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Central Coalfields Ltd. Vs. T.M.S. Engineering and Construction Company and ors.

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Court : Jharkhand

Decided On : May-19-2004

Reported in : [2004(4)JCR437(Jhr)]

Judge : Vishnudeo Narayan, J.

Acts : Coal Mines (Nationalization) Act, 1973 - Sections 2, 3, 17, 23 and 26; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11

Appeal No. : A.F.O.D. No. 234 of 1995

Appellant : Central Coalfields Ltd.

Respondent : T.M.S. Engineering and Construction Company and ors.

Advocate for Def. : S. Talukdar,; A.K. Sinha and; Manoj Sharma, Adv.

Advocate for Pet/Ap. : A.K. Mehta,; A. Sen and; Rohit Roy, Adv.

Disposition : Appeal allowed

Judgement :

Vishnudeo Narayan, J.

1. This appeal at the instance of the appellant (who was defendant No. 2 in the suit) has been preferred against the impugned judgment and decree dated 20.02.1995 and 08.03.1995 respectively passed by Shri Azad Chandra Shekhar Prasad Singh, Sub-Judge VI. Ranchi in Title Suit No. 147 of 1976 whereby and whereunder the said title suit was decreed in part directing defendant Nos. 1 to 3 to pay a sum of Rs, 25'51,568.16 paise along with interest pendente lite and future @ 6% within three months.

2. The plaintiff-respondent No. 1 had filed Title Suit No. 147 of 1976 on 15.09.1976 against the defendant-appellant and proforma defendant-respondent Nos. 2 and 3 for a declaration that the goods mentioned in Schedule A of the plaint were taken over from the custody of the plaintiff-respondent on 18.09.1973 and 19.09.1973 illegally and without any authority of law and they did not vest in the Central Government and subsequently ..in the Coal Mines Authority Limited and its successors i.e. defendant-appellant and defendant-respondent Nos. 2 and 3 under the Coal Mines (Taking Over of Management) Act, 1973 and Coal Mines (Nationalization) Act, 1973 or any other law and further for realization of Rs. 1568.16 paise being the balance amount of the hire charges up to 17.09.1973 for one dozer and five trucks as per Schedule B of the plaint and also a sum of Rs. 42,65,381/- as damages as per his Bill No. 8/73, 9/73, 10/73, 11/73, 12/73 and 13/73 of dated 01.07.1976 as per Schedule A, C, D, E. F. G, H and A/1 of the plaint.

3. The case of the plaintiff-respondent, inter alia, is that proforma defendant-respondent No. 7 Karanpura Dewarkhand Colliery Private Limited was the owner of Karanpura Dewarkhand Colliery, P.O. Khelari. District Ranchi prior to the vesting of the Coal Mines under the Coal Mines (Nationalization) Act, 1973 and the plaintiff-respondent entered into a contract with defendant-respondent No. 7 for removal of over burden work in the said colliery and in pursuance to the said contract and for execution thereof the plaintiff-respondent absolutely as an independent Contractor started the work and sent some of his staff, machineries, stores and equipment and from time to time brought diverse stores and machinery in the said colliery for the said contractual work and also constructed two brick built structures with A.C. sheet roofing consisting of nine rooms bathroom and latrine in

an area of about 2000 sq. ft, on the land temporarily-provided by defendant-respondent No. 7 in the said colliery for his staffs and stores at his own cost on the verbal understanding that the plaintiff-respondent shall after the completion of the contract either dismantle and remove the said structure or sell the same to the suitable buyers with the consent of defendant-respondent No. 7 and the plaintiff-respondent had to incur a cost of Rs. 60,000/- over the construction. The plaintiff-respondent was duly discharging the work as Contractor under the said contract and submitting bills and receiving payments from defendant-respondent No.7. The Coal Mines (Taking Over of Management) Ordinance, 1973 was promulgated on 30.01.1973 which was subsequently repealed by the Coal Mines (Taking Over of Management) Act. 1973 and the management of the said colliery was taken over by the Union of India and it was entrusted to a Government body known as Coal Mines Authority and a custodian was appointed therein. At the time of the promulgation of the said ordinance the plaintiff-respondent had its machinery and equipment in the said colliery as goods brought by the plaintiff-respondent from outside in the said premises for execution of the said contractual work. At that time three trucks belonging to defendant-respondent No. 4 and one truck belonging to the plaintiff-respondent were stationed at Ranchi for registration purposes. The plaintiff-respondent was in many ways linked and connected with defendant-respondent No. 4 and some of the machineries and the equipments which the plaintiff-respondent had brought in the said colliery for execution of the contractual work were taken by the plaintiff-respondent on lease and hire basis from defendant-respondent No. 4, The officers on behalf of the custodian of the said colliery asked from the plaintiff respondent for the letter of contract dated. 17.09.1971 written by defendant-respondent No. 7 to him and the plaintiff-respondent had handed over the said letter on 09.02.1973 to Sheri P.D.N. Sinha, an officer representing the said custodian who took the same and issued a receipt dated 09.02.1973 in respect thereof. it is alleged that at the instance of the said custodian the aforesaid four trucks were illegally seized on 31.01.1973 and were brought from Ranchi to the said colliery and after correspondence and demands these trucks were subsequently released on illegal threat verbally made that those trucks should not be taken out of the said colliery besides the jeep which was being employed by the plaintiff-respondent in the execution of the contract. Since

defendant-respondent No. 4 because of the said illegal threat found it difficult to remove the aforesaid three trucks, by an agreement gave the said three trucks to the plaintiff-respondent on hire basis and the plaintiff-respondent began to use the said three trucks in the execution of the said contractual work. The further case of the plaintiff-respondent is that by a letter No. 1284/73, dated 19.02-1973. the plaintiff-respondent informed the custodian of the said colliery that he, as a Contractor, is willing to continue the said work at the same rate and on same terms and conditions under the new management and the Coal Mines Authority, Government of India. Karanpura Dewarkhand Colliery by a letter dated 24.02.1973 informed the plaintiff-respondent to continue the work on the same terms and conditions in the area demarcated and attached with the said letter proposing certain rates which were duly accepted by the plaintiff-respondent and he resumed the said work and began to execute the said contractual work by implying the said machineries etc. and submitted bills and received payments from the Coal Mines Authority is alleged that Coal Mines Authority was willing to take one H.D. 21A-Allis Chalmer Bull-Dozer 280 H.P. and several trucks from the plaintiff on hire basis and in pursuance of the discussion between them in respect thereof by a letter dated 26.05.1973 of the Colliery Manager of the said colliery the Coal Mines Authority informed the plaintiff that the Coal Mines Authority would like to take from him on hire his dozer @ Rs, 200/- per working hour and his trucks each @ Rs. 10/- per trip for a load of 150 cft. solid earth or 200 cft. loose earth and dumping it to a distance of 1500 feet to 2000 feet away and in pursuance thereof the plaintiff-respondent began to give its four trucks and the dozer on hire to, the Coal Mines Authority in the said colliery and there was also a negotiation in the earlier part of September, 1973 for the enhancement of the hire charges aforesaid and the colliery management finding the proposal reasonable had verbally agreed to give effect to the said increased rates within a short time, is alleged that a truck bearing Registration No. BHN 5106 belonging to defendant-respondent No. 4 was brought by him to the said colliery in the month of July, 1973 and it was kept with the plaintiff-respondent as the same due to the bad monsoon conditions could not be taken to Corba in Madhya Pradesh at the work site of defendant-respondent No. 4 where it was needed but the colliery authority illegally did not allow the said truck to be taken out of the colliery and thus defendant-respondent No. 4 also gave the

said truck on hire basis to the plaintiff-respondent who began to use the same in his work and gave the same on hire to the said colliery.

