

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 04.04 2011

% Date of decision : 20.04.2011

+ **LPA No. 742 of 2010**

THE M.P. STATE MINING CORPORATION LTD. ... APPELLANT

Through : Mr. Viplav Sharma, Advocate.

- V E R S U S -

SANJEEV BHASKAR & ORS. ... RESPONDENTS

Through : Ms. Kriti Mishra, Adv. for R – 1.
Mr. Anurag K., Adv. for R – 2.
Mr. Mallikarjuna for
Mr. Saleem Ahmed, Adv. for R – 3.

A N D

+ **LPA No. 284 of 2011**

STATE OF MADHYA PRADESH ... APPELLANT

Through : Mr. Viplav Sharma, Advocate.

- V E R S U S -

SANJEEV BHASKAR & ORS. ... RESPONDENTS

Through : Ms. Kriti Mishra, Adv. for R – 1.
Mr. Anurag K., Adv. for R – 2.
R – 3 : Proforma Party.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

SANJAY KISHAN KAUL, J.

1. A mining lease was granted on 03.11.1966 to late Shri R.N. Bhaskar, father of respondent No. 1 herein, in respect of an area of 28 acres (11.331 hectares) for Pyrophyllite and Diaspore minerals in Village Kari, Distt. Tikamgarh, Madhya Pradesh for a period of 20 years from 03.11.1966 to 02.11.1986. A show-cause notice was issued to the lessee alleging violation of two conditions of the mining lease on 18.09.1979, which was replied to by the lessee on 03.10.1979. The State of Madhya Pradesh (i.e., appellant in LPA No. 284/2011) not being satisfied, determined the lease on 05.04.1980.
2. The lessee assailed this order by filing a revision application before the Central Govt., Ministry of Mines, but the same was also dismissed on 06.04.1981. The determination of the lease was, thus, assailed in a writ petition filed before the Madhya Pradesh High Court in Misc. Petition No. 805/1981. It may be noticed that during the pendency of this petition, the original lessee died leaving behind his wife, two sons and two daughters as his legal heirs. These legal heirs were brought on record in the writ proceedings. The writ petition came to be decided by the Division Bench on 16.07.1986. The said Order noticed that from the stand of the State Govt., it appeared that the determination of lease was only on account of clauses (f) and (g) of sub-rule (1) of Rule 27 of the Mineral Concession Rules, 1960 (hereinafter referred to as, 'the said Rules'), which provided for commencement of the

mining operation within one year from the date of execution of the lease deed unless the State Govt., for sufficient cause, permits otherwise. There was also a requirement to erect and maintain the boundary marks and pillars necessary to indicate the demarcation of the leased area. The Division Bench noticed that there was no finding by any of the authorities that the lessee did not commence mining operation within one year from the date of execution of the lease and such a ground was not even mentioned in the show-cause notice. In so far as the other aspect of erection and maintenance of boundary marks and pillars was concerned, the show-cause notice referred to the breaches specified in the report of the Mining Inspector dated 28.05.1979. In this behalf, the Collector by his order dated 27.07.1979 had issued directions to all the lessees in the area to have their area re-demarcated according to the directions given in that order and the effect of such a direction was required to be gone into which fact was not apparent from the impugned orders. The Madhya Pradesh High Court, for the reason set out hereinabove, held that the determination of lease by the State Govt. and dismissal of the revision application could not be upheld and the matter should be re-examined and decided afresh by the State Govt.

3. We may notice that in the interregnum period between the determination of lease on 05.04.1980 and the filing of revision application before the Central Govt. on 06.04.1981, The Forest (Conservation) Act, 1980 (hereinafter referred to

as, 'the Forest Act') was enacted by the Parliament and it came into force on 27.12.1980. Section 2 of the Forest Act required prior approval of the Central Govt. by the State Govt. *inter alia* in respect of utilization of any forest land or any portion thereof for any non-forest purpose. The mining lease is stated to be in the forest area.

