

Kalyani Banerjee and ors. Vs. the State of Bihar and ors.

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Overruled by : [Hindustan Steel Limited, Rourkela Vs. Smt. Kalyani Banerjee and Ors](#)

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Court : Patna

Decided On : Sep-17-1971

Reported in : AIR1972Pat446

Judge : U.N. Sinha, C.J. and K.B.N. Singh, J.

Acts : Mining Leases (Modification of Terms) Rules, 1956 - Rule 6; Bihar Land Reforms Act, 1950 - Section 10

Appeal No. : Civil Writ Jur. Case No. 740 of 1968

Appellant : Kalyani Banerjee and ors.

Respondent : The State of Bihar and ors.

Advocate for Pet/Ap. : Balbhadra Prasad Singh, Tarini Prasad and Sita Sharan Singh, Advs.

Judgement :

U. N. Sinha, C.J.

1. This application under Article 226 of the Constitution of India has been filed by three petitioners, praying that two leases granted by the State of Bihar, respondent No. 1, to Messrs. Bharat Marble Company, a partnership firm, and Messrs.

Hindustan Steel Limited, respondents Nos. 4 and 5 respectively, be quashed and cancelled. Copies of the leases have been given as Annexures 6 and 7, dated the 12th May, 1967 and the 17th October, 1966 respectively. The further prayer is that the said respondents be enjoined to desist from interfering with the possession of the petitioners with respect to certain properties comprised within a lease, dated the 11th July, 1919, a copy of which has been given as Annexure 1. It has also been prayed, that, if necessary, the petitioners be restored into possession of each and several portion of the property mentioned in the said leases. A counter-affidavit has been filed on behalf of the State of Bihar, respondent No. 1, and a counter-affidavit and several supplementary statements have been filed on behalf of Messrs. Hindustan Steel Limited, respondent No. 5. Respondent No. 4, Messrs. Bharat Marble Company, has appeared through counsel, but has not filed any rejoinder in writing. The substance of the case of the petitioners is as follows: It is stated that by a registered document, dated the 11th July, 1919 (Annexure 1), Amardayal Singh, the then proprietor of Ladi Estate had granted a mining lease to Sri Pran Kristo Chatterjee in respect of certain minerals, including iron Ore in villages Adar and Gore, pertaining to his estate, bearing Touzi No. 130, Survey No. 143 and Touzi No. 161, Survey No. 91 respectively of the Collectorate of Palamau. This was a perpetual mokrari settlement. The mining rights had been given with respect to an area of about 2227 acres of land in village Adar and an area of 1303 acres of land in village Gore. By a registered deed of assignment dated the 13th March, 1937 the heirs of the original lessee, assigned and transferred their interest to one Vyomkesh Mukherjee. A copy of this document has been given as Annexure 2. It is said that the said Sri Mukherjee had exercised his rights under the deed of assignment and had raised iron ores on the terms and conditions of the original lease dated the 11th July, 1919, Until he died in 1949, leaving three daughters as his only heirs, who are the three petitioners. It is said that the petitioners had continued in possession and enjoyment of the leasehold property until the estate and the proprietary interest of the then proprietor had vested in the State of Bihar under the provisions of the Bihar Land Reforms Act, 1950. It is alleged that due to the vesting of the estate, the petitioners came to hold a statutory lease from the date of vesting, on the same terms and conditions as set forth in the original lease of 1919. It is said that in exercise of powers conferred

under Rule 6 of the Mining Leases (Modification of Terms) Rule, 1956, the Controller of Mining Leases, respondent No. 2, initiated a case in 1959 for the modification of the terms of the lease of the year 1919 and ultimately ordered that the said lease was modified and would terminate on 20th September, 1961. A copy of the order dated the 28th September, 1959 has been given as Annexure 3. This order is challenged as ultra vires, ineffective and null and void. It is, then, alleged that the State of Bihar, ignoring the right, title and interest of the petitioners over the properties mentioned in the 1919 lease, inducted respondents Nos. 4 and 5 as lessees over portions of the original lease-hold property. These two leases, Annexures 6 and 7 respectively, are also said to be ineffective and void. It is alleged that the petitioners had protested against the action of the State of Bihar and of respondents Nos. 4 and 5, but without any result. Under these circumstances, this writ application has been filed with the prayers mentioned above.

2. In the counter-affidavit filed on behalf of the State of Bihar, respondent No. 1, no clear-cut case has been made out in rebuttal. The counter-affidavit consists of five paragraphs only, sworn by the District Mining Officer and the relevant paragraphs are paragraphs 2, 3 and 4, which are quoted below:

"2. That the application is not maintainable in law and in fact and is fit to be dismissed.

3. That the petitioner has paid no rents and royalty from the date of vesting to the State of Bihar.

4. That the petitioner is not entitled to any relief."

No other document has been filed on behalf of the State, although the brief of the case runs to 194 pages. [It may be mentioned here that the vesting of the estate in question, under the Bihar Land Reforms Act, 1950, had taken place in January, 1955.