4. The further case of the plaintiff-respondent is that there is nothing in the Coal Mines (Taking Over of Management) Ordinance, 1973 as well as in the Coal Mines (Taking Over of Management) Act, 1973 to infringe or affect the right, title, interest, ownership and possession of the plaintiff - respondent in its aforesaid machineries, equipments etc. which the plaintiff-respondent as a Contractor was employing in the said colliery in furtherance of the contractual obligation and similarly there is nothing in the Coal Mines (Nationalization) Act, 1973 to infringe the plaintiff's right, title, interest ownership and possession in respect thereof and that is why even after coming into force of the said ordinance and the subsequent two Acts aforesaid the plaintiff-respondent absolutely as an independent Contractor was allowed to work in the colliery as per the contract for removal of the over burden work by employing its machineries and equipments etc. and upon a contract by giving on hire its one dozer and several trucks to the Coal Mines Authority and was making bills upon and receiving payments from the said Coal Mines Authority and the plaintiff-respondent's right and title to the said goods were never disputed by the Union of India or by the Coal Mines Authority and the plaintiff-respondent worked as an independent Contractor in the said colliery with his stores, equipments trucks, jeep etc. up to 17.09.1973. It is alleged that Sub-Area Manager, Coal Mines Authority Limited. Government of India, North Karanpura. West Group Dakra, P.O. Khelari, District Ranchi vide his letter No. CMA/NK (W) G/73/10642-45, dated 18th September, 1973 informed the plaintiff-respondent (that Coal Mines Authority had decided and taken over the ancillaries and relevant spares engaged by him in the work of over burden removal at Karampura Dewarkhand Colliery under the provisions of the Coal Mines (Taking over of Management) Act, 1973 and Coal Mines (Nationalization) Act, 1973 and details of the equipments, . ancillaries and spares were mentioned in the said letter and there was an inventory of the goods of the plaintiff-respondent and the machineries, trucks, jeep, dozer, toe scrapper. stores and equipments etc. except sundry items were taken over by the Coal Mines Authorities illegally and in utter erroneous interpretation of the provisions of the said Act and on 19.09.1963 six sundry items belonging to the plaintiff-respondent were also taken over illegally by

the Coal Mines Authority and those articles have been detailed in Schedule A of the plaint along with their current market price is alleged that Coal Mines Authority also illegally took possession of the brick built structure with A.C. sheet roofing aforesaid and, thereafter, the Sub-Area Manager aforesaid vide his letter No. CMA/NK(W)G/ 73/10899-10900 dated 30th September. 1973 also informed the plaintiff-respondent that since 01.05.1973 the equipments referred to in its letter dated 18.09.1973 were in or about said colliery and used for the purpose of the said Coal Mines and they stood vested in the Central Government and, thereafter, in the Coal Mines Authority Limited under Coal Mines (Nationalization) Act, 1973. It is alleged that taking over of plaintiff-respondent's equipments, machineries etc. as described in Schedule A of the plaint and the claim that the said equipments, machineries etc. had vested with the Central Government and, thereafter to Coal Mines Authority are absolutely illegally without jurisdiction and void ab initio and the plaintiff-respondent vide its letter dated 05.10.1973 and 03.11.1973 made strong protest in respect thereof and challenged the said illegal taking over and the illegal claim of vesting of the plaintiffs said equipment and machineries etc. and demanded immediate return thereof and also claimed compensation for the wrongful user of the said equipments and machineries etc. till these goods are returned to it. The plaintiff-respondent also sent seven bills all dated 05.11.1973 claiming compensation but the Sub-Area Manager aforesaid vide their letter dated 22.11.1973 and 24.01.1974 returning therewith the aforesaid bills informed the plaintiff-respondent that the aforesaid equipments in question stood vested in the Central Government and, thereafter, with the Coal Mines Authority under the Coal Mines (Nationalization) Act, 1973 on and from 01.05.1973 and the question of giving them back or payment of hire charges therefore to the plaintiff-respondent does not arise.

5. The case of the plaintiff-respondent further is that the plaintiff-respondent and its two partners filed a petition bearing C.R.NO. 5495 (W) 74 under Article 226 of the Constitution before the High Court at Calcutta for issuance of a writ of mandamus directing the defendant-appellant and defendant-respondent Nos. 2 and 3 to recall cancel and withdraw letters dated 18.09.1973, 20.09.1973, 22.11.1973 and 24.01.1974 of Sub-Area Manager aforesaid and also to forbear from giving effect to the said letters in any manner whatsoever and also for quashing of the said

letters by a writ of certiorari and for the return of those goods to the plaintiff-respondent i.e. the petitioner aforesaid and also for the grant of injunction and a rule was issued and interim order of injunction was granted restraining the defendant-appellant from using, transferring, removing or encumbering and or dealing with machineries and equipments aforesaid and the said petition is still subjudice is alleged that the plaintiff-respondent are the lessee on hire basis from defendant-respondent No. 4 in respect of the goods mentioned in X series from the defendant-respondent No. 4 and in respect of the goods mentioned at Y series from defendant-respondent No. 5 and the plaintiff-respondent is the bailee in respect thereof is alleged that defendant-respondent No. 5 being the financier of the aforesaid five trucks a recourse to the arbitration proceedings against the defendant-respondent No. 4 and the plaintiff-respondent which was subsequently decreed by the Hon'ble High Court at Calcutta in terms of the arbitration awards. The further case of the plaintiff-respondent is that Coal Mines Authority wrongfully used all the machineries and equipments negligently and kept them on open land and did not properly maintain them, and a result of the said wrongful negligent users and bad maintenance and keeping those valuable machineries and equipments etc. they have been reduced to scraps and the aforesaid goods were not the part of the Coal Mines and it was taken over illegally by the Coal Mines Authority and the illegal taking over of the said goods and illegal retention and user thereof have reduced the plaintiff-respondent to utter financial penury and inflicted limitless injuries resulting to its total loss of earning and virtual closer of business activities and the Coal Mines Authority and its successor defendant-appellant and defendant-respondent No. 3 have damaged those machineries and equipments to such an extent reducing them to worthless ramshackle scraps that even if those goods are returned to the plaintiff-respondent, they will have no commercial or actual use they are meant for nor fetch any market value whatsoever save and except attracting stray dealers of scrap materials is also alleged that the contract of the plaintiff-respondent has not been terminated and it has been illegally thrown out and denied the right of work and thus the plaintiff is entitled to get adequate damages for wrongful deprivation of its goods and the structure aforesaid mentioned in Schedule A and also entitled to compensatory damages in respect thereof at their present market rate as mentioned in the Schedule of the plaint

besides a sum of Rs- 1568.16 paise being the balance amount of hire charge of the said dozer and truck up to 17.09.1973 and the plaintiff-respondent is lawfully entitled to damages for loss of income at the increased rate of hire charges agreed by the Coal Mines Authority in September, 1973 as aforesaid in respect of the dozer and trucks, operational charges thereof for all these days and months as these were the minimum rates at which they could be easily and consistently implied during the said period and thus the plaintiff claims a sum of Rs. 42.65.381/- as damages fully detailed in para 24 of the plaint. The defendant-appellant and defendant-respondent No. 3 are the successors-in-interest of the Coal Mines Authority Limited and all the assets and liabilities of the said Karpura Dewarkhand Colliery and assets of liabilities of defendant-respondent No. 7 in the said colliery now stand transferred to and vested in them and notice under Section 80 of the Code of Civil Procedure has also been served upon defendant-respondent No. 2, the Union of India and defendant-appellant and defendant-respondent No. 3 are liable for damages respect thereof.

6. The defendant-appellant and defendant-respondent Nos. 2 and 3 have jointly filed their written statement and their case, inter alia, is that M/s. Mariposa Dewarkhand Colliery Private Limited has vested in the Central Government free from all encumbrances on the appointed day i.e. 01.05.1973 under Section 3 of the Coal Mines (Nationalization) Act, 1973 and the management of the said colliery was taken over by defendant-respondent No. 1 . under the provisions of the Coal Mines (Taking Over of Management) Ordinance, 1973 and the management of the said colliery continued since then under the provisions of the said ordinance and of the Coal Mines (Taking Over of Management) Act, 1973 and the ownership of the mines i.e. the said colliery as defined in Section 2(h) of the Coal Mines (Nationalization) Act, 1973 vested in the Central Government free from all encumbrance from 01.05.1973 and the defendant-appellant and other defendant-respondents had no concern with the said colliery prior to 31.01.1973, the date when the management of the colliery was taken over, and on promulgation of the ordinance aforesaid plants and equipments which were found being used in the said colliery were taken over. Their further case is that on the following day of the promulgation of the ordinance aforesaid the plaintiff-respondent removed four trucks bearing Registration No. BHN-5004. BRV-9907.

BHN-5003 and BHN-5005 from the said colliery and brought to Ranchi which were later on recovered and brought back to the colliery aforesaid with the help of the SDM, Sadar, Ranchi is alleged that the plant, machineries, equipments, goods and trucks etc came within the definition of mines as defined in Section 2(h) of the said Nationalization Act, 1973' which have vested in the Central Government and as such they were rightly taken in possession by the competent authority under the said Act. The plaintiff-respondent was discharging the works in the said colliery as Contractor under the ex-owner [i.e, defendant-respondent No. 7) of the said colliery and used to submit bills and receive payment but it is false to say that the plaintiff-respondent had handed over the letter dated 07.09.1971 to Shri P.D.V. Sinha, an officer representing the custodian on 19.02.1973. It is alleged that the plaintiff-respondent vide letter dated 19.02.1973 has expressed its willingness to work on the same terms under the custodians and in response thereto the Colliery Manager. Coal Mines Authority had sent a letter to the plaintiff-respondent conveying therein the rates and terms and conditions with approval of the custodian to resume the works of removal of over burden immediately vide letter dated 24.02.1973 and accordingly, the plaintiff-respondent started the works from 26.2.1973 and for that plaintiff-respondent was paid a sum of Rs. 1,49,267.02 paise for the period from 26.02.1973 to 28.05.1973. It is alleged that as per the discussion between the plaintiff-respondent and the Colliery Manager of the said colliery it was agreed to hire dozer @ Rs 200/- per working hour and trucks @ 10/- per trip for load of 150 cft. solid earth or 200 cft. loose earth and dumping it to a distance of 1500 meters to 2000 meters vide letter No. CMA/KDC/72 Contractor 242-43 dated 26.05.1973 and thereafter. the plaintiff-respondent sent a letter No. 108/73. dated 12.07.1973 to the custodian to enhance the said rate but it is false to say that the custodian had verbally agreed to enhance the rate as requested. It is alleged that truck No. BHN 5106 was found working in the said mines and the same was rightly taken over by the custodian on 18.09.1973 irrespective of whoever was the owner of the said truck and the custodian had rightly directed the plaintiff-respondent not to remove the trucks out of the said colliery premises. It is alleged that the custodian had taken steps in accordance with law to take over the plaintiff machinery, equipments and other property etc. as were found being used in the said mines and the plaintiff-respondent were made acquainted with the legal

