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BHARAT COKING COAL LTD.

THE STATE OF BIHAR AND ANR.

MAY 13, 1994

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[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

Bihar Land Reforms Act 1950—Sections 10, 11, and 2(m)—Mining lease—On a small portion of the surface land, a bazaar and cinema house set up for benefit of colliery workers—Held, entire area including land on which bazaar and cinema house located would be covered by mining lease and hence deemed to have been leased by State Government by virtue of Section 10(1).

The appellant company had subsisting leases in respect of an area D of 627 bighas of land for a period of 999 years. The surface land had been taken on lease from the tenure holders. Apart from bungalows, labour quarters, pits, quarries, coal depots and other things connected with coal mining operations no part of the surface land was used for agricultural purposes. On a small portion of the land a small bazaar and a cinema house had also been set up.

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A notice under section 4 of the Bihar Land Reforms Act, 1950 was served on the Company asking it to deliver possession of the land on the ground that it had been vested in the State of Bihar. The Trial Court on the company's suit held that the whole estate in dispute had vested in the F State and by virtue of Section 10(1) and 11 of the Act and the Company became the mining lessee under the State of Bihar for the remainder of the terms of the lease of 999 years granted in 1894. The Trial Court decreed the suit and restrained the State of Bihar from interfering with the possession of the Company over the entire land.

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The Single Judge of the High Court in the State's Appeal however, took the view that the cinema and bazaar portions of the land would not get protection of Section 10 read with Section 11 of the Act and modified the Trial Court decree to that extent.

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The company appealed to the Supreme Court by Special Leave.

Allowing the Appeal,

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HELD : 1. The original lease in favour of the plaintiffs is a subsisting lease for extraction of mines and minerals comprised in the entire estate. Merely because in a very small part of it by way of amenities to the employees working at the mines, a portion is reserved by way of bazaar for purchase of daily needs of the employees and for a cinema house, it cannot be said that the subsisting lease is being used for a purpose other than those of mines and minerals. The term "mine" has been defined in Section 2(m) of the Bihar Land Reforms Act. It merely defines what "mine" is. There is no definition of "subsisting lease of mines and minerals". The lease itself was for mining operations during the period of the lease. It does not require that every area must be under actual mining operation. It was not the case of the State that there were no minerals in the area where the shops and cinema hall were there. The lease being a long-term lease of 999 years, it will take its own time for the lessee to work on different portions of the area. The purpose of Section 10 of the Act was to exclude subsisting leases for purposes of mining or minerals. It contemplated that the land should not be used for agricultural purposes or such like purposes to enjoy the benefit of Sections 10 and 11 of the Act. [118-D-E-F-G]

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2. The High Court erred in its interpretation of Section 10 of the Act and in ignoring the full effect of Section 11 of the Act. The trial court was in any case right in including buildings and land which were appertaining to the mines and which were not covered under Sections 9 and 10 of the Act to be covered under Section 11 of the Act. But it is not a true interpretation of Section 10(1) of the Act so long as the area is covered by lease for mining. The estate or tenure comprised in such lease which vests in the State would be deemed to have been leased by the State Government to the holder of lease. Section 11 comes into operation when certain leases do not include the buildings and land as part of the lease. On the facts of the present case the lease is such that everything in the area of the lease vests in the State Government and is deemed to be have been leased by the State Government to the lessee. The lease in the present case is of the entire village for purposes of mining. Therefore, everything comprised in the village on vesting in the State would be deemed to have been leased by the State Government to the lessee. [119-A-B-C-D]

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 840 of 1988.

From the Judgment and Order dated 20.8.87 of the Patna High Court in Appeal from Original Decree No. 32 of 1976

B Altaf Ahmad, Additional Solicitor General R.N. Sachthey, Anip Sachthey and Hemushi Munshi for the Appellant.

R.K. Khanna and R.P. Singh for Respondent No. 1.

C H.L. Agarwal and Irshad Ahmad for the Respondent No. 2.

The Judgment of the Court was delivered by

YOGESHWAR DAYAL, J. The present appeal by M/s. Bharat Coking Coal Limited, a public sector undertaking, is directed against the judgment of the Single Judge of the Patna High Court, Ranchi Bench, Ranchi dated 20th August, 1987 whereby the Single Judge modified the decree passed by the 1st Additional Subordinate Judge, Dhanbad, dated 27th February, 1976 by which the suit filed by the plaintiff (predecessor-in-interest of the appellant herein) was decreed. By the said order the state of Bihar was restrained from interfering with the possession of the appellant from the entire land of Khewat No. 11 of village Kenduadih.

