

United Collieries Ltd. and anr. Vs. Engineer in Chief, South Eastern Rly. and ors.

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Court : Madhya Pradesh

Decided On : May-03-1963

Reported in : AIR1964MP42; 1963MPLJ701

Judge : P.V. Dixit, C.J. and ;K.L. Pandey, J.

Acts : [Constitution of India](#) - Articles 226 and 227; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9; Mineral Concessions Rules, 1960; Mines and Minerals (Regulation and Development) Act, 1957

Appeal No. : Misc. Petn. No. 86 of 1963

Appellant : United Collieries Ltd. and anr.

Respondent : Engineer in Chief, South Eastern Rly. and ors.

Advocate for Def. : R.J. Bhawe, Govt. Adv.

Advocate for Pet/Ap. : R.S. Dabir and ;V.S. Dabir, Adv.

Disposition : Petition dismissed

Judgement :

Dixit, C.J.

1. This is an application under Articles 226 and 227 of the [Constitution of India](#) for the issue of a command to the State Government, the Collector of Surguja, the Divisional Forest Officer, Sur-guja, and South Eastern Railway Administration and its Engineer-in-chief at Manindragarh to secure and preserve the rights of the petitioners granted to them under a mining lease by the State of Madhya Pradesh and to ensure the continued enjoyment of those rights by the petitioners and their quiet possession. The petitioners also pray for the issue of a prohibitory direction restraining the respondents from interfering in any way with the petitioners' rights under the lease.

2. The material facts of the case are very simple. By an indenture of lease concluded between the first petitioner, the United Collieries Ltd. (hereinafter referred to as the Company), and the State Government on 9th April 1962 the Company was granted for a period of thirty years, commencing from 3rd January 1946, a coal mining lease in respect of lands described in Part I of the Schedule to the indenture, known, as the North Chirimiri Colliery in the district of Surguja,

'together with liberties, powers and privileges to be exercised or enjoyed'

mentioned in Part II of the Schedule, subject to the restrictions and conditions as to the exercise and enjoyment of such liberties, powers and privileges specified in Part III of the Schedule and subject to the liberties, powers and privileges mentioned in Part IV of the Schedule reserved to the State Government. The other petitioner is the Managing Agent of the Company. The petitioners claim that under the lease they are the absolute assignees of the rights of the State Government, have a restricted right to enter upon the reserved forest with the previous sanction in writing of the Divisional Forest Officer and to fell, cut and use timber trees in accordance with the terms of the lease and the conditions which the Government may impose and own surface rights also, and that they are entitled to the active protection of the lessor, the State Government, and its officers in the enjoyment of the rights, liberties and privileges granted to them under the lease.

The grievance of the petitioners is that the respondents Nos. 1 and 2, namely, the Engineer-in-chief of the South Eastern Railway and the South Eastern Railway Administration, without obtaining any authority from the Government have begun

constructing a railway track on a portion of the leased area; that in carrying out this project they have illegally cut down a substantial portion of the reserved forest on their area of lease and have also opened some portions of the earth exposing some fifty tons of coal which has been removed by the Railway Administration, their contractors and labourers; that the railway line when completed will make the functioning of the petitioners' aerial ropeways impossible; that the petitioners have already driven galleries underground; that they are entitled to the right of support of the surface and the laying of the railway line on it has endangered safety in the working of the mines; and that by this act of the railway authorities their rights under the lease of excavating the mineral without let or hindrance from any outside authority has been seriously hampered. The petitioners further say that they brought their grievance to the notice of the Collector and the Divisional Forest Officer of Sur-guja district but obtained no redress. They have, therefore, invoked the powers of this Court under Articles 226 and 227 praying that the directions stated earlier be issued to the respondents.