position in respect thereof vide letter No. CMA/ NK(W)C/73-10642-45, dated 18.09.1973 and CMA/NK (W) 9/73-10630-4, dated 18.09.1973 and a modified subsequent letter No. CMA/NK (W)C/73-10899-10900, dated 30.09.1973. The specific case of the defendant-appellant is that the machineries and equipments etc. as mentioned in Schedule A of the plaint come within the definition of mines under section 2(h) of the said Nationalization Act and as such they have vested in the Central Government free from all encumbrances and, thereafter, as or direction of the Central Government it stood transferred to Coal Mines Authority Limited, a Government company and Coal India Limited and, thereafter, to the defendant-appellant and the plaintiff-respondent is not entitled to claim any compensation in respect thereof, It is alleged that the plaintiff-respondent had filed C.R. No. 5495 (W) 74 before the Calcutta High Court which was dismissed vide order dated 24.11.1978 subject to the directions contained therein and in consequence thereof the suit of the plaintiff-respondent is barred by the principle of res judicata. It is alleged that the defendant-appellant or defendant-respondent Nos. 2 and 3 are not bound by the arbitration award or the decree of the Court, if any. against the ex-owner and. if any. amount is due to the creditors they should file the claims under the provisions of the Coal Mines (Nationalization) Act. 1973. The Coal Mines Authority has not recognized the plaintiff-respondent as Contractor and hence the termination of the contract does not arise. Their further case is that Rs. 1568.15 paise has rightly not been paid as the trucks have vested in the Central Government and hence the payment of any hire charges for the trucks does not arise and they further denied the liability to pay Rs. 42,66,949.16 paise or any sum at all as claimed by the plaintiff-respondent.

7. In view of the pleadings of the parties the learned trial Court has framed the following issues for adjudication in this case:

- (i) Is the suit as framed maintainable ?
- (ii) Has the plaintiff valid cause of action for the suit?
- (iii) Is the suit barred by resjudicata ?
- (iv) Are the notice under Section 80 CPC legal and valid?

(v) Have the machineries, equipments, trucks etc. mentioned in Schedule A to the plaint vested in the Central Government free from all encumbrances under the Coal Mines (Nationalization) Act, 1973 as claimed by the defendants 1 to 3 ?

(vi) Is the plaintiff entitled to the reliefs claimed and if so to what extent ?

(vii) To what other relief or reliefs, if any, is the plaintiff entitled to ?

8. In view of the oral and documentary evidence on the record the learned trial Court while deciding issue Nos. (v) and (vi) has held in para 16 of the impugned judgment that it is the right, title and interest of the owner of a Coal Mine which stood vested into the Union of India. The plaintiff admittedly was not mine owner rather it was an independent Contractor working in the Mining Area and the trucks, bulldozers, jeep, machineries and equipments belonged to the plaintiff and some of which were taken on hire basis from Suman Construction Company Private Limited, defendant No. 4. and as such the same cannot be said to have vested into the Coal Mines Authority. The taking over the said assets of the plaintiff-firm on 18.09.1973 under the Coal Mines (Taking Over of Management) Act, 1973 and the Coal Mines (Nationalization) Act, 1973 is ab initio illegal, void and without Jurisdiction. The above two Acts are not applicable in case of the plaintiff. The contract of the plaintiff firm was duly ratified by the Coal Mines Authority inasmuch as trucks etc. were released to the plaintiff after they proved their ownership and the contesting defendants took the same on hire rental basis regarding which bills were submitted by the plaintiff and payments were also made to them. The taking over of the assets of the plaintiff-firm and that also after four and half months from the appointed day on which the Act came into force and from that eight months from the day of ordinance came into force is without jurisdiction. The actual taking over and vesting of the assets of the plaintiff-firm is said to have taken place on 18.09.1973 as per letter of the Sub-Area Manager it was later on modified by the letter issued under the signature of Mr. D.P. Choudhary on 30.09.1973. Till 18.09.1973 the plaintiff was working as a CMA Contractor. It was not only illegal but malafide on the part of the CMA. Officers who had no authority to seize the trucks, equipments etc. of the plaintiff-firm in the garb of vesting under the Coal Mines (Nationalization) Act, 1973. At the time of taking over of the assets of the

plaintiff-firm on 18.09.1973 there were other contractors working in the same colliery and their equipments, vehicles, machineries etc. were not taken over and they were allowed to continue the contract work. This discrimination clearly proves bad motive on the part of the contesting defendants. At the time of promulgation of the Coal Mines (Taking Over of Management) Ordinance, 1973 the plaintiff-firm was working as the Labour Contractor for removal of ever burden as per terms and conditions of the contracts with the previous owners. The plaintiff was not a Managing Contractor nor a raising Contractor but only a Labour Contractor. After due representation to the CMA and after proper verification of the papers the contract was ratified by the CMA initially under Section 15(1) and (2) of the Coal Mines (Taking Over of Management) Act. 1973 vide letter dated 24.02.1973 written by the Colliery Manager and vide letter dated 16.03.1973 written by the custodian and also vide letters dated 02.05.1973 and 26.05.1973. In all these letters using the words your dozer and your trucks clearly show that the plaintiffs equipments belonged to them only and did not vest in the Central Government and/or in CMA. As the plaintiff-firm did not vest in the Union of India and subsequently in the CMA on the appointed day and in view of the fact that the contract of the plaintiff-firm was duly ratified by the CMA after the appointed day, the plaintiff started working as a CMA Contractor and fulfilled the contractual obligations as per the terms and conditions of contract with CMA. The plaintiff submitted bills and received payments from time to time and as such there was no justification in taking over of the assets of the plaintiff-firm on 18.09.1973. CMA had no authority to take over assets of a CMA Contractor under the Act. According to Section 11(1) of the Act the Government company or the custodian can only manage affairs and business of a Coal Mines. They had no right to take over the assets and equipments which had not vested into the Union of India. According to Section 3(1) of the Act on the appointed day the right, title and interest of the owners in relation to the Coal Mines specified in the schedule shall also transferred to and shall vest absolutely in the Central Government free from all encumbrances. Relevant entry in the schedule referred to above relates to 'Karanpura Dewarkhand Colliery and the name of the plaintiff-firm does not find place. The language of Section 3(1) is very clear and unambiguous and the said section indicates acquisition of the right, title and interest of the owners in relation

to the Coal Mines specified in the schedule and speaks of transfer to the Central Government of the right, title and interest of such owners of the Coal Mines whose names are specified in the schedule. It is also clear that the other right, title and interest of the owners concerned are not being affected but only those which are connected with the Coal Mines. It is not right, title and interest of any or every owner of an article or underlying in or adjacent to a mine or used for the purpose of the mines are to be acquired and transferred to the Central Government. It has also been held that the question of return of the aforesaid trucks bulldozers, jeeps, machineries and equipments to the plaintiff does not now arise in view of the fact that those articles have been destroyed or reduced to scraps and at best the plaintiff is entitled to reasonable cost of the aforesaid truck, dozer, jeep, machineries and equipments along with damages for their illegal use and occupation w.e.f. 18.09.1973 to 30.06.1976 besides damages as a result of the awards of the two arbitration proceeding as well as Rs. 1568.16 paise being the balance amount due with respect of the bill as shown in Schedule B of the plaint and thus the plaintiff is entitled for the damages worth Rs.25,51,568.16 paise from the contesting defendants (the details of which have been shown at page 110 of the impugned judgment and at page 84 of its certified copy) besides interest pendente lite and future till realization @ 6% per annum on the said amount. The learned Court has further held in respect of issue No. (iii) that the suit of the plaintiff cannot be said to be barred by the principles of res Jucidata in spite of the dismissal by the Calcutta High Court of Civil Rules No. 5495 (W) of. 1974 filed at the instance of the plaintiff in which it was held that the equipments and machineries etc. trucks and other articles have vested in the Union of India. While deciding other issues it has been held that there is no defect in the notice under Sec-Lion 80 of the Code of Civil Procedure and the suit of the plaintiff is maintainable and it is entitled for the reliefs claimed as stated above.

