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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (T) No.275 of 2017**

South Eastern Coalfields, Through the Chief General Manager,
South Eastern Coalfields Limited Bishrampur Area, Bishrampur,
Tahsil and District Surajpur (CG)

-----Petitioner**Versus**

- 1.** State of Chhattisgarh, through the Secretary, Department of Urban Administration & Development, Government of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Naya Raipur (CG)
- 2.** Nagar Panchayat, Bishrampur, through the Chief Municipal Officer, Nagar Panchayat, Bishrampur, Tahsil and District Surajpur (CG)

---- Respondents

For Petitioner	:	Dr.N.K.Shukla, Senior Advocate with Mr.Vikram Sharma, Advocate
For Respondent No.1	:	Mr.P.K.Bhaduri, Government Advocate
For Respondent No.2	:	Mr.Harshal Chouhan, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****23/04/2018**

- 1.** The petitioner-South Eastern Coalfields Limited is a subsidiary of Coal India Limited and is Government company in terms of Section 625 of the Indian Companies Act and dealing with extraction and marketing of coal. One of the units of the petitioner company is situated at Bishrampur, District Surajpur, which is known as Bishrampur Area. The State Government in exercise of powers conferred under Section 5(1) of the Chhattisgarh Municipalities Act, 1961 (hereinafter called as "the Act of 1961") has constituted Nagar Panchayat, Bishrampur by notification dated

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20.1/2.2003 (Annexure P/3) and thereafter by notification dated 14th July, 2004 (Annexure P/4) the State Government in exercise of the powers conferred under Section 29 (1) of the Act of 1961 determined the extent of wards of Nagar Panchayat Bishrampur. The said Nagar Panchayat levied the property tax on the petitioner company in exercise of powers conferred under Section 127-A of the Act of 1961 vide Annexures P/5, P/6 and P/7. Questioning that notification determining the extent of wards and also questioning levy of property tax, this writ petition has been filed by the petitioner mainly on the ground that the land on which township of Bishrampur colliery is established is belonging to the Government of India acquired under the Coal Bearing Areas (Acquisition and Development) Act, 1957 for the purpose of coal mining and the State Government has no competency to include the area which is belonging to the Government of India and consequently, Nagar Panchayat Bishrampur cannot issue a direction to furnish return under the Act of 1961 for realization of property tax. It has also been stated that the area, which is reserved for mining, cannot be included in Nagar Panchayat, Bishrampur.

- 2.** Returns have been filed by the State Government and Nagar Panchayat, Bishrampur.
- 3.** Dr.N.K.Shukla, learned Senior Counsel appearing for the petitioner with Mr.Vikram Shrama, learned counsel, would

submit that the State Government has no power and jurisdiction to include the area, which is belonging to the Government of India and used for mining purpose in Nagar Panchayat, Bishrampur and consequently, Nagar Panchayat, Bishrampur cannot issue a direction to furnish return under the Act of 1961 to recover the property tax.

4. Mr.P.K.Bhaduri, learned Government Advocate appearing for respondent No.1, would submit that constitution of Nagar Panchayat, Bishrampur in exercise of the powers of the State Government under Section 5(1) of the Act of 1961 is legislative in character and it cannot be questioned. He would further submit that the petitioner company is a legal entity and is a Government company under Section 635 of the Indian Companies Act. The petitioner is not a property of the Union of India, but it is a property of the Government company and therefore, in view of the judgment rendered by the Supreme Court in the matter of **Western Coalfields Limited v. Municipal Council, Birsinghpur Pali and another**¹, the writ petition deserves to be dismissed.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.

6. Nagar Panchayat, Bishrampur has been constituted by the State Government in exercise of powers conferred under

¹ (1999) 3 SCC 290

Section 5(1) of the Act of 1961. It is well settled law that function of the Government in establishing Nagar Panchayat or Corporation is neither executive nor administrative. It is legislative process.

7. The Supreme Court in the matter of **Sundarjas Kanyalal Bhathija and others v. The Collector, Thane, Maharashtra**² held that the function of the Government in establishing a Corporation under the Act is neither executive nor administrative. It is legislative process indeed. It was observed as under:-

"23.we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the Government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the Court could say no more. In the present case the Government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs."

8. In the light of principle of law laid down by the Supreme Court in **Sundarjas Kanyalal Bhathija** (supra), if the facts of the present case are examined, it is quite vivid that

² AIR 1990 SC 261

function of the Government in establishing Nagar Panchayat, Bishrampur under the Act is neither executive nor administrative and statutory provision has been followed in constituting Nagar Panchayat Bishrampur. Merely because property is owned by the Government company for the purpose of mining, it will not dis-entitle the State Government to notify the area as Municipal area or transitional area in terms of Article 243-Q of the Constitution of India. I do not find any merit in the argument raised by the petitioner.