4. In pursuance of the aforesaid Order dated 16.07.1986 of the Division Bench of the Madhya Pradesh High Court, no *suo moto* order was passed by the State Govt. and the next event was the application filed by the legal heirs of the lessee on 02.09.1986 praying for them to be brought on record as the legal heirs and to permit the mining operation to be carried out for the balance period of 20 years, which came to 6 years, 6 months and 29 days. The lease could not be operated for this balance period due to the action of the determination of lease, which decision had been quashed by the Order dated 16.07.1986. However, no order was passed on the application.
5. Instead of passing any orders, a demand notice is stated to have been sent from the Office of Collector, Tikamgarh demanding dead rent for the period before expiry of the lease deed in view of the audit / inspection note. This notice was sent on 08.06.1990. The matter did not rest at this since even subsequently demand notices were sent for dead rent on 14.08.1990 and 08.12.1993, which according to the State of Madhya Pradesh were inadvertently sent. The stand of the State Govt. is that as per the terms of the lease, 20 years'

period expired on 02.11.1986 due to efflux of time, i.e., couple months after the order was passed by the Division Bench of the Madhya Pradesh High Court on 16.07.1986 and the original lessee never made any application in the prescribed form and manner for grant of the mining lease either by way of a fresh grant or by way of renewal. It has been, thus, stated that the lessee was not actually a holder of a lease when the dead rent for subsequent period was demanded. Such dead rent could have been demanded only for an existing lease in view of the provisions of Section 9A of the Mines and Minerals Development Regulation Act, 1957 (hereinafter referred to as, 'the said Act').

6. Respondent No. 1 kept on making representations *inter alia* on 28.08.1996, 14.04.1997 and 23.09.1997. Since these representations were not leading to any fruitful result, respondent No. 1 filed a contempt petition on 07.10.1998 before the High Court of Madhya Pradesh, which was registered as Contempt Petition No. 186 of 1998. The contempt petition was held to be barred by time and was, thus, not entertained, but simultaneously the Division Bench of the Madhya Pradesh High Court observed that it had hope and trust that the Govt. would implement the Order passed by the Court in 1986, if they had not implemented the same so far.
7. The State Govt. for the first time responded only on 21.04.1999 declining to extend the mining lease on the ground that in view of the Order passed by the High Court on

16.07.1986, the mining lease was automatically restored for the remaining period upto 02.11.1986. The absence of any direction by the High Court for extension / renewal of the lease was cited in support of this stand and the direction being only for the State Govt. to decide afresh the question of determination of the lease of the lessee (i.e., respondent No. 1).

8. Respondent No. 1 filed a revision application before the Central Govt., Ministry of Mines under Section 30 of the said Act read with Rule 56 of the said Rules on 07.07.1999. It is during the pendency of this application that the State of Madhya Pradesh claims to have granted a lease for 5 hectares of the mining area out of 11.331 hectares to the M.P. State Mining Corporation (i.e., the appellant in LPA No. 742/2010 and hereinafter referred to as, 'the Corporation') on 30.07.1999. The Central Govt. granted interim stay directing the State Govt. not to grant the mining lease to any third-party on 12.08.1999, but without the knowledge of what transpired on 30.07.1999. The Corporation filed a Writ Petition No. 3914/1999 before the Madhya Pradesh High Court on 24.08.1999 seeking directions against the respondents to execute a lease deed for a period of 20 years commencing from the date of execution in terms of the grant made on 30.07.1999. Interestingly, respondent No. 1 herein was not made a party though in one paragraph, there is an allegation about the pendency of the revision application. The respondents being the State Govt. and the Collector, who

were really supporting parties to the Corporation, failed to file any return. It is in view of failure of this return that on 15.09.1999, interim mandamus was issued to execute the mining lease in favour of the Corporation, which is stated to have been so executed on 25.09.1999. We were informed orally by the counsels that the writ petition was apparently disposed of as infructuous and actually no final mandamus was granted in the matter.

9. Respondent No. 1 filed another revision application before the Central Govt. on 15.12.1999 *inter alia* praying for quashing of the grant made on 30.07.1999. The first revision application was dismissed on 07.11.2001 by the Mines Tribunal, which was assailed by respondent No. 1 by filing Writ Petition (Civil) No. 8033/2002 before this Court. The second revision application was dismissed on 31.12.2002 *inter alia* on the ground that the lease was executed in favour of the Corporation by the State Govt. in compliance of the Order dated 15.09.1999 of interim mandamus by the Madhya Pradesh High Court, which order was assailed by respondent No. 1 by filing Writ Petition (Civil) No. 5809/2004 before this Court. Counter affidavits were filed in both the matters and by the common impugned judgment dated 21.09.2010, both the writ petitions have been allowed holding that the grant could not have been made in favour of the Corporation and that respondent No. 1 was entitled to the benefit of the remaining unexpired period of the original lease to begin from the date the decision is taken by the State Govt.

pursuant to the impugned judgment, but subject to the petitioner (respondent No. 1 herein) complying with all the requirements of the said Act and the said Rules and any other applicable law and paying the dead rent and other charges as required by law. It is this Order, which is now assailed in the two LPAs filed by the State of Madhya Pradesh and the Corporation.