9. Assailing the impugned judgment it has been submitted by Shri Anup Kumar Mehta, learned counsel for the defendant-appellant, that the learned Court below has committed a manifest error in not properly construing the provisions of Coal Mines (Taking Over of Management) Act 1973 and the Coal Mines (Nationalization) Act, 1973 and as well as definition of 'mine' as contained in the aforesaid Acts, and the learned Court below has erroneously come to the finding

that the machineries, equipments, trucks and bulldozer etc. have not vested in the Central Government. It has also been submitted that on the appointed day as per Section 3 of the Coal Mines (Nationalization) Act 1973, the right, title and interest of the owners in relation to the Coal Mines specified in the Schedule shall stand transferred to and shall vest absolutely in the Central Government free from all encumbrances and the machineries, equipments, trucks jeep and bulldozer etc, belonging to any person which were used for the purpose of the said mine have also vested absolutely in the Central Government free from all-encumbrances and the Central Government had taken over the said mine along with its all assets, machineries, equipments, building structure etc. as defined under Section 2(g) of the Coal Mines (Taking Over of Management) Ordinance. 1973 w.e.f. 31.01.1973. It has also been submitted that the learned Court below did not consider that the machineries and equipments etc. which were being used for the purpose of the said colliery and which belonged to the colliery had vested absolutely in the Central Government under the provisions of the Nationalization Act, 1973 and Paws 5, 6 and 7 have admitted in their evidence on oath that the machineries, equipments and the trucks, bulldozer, jeep etc. besides the structure in question were in the colliery premises and were being used for overburden removal and by virtue of Section 3 of the Nationalization Act. 1973 all these articles stand vested in the Central Government. Referring the ratio of the case of Bharat Coking Coal Limited v. Madan Lal Agarwal, (1977) 1 SCC 177, it has been submitted that all the properties or assets which fall within the definition of 'mine' in Section 2(h) -of the Nationalization Act, 1973 and which are used for over a period of time and not temporarily as necessary for proper functioning of the colliery irrespective of whether or not belonging to the owner of the colliery would vest in the Central Government by virtue of Section 3 and the machineries and equipments etc. aforesaid have nexus with the activities of the said Coal Mines. In support of his contention reliance has also been placed upon the ratios of the case of Bharat Coking Coal Limited v. Shyam Sunder Prasad and Ors. (1998) 5 SCC 512, Valley Refractories Private Limited and Anr. v. K.S. Garewal, AIR 1978 Cal 574 and Bharat Coking Coal Limited v. Karam Chand Thapar and Bros. Private Limited and Ors., (2003) 1 SCC 6. It has further been submitted that the plaintiff-respondent has earlier filed Civil Rule No. 5495 (W) 1974 before the Calcutta High Court for

declaring Section 3 and Section 26(5) of the Coal Mines (Nationalization) Act, 1973 as ultra vires and void and for further declaration that the petitioners [i.e. the plaintiff-respondent) are the owners of the aforesaid machineries, equipments etc. and to return and or to deliver back possession of the aforesaid goods and articles to the petitioners aforesaid and the said writ petition was disposed of vide order dated 24.11.1978 in which it was observed relying upon the ratio of the case of Valley Refractories Private Limited (supra) that the machineries, equipments, fixtures and other properties used in connection with the colliery on 'the date of vesting had also vested under Nationalization Act although such machineries, equipments belonged to some other concerned and not to the owners of the colliery at the relevant point of time and the remedy of the owners of such equipments, machineries etc. is to get compensation by making a claim for such compensation before the authority appointed under the said Act and the claim of the petitioner to get back the machineries, equipments, trucks etc. as set out in the writ petition cannot be accepted and the rule must fall on that score and the suit filed by the plaintiff appellant, therefore, is barred by principle of res judicata in view of the decision of Civil Rule No. 5495 (W) 1974 as the said writ petition under Article 226 was disposed of on merits after contest and the decision would continue to bind parties unless it is modified or reversed by appeal or other appropriate proceedings. In support of his contention reliance has been placed upon the ratio of the case of Ashok Kumar Srivastav v. National Insurance Company Limited and Ors., II (1998) CLT 157 (SC). It has further been contended that the filing of the present suit by the plaintiff-respondent prior to the other aforesaid of the Calcutta High Court does not come in the way of application of the principle of res judicata in this case when there is identity of reliefs claimed in the said writ as well as in the present suit on the similar facts and the maintainability of the suit cannot be adjudged from the effect which the decree may cause but it can determine on the basis of ostensible pleadings made and the reliefs claimed in the plaint. It has further been contended that the remedy of the plaintiffs appellant was before the Commissioner of Payments in respect of his claim, if any, as per the provisions contained in Chapter VI of the Coal Mines (Nationalization) Act, 1973 and the plaintiff appellant has admittedly moved before the Commissioner of Payments in respect of its claims and its claim was also partly entertained and it

was paid by the order of the Commissioner of Payments out of the compensation amount of the Colliery in question as per Schedule of the Nationalization Act, 1973. It has also been submitted that Chapter VI of the said Act is a self contained code and a person aggrieved of the order of the Commissioner of Payments has a right to prefer an appeal to the Principal Civil Court of original Jurisdiction within the local limit of whose jurisdiction the said colliery is situated but the plaintiff-respondent did not file any appeal and has filed the suit in question and the plaintiff-respondent has only remedy regarding its claim against the erstwhile owner of the said colliery and not against the defendant-appellant or defendant-respondent Nos. 2 and 3 in view of the legal position that the colliery in question has vested in the Central Government free from any encumbrance. Therefore, the impugned judgment is unsustainable.

10. In contra, it has been submitted by Sri Sameet Talukdar, learned counsel for the plaintiff-respondent supporting the impugned judgment that proforma dependent-respondent No. 7 was the owner of Karampura Dewarkhand Colliery prior to the vesting of the Coal Mines under the Coal Mines (Nationalization) Act, 1973 and the plaintiff-respondent had entered into a contract with him for removal of the overburden work in the said colliery and in pursuance of the said contract and for its execution absolutely as an independent Contractor started the work of the removal of overburden and for that he had brought bulldozer, trucks, jeep, equipments and machineries etc. and these equipments machineries and other goods were neither used or has any co-relation in any excavation in the said colliery for the purposes of searching or obtaining minerals and thus machineries equipments and the aforesaid trucks, bulldozers and jeep etc. were not the properties of the said colliery rather these goods and articles are the properties of the said Contractor i.e. plaintiff-respondent and their vesting as per the provisions of the Nationalization Act, 1973 in the Central Government does not arise at all and what has vested of the collierys the right of the owner in respect thereof Under Section 3 of the Nationalization Act, 1973 w.e.f. the appointed day i.e. 01.05.1973. It has further been submitted that management of Karnpura Dewarkhand Colliery was taken over by the Central Government and entrusted to Coal Mines Authority, a Government body and a custodian was appointed for its management and all the aforesaid goods, equipments and machineries etc. were taken over by the

custodian under its management as per the provisions of Coal Mines (Taking over of Management) Ordinance, 1973 or the Coal Mines (Taking Over Management) Act 1973 from the appointed day i.e. 31.01.1973 though all the aforesaid goods machineries and equipments etc. were not the properties of the colliery rather they belonged to the plaintiff-respondent who was engaged on contract for the execution of the removal of the work of overburden and further the contract was ratified by the custodian of the said colliery on the same terms and conditions under the management of the Coal Mines Authority and the provisions of the ordinance aforesaid and Taking Over of Management Act, 1973 do not infringe or affect the right, title interest, ownership and possession of the plaintiff-respondent in its aforesaid goods, machineries and equipments etc. which the plaintiff-respondent as a Contractor was employing in the said colliery in furtherance of its contractual obligation and the Nationalization Act, 1973 also does not infringe the right, title, interest and possession of the plaintiff-respondent in respect thereof and the plaintiff-respondent was also paid hiring charges prior to 18.09.1973 i.e. after the appointed day under the Nationalization Act, '1973 in respect of the aforesaid goods, machineries and equipments. It has further been submitted that the learned Court below has properly construed the evidence oral and documentary on the record in respect thereof and has rightly held that the aforesaid goods, equipments and machineries belonged to the plaintiff-respondent and the same have not vested as per Section 3 of the Nationalization Act, 1973 in the Central Government. It has also been submitted that principle of res judicata does not apply in this case in view of the decision in Civil Rule No. 5495 (W) 1974 of the Calcutta High Court for the simple reason that the plaintiff-respondent has filed the present suit for compensation with respect to the goods, equipments and machineries aforesaid and the said relief was not the subject matter of adjudication before the Calcutta High Court in the said writ and the claim of compensation was neither directly nor substantially in issue before the Calcutta High Court in the said writ case. In support of his contention reliance has been placed upon the ratios of the case of Ajmer Central Cooperative Bank Limited Ajmer through the Managing Director v. Prescribed Authority, under the Rajasthan Shops and Commercial Establishments Act, Ajmer and Ors., (1996) 2 SCC 1 and Madhvi Amma Bhawani Amma and Ors. v. Kunjl Kutty Filial Meenakshi Pillai and