3. Then comes two counter-affidavits filed on behalf of respondent No.

5. The contentions raised in the first counter-affidavit may be divided into two parts. In the first part it is stated that the document given by the petitioners as Annexure 1 created a tenure-holder's interest in favour of the grantee and as at the time of the commencement of the Bihar Land Reforms Act, no mines were in operation, the petitioners did not hold any statutory lease as contended by them. With respect to the modification of the transaction of 1919, it is stated that the modification was made on the basis of a mining lease and even on that assumption, the order of the Controller was legal and valid. It is stated that even if the petitioners were in the position of statutory lessees under Section 10 of the Bihar Land Reforms Act, the Controller had full jurisdiction to modify the lease of 1919. Therefore, it is contended that the State of Bihar had full right to execute the lease in favour of respondent No. 5 in 1966 (Annexure 7). It is stated, that, on the basis of that lease, respondent No. 5 had come in possession of the leasehold property and was working therein. The second part of the contentions raised is contained in one paragraph only, namely, paragraph, 20, which is to the following effect:

"That the petition is otherwise fit to be rejected. I further say that neither Kumar Amardeyal Singh nor his subsequent transferees had any legal right to create any mining lease or transfer subsoil rights in respect of the land in question."

It is this part of the case that has been dealt with more elaborately in the second counter-affidavit of this respondent, in view of the reply to the first counter-affidavit filed by the petitioners contending that the plea set out in this paragraph of the first counter-affidavit, cannot be entertained at the instance of this respondent, when the respondent's lessor has recognised the petitioners' status and rights. The substance of the second counter-affidavit filed on behalf of respondent No. 5 is to the following effect. It is stated that Kumar Amardeyal Singh of Ladi Estate or his predecessors-in-interest were only Jagirdars and they had no mineral rights at all in the estate and so they had no right to grant any mining lease. It is contended that the mineral rights and all underground rights in Ladi State were always with the State of Bihar. The assertion made by the petitioners that the State of Bihar had recognised the status and rights of the petitioners is denied as misconceived and a factually incorrect assertion. A reference has been made to a decision of

this Court in the case of Tribeni Prasad Rungta v. State of Bihar, Misc. Judicial Case No. 369 of 1963, D/-23-11-1964, reported in 1965 BLJR 706 = (AIR 1965 Pat 274) advertent specially to paragraph 5 of the counter-affidavit filed by the State of Bihar in that case. [This paragraph has been quoted in full in paragraph 6 of this counter-affidavit.] As a detailed discussion of the miscellaneous judicial case of this Court will have to be made in due course, paragraph 6 of the second counter-affidavit filed on behalf of respondent No. 5 is quoted here in full.

"That in M.J.C. No. 369 of 1963 (Shree Tribeni Prasad Rungta v. The State of Bihar), it was stated as follows in paragraph 5 of the counter-affidavit filed on behalf of the State of Bihar:--

That with regard to the statements of the petitioner in paragraphs 7 and 8 of his petition the true fact is that the mineral right in the said estate covered by the said indenture vested in the State of Bihar on the 14th July, 1951 under the Bihar Land Reforms Act, 1950. Further, the true fact is that the outgoing landlord, Kumar Amardeyal Singh of Ladi Estate in the District of Palamau, who was a Jagirdar, had no mineral right in the said estate. This fact was also decided in Title Suit No. 18 of 1933, instituted on behalf of the State of Bihar against Kumar Brajdeo Narayan Singh, ancestor of the said Kumar Dayal Singh. The said Title Suit was decided on the 15th June, 1951, according to which it was held by Shree Asiq Ali, the learned Subordinate Judge of Palamau, that the mineral right belonged to the State and it was held in favour of the State. This fact will also appear from an undertaking given by the petitioner's father (a copy of which the petitioner has marked as Annexure 'D' of his petition) in which the finding of the said Title Suit No. 18 of 1933 is referred and it is stated that it was decided in favour of the State Government. Therefore, the State Government is entitled to realise the dead rent from the 14th of November, 1951'."

It would be convenient, at this stage, to quote in full this Annexure D filed in the Miscellaneous Judicial Case also, as reference to it has been made by Sri Balbhadra Prasad Singh appearing for the petitioners, without any objection having been raised by the learned Advocate-General appearing for respondent No. 5. As a matter of fact, both the learned counsel have referred to this document

in support of their respective arguments at some stage or other, Annexure D runs thus:

"This agreement is made on the 16th day of April, and one thousand nine hundred and fifty three by me R. B. Madan Gopal Rungta, son of Shri Mangilal Rungta.

Whereas the late R. B. Amardeyal Singh, proprietor of Ladi Estate, granted a mining lease dated 17-7-1919 in favour of Shri P. K. Chatterji.

