

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.226 of 2016
IN
Civil Writ Jurisdiction Case No. 7023 of 2001**

- =====
1. The State of Bihar.
 2. The Mines Commissioner, Government of Bihar, New Secretariat, Patna.
 3. The District Magistrate, West Champaran.
 4. The Assistant Mining Officer, Bettiah, West Champaran.
- Respondents Appellant/s

Versus

1. Smt. Reena Verma, wife of Late Ramesh Prasad Verma.
 2. Satyavarat Verma, son of Late Ramesh Prasad Verma.
 3. Satya Priya Verma, son of Late Ramesh Prasad Verma.
- All are resident of D K Shikarpur, P.O. DK Shikarpur, P.S. Shikar Puram, District West Champaran presently residing at Sinha Library Road, P.S. Kotwali, District Patna.
4. Archana Verma, wife of Shri Amitabha Srivastava, resident of House No.5 Pragati Path, West Boring Canal Road, P.S. S K Puri, District Patna at present residing at House no. C 793, Nikka Singh Block, Asian Game Village, New Delhi.
- Petitioner Respondent/s
- =====

Appearance :

For the Appellant/s : Mr. Naresh Dixit, Spl. PP, Mines.
For the Respondent/s : Mr. Akash Deep, Adv.
Mr. Rajesh Kumar Verma, Adv.
Mr. Shyameshwar Kumar Singh, Adv.
Mr. Rajesh Kumar, Adv.
Mr. Shashank Chandra, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)
Date: 18-09-2018

Heard the parties.

If there could be one instance of abuse of statutory powers and of judicial process by the State, it is the case in hand.

The respondent-writ petitioners were charged with 'dead rent' by the appellants, who raised a demand of Rs.24,55,645/-



issued under the signature of the Assistant Mining Officer, Bettiah, West Champaran vide order dated 27.02.2001, even when the area for which such demand was raised, fell outside the area settled with the original settlee, by way of a registered lease deed, entered in between the parties in the year 1966, which has been renewed from time to time. The learned Single Judge taking note of the abuse of the statutory powers vested in the Assistant Mining Officer in raising such demand in the backdrop of the statutory prescription underlying Section 9A of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act') which enables the Mining Department to realize 'dead rent' in respect of the areas included in the instrument of lease and finding that the area in question fell outside the leasehold area, quashed the order of demand by the judgment and order impugned in this appeal. Wisdom has yet not dawned on the department, who have chosen to move this Court in this appeal but are unable to demonstrate the source of power under which such demand is raised in respect of area falling outside the leasehold area.

Even on merits, Mr. Akash Deep, learned counsel appearing for the respondent-writ petitioners, has contested the allegation to submit that it is wholly incorrect for the appellants to charge the respondent-writ petitioners of spreading their activities



beyond the leasehold areas, which allegation lacks foundation. He submits that the present situation is that the mining activities are closed since the year 2001.

We have heard learned counsel for the parties and perused the records. It is not in dispute that the area for which the demand of 'dead rent' is made, falls outside the leasehold area settled with the respondent-writ petitioners' family area and which position has been fairly accepted by learned counsel for the Mining Department. It is however argued by the appellant-department that the respondent-writ petitioners are carrying on mining activities in the area in question, even though it is not settled with them under the registered lease deed. In our opinion, the very admission of the appellant-department itself renders the order dated 27.02.2001 whereby the demand of 'dead rent' was raised by the Assistant Mining Officer, illegal because a 'dead rent' as per Section 9A of 'the Act' can be raised in respect of only such of the areas which are included in leasehold document.

Section 9A of 'the Act' reads as under:

“⁴¹[9A. Dead rent to be paid by the lessee.—

(1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall, notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, pay to the State Government, every year, dead rent at such rate, as may be specified, for the time



being, in the Third Schedule, for all the areas included in the instrument of lease:

Provided that where the holder of such mining lease becomes liable, under section 9, to pay royalty for any mineral removed or consumed by him or by his agent, manager employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty, or the dead rent in respect of that area, whichever is greater.

(2) The Central Government may, by notification in the Official Gazette, amend the Third Schedule so as to enhance or reduce the rate at which the dead rent shall be payable in respect of any area covered by a mining lease and such enhancement or reduction shall take effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of the dead rent in respect of any such area more than once during any period of ⁴⁴[three years].”

In the undisputed circumstances noted and in view of the legal position reflecting from Section 9A, we would not be required to express any opinion, whether or not the respondent-writ petitioners are indulging in activity beyond their leasehold areas and leave it at the discretion of the department for taking appropriate steps in accordance with law, if so advised, but in so far as the issue in hand is concerned, the action undertaken is without sanction of law and having been struck down by the learned Single Judge in the judgment and order impugned, we find no merit in the appeal to interfere therewith. The judgment and order passed by the learned Single Judge is in tune with the prescription underlying Section 9A of the ‘Act’.

This appeal is dismissed but we must record that with



utmost difficulty we have exercised restraint in imposing costs against the appellant-department for abusing their statutory powers as well as the process of the court.

(Jyoti Saran, J)

(Nilu Agrawal, J)

SKPathak/Anjula

AFR/NAFR	NAFR
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