Ors., (2000) 6 SCC 301. It has also been contended that the owner of every Coal Mines shall be given the amount in cash and in the manner specified in Chapter VI of the Nationalization Act, 1973 for the vesting in it under Section 3 of the right, title and interest of the owner in relation to such Coal Mines and amount equal to the amount specified against it in the corresponding entry in the 5th column of the schedule of the said Act and Section 20 mandates that every person having a claim against the owner of a Coal Mines shall prefer such claim before the Commissioner of Payments appointed under Section 17 within 30 days from the specified date and the equipments, machineries, trucks, bulldozer, Jeep etc. of the plaintiff-respondent were taken over by the Coal Mines Authority on 18.09.1973 as per Ext. 4/D claiming the same to have vested in the Central Government and a claim has been made by the plaintiff-respondent not in respect thereof but in respect of his other claims before the Commissioner of Payments which was partly allowed and since was no forum of appeal and thus no appeal was preferred against rejection of the claim of the plaintiffs appellant because Sub Section 7 has been inserted by amendment under Section 23 of the Nationalization Act, 1973 on 27.05.1978. It has also been submitted that Sub Section 5 of Section 26 mandates that where any machinery, equipment or other property in a Coal Mine has vested in the Central Government but such machinery, equipment or other property does not belong to the owner of such Coal Mines the amount specified in the 5th column of the schedule against yueh coal mines shall on a reference made to it by the Commissioner to be apportioned by the Court between the owner of such Coal Mine and the owner of such machinery, equipment or other property having due regard to the value of such machinery, equipment or other property on the appointed day and this provision has no application in this case and no reference has been made by the Commissioner of Payment and thus it is redundant and it cannot be an impediment in this case and in the absence of appropriate forum available the plaintiff-respondent had no alternative but to file the suit and thus the claim of the plaintiffs against the defendant-appellant and defendant-respondent No. 2 and 3 is tenable. Lastly it has been contended that the trial Court ought to have decreed the suit in respect of the entire claim and there is evidence on the record to support for the entitlement of the entire claim of the plaintiff-respondent and the plaintiff-respondent can challenge adverse finding without filing appeal of

cross objection and it cannot be said that the appellate Court can under no circumstances give him relief under the provisions of Order XLI, Rule 33 of the Code of Civil Procedure and thus the suit should be decreed in its entirety.

11. The following points arise for adjudication in this appeal:

(i) Have the machineries, equipments, trucks, bulldozer, Jeep etc. detailed in Schedule A of the plaint vested in the Central Government free from all encumbrances under Section 3 of the Coal Mines (Nationalization) Act, 1973.

(ii) Is the claim of the plaintiff-respondent barred by principle of res judicata ?

(iii) Is the plaintiff-respondent entitled to claim compensation from defendant-appellant and defendant-respondent Nos. 2 and 3 in the existence of a special forum for redressal of his claim ?

POINT NO. 1

12. In view of the pleadings of the parties and the evidence oral and documentary on the record the following facts are the admitted facts:

Proforma defendant-respondent No. 7 Karanpura Dewarkhand Colliery Private Limited was the owner of Karanpura Dewarkhand Colliery situate at Khelari in the district of Ranchi prior to its vesting under the Nationalization Act, 1973. The management of the said colliery was taken over w.e.f. the appointed date under the Section 3(1) of the Coal Mines (Taking Over of Management) Ordinance, 1973 as its management has vested in the Central Government. The said ordinance was repealed by the Coal Mines (Taking Over of Management) Act, 1973 and notwithstanding such repeal anything done or any action taken under the ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act. The management of the said colliery came under the custodial appointment by the Central Government. There was a contract entered into between the plaintiff-respondent on the one hand and the defendant-respondent No. 7 on the other hand for the work of removal of overburden in the said colliery and in pursuance to the said contract and for execution thereof the plaintiff-respondent as a Contractor started the work of removal of the overburden

in the said colliery w.e.f. 01.10.1971 (Ext. 3) on the terms and conditions stated therein and for that he had brought in the said colliery machineries, equipments, trucks, jeeps, bulldozers etc. and his staff. The plaintiff-respondent also made construction of a structure over the land of the said colliery for the accommodation of his staff engaged in the said contractual work and the plaintiff-respondent was discharging the work as Contractor under the said contract and submitting bills and receiving payments from defendant-respondent No. 7. The plaintiff-respondent for the execution of the contractual work had obtained equipments machineries, jeep, bulldozer and four trucks on hire basis from defendant-respondent No. 4 Suman Construction (Ext. 3/A) and at the time of promulgation of the ordinance aforesaid the equipments, machineries etc. aforesaid were used in the said colliery for the execution of the contractual work. Three trucks of defendant-respondent No. 4 taken on hire purchase by the plaintiff-respondent besides his one truck were at Ranch! for registration purposes prior to the promulgation of the said ordinance and these four trucks were brought to the colliery from Ranch! at the instance of custodian with the help of the administration and in this connection ext, 3/A and 3/D are referred to. The plaintiff-respondent vide his letter dated 19.02.1973 (Ext. 3/B) expressed his willingness to the custodian to continue the contractual work at the same rate, terms and conditions under him to Coal Mines Authority which was accepted by the custodian and the said acceptance was communicated to the plaintiff-respondent vide its letter dated 24.02.1973 (Ext. 4). In this connection Ext. 4/A, 4/B and 4/C have also their relevancy. The plaintiff-respondent, thereafter, resumed the contractual work and submitted bills and received payments and when the work was stopped the custodian directed the plaintiff-respondent to start the work of the removal of the overburden forthwith vide letter dated 07.04.1973 (Ext. 3/L) and also agreed to hire the bulldozer of the plaintiff-respondent @ Rs. 200/- per working hour beside the trucks vide letter dated 26.05.1973 (Ext. 4/C). The plaintiff-respondent worked as an independent Contractor with the machineries, equipments, trucks, jeep and bulldozer for removing the overburden up to 17.09.1973. The Sub-Area Manager, Coal Mines Authority Limited vide its letter dated 18.09.1973 (Ext. 4/D) read with its letter dated 30.09.1973 (Ext. 4/E) informed the plaintiff-respondent that bulldozer, scrappers, five trucks, jeep and ancillaries along with spares of the

above machineries used in the work of the overburden removal stand vested in the Central Government and they were taken over by the Coal Mines Authority under The Taking over Management Act, 1973 and Nationalization Act, 1973 and took over the aforesaid goods, machines and equipments and Sub-Area Manager of the Coal Mines Authority Limited vide its letter dated 22.11.1973 (Ext. 4/F) in reply to the letter dated 18.10.1973 of the plaintiff-respondent intimated it that the machineries, equipments etc. in 'question stood vested in the Central Government from 01.05.1973 and question of giving them back to it does not arise and also paying any hire charges also does not arise and the bill bearing No. 1 of 1973, dated 18.10.1973 of the plaintiff-respondent was also returned. Ext. 4/G is the letter dated 24.01.1974 of the Coal Mines Authority whereby several bills dated 05.11.1973 relating to payment of hire charge were also returned. An inventory (Ext. B) regarding the equipments, machineries etc. used in the execution of the contractual work by the plaintiff-respondent was prepared by the Coal Mines Authority on 18.09.1973 which has vested in the Central Government as claimed by the Coal Mines Authority and this inventory list is in respect of the Articles which has been stated in Schedule A of the plaint claimed by the plaintiff-respondent as its own property. There were several other documents on the record brought by the parties to the suit but those documents have not been discussed here for the reasons that they have no relevancy in respect of the issue in dispute. The plaintiff-respondent had filed Civil Rule No. . 5495 (W) of 1974 before the Calcutta High Court for the issuance of appropriate writ directing the Union of India and the Coal Mines Authority Limited to return the machineries and equipments including bulldozer jeep, trucks etc. to the plaintiff-respondent as these goods machineries and equipments have not at all vested in the Central Government under the provisions of the Act aforesaid. The order of the Calcutta High Court dated 24.11.1978 is Ext. C in this case in which the Calcutta High Court relying upon the ratio of the, case of Valley Refractories Private Limited and others (supra) disposed of the writ petition of the plaintiff-respondent and observed that the machineries, equipments, fixtures and other properties used in connection with the colliery on the date of the vesting had also vested under the Nationalization Act although such machineries, equipments belonged to some other concerned and not to the owner of the colliery at the relevant point of time

and the remedy of the owners of such equipments. machineries etc is to get compensation by making a claim for such compensation before the authority appointed under the Act. The plaintiff-respondent has preferred his claim before the Commissioner of Payments earlier which was partly entertained and he was also paid by the order of the Commissioner of Payments out of the compensation amount of the colliery in question as per Schedule of the Nationalization Act, 1973. No document has been brought on the record on behalf of the plaintiff-respondent as for what claims he has moved before the Commissioner of Payment for the reason best known to him, The plaintiff-respondent had claimed Rs. 42,45,381 on the basis of Ext. 5/9, Ext. 5, Ext 5/F, Ext. 5/G, Ext. 5/H and Ext. 5/J besides damages for loss of the brick built structure shown in Schedule E and damages in lieu of market value of goods as mentioned in Schedule G of the plaint and the learned Court as per para 16 at page 110 of the impugned judgment has decreed the suit for Rs. 25,51.568.16 paisa.