10. We may notice at the inception that a technical plea has been sought to be raised that the rule was issued in both the writ petitions and the writ petitions were directed to be listed on the Regular Board. When these writ petitions came up for hearing, the counsels for the respondents were not present and the Registry was directed to issue court notices to the respondents. The counsel for the State of Madhya Pradesh was served, but service to the counsel for the Corporation was awaited. No fresh notice was issued to the counsel for respondent No. 3 and it is the counsel for the State of Madhya Pradesh who represented in the matter as the service of respondent No. 2 on the State of Madhya Pradesh was also treated as the service on the Corporation even though the counsels were different.
11. In respect of the aforesaid, we may note that both the State of Madhya Pradesh and the Corporation are represented by the same counsel before us. Once rule was issued in the matter, it was the responsibility of the counsels to keep track of the matter and to appear when the matter was listed for regular hearing. The counsel for both the set of appellants

before us failed to do so. Learned Single Judge was not required to issue invitation letters to the counsels to appear before him, but still took the precaution of issuing court notices. This can hardly be stated to be any procedural defect and we, thus, reject the plea based on the same outright.

12. A perusal of the impugned judgment shows that the reasoning of learned Single Judge is predicated on the decision rendered by the Division Bench of the Madhya Pradesh High Court on 16.07.1986 and the failure of the State Govt. to take any action in pursuance thereof. The conclusion reached is that once the determination of the lease was held to be invalid, the period spent between the determination of the lease and the decision of the High Court when the lessee could not utilize the lease has to be naturally compensated by permitting respondent No. 1 to utilize the mining area for the remaining part of the statutory lease. It is not even in dispute that the statutory lease is hereditary in character as per the terms of the lease deed. The request made by respondent No. 1 to include his name in place of his father by giving no objection certificates from other legal heirs was never rejected, but, on the other hand, the relevant documents were sought from respondent No. 1. Rule 25A(2) of the said Rules, in fact, provides that if a lessee in whose favour an order is passed granting or renewing the lease dies before the deed is executed, the order shall be deemed to have been passed in the name of the legal representatives of

the deceased. The State Govt. also accepted the dead rent from 1980 to 1999 for which the only explanation given is that it was by error. The case was treated not as one for renewal, but even assuming it was for renewal of lease, the letter of respondent No. 1 dated 02.09.1986 was observed to be liable to be treated as one for renewal and the delay could have been condoned. Learned Single Judge has held that the binding nature of the judgment delivered by the Madhya Pradesh High Court on 16.07.1986 could not be ignored and an interpretation, which would defeat the said Order, was unjustified.

13. Learned Single Judge, thus, concluded that the original lease cannot be said to have expired on 02.11.1986 when it was made unworkable by wrongful determination of the lease as held by the Order dated 16.07.1986, which Order became final and binding not having been assailed any further. The period of mining lease lost was, thus, liable to be compensated by permitting mining activity for a further period to the extent of the loss of the period as per the original lease.
14. Another aspect taken note of is that respondent No. 1 was never informed of the non-filing of any application, which may be required. Learned Single Judge has taken due care while granting the benefit for the remaining period of the unutilized period of the lease by making it subject to the decision of the State Govt. and subject to respondent No. 1 fulfilling all the requirements under the said Act, the said

Rules and any other applicable law apart from paying dead rent and other charges as required by law.

15. The grant of 5 hectares of lease has been held to be illegal as it was in the teeth of the order passed by the Tribunal on 12.08.1999. At least, no lease deed could have been executed pursuant thereto.
16. Learned counsel for the appellants sought to contend that when the determination of lease was challenged before the Madhya Pradesh High Court, a stay application had been filed, which was dismissed as withdrawn. It was submitted that had respondent No. 1 obtained an interim relief, it could have worked the lease for the remaining period, but it chose not to do so. Such a plea, to say the least, is specious. The non-grant of an interim order or withdrawal of the application for interim relief certainly cannot defeat the final relief. To accept a plea that the lease would have worked itself out if interim orders were granted, but since no interim orders were granted and the decision for the determination of lease has been held to be invalid, the lessee is entitled only to the remaining period of the lease as per the original lease, is totally unsustainable.
17. A second limb of the argument, which flows from the Order of the Madhya Pradesh High Court dated 16.07.1986, is that no specific direction had been passed for renewal of the lease for the period when it was not enjoyed. We may note that the determination was quashed and the State Govt. was called upon to decide the question afresh. The State Govt.

chose not to pass any fresh order, but sat over the matter despite repeated representations made on the part of the lessee / legal heirs (i.e., respondent No. 1). The State Govt. seeks to take advantage of its own silence / inaction. The fact that respondent No. 1 did not approach the Court earlier in contempt proceedings and the consequent dismissal of the contempt petition on the ground of limitation cannot strengthen the hands of the State Govt. in this behalf apart from the fact that a pious hope was expressed by the Bench while dismissing the contempt petition on grounds of limitation that the State Govt. would pass an appropriate order in compliance of the Order dated 16.07.1986, if it had not done so.