And

Whereas I have acquired right of a sub-lease through mining sub-lease dated 21-9-1951.

And

Whereas in that capacity I began working the mines at village Goerey, police station Daltonganj, district Palamau and despatched some quantity of iron ore from the mines.

And

Whereas the operation of the mines was stopped by the Deputy Commissioner, Palamau, in assertion of the right that the mines and minerals in Palamau belong to Government.

And

Whereas the Government is examining the instrument of grant or grants or sanad creating the Jagirdari or proprietary right in favour of the Jagirdar of Ladi Estate in order to see what right and interest he had in the minerals underground and whether they differ in any way from the right and interest in underground minerals of the proprietor of village Muter against whom the Government brought a suit being Title Suit No. 18 of 1933 of the Court of Subordinate Judge of Palamau which was decided in their (Government) favour.

And

Whereas pending further examination of mineral rights in Gorey the Government have permitted me to work out the mines and despatch iron ore from there on condition that I execute an agreement of certain terms in their letter No. 174 dated 16th April, 1953.

Now this agreement witnesseth as under:--

(a) That the permission to work the mine and despatch iron ore will not create any interest in my favour and will not amount to waiver on the part of Government to the mining rights and will not in any way prejudice the right and interest of Government in the mines.

(b) That I will deposit royalty on the despatch of iron ores calculated on the basis of rate of royalty for iron ores given in the Mineral Concession Rules, 1949, every three months as security of royalty as that in case Government's right to minerals is finally established after further examination of this matter, there may not be any large accumulation of royalty.

(c) That I will submit the area with plot No. and boundaries with reference to map before starting work in particular area.

In witness (sic) where I have signed this agreement in token of acceptance of the term thereof.

1.

Witness. Attested signature. Yaswant Sahay Verma Pleader, Daltonganj.

Sewandra Sunder Paul, Constituted Attorney of Rai Bahadur Madan Gopal Rungta.

2.

Witness, Attested signature Basudev Prasad Pleader, Daltonganj, 16-4-53 16-4-53 at Daltonganj."

4. It will be necessary, at this Stage, to mention about a rejoinder filed on behalf of the petitioners referring to the miscellaneous judicial case of this Court, mentioned above. It is stated in this rejoinder that in Title Suit No. 18 of 1933, Amardeyal Singh or his successors were not parties and that suit had not dealt with any portion of Ladi Estate. It is said that that suit had been filed by the State of Bihar against Kumar Brajdeo Narain Singh of Chainpur Estate and it is said that this matter had been dealt with by this Court in its judgment passed in the miscellaneous judicial case. A reference has also been made to a decision of the Supreme Court of India, in Civil Appeals Nos. 172-174 of 1963. [This is the case of Bihar Mines Ltd, v. Union of India, reported in AIR 1967 SC 887.] Along with this rejoinder filed by the petitioners, a copy of an order of the Government of Bihar of November 1968 has been given as Annexure 1 of this particular rejoinder, where a reference to this decision of their Lordships of the Supreme Court is to be found. [This matter will be considered later on when the decision of this Court in Miscellaneous Judicial Case No. 369 of 1963 and the decision of their Lordships of the Supreme Court are dealt with more fully.] It has further been mentioned in this rejoinder that prior to the vesting of the Ladi Estate under the Bihar Land Reforms Act, the ex-proprietor had been granting mining leases in this estate and the Government had never interfered with this right.

5. After this rejoinder had been filed by the petitioners in 1968, there was a gap for about two years and then from 1970 onwards, four supplementary affidavits have come on the record on behalf of respondent No. 5. Two of them were filed when the hearing of the case had actually started. In the first supplementary counter-affidavit filed in March, 1970, respondent No. 5 has given the facts and circumstances under which the lease (Annexure 7) had been granted by the State to this respondent, after the State Government had advertised for the grant of mining lease in respect of Gore area in the Official Gazette, dated the 11th December, 1961. In this supplementary counter-affidavit it has been mentioned that the deponent had discussions with the District Mining Officer, State of Bihar, at Daltonganj, when he learnt that petitioner No. 1 of this writ case or her representative had filed an application stating that she has or had no concern with the area supposed to have been leased out to her and that it is essential that the State of Bihar be directed to produce this application. [This matter may be clarified

once and for all at this stage. Sri Lakshman Saran Sinha appearing for the State of Bihar has stated that no such document is available and when the District Mining Officer is himself respondent No. 3, it must be taken that no such application had been filed and the statements made on behalf of respondent No. 5 are unworthy of credence.] In the second supplementary counter-affidavit filed in July 1970 some further facts have been stated on behalf of respondent No. 5 to show that the lease in favour of this respondent (Annexure 7) had become effective. With an affidavit filed on behalf of this respondent in August 1971, a copy of the Khewat of village Gore has been given as Annexure A, prepared under Section S3 of the Chotanagpore Tenancy Act, 1908. [In this Khewat Amardeyal Singh has been shown as the "interested person". "Qaiser-i-Hind" has been shown as the party under whom he holds. The nature of the right has been described as "Davami Bando bast". This right is mentioned as non-resumable.]