13. P.W. 7, Dharm Chand Talab Chand Mehta is the husband of Smt. Bharti Mehta, one of the partners of the plaintiff-respondent-firm. and he also held a power of attorney in his favour executed by his wife. He has deposed that defendant-respondent No, 4 Suman Construction Private Limited is the sister concern of the plaintiff-respondent firm. He has deposed that Karnapura Dewarkhand Colliery was in need of a Contractor for the work of the removal of the overburden and the plaintiff-respondent filed a quotation for that work and the terms of the contract were settled between them and the contract was executed between them on 17.09.1971 and the plaintiff-respondent brought machineries, equipments and other articles and goodsn the said colliery for execution of the contractual work and started doing the contractual work from 01.10.1971 and also made construction of a premises for housing his staffs and keeping the machineries and equipments at the cost of Rs. 60,000/-. He has deposed that it was agreed between them that the said structure shall be used by the plaintiff-respondent till it works as Contractor and theieaftpi, the said structure shall be sold to the colliery or it shall be dismantled and the plaintiff-respondent shall remove the building materials from there. His evidence is further to the effect that it was agreed between them that after the completion of the work the plaintiff-respondent shall remove its machineries, equipments and other articles and goods from there.

The plaintiff-respondent was discharging the contractual work and he was paid as per his bills submitted before the said colliery. In para 3 of his evidence he has deposed that the management of the said colliery was taken over by the Central Government under the provisions of the Coal Mines (Taking Over of Management) Ordinance w.e.f. 31.01.1973 and handed over the management to the Coal Mines Authority and the custodian was appointed for that purpose and the defendant-respondent No. 3 are the successors of the Coal Mines Authority and on demand he had handed over the relevant correspondences in respect of the execution of the said contract to the Coal Mines Authority on 09.02.1973 which is evidence by Ext. 2. He has also deposed that four trucks out of which three trucks of the defendant-respondent No. 4 were at Ranch! at a petrol pump for their registration and these four trucks were seized on 31.01.1973 and brought inside the said colliery and the plaintiff-respondent was directed not to take out these trucks outside the area of the colliery and a jeep of the plaintiff-respondent was already engaged for the contractual work aforesaid in the said colliery. He has also deposed that the plaintiff-respondent requested the custodian to ratify the contract dated 17.09.1971 for execution of the contractual work and the plaintiff-respondent was allowed to continue the said contract work and Ext. 3/B is the letter of the plaintiff-respondent in respect thereof and the Coal Mines Authority vide its letter dated 24.02.1973 (Ext. 4) allowed him to continue the contractual work at the rate given therein and thereafter, the plaintiff-respondent entered into an agreement with defendant-respondent No. 4 Suman Construction in respect of the aforesaid three trucks and he was using the trucks, jeep, dozer and other equipments and machineries in the execution of the contractual work and on 26.05.1973 the Coal Mines Authority Limited took the aforesaid equipments, machineries, trucks, dozer, jeep etc. on hire basis as per Ext. 4/C on the condition of the rental charges being paid per week. He has also deposed that one truck bearing registration No. BHN 5106 belonged to Suman Construction aforesaid which was on its way to Corba but due to certain unavoidable circumstances it was kept with the plaintiff-respondent firm in the said colliery and the plaintiff-respondent was not allowed to take out the said truck outside the colliery premises as a result of which the plaintiff-respondent also took the said truck on hire basis from the Suman Construction and also utilized the said truck in its contractual work. He has also

deposed that the plaintiff-respondent was executing the Contractual work in the capacity of an independent Contractor and for that he had brought the machineries, equipments, trucks, dozer, jeep etc. but the Sub-Area Manager of the Coal Mines Authority vide its letter dated 18.09.1973 (Ext. 4/D) took over under the provision of the Taking Over of Management Act. 1973 read with the provisions of Nationalization Act. 1973 and prepared an inventory in respect thereof and further intimidated the plaintiff-respondent vide its letter dated 30.09.1973 (Ext. 4/E) that the aforesaid equipments, machineries and goods etc. have vested in the Central Government. His evidence is further to the effect that the action of the Coal Mines Authority is illegal and unlawful as these articles belonged exclusively to the plaintiff-respondent and it can never vest/in the Central Government. He has also deposed that due to the illegal taking over of the aforesaid machineries, equipments, goods etc. the plaintiff-respondent had suffered financial loss and his bills were also not paid by the Coal Mines Authority. Lastly he has deposed that the Coal Mines Authority has not terminated the contract in question. In para 21 of his cross examination he has deposed that he had claimed Rs. 148.000/- by filing a claim petition before the Commissioner of Payments which were in respect of the bills against the erstwhile owner of his contractual work executend the said colliery prior to the said colliery being taken over under the management of the Coal Mines Authority and the said claim has no co-relation with the claims made in the suit and the Commissioner of Payments had orally directed him to move the Court in respect of his claim regarding the aforesaid machineries, equipments and other goods etc. taken over by the Coal Mines Authority under its management. PWs 5 and 6 who are the former employees of the plaintiff-respondent in their evidence have corroborated the testimony of P.W.7.

14. As against that there is testimony of DW 2, Devi Prasad Choudhary, the custodian under Coal Mines Authority and DW 1 Mul Chandra Khanna, the Manager of the Colliery in question D.W. 2 has deposed that he was appointed custodian by the Central Government for taking over of the colliery in question and he has taken over the said colliery on 31.01.1973. He has further deposed that he had taken over all the assets such as land, house, machineries, equipments, vehicles, railways and came in possession thereof as custodian of the Central Government and started managing the said colliery. He has further deposed that

he was told that the four trucks had been taken out from the said colliery and with the help of the administration he got the delivery of the aforesaid four trucks. He has further deposed that by virtue of the provision of the Nationalization Act the said colliery has vested in the Central Government w.e.f. 01.05.1973 and Coal Mines Authority was brought into existence and the entire assets and properties of the colliery was transferred to the Coal Mines Authority. His evidence is further to the effect that vide Ext. D he has informed the plaintiff-respondent regarding the vesting of his machineries, equipments, trucks, dozer, jeep etc. in the Central Government and it is false to say that the aforesaid equipments machineries, trucks, dozer jeep of the plaintiff-respondent have not vested the Central Government and the claim of compensation in respect thereof by the plaintiff-respondent is not tenable. He has further deposed that the defendant-appellant and defendant-respondent Nos. 2 and 3 are not liable for the same. He has further deposed that Ext, A, letter dated 18.09,1973 was issued by the Project Officer. Shri S.N, Jha which was modified by him vide Ext. A/1 on 30.09.1973 in which it has been stated that the equipments, machineries, goods etc. of the plaintiff-respondent have vested in the Central Government and all these equipments. machineries and goods of the plaintiff-respondent were used in the mining work of the said colliery w.e.f. 01.05.1973. DW 1 has deposed that the management of the Karanpura Dewarkhand Colliery, Khelari was taken over by the Central Government w.e.f. 31.01.1973 and the custodian was appointed to take after the management and, thereafter, the said colliery has vested in the Central Government w.e.f. 01.05.1973 and the plaintiff-respondent was informed in respect thereof vide Ext. A and Ext. A/1 and, thereafter, an inventory (Ext. B) was prepared in respect of the equipments, machineries and other goods of the plaintiff-respondent used in the mining of the said colliery. He has also deposed that the structure inside the premises of the colliery as claimed by the plaintiff-respondent has been constructed by the colliery and not by the plaintiff-respondent and the claim of the plaintiff-respondent in respect thereof is untenable. He has also deposed that the claim of the plaintiff-respondent regarding compensation is equally untenable against the defendant-appellant and defendant-respondent Nos. 2 and 3. He has also deposed that the bills Ext. 5 series except bills bearing Ext. No. 5/B, 5/Z/5, 5/Z/9 and 5/Z/14 are of the period

after the taking over the management by the custodian.