18. Learned counsel for the appellants also sought to raise the issue of non-compliance of the Forest Act. It was submitted, before us, that introduction of the Forest Act in the interregnum period made it mandatory for respondent No. 1 to take necessary clearances, as was done by the Corporation from the Central Govt. and then make an application. Respondent No. 1 ought to have known the said fact, but failed to make such an application. Once again, this plea is only to be stated to be rejected. The occasion for the same would arise after the State Govt. would have passed a fresh order in pursuance of the Order of the Division Bench dated 16.07.1986 or would have mutated the lease in favour of the legal heir(s) as requested for on 02.09.1986. The State Govt. failed to do so. In any case, learned Single Judge, as

observed above, has taken due precaution to make the order conditional on grant of all permissions and we find force in the contention of learned counsel for respondent No. 1 that they would get the benefit only after they have obtained the permissions for which they have even taken steps post the impugned decision, but the interim order granted by the Division Bench in the present appeals came in the way. The issue of these compliances would, thus, arise much later and the State Govt. need not to have any worry on that account as the obtaining of requisite permissions is a pre-requisite to the operation of mining lease by respondent No. 1.

19. Learned counsel for the Corporation laid great emphasis on the fact that the mining lease executed in its favour by the State Govt. was a sequittur to the Orders passed in the writ petition filed by it before the Madhya Pradesh High Court being Writ Petition (Civil) No. 3914/1999. We may notice that the said writ petition was filed without impleading respondent No. 1 as a party though the challenge laid to the order passed by the Central Govt. on 12.08.1999 directly affected respondent No. 1. There was only a passing reference in one paragraph about the order being passed and the State Govt. conveniently failed to file any return as is apparent from the Order dated 15.09.1999. Not only that, the counsel for the State Govt. stated that he had no instruction in the matter. It is in view thereof that an interim mandamus was granted at the back of respondent No. 1 by not bringing the clear picture

and thereafter writ petition is stated to have been disposed of as infructuous without any final mandamus being issued.

20. The material fact is that both the appellants seemed to be under a mistaken belief that the present case is one of renewal of a lease. It is really not so. No doubt, the original period of lease expired, but the decision of the determination of lease by the State Govt. was held to be invalid. Thus, the benefit, which is sought to be given to respondent No. 1, is for the period when dead rent was being charged and respondent No. 1 could not operate the lease on account of the invalid decision of termination till the same was set aside by the High Court.
21. The last aspect urged by learned counsel for the appellants is arising from the plea of lack of inherent jurisdiction in Delhi High Court. In this behalf, learned counsel relied upon the decision of the Supreme Court in Sushil Kumar Mehta v. Gobind Ram Bohra (Dead) Through His LRs, (1990) 1 SCC 193 wherein in para 26, it has been observed that a decree passed by a court without jurisdiction over a subject matter goes to the root of its exercise of jurisdiction as the court is *coram non judice* and the decree would be nullity. Such plea of invalidity can be raised at any time. This judgment has been cited as in the impugned judgment, there is no discussion on the aspect of any lack of inherent jurisdiction and this plea was obviously not urged at the stage of arguments as otherwise it would have certainly been dealt

with. No review application was filed before the learned Single Judge alleging that any plea urged had been left out.

22. We can hardly disagree with the aforesaid principle and are rather bound by it, the legal principle being enunciated by the Supreme Court. However, this would be so if there is such an inherent lack of jurisdiction. We, thus, squarely put to learned counsel for the appellants as to how can he argue such a case of inherent lack of jurisdiction. Learned counsel for the appellants submitted that since the mine was located in Madhya Pradesh, respondent No. 1 had approached the Madhya Pradesh High Court earlier, this Court would have no territorial jurisdiction. Reliance was sought to be placed on the judgment of the Supreme Court in Stridewell Leathers (P) Ltd. & Ors. v. Bhankerpur Simbhaoli Beverages (P) Ltd. & Ors., (1994) 1 SCC 34. In our considered view, the said judgment has no application in the facts of the present case. The judgment related to the expression "*the High Court*" used in Section 10-F of the Companies Act, 1956, which was held to mean the High Court having jurisdiction in relation to the place at which the registered office of the company concerned was situated in view of Section 2(11) read with Section 10(1)(a) of that Act.
23. An interesting aspect is that both the learned counsels, i.e., learned counsel for the appellants as well as learned counsel for respondent No. 1, seek to rely upon the judgment in Kusum Ingots & Alloys Ltd. v. Union of India & Anr., (2004) 6 SCC 254. In our considered view also, that is the judgment

which would govern the matter in issue. Learned counsel for respondent No. 1 drew our attention to para 27 of that judgment, which reads as under :-

“27. When an order, however, is passed by a court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situated having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.”