In the last supplementary counter-affidavit filed on behalf of respondent No. 5, on the same day, in 'August 1971, another document has been appended as Annexure P, but no one has relied upon this document at any stage for any particular purpose.

6. In view of the fact that in the lease of 1919 (Annexure 1) a reference has been made to the fact that the name of Amardeyal Singh stands recorded in the Land Registration Office, in the appropriate column, a supplementary affidavit was filed on behalf of the petitioners, in the course of the hearing of the case, appending therewith two copies of certain entries made in Register D, Part I, combined with Register A, of villages Adar and Gore [Annexures 8 and 9]. These entries show Amardeyal Singh, then his son Ambica Prasad Singh and then the State of Bihar as the successive proprietors of villages Adar and Gore, appertaining to Ladi Estate.

7. The various contentions raised by the learned counsel for the parties may be narrated at one place. It is argued on behalf of the petitioners that the State of Bihar had no power to grant the mining leases incorporated in Annexures 6 and 7, to respondents Nos. 4 and 5 respectively in village Gore, from the property included in the lease of the 11th July, 1919, of which the present lessees are the

three petitioners, by way of assignment to their father. It is argued that the modification of the 1919 lease made by the Controller on the 28th September, 1959 (Annexure 3) was wholly without jurisdiction and that after the expiry of the sub-lease given to M. G. Rungta, sometime in September 1961, the petitioners are in possession of the lessees' interest and respondents Nos. 4 and 5 cannot disturb their possession by virtue of alleged leases in their favour. It is urged that admittedly respondent No. 5 has disturbed the petitioners possession, as is mentioned in paragraph 12 of their first counter-affidavit. It is then argued that on the vesting of Ladi Estate in the State of Bihar, under the Bihar Land Reforms Act, in 1955, the lease granted in 1919 (Annexure 1) became a statutory lease in favour of the petitioners, under Section 10 of the Land Reforms Act, 1950, and the alleged leases in favour of respondents Nos. 4 and 5 were wholly void and ineffective. It is argued that Title Suit No. 18 of 1933 had no connection with the Ladi Estate, as has already been held by this Court in Miscellaneous Judicial Case No. 369 of 1963, mentioned above. It is difficult to appreciate what the case of respondent No. 1, the State of Bihar is. I have already mentioned the stand taken by this respondent in its counter-affidavit and the learned counsel appearing for this respondent has taken the line of least resistance by adopting the contentions raised on behalf of respondent No. 5 in its counter-affidavits and the supplementary papers. The learned counsel for respondent No. 4 had nothing to urge, except by saying that he adopts the contentions raised on behalf of the State of Bihar and the other lessee, namely, respondent No. 5. Therefore, it is necessary to mention the arguments advanced on behalf of respondent No. 5 by the learned Advocate-General in some detail. The first argument raised is, that, the petitioners were only tenure-holders and as they had not actually been working any mine at the time when the vesting of Ladi Estate had taken place, no statutory lease had followed in the petitioners' favour. It is then argued, that, even if the modification of the lease made by the Controller in 1959 was on the basis that the petitioners' interest was that of a lessee of a mining lease, the modification was legal, valid and binding and the lease came to an end on the 20th September, 1961. Then, it is argued, that, as this respondent came in possession by virtue of the lease granted in its favour, in 1966, the petitioners cannot obtain any relief by way of a writ, whatever relief they may obtain in any other appropriate proceeding. This

argument is supplemented by the contention that T. P. Rungta has clearly accepted the position that this respondent is carrying on mining operation in village Gore. The learned Advocate-General has further urged that the petitioners had approached this Court in this case after a considerable delay, as their lease had been affected by the order of the Controller, made as early as in 1959, and, that, in any event, the petitioners cannot ask for any relief against respondent No. 5 in this writ case, so many years after the lease made in its favour. The last and the main contention raised on behalf of respondent No. 5 is, that Amardeyal Singh had no power to grant a lease of the underground mineral rights and the petitioners have not produced any material on record to show that Amardeyal Singh had any such right. Reference has been made in this connection to the Khewat of village Gore, to the Gazetteer of Palamau and to the Final Report of the Survey and Settlement Operations in the District of Palamau, compiled by T. W. Bridge, I.C.S., Settlement Officer, Chotanagpore.

