estate in the State. However, the Mines Tribunal fixed the period of leases from 1.7.52 to 23.11.87 being 10 years from the date of its order.

Aggrieved by the order of the Mines Tribunal, the appellants moved the High Court reiterating the same arguments once over before the High Court. The High Court after considering the arguments threadbare confirmed the views expressed by the Mines Tribunal and consequently dismissed the writ petitions. Hence the present appeals by special leave.

Mr. Satish Chandra, learned Sr. Counsel addressed three main arguments and the other learned counsel adopted the same on behalf of the appellants. It was his contention that under Section 7 of the Act, the rights of intermediaries, like the appellants who were zamindars to work the mines would continue and such rights do not cease and vest in the State. In other words, they continue to remain vested in the intermediaries as before, though, the title to the lands has gone to the State. In support of this contention, he invited our attention to the fact that no compensation was provided under the provisions of the Act in respect of their right in the mines. The same was because, according to him, their right to work mines did not vest in the State and it always remained with the appellants

(intermediaries). According to the learned Sr. Counsel, the right to operate or work mines and to extract minerals remains unaffected by the extinguishment of the rights under Chapter II and at the same time the same is to be governed by Chapter VI only. He placed reliance on the proviso to Section 107(2) of the Act to contend differently. Section 107 reads as follows:-

"Section 107:-

(1) With effect from the date of vesting, all mines comprised in the estate or estates acquired under this Act as were in operation on the date immediately preceding the said date and were being worked directly by the intermediary shall, if so desired by him, be deemed to have been leased by the State Government to the intermediary, and such intermediary shall be entitled to retain possession of those mines as a lessee thereof.

(2) The term and conditions of the said lease by the State Government shall be such as may be agreed upon between the State Government and the intermediary or in default of agreement, as may be settled by a Mines Tribunal appointed under section 110:

Provided that all such terms and conditions shall be in accordance with the provisions of any Central Act, for the time being in force regulating the grant of new mining leases."

Elaborating his submission on the basis of the proviso to Section 107(2), it was submitted that the phrase 'for the time being in force' occurring in the proviso is referable only for regulating the terms and conditions of those leases under Section 107(1) which on the date of vesting are deemed to have been leased by the State Government. In as much as there was no Central enactment laying down any provision, regulating the operation of the mines in respect of minor minerals on 1.7.1952, the subsequent enactments either Central or State, will not come to the aid of the respondents to restrict the rights by fixing the period in the terms and conditions of the proposed leases. The Minor Mineral Concession Rules, 1963 are only prospective and the same cannot be applied to bind the appellants with the fixed period and conditions in the proposed lease from 1.7.1952, the date of vesting. Therefore, the terms and conditions proposed

A by the Collector, Agra cannot be justified either under the Act or under the Rules. Period of lease can be fixed only in a case where the rights in the mines including the right to work the mines has been acquired and have to be regulated by the terms and conditions of the lease such as the cases where the mines had already been leased out. So far as the cases of the appellants are concerned, according to the learned Sr. Counsel, the right
B to work the mines remains vested in them as intermediaries and that right has not been acquired under Chapter II of the Abolition Act and therefore no period can be fixed so far as they are concerned.

Alternatively, it was argued that regulations contemplated under the Central Act, 1957 by Section 15 can only mean in the present context to
C preserve the right to work the mines without let or hindrance. The power to regulate, Contemplated under Section 15 of the Central Act given to the State Government cannot be extended to extinguish the rights of intermediaries under the guise of regulation. In support of this argument that regulation cannot amount to prohibition or extinguishment, he cited a number of authorities.
D

The second major point argued was that assuming that the Collector was right in offering the lease to the appellants subject to the terms and conditions mentioned thereon, the same cannot be from the date of vesting and it must be from the date on which the parties agree to execute the
E lease. Learned Sr. Counsel submitted that the order of the Mines Tribunal that the mining lease was from 1.7.1952 and for a period of 10 years from he date of its order was misconceived and invalid in law.

The last point argued was with reference to the payment of dead rent. According to the learned Sr. Counsel, the payment of dead rent must
F relate to the probablye value of the minerals extracted per acre and the amount fixed with reference to area namely, Rs. 1,000/- per acre per annum was, therefore, not sustainable.

Some of the counsel who adopted the argument of Mr. Satish Chandra
G submitted that the power is vested under the Rules with the Government to relax wherever necessary and the Government must be directed to relax the conditions in favour of the appellants.

Learned counsel appearing for the respondent-State reiterated the conclusions reached by the Mines Tribunal and confirmed by the High
H Court in support of his argument.

We have considered the rival submissions and we are of the view that the High Court was right and appellants have no case in all these appeals. A

In view of the consequences of vesting of the estate pursuant to the Notification under section 4 of the Act, we are not able to appreciate the arguments of the learned Sr. Counsel for the appellants. The clear and unambiguous provisions of 6 and 107 of the Act leave no doubt about the vesting of mines and minerals with the State Government. We have already given the substance of Section 6 and the text of Section 107. B

In this connection, we need only to refer to the judgment of this Court rendered under the very same provisions with which we are concerned. In *Bagwan Das* v. *State of U.P. and others,* AIR (1976) SC 1393, this court observed as follows:- C

> "The right of the former Zamindars to mines and minerals was extinguished by the Act of 1951 and became vested in the State Government. So long as the proprietory right to the land was vested in the Zamindar, he was entitled to mines and minerals. With the abolition of Zamidari by the 1951 Act that right has passed on not to the appellant but to the State Government. The appellant's writ petition filed to restrain the State Government from auctioning the right to undertake mining operations must, therefore, fail." D E