The brief facts are - that M/s. East India Coal Company Limited (hereinafter referred to as 'the Company'), a joint stock Company, had filed the suit, out of which the present appeal has arisen. The Company was carrying on coal mining operations in village Kenduadih in the district of Dhanbad. After the enactment of Coking Coal Mines (Nationalisation) Act, 1972 a Notification was issued by the Central Government by which the right, title and interest of the Company got vested in M/s. Bharat Coking Coal Limited (in short 'BCCL') which is an undertaking under the Central Government with effect from 1st May, 1972. Accordingly BCCL was substituted in place of the erstwhile Company as the plaintiff in the suit.

The Company had taken a mining lease of an area of 627 bighas of land from Brahmottardars Gouri Prasad Singh khawas and others on 14th December, 1891 and was carrying on coal mining operations in the aforesaid area. Later, the Maharaja of Jharia disputed the said rights and

the Company took a fresh mining lease from Maharaja of Jharia on 1st October, 1894. Later on in 1911 the Company got the entire surface land of that village from three tenure holders on the basis of three registered deeds for purposes of extraction of coal etc. The various mining leases were for 999 years. The Company was recorded of those lands as Khewatdars in Khewat No. 11 Tauzi No. 8.

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The Company had several collieries, bungalows, staff quarters, labour quarters, pits, inclines, quarries, pump-houses, workshops, coal depots, railway sidings and other things connected with the coal mining operations. No part of the surface land was used for agricultural purposes. However, on a small portion of the surface land some shops had been set up by the shop-keepers and a small cinema house had also been set up for the benefit and entertainment of the employees of the collieries on the condition that they will have to vacate by removing the structures whenever required by the Company for mining purposes on fifteen days notice.

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It appears that the Bihar Land Reforms Act, 1950 (herein after referred to as 'the Act') came into force on 25th September, 1950 and a notice under Section 4 of the act asking the Company to deliver possession of the land of Khewat No.11, as the same had been vested in the State of Bihar, was served on it. The Company appeared before the Authority under the Act and submitted that it was only a mining lessee and not a proprietor or intermediary and hence the land did not vest in the State. The Company lost the case before the authorities and challenged their decision before the High Court by way of a writ petition but ultimately withdrew the same on the directions of this Court asking the Company to get the matter decided by a regular suit in a civil court. Thereafter the Company filed the suit out of which the present appeal has arisen.

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The question for determination is whether the right, title and interest of the Company in respect of the surface land of the suit property had vested in the State of Bihar or not ?

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Since the Company was not an intermediary within the meaning of the Act, the whole question turns on the meaning and contents of Sections 10 and 11 of the Act.

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Sections 10(1) and 11 of the Act provide as under :

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A "10(1) - Subsisting leases of mines and minerals - Notwithstanding anything contained in this Act, where immediately before the date of vesting of the estate or tenure there is a subsisting lease of mines or minerals comprised in the estate or tenure or any part thereof, the whole or that part of the estate or tenure comprised in such lease shall, with effect from the date of vesting, be deemed to have been leased by the State Government to the holder of the said subsisting lease for the remainder of the term of that lease, and such holder shall be entitled to retain possession of the lease hold property".

C "Section 11 - Buildings and lands appurtenant to mines - Where by virtue of Section 9 or Section 10, any lease of mines and minerals comprised in an estate or tenure is deemed to be given by the State all buildings and lands not included in such lease, whether comprised in that or any other estate or tenure, which vest in the State by operation of this Act and are in the use and occupation of the lessee for purposes connected with the working or extraction of the mines and minerals comprised in the lease, including the lands upon which any works, machinery, tramways or sidings appertaining to the mines are situate, shall be deemed to have been leased by the State to that lessee with effect from the date of vesting of the estate or tenure and the lessee shall be entitled to retain possession of all such buildings and land subject to the payment of such fair and equitable ground rent as may be agreed upon between the State and the lessee, or in default of agreement as may be fixed by a Mines Tribunal appointed under Section 12."

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F The trial court took the view that the whole estate in dispute had vested in the State and by virtue of sections 10(1) and 11 of the Act the estate is deemed to have been leased to the Company by the State Government. The trial Court also took the view that under Section 10 of the Act the Company became the mining lessee under the State of Bihar for the remainder of the terms of the lease of 999 years granted in the year 1894.