8. Prima facie, the contentions raised on behalf of the petitioners seem to be valid, based as they are on the perpetual lease of some mineral rights given by Amardeyal Singh on the 11th July, 1919, unless this lease has validly come to an end on the 20th September, 1961, under the orders of the Controller, dated the 28th September, 1959 (Annexure 3). On the question of this termination, the decision given by this Court in Miscellaneous Judicial Case No. 369 of 1963 on the 23rd November, 1964, will have to be dealt with in extenso and in this context the later decision of the Supreme Court, in AIR 1967 SC 887 will have to be considered. The argument advanced by the learned Advocate-General, that, Amardeyal Singh had no proprietary rights in the underground minerals in Ladi Estate must also be considered.

9. The petitioner of Miscellaneous judicial Case No. 369 of 1963 was one T. P. Rungta, son of Madan Gopal Rungta, deceased. He had alleged that Amardeyal Singh, proprietor of Ladi Estate, a Jagirdar, had granted a mokarri mining lease in respect of iron ore in villages Adar and Gore to one P. K. Chatterji by a registered instrument, dated the 11th July, 1919. The lessee had assigned his interest to one Mukharji, on whose death, his three daughters had granted a sub-lease to Madan Gopal Rungta, for ten years, under a registered instrument, dated the 21st

September, 1951. [Madan Gopal Rungta had died on the 15th October, 1962, and he had been succeeded by the petitioner T. P. Rungta.] It was alleged that on the 30th November, 1962, the T. P. Rungta's authorised agent had received a notice under Section 7 of the Bihar and Orissa Public Demands Recovery Act, demanding a sum of Rs. 66,317.93 paise. A certificate proceeding had been instituted for recovery of money on account of dead rent for the period from 14th November, 1951 to 20th September, 1961. Having unsuccessfully disclaimed his liability, under Section 9 of the Public Demands Recovery Act, T. P. Rungta filed the writ case under Articles 226 and 227 of the Constitution of India. Some more facts were alleged in that case to the following effect. It was said that, while Madan Gopal Rungta was working the mines under the sub-lease, he was prevented from doing so by the Deputy Commissioner of Palamau in Decemoer, 1952 on the ground that the proprietor of Ladi Estate had no right to grant any mining lease to P. K. Chatterji. In March. 1953 an arrangement was entered into between the State Government and Madan Gopal Rungta for the working of the mine, on the latter's executing an agreement in writing that he would work the mines and despatch iron ore without any prejudice to the Government's rights over the mines and subject to the result of the examination of Madan Gopal Rungta's claim under the sub-lease. Such an agreement was executed by Madan Gopal Rungta on the 16th April, 1953 and he continued his mining operation. [This was Annexure D of the Miscellaneous Judicial Case.] Thereafter, the Ladi Estate had vested in the State of Bihar in January, 1955 under the Bihar Land Reforms Act. While this state of affairs had continued, the Controller of Mining Leases for India, by an order dated the 28th September, 1959, made under Rule 6 of the Mining Leases (Modification of Terms) Rules, 1956, modified the terms and conditions of the sub-lease, dated the 21st September, 1951, granted to Madan Gopal Rungta, ordering, amongst other matters, that a dead rent shall be payable at the rate of Rs. 5 per acre per annum for iron ore only. This was the basis for the claim in the certificate proceeding under the Public Demands Recovery Act. The case had been contested by the State of Bihar, according to whom, royalty of Rs. 17184 was due from 14th November, 1951 to 30th June, 1954 and dead rent of Rs. 4219.64 paise was due from 1st July, 1954 to 27th September, 1959 and the modified dead rent from 28th September, 1959 to 20th September, 1961. After considering the

questions arising in the case, a Division Bench of this Court held, that, the Controller had no jurisdiction to make any order of modification in the conditions of the sub-lease and that the State of Bihar was claiming dead rent from Madan Gopal Rungta only under the order of the Controller, dated the 28th September, 1959. Another aspect of the decision may also be noticed. The State of Bihar had contended that a part of the certificate debt was royalty due for despatch of iron ores from 14th November, 1951 to 30th June, 1954. This Court held that the vesting of the estate having taken place in January, 1955, the State became entitled to royalty from the mining lessees, if those leases were not otherwise modified under Section 10 of the Bihar Land Reforms Act, This Court stated thus:

"Prior to that the State was not entitled to such royalty, unless they claimed their mining rights on some other basis. In the present case, the counter-affidavit filed on behalf of the State does not disclose any such thing. Reference has been made in the counter-affidavit to Title Suit No. 18 of 1933 in the Court of the Subordinate Judge of Palamau, in which the Government's underground rights were declared against the proprietor of the estate, but that related not to Ladi Estate but to some other estate."