We have, therefore, no hesitation to reject the contention of the learned counsel for the appellants that notwithstanding the Act, the rights of intermediaries in the mines remain vested with them. F

The contention that regulation cannot mean prohibition as a general proposition is no longer open for argument in view of the decision of this Court in *State of Tamil Nadu* v. *Hind Stone,* [1981] 2 SCC 205. This Court while considering the scope of Rule 8C of Tamil Nadu Minor Mineral (Concessions) Rule 1959 observed as follows:- G

> "One of the arguments pressed before us was that Section 15 of the Mines and Minerals [Regulation and Development] Act authorised the making of rules for regulating the grant of mining leases and not for prohibiting them as rule 8-C sought to do, and, therefore, Rule 8-C was ultra vires Section H

15. We know cases on the subject right from *Municipal Corporation of the City of Toronto* v. *Virgo* and *Attorney-General for Ontario* v. *Attorney General for the Dominions* up to *State of U.P.* v. *Hindustan Aluminum Corporation Ltd.*, were brought to our attention. We do not think that 'regulation' has that rigidity of meaning as never to take in 'prohibition' Much depends on the context in which the expression is used in the statute and the object sought to be achieved by the contemplated regulation. It was observed by Mathew, J. in *G.K. Krishnan* v. *State of Tamil Nadu:* The word 'regulation' has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied." In modern statutes concerned as they are with economic and social activities, 'regulation' must, of necessity, receive so wide an interpretation that in certain situations, it must exclude competition to the public sector from the private sector. More so in welfare State. It was pointed out by the Privy Council in *Common Wealth of Australia* v. *Bank of New South Wales*-and we agree with what was stated therein-that the problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, not so much legal as political, social or economic consideration and that it could not be laid down that in no circumstances could the exclusion of competition so as to create a monopoly, either in a State or Commonwealth agency, be justified. Each case, it was said, must be judged on its own facts and in its own setting of time and circumstances and it might be that in regard to some economic activities and at some stage of social development, prohibition with a view to State monopoly was the only practical and reasonable manner of regulation. The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed, as we have already said more than once, at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act."

Ours is not a extreme case of prohibition but one of regulation, therefore, there is no force in the arguments that the terms and conditions of the lease exceeds the area of regulation contemplated under Section 15 of the Central Act. A

So far as the second contention is concerned, it was equally without substance. The terms and conditions which were required to be determined could not be only for the future. Necessarily they had to be for the whole period for which the lease was to be granted. As the legislature has conferred a right on the intermediaries, who were operating the mines on the date of vesting it had further created the Mines Tribunal for settling the terms. Therefore, it is logical to hold that the terms to be laid down by the Tribunal would be in respect of the past as well as the future. Nobody, could imagine that the Tribunal would be created the day on which the rights were abolished and that it would determine the right without loss of any time. In this context in which these words find a place, it must be construed that the phrase 'for the time being in force' should be given a meaning that fulfils the object of the provision, the purpose being that at the time of settling the terms the Mines Tribunal would take into account the provisions of the Central Act. This was the view taken by the High Court and rightly too. Therefore, we do not find any substance in the argument of the learned Sr. Counsel on the second point. B C D

On the third point concerning the dead rent, it is seen that inspite of opportunities given, the appellants have not taken steps to produce the records regarding the quality or quantity of the minerals removed by them during the period in question. Necessarily, therefore, the authorities have to levy the dead rent at the maximum rate. This is what the Tribunal observed:- E F

> "Regarding royalty or dead rent, since there is no record of the amount of mineral taken out by the lessee, and the opposite parties have not given the required information through the interrogatories it would not be possible to calculate the royalty of the mineral extracted, therefore the Government intends to charge dead rent, because the dead rent, as per schedule 2 of rule 22 is chargeable at prescribed rates on per acre basis irrespective of the quality or quantity of the mineral removed by the lessee." G

It is not correct to contend that dead rent is payable with regard to H

A the quantity of mineral won over. Dead rent has a different connotation. In *D.K. Trivedi and Sons* v. *State of Gujarat,* [1986] Supp. SCC 20 it was observed as follows:

> "In a mining lease the consideration usually moving from the lessee to the lessor is the rent for the area leased (often
> B called surfact rent), dead rent and royalty. Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in
> C respect of the minerals extracted proportionate to the quantity so extracted. *Such payment is called "royalty". It may, however, be that the mine is not worked properly so as not to yield enough return to the lessor in the shape of royalty. In order to ensure for the lessor a regular income, whether the mine is worked or not, a fixed amount is provided to be paid*
> D *to him by the lessee. This is called "dead rent". "Dead rent" is calculated on the basis of the area leased while royalty is calculated on the quantity of minerals extracted or removed.* Thus, while dead rent is a fixed return to the lessor, royalty is a return which varies with the quantity of minerals extracted
> E or removed. Since dead rent and royalty are both a return to the lessor in respect of the area leased, looked at from the point of view dead rent can be described as the minimum guaranteed amount of royalty payable to the lessor but calculated on the basis of the area leased and not on the quantity of minerals extracted or removed. Infact, clause (ix)
> F of Rule 3 of the Rajasthan Minor Mineral Concession Rules, 1977, defines "dead rent" as meaning "the minimum guaranteed amount of royalty per year payable as per rules or agreement under a mining lease." Stipulations providing for the lessee's liability to pay surface rent, dead rent and
> G royalty to the lessor are the usual covenants to be found in a mining lease."

Regarding the relaxation of rules, it is not for this Court to give any direction in the facts of these cases.

H In the foregoing circumstances, we do not find any substance in all

these cases. The appeals are dismissed. However, there will be no order as to costs. A

V.S.S. Appeals dismissed.