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H It was contended on behalf of the plaintiff that since the Company was the mining lessee, the entire lease hold land, including surface land, would be deemed to have been leased by the State Government within the meaning of Section 10 of the Act. The trial court, however, referred to the

definition of "mine" in Section 2(m) of the Act which reads as under :— A

"2(m) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, but does not include any works, machinery, tramways or sidings appertaining to a mine and a mine shall be deemed to be "in operation" if a notice of the commencement of its operation has been given under section 14 of the Indian Mines Act, 1923 (4 of 1923) to the District Magistrate of the district in which such mine is situated and the discontinuance of the operation thereof has not been notified to the competent authority." B

After reading this definition the trial court took the view that the land wherein actual excavation or mining operation is not going on, is excluded from the mine. Therefore, Section 10 of the Act does not come to the rescue of the plaintiff. It, however, took the view that Section 11 of the Act lays down that where by virtue of Sections 9 and 10 of the Act any lease of mines and minerals comprised in an estate or tenure is deemed to be given by the State all buildings and lands not included in such lease, whether comprised in that or any other estate or tenure, which vest in the State by operation of this Act and are in the use and occupation of the lessee for purposes connected with the working or extraction of mines and minerals comprised in the lease, including the lands upon which any works, machinery _____ appertaining to the mines are situate, shall be deemed to have been leased by the State to the lessee with effect from the date of vesting of the estate or tenure, and the lessee shall be entitled to retain possession of all such buildings and land subject to the payment of such fair and equitable ground rent as may be agreed upon between the State and the lessee, or in default of agreement as the case may be, fixed by the Mines Tribunal appointed under Section 12 of the Act. C D E F

It was the case of the plaintiff that the Company had taken a lease of underground minings rights from the proprietor and that of surface land from the tenure holders. It was also the case of the plaintiff that under Section 10 of the Act the mines comprised in the estate and leased to it by the proprietor, and not the surface land which was separately leased to it by the tenure holders. That is why Section 11 of the Act has been enacted for covering all cases of surface land not included in the lease of mines within the meaning of Section 10 of the Act. G H

A The trial court accepted this contention.

The Single Judge of the High Court, however, took the view that the land where shops have been built or cinema house or such like things have been built are not covered under Sections 10 or 11 of the Act. The trial court found, and it was not disputed before the High Court, that the

B plaintiff was carrying on operation extensively throughout the entire area of the village and all over the surface of the village the company's office, air shafts, inclines, quarries, pits and railway sidings etc. are scattered; that in order to provide amenities to, and for catering the needs of, its labourers and employees numbering about 5,000 to 6,000, the Company had established a bazar known as Kenduadih Bazar and had set up a cinema hall by granting land to its owner.

The High Court took the view that the cinema and bazar portions of the land would not get protection of Section 10 read with Section 11 of the Act and had accordingly modified the trial court decree to that extent.

D It will be noticed that the original lease in favour of the plaintiff is a subsisting lease for extraction of mines and minerals comprised in the entire estate. Merely because in a very small part of it, by way of amenities to the employees working at the mines, a portion is reserved by way of bazar for purchase of daily needs of the employees and for a cinema house, it cannot be said that the subsisting lease is being used for a purpose other than those of mines and minerals. As stated earlier the term "mine" has been defined in Section 2(m) of the Act. It merely defines what "mine" is. There is no definition of "subsisting lease of mines and minerals". The lease itself was for mining operations during the period of the lease. It does not require that every area must be under actual mining operation. It was not the case of the State that there was no minerals in the area where the shops and cinema hall are there. The lease being a long term lease of 999 years, it will take its own time for the lessee to work on different portions of the area. Purpose of Section 10 of the Act was to exclude subsisting leases for purposes of mining or minerals. It contemplated that the land should not be used for agricultural purposes or such like purposes to enjoy the benefit of Sections 10 and 11 of the Act.

We are of the view that the High Court erred in its interpretation of Section 10 of the Act and ignoring the full effect of Section 11 of the Act.

H The trial court was in any case right in including buildings and land which

were appertaining to the mines and which were not covered under Sections 9 or 10 of the Act to be covered under Section 11 of the Act. But we are of the view that it is not a true interpretation of Section 10(1) of the Act so long as the area is covered by lease for mining. The estate or tenure comprised in such lease which vests in the State would be deemed to have been leased by the State Government to the holder of lease. Section 11 comes into operation when certain leases do not include the buildings and land as part of the lease. In our view, on the facts of the present case, the lease is such that everything in the area of the lease vest in the State Government and is deemed to have been leased by the State Government to the lessee, namely the plaintiff - appellant. A

The lease in the present case is of the entire village for purposes of mining. Therefore, everything comprised in the village on vesting in the State would be deemed to have been leased by the State Government to the lessee. B

We accordingly set aside the judgment of the High Court dated 20th August, 1987 and hold that the plaintiff is entitled to the decree prayed for and it is declared that the appellant is a lessee under the State of Bihar and is entitled to retain possession of the entire surface land in dispute under Section 10 of the Act itself and the order of defendant No. 2 in the suit, as affirmed by the Deputy Collector, Dhanbad directing the plaintiff to deliver possession of the land in dispute is illegal, void and without jurisdiction. Defendants/respondents are hereby permanently restrained from interfering with the possession of the plaintiff over the entire land of Khewat No. 11 of Village Kenduadih. There is, however, no order as to costs of the present proceedings. C

R.R.

Appeal allowed. D

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