In the result, the certificate proceeding was quashed by this Court. In order to appreciate the facts of T. P. Rungta's case, Annexure D of that case has been reproduced in full in paragraph 3 above. Whether the earlier conclusion of this Court in this Miscellaneous Judicial case, to the effect, that, the Controller had modified the sub-lease granted to Madan Gopal Rungta in September, 1951 is relevant or not, the position remains the same, if it be taken that the Controller had purported to modify and terminate the original lease, dated the 11th July, 1919. Reference may be made in this context to the decision of their Lordships of the Supreme Court in the case of AIR 1967 SC 887. But, before I deal with the Supreme Court decision more fully, I would like to dispose of the arguments advanced by the learned counsel for the parties in this case, on the counter-affidavit filed by the State of Bihar in Miscellaneous Judicial Case No. 369 of 1963, the main contentions raised in that counter-affidavit may be summarised as follows:

(a) Under the sub-lease granted to Madan Gopal Rungta by the present petitioners, T. P. Rungta, the petitioner of that case, son of M. G. Rungta, was liable to pay all old dues, including the dead rent, to the State Government from the date of vesting of the mineral rights in the State Government under the Bihar Land Reforms Act.

(b) On the terms of the 1919 lease and followed by the order of the Controller in 1959, the rate of dead rent was increased, payable to the State Government.

(c) Amardeyal Singh, who was a Jagirdar, had no mineral right in the Ladi Estate and this fact had been decided in Title Suit No. 18 of 1933, instituted against the ancestor of Amardeyal Singh.

(d) Reference was made to the undertaking given by Madan Gopal Rungta on 16th April, 1953, which was made Annexure D of the counter-affidavit.

So far as Title Suit No. 18 of 1933 is of any relevance, the decision of this Court in the Miscellaneous Judicial Case is clear to the effect, that, that title suit had no connection with the Ladi Estate. The other inference which can be drawn from the contentions raised by the State of Bihar in that Miscellaneous Judicial Case can only be, that, the lease of 1919 and the sublease of 1951 were legally valid transactions. I do not see how any part of these contentions raised by the State of Bihar in the earlier case can support the present contention raised in this case, that, Amardeyal Singh had no right, title and interest in sub-soil minerals and if the order of the Controller passed in 1959 is out of the way, the argument raised by the petitioners under Section 10 of the Bihar Land Reforms Act may be quite valid. In Annexure D of the counter-affidavit filed in that Miscellaneous Judicial Case it was clearly mentioned that the undertaking given by Madan Gopal Rungta was on the Basis that the State Government was examining the title of the proprietor of Ladi Estate in the minerals underground, in view of Title Suit No. 18 of 1933, where it had been held that the proprietor of some other estate (not Ladi Estate) had no right in underground minerals. The Supreme Court's decision has now clarified the legal position about the right of the Controller of Mining Leases beyond any doubt. It has been held by the Supreme Court, in. the case of Bihar Mines Ltd., that, the effect of Section 10 of Bihar Land Reforms Act is not that the

old lease granted before the vesting of any estate continued with the Government substituted as lessor in place of the original lessor, but that a new statutory lease came into existence on the date of vesting. It has been held that the Mining Leases (Modification of Terms) Rules, 1956, provided for modification of leases granted before the 25th October, 1949, and so the terms of a statutory lease under Bihar Land Reforms Act, 1950, can not be modified. Therefore, there is no escape from the conclusion, that, the termination of the 1919 lease effected by the Controller was null and void. It appears from the record that the leases granted to respondents Nos. 4 and 5 of this case had really followed the modification and termination made in 1959, cutting down the life of the 1919 lease and putting an end to it on the 20th September, 1961. This is clear from what has been stated in the first supplementary counter-affidavit filed by respondent No. 5 in March 1970 mentioned above. In paragraph 2 of that supplementary counter-affidavit it is stated that the State Government had advertised for grant of mining lease in respect of Gore area in the Official Gazette on the 11th December, 1961 and the names of the applicants have been mentioned in paragraph 3 thereof. Respondent No. 5 was one of such applicants. It may be mentioned, at this stage, that, in the absence of any counter-affidavit filed on behalf of respondent No. 4, it is not clear as to how a lease (Annexure 6) had come into existence in favour of that respondent in 1967. All that one can get from Annexure 6 is that the lessee had applied to the State Government in accordance with the Mineral Concession Rules, 1960, for a mining lease and this lease had followed, covering an area of 267.89 acres in village Gore. But, the grant of the leases incorporated in Annexures 6 and 7 in favour of respondents Nos. 4 and 5 appear to be inconsistent with the State Government's attitude in 1968. as shown in Annexure 1 of the rejoinder filed by the petitioners in April, 1969. This document was sent by the Government of Bihar in November, 1968, to the Deputy Commissioner of Palamau, Daltonganj, and the relevant portion of the document is quoted below:

"To

The Deputy Commissioner, Palamau, Daltonganj.

Re: His letter No. 23 (a) M dated the 9th February, 1967.

Sub:-- Application of (i) M/s. Ajoy Minerals Co., (ii) M/s. Ashok Trading Agencies, (iii) M/s. Associated Mining Industries (Pvt.) Ltd., (iv) M/s. Bharat Marble Co., (v) M/s. Damodar Valley Mining Industries, (vi) Sri Darsan Singh, (vii) M/s. Laxami Narayan Manmohan Lal, (viii) Sri Rajendra Prasad Agarwala, (ix) Sri Someshwar Prasad and (x) Sri Triveni Prasad Rungta for grant of mining lease for lime-stone and dolomite in village Berma, P.S. Daltonganj in the district of Palamau.