9. Now, levy of property tax by Nagar Panchayat, Bishrampur to the property owned by the petitioner company is no longer *res-integra* and stood determined by authoritative pronouncement of the Supreme Court in the matter of **Western Coalfields Ltd., v. Special Area Development Authority, Korba and another**³ in which it was held that even though the entire capital have been subscribed by the Government of India, it cannot be predicated that the companies themselves are owned by the Government of India. The companies, which are incorporated under the Companies Act, have a corporate personality of their own, distinct from that of the Government of India. The lands and buildings are vested in and owned by the companies. These are not exempted from payment of property tax under Section 136 of the Act.

3 AIR 1982 SC 697

10. Similarly, in the matter of **Municipal Council, Birsinghpur Pali** (supra) Their Lordships of the Supreme Court while taking note of Sections 3, 5 and 11 of the Coal Mines (Nationalisation) Act, 1973 and Section 127-A(2) of the M.P. Municipalities Act, 1961 clearly held that Birsinghpur colliery does not vest in the Government of India and can be subjected to levy of property tax under Section 127-A(2) of the Act of 1961. It was observed as under:-

“6. The answer, in our view, is to be found in the plain language of Sections 3, 5 and 11 of the Coal Mines (Nationalisation) Act, 1973 which we have reproduced above. Under Section 3, from the appointed date the right, title and interest of the erstwhile owner of the Birsinghpur Colliery in its property stood transferred to and vested absolutely in the Union. Section 5 empowered the Union, if it was satisfied that a government company was willing to comply with or had complied with such terms and conditions as the Union might think it fit to impose, to direct in writing.

“that the right, title and interest of an owner in relation to a coal mine referred to in Section 3, shall, instead of continuing to vest in the Central Government, vest in the government company....”.

Therefore, the right, title and interest of the erstwhile owner of the Birsinghpur Colliery in its property, which vested in the Union on the appointed day, instead of continuing to vest in the Union, was, by reason of the direction issued by the Union under Section 5, vested in the appellant. Section 11 dealt with the management of the coal mine whereas Section 5 dealt with the right, title and interest in the property of the coal mine. Under Section 5, the general superintendence, direction, control and management of the affairs and the business of the Colliery, which by reason of Section 3 had vested in the Union, now "vest in the government company" in whose favour the direction under Section 5 had been made. In other words, by reason of Section 5 and 11, the right, title

and interest of the erstwhile owner of the Birsinghpur Colliery in the property thereof as also in the superintendence, control, management and business thereof which had vested in the Union, now vested in the appellant consequent upon the direction in that behalf issued by the Union under Section 5. The appellant, as a company, is a legal entity. It holds its property in its own right and for itself. It is, therefore, that we cannot accept the submission of Mr. Raval that the property of the Birsinghpur Colliery vests in the appellant-Company on behalf of the Union and that for that reason, cannot be subjected to the levy of property tax under Section 127-A of the M.P. Municipalities Act, 1961."

11. The principle of law laid down in **Municipal Council, Birsinghpur Pali** (supra) squarely applies to the facts of the present case and it cannot be held that the petitioner company cannot be subjected to levy of property tax under Section 127-A of the Act of 1961. The land and building vested in and owned by the petitioner's company are subjected to levy of property tax under Section 127-A of the Act of 1961.

12. As a fallout and consequence of the above-stated discussion, the writ petition deserves to be and is hereby dismissed. However, liberty is reserved in favour of the petitioner to file objection before the appropriate authority in accordance with law within two weeks from the date of receipt of certified copy of this order and final decision will be taken within further four weeks. No cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (C) No.1760 of 2012****Petitioner**

South Eastern Coalfields

Versus**Respondents**

State of Chhattisgarh and another

(English)

Land and building owned by the South Eastern Coalfields Limited are subjected to levy of property tax under Section 127-A of the Act of Chhattisgarh Municipalities Act, 1961

(हिन्दी)

छत्तीसगढ़ नगर पलिका अधिनियम, 1961 की धारा 127—A के अन्तर्गत साउथ ईस्टर्न कोलफील्ड्स लिमिटेड के स्वामित्व के भूमि तथा भवन सम्पत्ति कर उद्गृहण के अध्यधीन हैं।