15. From the evidence oral and documentary on the record it appears that the management of Karanpura Dewarkhand Colliery, Khelari of defendant-respondent No. 7 was taken over by the Central Government as per provision of Coal Mines (Taking Over of Management) Ordinance 1973 on 31.01.1973 and custodian was appointed in respect thereof and subsequently it was transferred to Coal Mines Authority Limited and the said ordinance was repealed by the Coal Mines (Taking Over of Management) Act, 1973. The equipment, machineries, trucks, dozer, jeep etc. of the plaintiff-respondent were used for the purposes of the said colliery by the plaintiff-respondent in execution of his contractual obligations prior to the said Taking Over of Management in the said colliery and also remained in use for the purposes of the said colliery even, thereafter, and these machineries, equipments, dozer, trucks, jeep etc. were taken over by the custodian under its management as these equipments, machineries and other goods has nexus with the activities of the . said colliery. The said colliery vested in the Central Government by virtue of Section 3 of the Coal Mines (Nationalization) Act. 1973 free from all encumbrances w.e.f 01.05.1973 and as per serial No. 301 of the Schedule of the Coal Mines (Nationalization) Act, 1973 a sum of Rs. 10.83.000/-was determined as compensation for the said colliery which was to be paid to the erstwhile owner of the said colliery subject to the provisions contained in the said Nationalization Act, 1973. There is no documentary evidence on the record to establish the fact that as per the terms of the contract the plaintiff-respondent has made construction of a structure for housing of his employees and storage of his materials inside the colliery at the cost of Rs. 60.000/-The claim of damages for illegal use and occupation of the dozer, trucks and jeep w.e.f. 18.09.1973 to 08.09.1974 vide Ext. 5/F and from 09.09.1974 to 30.06.1976 as per Schedule C and D of the plant-respectively vide Ext. 5/G as well as damages for illegal use of the machineries and equipments etc. as per Schedule F of the plaint vide Ext. 5/H are not at all tenable in view of the fact that as per the mandate contained in Section 3 read with definition of 'mine' contained therein has vested with the Central Government w.e.f. 01.05.1973. The claim of damages as per the award in the two arbitration proceedings contained in Schedule H and H/I of the plaint has no co-relation with this case as it is a matter between the plaintiff-respondent and defendant-

respondent No. 4 Suman Construction as well as defendant-respondent Nos. 5 and 6. The claim of the price of the trucks, dozer, jeep, machineries and equipments as per Schedule A of the plaint is equally not tenable against the defendant-appellant and defendant-respondent Nos. 2 and 3 as they have vested in the Central Government free from all encumbrances, A sum of Rs. 1568.16 paise being the arrears of the amount of bill vide Ext. 5 is equally untenable on the said ground.

16. The contention of the learned counsel for the plaintiff-respondent that the aforesaid machineries, equipments, goods etc. were the properties of the plaintiff-respondent brought in the colliery for the execution of the contractual obligation regarding removal of the overburden on the terms and conditions as contained in the contract and these are not the assets of the Karanpura Dewarkhand Colliery and thus it can never vest in the Central Government as per the provisions of Nationalization Act, 1973 is not tenable in view of the definition of the mine contained in Section 2(h) read with Section 3 of the Nationalization Act. 'Mine' has been defined in Section 2(h) of the Nationalization Act, 1973 and the relevant part of the same as follows:

2(h) 'mine' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried out on, and includes-

(iv) All lands, buildings, works, adits, levels, planes, machinery and equipments, instruments, stores, vehicles, railways, tramways and sidings, or adjacent to, a mine and used for the purpose of mine;

Section 3 of the Nationalization Act, 1973 is equally relevant in this connection which runs thus:

3. Acquisition, of rights of owners in respect of coal mines.-(1) On the appointed day, the right, title and interest of the owner relation to the coal mines specified in the Schedule shall stand transferred to, and shall vest absolutely in, the Central Government free from all encumbrances.

In the case of *Bharat Coking Coal Limited v. Madanlal Agrawal* (supra). It has been observed by the Apex Court that all properties or assets which fall within the definition of 'mine' in Section 2(h) and which are used for over a period of time not temporarily as necessary for appropriate functioning of the mine irrespective of whether or not belonging to owner of the mine would vest in the Central Government by virtue of Section 3 of the Nationalization Act, 1973. It has further been observed that though lands and buildings solely used for the purpose of office and residence of the officer and staff of the mine did not belong to the owner of the mine but belonged to the Director of a owner company and right, title interest therein has vested in the Central Government. The Apex Court has thus observed:

'The two keywords for the purposes of interpreting Section 3 are 'mine' and 'owner'. The definition of 'mine' in Section 2(h) is designed to cover at least two different kinds of property; (i) properties which belonged to the mine and (ii) properties which are used by the mine for a proper functioning of the mine. The first category of properties would be properties which are of the ownership of the mining company. The second category of properties need not necessarily be of the ownership of the mining company. These could also be properties which are leased by the Mining Company or in possession of the Mining Company and used by it.'

It has further been observed that:

'Regarding those properties which are not of the ownership of the Coal Mine, it is clear from the definition of 'mine' that only properties which are required for a proper functioning of the mine and which are covered by the definition would be acquired. Any and every property belonging to any person which happens to be on the surface of the mine or adjacent to does not taken away. Hence only those properties of another person which fall within the definition of a mine and which are necessary for a proper functioning of the mine are to be taken away. The definition itself takes care of this aspect by stipulating wherever necessary that such properties must be used for the purpose of the mine, where the purpose is specified or general.'

In the case of Bharat Coking Coal United v. Shyam Sunder Prasad and others (supra) the Apex Court has thus observed :

'Definition of 'mine' has been noticed by this Court in the decision of Bharat Coking Coal Limited v. Madanlal Agarwal and it has been held on consideration of the definition of 'owner' and 'mine' in the said Coal (Nationalization) Act that even assets in respect of which the mine or the Mining Company may not be the proprietor but which were leased to the mine or which were in the possession of a mine over a period of time, would stand acquired. In the instance case, the machineries, concerned were boilers and from the nature of the user it can be reasonably held that the same were used in connection with the mining operation. Under the extended definition of mine in the Coal Nationalization Act such machine had, therefore vested.'

In the case of Valley Refractories Private Limited and another (supra) it has been observed by the Apex Court that.

'In the view have taken on the definition, in my opinion, the weighbridge would come within the purview of the 'coal mine' and the right. title and interest and the ownership of the weighbridge vests in the central Government by virtue of Section 3.'

In the case of Bharat Coking Coal Limited v. Karam Chand Thapar and Bros. Private Limited and others (supra) it has been observed by the Apex Court that the condition precedent for vesting in the Central Government of the properties must have some nexus with the activities of the Coal Mines. It has been thus observed therein by the Apex Court:

'It is trite that there must be some correlation with the activity of a coal mine-the user must be there for the purposes of the coal mine, be it a weighbridge, be it a Directors bungalow or be it even a Unions office, but it must relate to the affairs of the Coal Mine concerned and not dehorn the same.'

The plaintiff-respondent had questioned the vesting of his equipments, machineries and goods aforesaid in the Civil Rule No. 5495 (W) of 1974 before the

Calcutta High Court prior to the filing of this suit and Ext. C. the order dated 24.11.1978 in which it was observed relying upon the ratio of the case of Valley Refractories Private Limited (supra) that the machineries, equipments, fixtures and other properties used in connection with the colliery on the date of vesting had also vested under the Nationalization Act although such machineries, equipments belonged to some other concerned and not to the owners of the colliery at the relevant point of time. On the touchstone of the ratio settled by the Apex Court in the matter hold that the equipments, machineries, trucks, dozer, jeep etc. of the plaintiff-respondent were used for the purpose of the said colliery and, therefore, these have vested in the Central Government by virtue of Section 3 of the Nationalization Act, 1973 read with the definition of the mine as contained in Section 2(h) therein. Since these have vested in the Central Government free from all encumbrances, therefore, no question does arise of payment of any compensation by the defendant-appellant and defendant-respondent Nos. 2 and 3 respect thereof to the plaintiff-respondent. The learned Court below has failed to construe the definition of mine as contained in Section 2(h) read with Section 3 of the Nationalization Act, 1973 in proper perspective and as such his finding in respect thereof is erroneous. Therefore. Point No, 1 is decided in favour of defendant-appellant and defendant-respondent Nos. 2 and 3 and against the plaintiff-respondent.

POINT NO. 2

17. There is no denying the fact that the plaintiff-respondent had filed Civil Rule No. 5495 (W) of 1974 before the Calcutta High Court against the defendant-appellant and defendant-respondent Nos. 2 and 3 for a declaration that Section 26(3) and Section 26(5) of the Coal Mines (Nationalization) Act, 1973 is ultra vires and void and issuance of a direction commanding them to recall, rescind, cancel and withdraw the letters dated 18.09.1973 (Ext. 4/D) and 30.09.1973 (Ext. 4/E) and to return the said equipment, machineries, trucks, dozer, jeep and other goods etc. to the petitioner i.e. plaintiff-respondent and also for a declaration that he is the owner in respect thereof. The Calcutta High Court vide order dated 24.11.1978 (Ext. C) disposed of the said application following the ratio of the case of Valley Refractories Private Limited and others (supra) and observed that the

machineries, equipments, fixtures and other properties used in connection with the colliery on the date of vesting had also vested under the Nationalization Act, 1973 although such machineries, equipments belonged to some other concerned and not to the owners of the colliery at the relevant time of point. It was also observed that the remedy of the owner of such equipment, machineries etc. is to get compensation by making a claim for such compensation before the authority appointed under the Act. In spite of the said observation of the Calcutta High Court referred to above the plaintiff-respondent by this suit has claimed compensation from defendant-appellant and defendant-respondent Nos. 2 and 3 Section 11 of the Code of Civil Procedure mandates that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or/between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or a suit in which such issue has been subsequently raised, and has been heard and finally decided by said Court. in the case of Ashok Kumar Srivastava (supra) it has been observed by the Apex Court which runs thus :

'It is well nigh settled that a decision on a issue raised in a writ petition under Article 226 or Article 32 of the Constitution would also operate as resjudicata between the same parties and subsequent judlcate proceedings. The only exception is that the rule of res Judicata would not operate to the detriment or impairment of a fundamental right. A Constitution Bench of this Court has considered the applicability of rule of res judicata in writ proceedings under Article 32 of the Constitution in Daryao and Ors. v. State of U.P. and Ors., 1962 (1) SCR 574 and it was held that the basis on which the rule rests is founded on consideration of public policy and it is in the interest of public at large that a finality should attach to the binding decision pronounced by a Court of competent jurisdiction and it is also in the public interest that individuals should not be vexed twice over in the same kind of litigation.' It has further been observed that:

'The principles of resjudicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be

binding at the subsequent stage of that proceeding.'