Orders: In view of the judgment of the Supreme Court passed in Civil Appeal Nos. 172-174 of 1963 in Bihar Mines Ltd. v. Union of India and others, M/s. Quamruddin and Sons are alone entitled to remain in possession of the area in question for the period mentioned in the lease deed granted in their favour by the ex-proprietor of Ladi Estate. The area applied for by the aforesaid applicants are, therefore, not available for settlement. The applications are accordingly rejected.

By order of the Governor of Bihar

Sd. C. P. Singh.

Deputy Secretary to Government. The judgment of the Supreme Court, mentioned therein, is the one reported in AIR 1967 SC 887. Clearly, at that stage, the State Government had accepted the position that the ex-proprietor of Ladi Estate was entitled to grant mining lease in village Berma. It may be noticed that respondent No. 4 of this case was one of the applicants mentioned in this document, who failed in his endeavour in 1968, on the basis of the Supreme Court judgment. Upto now no material has been brought on the record to show how the State Government has now come to the conclusion that the proprietor of Ladi Estate had no right to the underground minerals, in order to support the contentions raised by respondent No. 5. The attempt to give the leases in 1966 and 1967 must be taken to be tantamount to an action expelling certain individuals from an interest they claim in immovable property, without any legal justification. I may refer back to the counter-affidavit filed by the State Government, in the instant case, where the main point taken in opposition is that the petitioners have not paid rents and royalty from the date of the vesting of the estate. If the petitioners have not, the appropriate remedy may lie somewhere, but the nonpayment cannot justify the grant of the leases incorporated in Annexures 6 and 7. It is hardly possible to

permit respondent No. 5 to defeat the petitioners by saying merely, that, Amardeyal Singh had no title to the underground minerals in Ladi Estate and that unless the petitioners prove that he had such a right in this case, or elsewhere, the lease granted to it must be taken to be valid by its own force.

10. In order to substantiate his argument, that, Amardeyal Singh or his predecessors were only Jagirdars and had no mineral right in the estate, the learned Advocate-General has referred to the Final Report of the Survey and Settlement Operations in the district of Palamau, by T. W. Bridge, I.C.S., Settlement Officer, Chotanagpore, and our attention was drawn, particularly, to paragraph 109 thereof, where there is some mention about iron furnaces and iron mines. But, this paragraph itself mentions that the Government had never completed the inquiry as to whether the Jagirdars had any interest in the iron mines or not. The learned counsel for the petitioners has, on the other hand, referred to various other paragraphs of this report, including paragraph 113, where some mention has been made to the fact that Jagirdars had been elevated to the superior position of Zamindar and that Government cannot claim any right in minerals lying within the Jagir, The learned counsel has also relied upon the resolution of the Government of Bihar and Orissa in the Revenue Department, dated the 23rd August, 1921, where there is a mention that the Jagirdars had been admitted to the full rights of proprietors of permanently settled estates. In my opinion, on a consideration of the portions of Bridge's report, referred to by the learned counsel for the parties, it will be highly speculative to come to any definite conclusion as to whether the Jagirdars in the district of Palamau had or had not rights in the underground mineral rights within their Jagirs. The proper course to adopt in this writ case is, in my opinion, to proceed on the footing that the apparent state of things represents the real state of things, until the contrary is established in an appropriate proceeding. The apparent state of things is, amongst others, a continuation of the leasehold interest of the petitioners with respect to the minerals mentioned in the 1919 lease. Once the modification, made in 1959 is out of the way, the leasehold interest must be taken to continue. A further prima facie conclusion must also follow from Section 10 of the Bihar Land Reforms Act, as long as it is not established that the proprietors of Ladi Estate had no right in the minerals given in lease in 1919, and the conclusion is that a statutory lease in

favour of the lessee came into existence in January, 1955 on the vesting of Ladi Estate. If it is ever held in a competent proceeding, that, the proprietor of Ladi Estate did not have any right in the minerals given in lease in 1919, the position may be otherwise. In my opinion, it is not at all necessary to give any final decision in this case as to whether Amardeyal Singh had any right, title and interest in the minerals, which he had purported to give in lease in 1919, because the petitioners have sufficient cause of action for obtaining relief in this writ case on the prima facie state of affairs dealt with above. As a matter of fact, on the view taken by the State of Bihar itself, in 1968, with respect to village Berma, as a result of the decision of the Supreme Court, AIR 1967 SC 887, it should have taken a similar Stand with respect to the lease of 1919 in favour of the petitioners, instead of supporting the stand taken by respondent No. 5 in this case. On the stand taken by the State of Bihar in 1968 and on the counter-affidavit filed in this case, no other conclusion is possible, except that the State of Bihar has upto now, accepted the leasehold interest of the petitioners under the 1919 lease.