3. In the returns filed on behalf of the respondents, the lease relied upon by the petitioners has been admitted. It has also been admitted that the South Eastern Railway Administration is laying railway, line on a portion of the leased area. It is, however, denied that under the lease the petitioners are absolute assignees of the rights of the State Government in respect of the leased area or that they acquired any surface rights over the area, or that they have exclusive property rights or subsidiary rights in the reserved forest on the leased area. It has been averred that the liberties, powers and privileges conferred on the petitioners under the lease are subject to several restrictions and conditions mentioned in Part III and reservations made in favour of the Government in Part IV of the Schedule; that Clause (2) of Part IV of the Schedule reserved to the State Government or any person authorized by it the liberty to enter into and upon the leased land and to make upon, over or through the same any railways, tramways, roadways or pipelines for the purposes specified in the said clause and to get from the said lands stones, gravel and earth for making, maintaining and repairing such railway, tramways etc.; that the Railway Administration approached the local authorities for permission to lay the railway line in early March 1963; that on 13th March 1963 the Commissioner, Bilaspur Division commended to the State Government for ac-

ceptance the proposal of the Collector that the Railway Administration should be permitted to construct a railway line; and that the Government gave to the Railway Administration the permission and communicated it to the Collector by its letter dated 8th April 1963 (Annex. R/I to the Return). It has been further stated in the returns that the construction of the railway line is essential for the working of the Duman Hill Colliery run by the National Coal Development Corporation Ltd., that it does not substantially interfere with the operations of the petitioners' ropeways or with any of their rights under the lease, and if they do the petitioners can claim compensation in terms of Clause (2) of Part IV of the Schedule and that the Railway Administration has been authorised to construct the railway line on the express condition that it will compensate the Company for any loss or damage sustained by it 'by reason or in consequence of the exercise' by the South Eastern Railway of the authority given to it by the State Government. The respondents have further stated that as the authorisation by the State Government to the Railway Administration for the construction of the railway tract and its construction by the railway authorities is in terms of the clauses of the lease and particularly in accordance with Clause (2) of Part IV and Clause 16 of Part VII of the Schedule, the petitioners are not entitled to move this Court for the issue of the directions prayed for by them under Articles 226 and 227 of the Constitution.

4. In support of this petition Shri Dabir, learned counsel, argued that the lease given to the petitioner was in respect of lands and made the petitioners absolute assignees of the rights of the State Government in the land and gave them rights over the surface also; that the lease was subject to certain contractual warranties and some statutory warranties; and that while the question of breach of contractual warranties could not be agitated in proceedings under Article 226, the petitioners were entitled to seek redress in these proceedings on the ground of breach of statutory warranties. Learned counsel did not indicate the statutory warranties which, according to the petitioners, the respondent-State contravened by permitting the Railway Administration to construct a railway line on the land leased to the applicants and which the railway authorities infringed by laying the railway line. He, however, urged that the mining lease had been granted under the Mineral Concession Rules 1960 framed under the Mines and Minerals (Regulation and Development) Act, 1957, and was in Form 'K' prescribed by the rules and subject

to the liberties, powers and privileges specified in the Schedule to the lease which had been granted to the lessees according to the rules.

Learned counsel seemed to suggest that these liberties, powers and privileges granted to the lessees were statutory warranties. He took us through Part II and Part III of the Schedule and said that all these liberties, powers and privileges granted to the lessees had been substantially interfered with by the laying of the railway track. In particular, learned counsel emphasized Clause (6) of Part III of the Schedule and pointed out that as by that clause the lessees were prohibited from working or carrying on any mining operations at or to any point within a distance of fifty meters from any railway line except with the previous written permission of the Railway Administration, the petitioners' right of working the mine would now be restricted by this clause whereas when the lease was granted it was unfettered by any such restriction as there was no railway line at the time. Learned counsel proceeded to say that Clause (2) of Part IV of the Schedule gave no right to the railway authorities to enter upon the petitioners' land and to commence the construction of the railways without first obtaining the permission of the State Government and payment of compensation for interference with the petitioners' rights by the construction of the railways; that the determination and payment of such compensation was a condition precedent to the exercise of any liberty or power under Clause 2; that the obtaining of the previous permission of the State Government for construction of the railway line on the leased land was essential; that when the Railway Administration entered upon the land of the petitioners and commenced the work of constructing railways, they had not obtained any authority in that behalf from the Government; and that ex post facto permission given by the State Government about the early April 1963 could not validate the action of the Railway Administration.

