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Central Coalfields Limited Vs. State of Bihar and anr.

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Court : Jharkhand

Decided On : Dec-08-2003

Reported in : 2004(1)BLJR368

Judge : P.K. Balasubramanyan, C.J. and; Tapen Sen, J.

Acts : Forest (Conservation) Act, 1980 - Sections 2; Coal Bearing Areas (Acquisition and Development) Act, 1957 - Sections 10 and 11

Appeal No. : CWJC No. 357 of 1994(R)

Appellant : Central Coalfields Limited

Respondent : State of Bihar and anr.

Advocate for Def. : G.A.

Advocate for Pet/Ap. : Anoop Kumar Mehta and; Indrajit Sinha, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

1. Heard.

2. This writ petition is filed by the Central Coalfields Limited for quashing a communication, Annexure-1, issued to it by the Regional Chief Conservator of

Forest bringing to the notice of the petitioner Company about the need for prior permission of the Central Government under the Forest (Conservation) Act, 1980, before taking up any non-forest activity in forest areas covered by the Forest (Conservation) Act, 1980. The letter also called upon the petitioner-Company to comply with the requirements of the Forest (Conservation) Act, 1980. This communication is sought to be challenged on the ground that the lands held by the petitioner-Company were lands acquired under the Coal Bearing Areas (Acquisition and Development) Act, 1957 and in view of the fact that ownership over these lands have vested in the Central Government, no prior permission as contemplated by Section 2 of the Forest (Conservation) Act, 1980 was needed for carrying on mining operations.

3. According to counsel for the petitioner, since the land had been specifically acquired for mining purposes and it has vested in the Central Government, there was no need for getting any sanction under the Forest (Conservation) Act, 1980. The further argument is that once the land was acquired under the Coal Bearing Areas (Acquisition and Development) Act, 1957, earmarking it for the purpose of mining operation, the land looses its character as a forest, even if it was originally a forest, and in view of this, no prior permission as contemplated under Section 2 of the Forest (Conservation) Act, 1980, was needed.

4. We were taken through the provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957. What we find therefore, is that the lands could be acquired, whether it be forest or not under that Act and once the land was acquired, it vested in the Central Government under Section 10 of that Act. Section 10 also provided that the effect of the vesting was that, on and from the date of such vesting, the Central Government shall be deemed to have become the lessee of the State Government as if a mining lease under the Mineral Concession Rules had been granted by the State Government to the Central Government. It was under Section 11 of the said Act that the rights over the lands were made over to the petitioner, a Government Company incorporated for that purpose. A reading of these provisions, in our view, only shows that there is a change in the ownership and the ownership passed to the Central Government subject to the fiction created by Section 10 of the Act, giving a right to the State

Government to act as a lessor of the Central Government, as if a mining lease under the Mineral Concession Rules had been granted by the State Government to the Central Government. But this Act does not provide for any permission for interfering with the nature of the land or the character of the land, though the intention behind the acquisition is for carrying on mining operations. It cannot also said to be having any impact on any other laws, especially a subsequent law enacted with the object of preserving the environment. Under the Forest (Conservation) Act, 1980, the prior approval of the Central Government is required for any non-forest activity within the area of any forest. It is now settled that mining activity in a forest area is a non-forest activity and it also comes within the purview of Section 2 of the Conservation Act, 1980. There is nothing in the Conservation Act or in the Coal Bearing Areas (Acquisition and Development) Act, 1957, which would justify our holding that once a land is acquired under the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Forest (Conservation) Act, 1980 has to be kept out. In fact, the object of the Forest (Conservation) Act, 1980 has been set out by the Supreme Court in T.N. Godavarman Thirumulkpad v. Union of India and Ors., AIR 1997 SC 1228. In paragraph 5 of the that judgment, the Supreme Court has held that the said Act would apply irrespective of the ownership over the land. The further directions issued in paragraph 5 of that judgment also indicate that any one, whether it be the Government or a Company or a private owner, who seeks to use forest land for mining purposes, a non-forest activity, it or he has to have the prior approval of the Central Government. Another direction was issued to the effect that any non-forest activity within any forest in any State in the country must cease forthwith if it was being done without the prior approval of the Central Government. Mining activity has been specifically referred to in the said direction and it is said that the same is also prohibited by the Forest (Conservation) Act, 1980, and prior approval of the Central Government under that Act is a must.

5. Thus it is not possible to accept the argument of the learned counsel for the petitioner that once the forest land is acquired under the Coal Bearing Areas (Acquisition and Development) Act, 1957, the same can be used for the mining purposes without prior approval of the Central Government in terms of Section 2 of the Forest (Conservation) Act, 1980. By virtue of the vesting under Section 11 of

the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Petitioner-Company can at best be deemed to be the owner of the land thus acquired, subject to the fiction in Section 10 of the Act. Since for any owner, whether it be an individual, a Company, a Corporation or a Government Company, prior approval is necessary under Section 2 of the Forest (Conservation) Act, 1980, if a forest land is to be used for a non-forest purpose the vesting cannot affect that position. The object of the Forest (Conservation) Act has been discussed in a number of decisions of the Supreme Court and it is not necessary to reiterate those decisions. Considering the circumstances and the object which is sought to be achieved by the Forest (Conservation) Act, 1980, it will not be permissible to hold that a land acquired under the Coal Bearing Areas (Acquisition and Development) Act, 1957, should be kept out of the purview of the Forest (Conservation) Act, 1980. We must also remember in this context that the maintenance of the environment and the ecological balance, is the obligation of the State Government and the Central Government and that obligation would tend to be defeated if the argument raised on behalf of the petitioner is accepted. On the facts of this case, it is seen that the Regional Chief Conservator of Forest has given a notice to the petitioner-company to comply with the requirements of the Forest (Conservation) Act. We see nothing illegal or improper in that communication issued by the Regional Chief Conservator of Forest. It is for the Petitioner-Company to comply with the requirements of the Forest (Conservator) Act, 1980. There is no reason to accede to the prayer to quash the communication, Annexure-1, issued by the Regional Chief Conservator of Forest. Thus we find no merit in this writ petition.

6. The writ petition is dismissed.

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