11. Learned Advocate-General appearing for respondent No. 5 has also referred to the Khewat (Annexure A of the affidavit filed by this party on 10th August, 1971), which mentions that Amardeyal Singh held village Gore under Qaiser-i-Hind, contending that Amardeyal Singh could not have been the owner of the underground mineral rights, until it is established that such a right had been conveyed to him either by a grant or by statute. The learned counsel for the petitioners has, On the other hand, referred to the copy of Register D of village Gore (Annexure 9 of the supplementary affidavit filed by the petitioners on 20th August 1971) and has argued that this document is a copy of the entry in Register A also and this register contains entries of revenue-paying estates and so Amardeyal Singh must have been the proprietor of the underground mineral rights also. He has referred to the case of Lodna Colliery Co. Ltd. v. Bhola Nath Roy, AIR 1964 SC 918, where their Lordships have stated thus:

"Exhibit 6 (a) is certified copy of settlement Khatian No. 611 in respect of village Sripur, relating to Touzi No. 2597, R. S. No. 2416. It describes the interest in the land in suit to be Bajapti (resumed) Lakhraj Pariharpur and others. It mentions five persons including the son of Madhusudhan Roy and the sons of Sitanath Roy,

to be the proprietors in possession of that interest. It also shows the King emperor of India as possessing the entire superior interest. It is thus clear that the possessors of the Bajeapati (resumed) Lakh-raj land in suit held it as proprietors under the King-Emperor of India. They must consequently have the same rights which other proprietors like Zamindars had,"

According to the learned counsel, even if Amardeyal Singh had held under the King-Emperor of India, he could still be the proprietor of the underground mineral rights like zamindars of revenue-paying estates. I do not think that the learned Advocate-General is right in relying on the decision, in the case of *Safar Ali v. Mohesh Lal Chowdhury*, 23 Cal LJ 122 = (AIR 1916 Cal 924) in this case. The placitum of *Safar Ali's* case reads as follows:

"A vendee of immovable property under a registered deed, if required to prove his title, must do so by the production of the deed or lay the foundation for the admission of the secondary evidence with regard to it. No oral evidence of that sale can be adduced under Section 91 of the Evidence Act."

According to the learned Advocate-General, when the petitioners have come to Court claiming the lessees' interest in the minerals contained in the lease of 1919, they must produce the document of title by which Amardeyal Singh's title to such minerals could be established. In my opinion, the question of title of Amardeyal Singh to the underground minerals purported to have been leased out in 1919 is quite foreign to the scope of this writ application and this case ought to be decided on a different footing altogether, as I have already indicated above. The petitioners are not merely attempting to enforce their contractual right under the 1919 lease, but they are raising the issue that the State has no right to interfere with their lease, resulting in their ouster from the property by mere executive action. This was the view expressed by the Supreme Court, in the case of *Mohammad Hanif v. State of Assam*, (1970) 2 SCJ 263.

12. The other subsidiary arguments raised on behalf of respondent No. 5, mentioned in paragraph 7 above, are also of no avail to this respondent. Even if the petitioners had not been actually working the underground minerals mentioned in the 1919 lease, in the area covered by Annexures 6 and 7, their title to the

minerals cannot be defeated only on that ground. So far as the delay is concerned, I do not think that that is of any consequence. If the Controller's order passed in 1959 did not terminate the 1919 lease in 1961, the petitioners can validly object now to the leases given to respondents Nos. 4 and 5 in 1967 and 1966 respectively. In my opinion, the only question which is now to be considered is, what relief is available to the petitioners in this writ case. I have mentioned the prayers made by the petitioners and, in my opinion, the petitioners are entitled to a declaration, that, the leases granted by Annexures 6 and 7 could not have affected the underground mineral rights of the petitioners with respect to the minerals covered by these two documents.

Respondents Nos. 1, 4 and 5, namely, the State of Bihar, Messrs. Bharat Marble Co. and Messrs. Hindustan Steel Limited, respectively, must be restrained by a writ of mandamus from giving effect to the leases incorporated in Annexures 6 and 7. It is made clear, however, that the observations made in this judgment for giving relief to the petitioners will not have any conclusive effect on the question of right, title and interest of Amardeyal Singh and of the lessee or lessees under the 1919 lease with respect to the underground minerals covered by the lease, if such questions are raised by any of the parties to this case in any other appropriate proceeding or litigation, for determination.

13. The writ application is, therefore, allowed, as indicated above, and the petitioners are entitled to their cost, which is assessed at Rs. 300 payable by the State of Bihar, respondent No. 1, for whose attitude taken in this case, a protracted hearing became necessary.

K.B. N. Singh, J.

14. I agree.

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