It was further said that Clause (2) of Part IV did not indicate the authority responsible for payment of compensation; that if, as stated in the letter dated 8th April 1963 addressed by the Government to the Collector, Surguja, the railway authorities were granted permission to enter upon the area in question for the construction of the railway line on the condition that it will compensate the Company, that by itself was not sufficient to impose, any binding obligation on the

railway authorities to compensate the Company; and that as a matter of fact the General Manager of the South Eastern Railways had, by his letter dated the 30th March 1963, informed the petitioner-Company that it was not liable to pay any compensation to the Company for the construction work commenced by them and that if any civil suit was filed for enforcing the claim the Company would be liable to pay to the Railway Administration compensatory costs and damages. Learned counsel also vehemently submitted that by their acts the respondents had deprived the petitioner-Company of its property rights under the lease in violation of Article 31 of the Constitution and infringed the petitioners' fundamental right under Article 19(1).

5. The reply of Shri Bhawe, learned Government Advocate, was that the action taken by the respondents was strictly in terms of the lease; that the petitioners were not entitled to any relief under Article 226 of the Constitution for any breach of pure and simple contractual obligations and rights under the lease; that there was no question of the petitioner being deprived of any of their property rights granted by the lease by the respondents' acts complained against; and that consequently Articles 19(1) and 31 were not attracted to the case.

6. On a consideration of the arguments advanced on behalf of the parties, we do not feel any doubt that this petition must be dismissed. The two questions that arise for determination in this petition are, first whether the State in authorising the railway authorities to construct a railway line on the leased area, and the Railway Administration in constructing that line have infringed any rights of the petitioners under the lease dated the 9th April 1962, and secondly, whether the petitioners are entitled to any redress under Articles 226 and 227 of the Constitution for any violation of their rights under the lease.

7 There can be no doubt that the right of working the colliery granted to the Company by the lease dated the 9th April 1962 is a right of property. But the nature, content and limits of that right are only as defined by the terms of the lease deed. The liberties, powers and privileges granted to the Company are subject to the restrictions and conditions mentioned in Part III of the Schedule. They are also subject to the liberties, powers and privileges mentioned in Part IV of the Schedule.

which are reserved to the State Government. The extent of the right given to the Company by the lease has to be measured by reading all the terms and parts of the deed together. The petitioners' claim is founded solely on the leased deed and not on any statutory provision. True, the lease was granted to the Company under the Mineral Concessions Rules 1960 framed under the Mines and Minerals (Regulation and Development) Act, 1957. But that does not give to the leased deed or any of its terms the status of a statutory provision or a rule. There is no provision either in the Act or the rules laying down that a lease granted under the rules would be read as a part of the Act or the rules. It is, therefore, erroneous to say that the liberties, privileges and powers granted to the petitioner-Company by the lease are statutory warranties or rights and privileges. They are nothing more than contractual rights and privileges. The material clauses of the lease are Clause (2) of Part IV and Clause (16) of Part VII of the Schedule.

7-8. After quoting Clause (2) of Part IV and Clause 16 of Part VII and after pointing out the correct interpretation to be placed on the words used therein His Lordship proceeded :) In our opinion, the action of the respondents being in terms of the aforesaid Clauses 2 and 16 of Parts IV and VII respectively of the Schedule to the lease, it cannot be said that by reason of that action the petitioners' rights under the lease have been violated.

9. If, then, what the State Government has done in permitting the railway authorities to construct a railway on the leased area is only in exercise of its right under the lease and all that has been done by the Railway Administration is covered by the terms of the lease itself, the petitioner-Company is not entitled to any relief under Article 226 of the Constitution. Even if, according to the petitioner's thinking, the acts done by the respondents are in breach of the terms of the lease, the petitioners cannot give any redress under Article 226 for the alleged breach. The action which the Government has taken under the conditions of the lease is not any act done in the exercise of its sovereign powers. It may be according to the terms of the lease or contrary to them. But it is not any act done or purported to be done in the exercise of the right of Eminent Domain or claimed to have been done under the authority of any statutory provision. When the action of the respondents is in the exercise or the supposed exercise of the powers under the

lease, then there can be no question of any invasion on the petitioners' right under Article 19 or of any acquisition or taking possession of the property attracting Article 31. The dispute which the petitioners have raised is really as to the construction of Clause 2 of Part IV of the Schedule and the nature and extent of the rights given to them under the terms of the lease, and the directions they are seeking, are for the purpose of enforcing the terms of the contract, or to put it other way, for preventing a breach of the terms by the lessor, namely, the State and its representatives. In this respect the position of the State acting as a lessor is no different from that of a private lessor claiming to exercise certain rights given to him under his lease deed. Any dispute between the parties with regard to the rights and privileges granted under a contract must be litigated in the ordinary Civil Courts and not in proceedings under Article 226. It is well recognized that under Articles 226 and 227 of the Constitution directions cannot be given for enforcing, or preventing a breach of, rights and obligations contractual in character.