(emphasis supplied)

24. It is, thus, obvious from the aforesaid observations of the Apex Court that given the location of the appellate authority in Delhi, the Delhi High Court could hardly be said to be *coram non judice* and a writ petition would be maintainable both in the Madhya Pradesh High Court and the Delhi High Court. We enquired from learned counsel for the appellants as to in what manner this judgment supported his case. We found no satisfactory answer other than the endeavour of the counsel to read other paragraphs which have no relevance in the present case. Those paragraphs were relating to the issue of law enacted by Parliament being assailed in the Delhi High Court merely because the situs of the Parliament was in Delhi. It was, thus, held that the facts pleaded must have a nexus on the basis of which a prayer is granted and the passing of legislation by itself does not confer any right to file a writ petition unless a cause of action has arisen thereof. A

distinction was, thus, made between a legislative action and an executive action. Learned counsel for the appellants once again sought to shift the focus to the judgment in Stridewell Leathers (P) Ltd. & Ors.'s case (supra) by contending that that was also a Supreme Court judgment. This is hardly a plea expected of the counsel when the judgment dealt with the matter in respect of the Companies Act, 1956 and the subsequent judgment of a Bench of three Judges in Kusum Ingots & Alloys Ltd.'s case (supra) had squarely dealt with the issue and, thus, would be the governing law.

25. Learned counsel for the appellants sought to refer to Article 214 of the Constitution of India to contend that there has to be a High Court for each State and, thus, the exercise of jurisdiction by the Delhi High Court goes to the root of the federal structure! We just fail to understand this kind of plea; which is sought to be raised when the matter pertains to the issue as to whether the Delhi High Court would also have the jurisdiction in the matter by reason of the situs of the statutory appellate authority. We, in fact, put to learned counsel for the appellants that there is a Full Bench judgment of this Court in this behalf in New India Assurance Co. Ltd. v. Union of India & Ors., 161 (2009) DLT 55 = AIR 2010 Delhi 43 but the learned counsel is unaware of the same. Ignorance is bliss!

26. In the end, we would like to emphasize that we expect the counsels to adhere to the directions passed by the Court. On the last date of hearing, we had clearly observed that

counsels for the parties should keep ready short synopsis running into not more than two pages each. The objective of this is to ensure that both the counsels in the Court can focus on the matter in issue. This was not done. The result was that the counsel for the appellants strayed from one aspect to the other intermingling different issues and to the extent arguing on matters which were not even urged before the learned Single Judge. All that the learned counsel said was that they were mentioned in certain grounds. The Court is not expected to read each ground, but bases its conclusions on the submissions advanced in the Court. Thus, only matters, which are urged, are expected to be decided and if some matter urged has been left out, an approach must be made to get the matter rectified by pointing the same out to the relevant court. This was also not done. We have emphasized this fact because the net result is that larger consumption of judicial time before the appellate forum like us without any focus on the matter in issue.

27. We are clearly of the view that the apprehensions of the appellants, especially the State of Madhya Pradesh, arising from the Forest Act are also without any basis, even though they were never urged before the learned Single Judge. In our considered view, the learned Single Judge has worded the impugned judgment in a manner which takes care of the interest of parties. The effect of the impugned judgment is that the decision of the determination of lease having been quashed by the competent court vide Order dated

16.07.1986, the lessee must get the benefit of that decision by being able to enjoy the lease for the period he was deprived of on account of the decision struck down. It is, thus, not a case of a fresh lease or a renewal of lease in that sense. Learned Single Judge has also taken due care to incorporate the compliance required of respondent No. 1 by making it obligatory on him to comply with all the requirements of the said Act, the said Rules and "*any other applicable law*" apart from paying dead rent and other charges as required by law. This is clearly set out in para 24 of the impugned judgment.

28. In view of the aforesaid, we find the appeals meritless and dismiss the same with costs quantified at Rs.25,000/- for each appeal. Interim orders stand vacated.

SANJAY KISHAN KAUL, J.

APRIL 20, 2011
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RAJIV SHAKDHER, J.