The matter in issue in the said writ petition as well as in this suit was directly and substantially was same and similar between the same parties litigating under the same title and the matter has been finally decided by the Calcutta High Court in Civil Rule No. 5495 (W) of 1974 videt is order dated 24.11.1978 in which it has been held that the remedy of the plaintiff-respondent is to get compensation by making a claim for such compensation before the authority appointed under the Coal Mines (Nationalization) Act, 1973 .and there is further observation that the equipments. machineries and goods etc. of the plaintiff-respondent has vested in the Central Government free from all encumbrances by virtue of Section 3 of the Nationalization Act. Therefore, the remedy of the plaintiff-respondent in the subsequent suit is barred by principle of res judicata. The ratios of the case of Madhvi Amma Bhawani Amma and others (supra) and Ajmer Central Co-operative Bank Limited Ajmer through the Managing Director (supra) are of no help to the plaintiff-respondent in the facts and circumstances of the case at hand. The facts of the aforesaid cases relied upon by the plaintiff-respondent are quite dissimilar to the facts of the present case and in that view of the matter the ratio of the Apex Court arrived at in those cases have no application to the facts of the case at hand. The doctrine of res Judicata or constructive res judicata predominantly is a principle of equity, good conscience and Justice and it would neither be equitable nor fair nor in accordance with the principle of natural justice that the issue concluded earlier ought to be permitted to be raised later in a different proceeding.. therefore, hold that the suit of the plaintiff-respondent is barred by the principle of res Judicata. The learned trial Court in para 18 of the impugned judgment has held that the suit of the plaintiff-respondent cannot be said to be barred by the principle of res Judicata and for coming to the said finding has placed reliance upon the ratio of the cases reported at AIR (sic) SC 2355. AIR (sic) Pat 247. AIR 1980 SC 1201 and AIR 1979 SC 195 and he has referred some other case laws also. have gone through the ratio in the aforesaid cases which have no application to the facts of this case. Thus the finding of the learned Court below of the non-applicability of the principle of resjudicata in this case is erroneous. In view of the order dated 24.11,1978 passed in Civil Rule No. 5495 (W) of 1974 by the Calcutta High Courtn the facts and circumstances of this case

shall operate as resjudicata and the suit of the plaintiff-respondent is thus barred by the principle of resjudicata. This points, therefore, decided in favour of defendant-appellant and defendant-respondent Nos. 2 and 3 and against the plaintiff-respondent.

POINT NO. 3.

18. The Coal Mines (Nationalization) Act. 1973 (herein after referred to as the Act) has provided a scheme for the purpose of disbursing the amount payable to the owner of the colliery and also in respect of the claim of every person against the owner of the Coal Mine. For that purposes Commissioner of Payments have been appointed under Section 17 of the said Act and the Central Government shall within 30 clays from the specified date pay in cash to the Commissioner for Payment to the owner of a Coal Mine an amount equal to the amount specified against the Coal Mine in the Schedule of the said Act as well as for payment to every person having a claim against the owner of the coal mine out of the said scheduled amount. Such owner of the coal mine and every person against the claim of the Coal Mine shall prefer such claim before the Commissioner of Payments within 30 days from the specified date and the Commissioner of payments as per the conditions contained under Section 23 of the said Act shall adjudicate their claim for payment. Any person aggrieved by the order of the Commissioner of Payment may prefer an appeal within a period of 60 days from the date of the disposal of the said claim to the Principal Civil Court of original jurisdiction within the local limits of whose jurisdiction the Coal Mine is situated. Section 26 of the said Act provides that if out of the money paid to the Commissioner of Claims in relation to a Coal Mine specified in the schemie, there is balance left after meeting the liabilities of all secured and unsecured creditors, the Commissioner shall disburse such balance to the owner of such coal mine to the group of coal mines- Sub-clause (5) of Section 26s relevant which runs thus :

(5) Where any machinery, equipment. or other property in a Coal Mine has vested in the Central Government or a Government company under this Act, but such machinery, equipment or other property does not belong to the owner of such coal mine, the amount specified in the fifth column of the Schedule against such coal

mine shall, on a reference made to it by the Commissioner, be apportioned by the Court between the owner of such coal mine and the owner of such machinery, equipment or other property having due regard to the value of such machinery, equipment or other property on the appointed day.'

Here in this case the machineries, equipments, trucks dozer and jeep etc. of the plaintiff-respondent do not belong to the owner of the said colliery but these equipments, machinery and goods etc. aforesaid belonging to the plaintiff-respondent were used for the purpose of the mine and as such it has vested in the Central Government by virtue of Section 3 of the said Act. Therefore, the remedy of the plaintiff-respondent lies in respect thereof before the Commissioner of Payments who shall make a reference on the basis of the said claim by the owner of the aforesaid machinery and equipments and other property aforesaid to the Court for apportionment of the amount of compensation as per the schedule of this Act between the owner of such coal mine and the owner of such machineries, equipments and other properties having due regard to the value of such machinery, equipment or other property on the appointed day. Here in this case the plaintiff-respondent has preferred a claim before the Commissioner of Payments which was partly allowed. The evidence of PW 5 in para 21 and PW 7 in para 21 is referred to. However, PW 7 in para 21 has deposed that the said claim filed before the Commissioner of Payments was in respect of the amount of bills which were due against the erstwhile owners in respect of the earth work and labour work. He has further deposed that he had orally discussed with the Commissioner of Payment regarding the machineries, equipments and other properties which were seized by the custodian and the Commissioner of Payments had advised him to move the matter before the Court. There is nothing on the record to substantiate the fact regarding the said advice rendered by the Commissioner of Payments and thus the evidence of PW 7 in respect thereof lacks credence. It is equally pertinent to refer here the order dated 24.11.1978 (Ext. C) passed in Civil Rule No. 5495 (W) of 1974 of the Calcutta High Court in which it has been categorically stated that the remedy of the owners of such equipments, machineries, etc is to get compensation by making a claim for such compensation before the authority appointed under the Act. It is needless to say that the compensation whatsoever payable to the owner of the equipments,

machineries and other properties used for the purpose of the said colliery on their vesting shall be paid out of the amount of compensation shown in the schedule against the said colliery on the reference being made by the Commissioner of Payments in respect thereof. Since the, aforesaid equipments and other properties etc. have vested in the Central Government free from all encumbrances and for which compensation has been determined as per the Schedule of the said Act and in this view of the matter the defendant-appellant or defendant-respondent Nos. 2 and 3 cannot be saddled with the liability for payment of the compensation as claimed by the plaintiff-respondent. The plaintiff-respondent has his remedy in the suit only against the erstwhile owner of the said colliery i.e. defendant-respondent No. 7. Surprisingly enough the plaintiff-respondent had sought the relief in respect of his claim against the defendant-appellant and defendant respondent No. 3 i.e. the Principal defendants and he has sought no relief against defendant-respondent No. 7 i.e. the erstwhile owner of the said colliery who had got the payment of the compensation amount in accordance with the provisions of this Act from the Commissioner of Payment out of the compensation amount shown in column 5 of the Schedule of the Act. Therefore, in the facts and circumstances of the case and as per the scheme under the said Act the plaintiff-respondent is not at all entitled to claim compensation from the defendant-appellant or defendant-respondent Nos. 2 and 3 in the existence of the special forum for redressal of his claim. This point is also decided in favour of the defendant-appellant and defendant-respondent Nos. 2 and 3 and against the plaintiff-respondent.

19. The learned Court below did not properly construe the provisions of the said Act in proper perspective and has committed a manifest error in decreeing the suit as per the impugned Judgment. Therefore, the impugned judgment suffers with illegality and it cannot be sustained.

20. There is merit in the appeal and it succeeds. The impugned judgment and decree of the learned Court below are hereby set aside. The appeal is allowed with costs.