Learned counsel for the applicants relied on *Calcutta Gas Co., (Proprietary) Ltd. v. State of West Bengal*, AIR 1962 SC 1044 as an authority for the proposition that a party, who has entered into an agreement with another, can ask the High Court for a suitable writ or direction under Article 226 when the other party to the contract has done anything in violation of the terms of the contract. In that case, the question that the Supreme Court considered was whether the right of the Calcutta Gas Co., under an agreement to manage the Oriental Gas Company for a period of twenty years had been infringed by the provisions of the West Bengal Oriental Gas Company Act, 1960. The Supreme Court held that there was a legal right accruing to the Calcutta Gas Company under the agreement and that was abridged, if not destroyed, by the provisions of the West Bengal Oriental Gas Company Act, 1960, and consequently the Calcutta Gas Company had locus standi to file an application before the High Court under Article 226 of the Constitution challenging the validity of the aforesaid Act. The Supreme Court agreed with the decision of the Calcutta High Court that the Act impugned in that case was within the legislative competence of the West Bengal State Legislature and was validly made. It is thus plain that in the case of the Calcutta Gas Co., AIR 1962 SC 1044 (*supra*), no question at all arose of enforcing any contractual obligation by the issue of a writ or direction under Article 226. What was

considered and decided in that case was that the interference with the rights given to the Calcutta Gas Company under the agreement of management by virtue of the West Bengal Oriental Gas Company Act, 1960, was valid as that Act itself was validly made. There was no question at all in that case of the legality of any action taken under the terms of the agreement held by the Calcutta Gas Company,

In *Virendra Singh v. State of U. P.*, 1955-1 SCR 415 : (AIR 1954 SC 447), there was a disturbance of certain muafi grants by an order made by the Uttar Pradesh Government revoking the grants. The Supreme Court issued a writ restraining the State of Uttar Pradesh from giving effect to the order of revocation and directing it to restore possession of the lands to the grantees. The case of *Virendra Singh*, 1955-1 SCR 415 : (AIR 1954 SC 447) (supra), is an instance of the exercise of an act of sovereignty by the State Government. So also, in *Mahadeo v. State of Bombay*, (1959) Supp (2) SCR 339 : AIR 1959 SC 735 the question that was considered and decided was about the effect of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals and Alienated Lands) Act, 1951, on contracts made by some of the proprietors in the former State of Madhya Pradesh with some persons giving them the right to take forest produce from the forest included in the Zamindari and Malguzari villages of the grantors. That was not a case where any question as to the validity of any act done by a contracting party in terms of the contract arose. There is not even a superficial resemblance between the present case and the cases just referred to. The distinction between the case before us and those cases is that in all those cases what the State Government did was not in the exercise of any rights under any contract or lease. In our judgment, if according to the petitioners the respondents' action is contrary to the terms of the lease granted to them, then the petitioners' only remedy is to sue for breach of the contract and no writ or direction under article 226 can be issued to enforce the contract or to prevent its breach.

10. The view we have taken of the matter renders it unnecessary to consider the nature and extent of the rights granted to the petitioners under the lease and of their disturbance and interference as alleged by the petitioners. These points have a bearing only on the question whether the respondents' action is in accordance with the terms of the lease or contrary to them and the quantum of compensation

to which the petitioners may be entitled in terms of Clause 2 of Part IV of the Schedule. They are not material in the determination of the question whether a direction or writ can be issued under Article 226 or Article 227 of the Constitution in the facts and circumstances narrated above. During the course of the arguments at the Bar, a reference was also made to Section 7 of the Indian Railways Act, 1890, and to the Land Acquisition Act, 1894, The reference requires no discussion as here the respondents do not claim that what they have done is under Section 7 of the Railways Act, and there is no question of acquisition of any land belonging to the petitioners. The land leased out to the applicants is of the Government.

11. For the foregoing reasons, our conclusion is that the petitioners are not entitled to the reliefs claimed by them. This petition is, therefore, dismissed with costs. Respondents 3 to 5's counsel's fee is fixed at Rs. 500/-. The outstanding amount of security deposit, if any after deduction of costs, shall be refunded to the petitioners.