IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Letters Patent Appellate Jurisdiction)

LPA No. 27 of 2008

1. The State of Jharkhand through its Chief Secretary
2. Deputy Commissioner, Hazaribagh now Ramgarh, PO and PS-Ramgarh, District-Ramgarh
3. Additional Collector, Hazaribagh, now Ramgarh, PO and PS-Ramgarh, District-Ramgarh
4. Sub Divisional Officer, Ramgarh, PO and PS-Ramgarh, District-Ramgarh
5. Land Reforms Deputy Collector, Ramgarh, PO and PS-Ramgarh, District-Ramgarh
6. Circle Officer, Mandu, Hazaribagh now Ramgarh, PO and PS-Mandu, District-Ramgarh ..... **Appellants**

Versus

1. Tata Steel Limited having its registered office at 24, Homi Modi Street, Fort, Bombay, PO and PS-Fort, District-Bombay, Maharashtra ..... **Respondent**
2. The State of Bihar ..... **Proforma Respondent**

CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE RATNAKER BHENGRA

For the Appellant-State : Mr. Rajiv Ranjan, Advocate General
Mr. Ashutosh Anand, AAG-III
Ms. Rishi Bharati, AC to AAG-III
For the Respondent No.1 : Mr. Jaideep Gupta, Sr. Advocate
Mr. G.M. Mishra, Advocate
Mrs. Anindita Mitra, Advocate
For the Intervenor(s) : Mr. Rajesh Kumar, Advocate
Mr. S.N. Das, Advocate

J U D G M E N T

C.A.V on 10/08/2022 Pronounced on 12/01/2023

Per, Shree Chandrashekhar, J.

In this Letters Patent Appeal, the State of Jharkhand has questioned powers and jurisdiction of the writ Court to issue the directions as contained in the order dated 31st August 2007 passed in CWJC No. 363 of 1997(R).

2. The writ Court has issued the following directions:

> *"13. .....*
> *(i) The respondents are, therefore, prohibited hereby from making any fresh settlements of lands within the lease hold areas of the*

petitioner in favour of private individuals.
(ii) All such settlements of lands within the lease-hold area of the petitioner in the areas covered under the mining lease for which surface right has been sanctioned to the petitioner under Rule 27(1) (d) of the Mineral Concession Rules, 1960, made in favour of private individuals, during the pendency of this writ application and made after 05.03.1997 are hereby quashed.
(iii) In the cases of settlement of such lands made in favour of private individuals prior to 05.03.1997, such settlements shall be subject to the scrutiny and verification by an Officer specially designated by the Respondent-State, who shall make enquiry into the individual settlements, after hearing the settlees and the petitioner and, if any such settlement is found to be illegal, the same shall be deemed as cancelled. The Respondent-State shall designate such Officer for the aforesaid purposes within two months from the date of this order and such designated officer shall conduct enquiry into each of the settlements made in favour of the private individuals and conclude the same within six months from the date of his being appointed as the designated Officer."

3. A shimmering dispute between the Tata Iron & Steel Company Limited (in short, Tata Steel) and the State of Bihar regarding surface rights over 2054.70 acres of the leasehold *Gairmazarua* land (in short, GM land) came before the writ Court in CWJC No. 363 of 1997(R). The aforesaid GM lands are part of about 13007 Bighas of the leasehold land comprised under a Lease Deed dated 29th March 1973 (in short, Tata Lease) and spread over eight villages in the districts of Hazaribagh and Ramgarh. The Tata Lease was executed between the State of Bihar and M/s West Bokaro Limited which held a Sublease dated 23rd January 1947 under M/s Bokaro & Ramgur Limited for mining rights over the aforementioned leasehold area. In the beginning, the Bokaro Coal Syndicate which was succeeded by M/s Bokaro & Ramgur Limited was the "licensee" under the Indenture dated 26th November 1907 (in short, Principal Indenture). This instrument continued for about 40 years through successive extensions of the period of instrument and finally a new lease dated 21st November 1946 (hereinafter referred as Headlease) was executed between Maharaja Kamakshya Narain Singh Bahadur and M/s Bokaro & Ramgur Limited. On coming into force of the Bihar Land Reforms Act, 1950 (in short, BLR Act), the State of Bihar tried to enforce the vesting provisions under section 10 of the BLR Act against M/s Bokaro & Ramgur Limited by filing T.S. No. 45 of 1960 for eviction of M/s Bokaro & Ramgur Limited. According to the State of Bihar, by operation of law all rights, title and interest of the Raja and intermediaries had vested in the State of Bihar. Later on, M/s West Bokaro Limited which

was impleaded as a defendant in T.S. No.45 of 1960 disputed the vesting provisions under the BLR Act but finally came to a compromise and accepted its position in law as a statutory lessee under the State of Bihar and, in pursuance thereof, mining rights over about 13007 Bighas of land were granted in its favor by the State of Bihar. By virtue of an order passed by the Calcutta High Court in Company Petition No. 353 of 1973, M/s West Bokaro Limited has been amalgamated with the Tata Steel with effect from 1st April 1973 and, that is how, the Tata Steel became a statutory lessee under the State of Bihar (now, State of Jharkhand). According to the Tata Steel, the State of Bihar started making settlements over different parts of the GM lands comprised under the Tata Lease without any notice/intimation to it. The Tata Steel has pleaded that such settlements were causing serious difficulties and hindrances in mining operations at a time when vast expansion plans were in the offing for raising coal production. It has further pleaded that such settlements were made in teeth of the rights flowing to it through the Tata Lease and that was the reason why it was constrained to approach the writ Court.

4. The State of Bihar raised objections to the writ petition on several grounds and denied that the Tata Steel has any exclusive right much less surface rights under the Tata Lease, except the mining rights. On the contrary, it claimed various rights under the Chota Nagpur Tenancy Act, 1908 (in short, CNT Act) to grant settlements for agricultural purposes over any portion of the leasehold area which are not under mining operations.

5. The writ Court has held that the Tata Steel shall have surface rights by virtue of the order passed by the Deputy Commissioner, Hazaribagh affixing and accepting surface rent under rule 27(1)(d) of the Mineral Concession Rules, 1960 (in short, MC Rules). After forming such an opinion, the writ Court proceeded to issue restrain orders against the State of Jharkhand from making settlement(s) over any part of the leasehold lands in favor of any person. The writ Court has further held that the settlements, if any, made after 5th March 1997 when an interim order was issued by the writ Court shall be null and void, and ordered an enquiry by an officer authorized by the State of Jharkhand to examine validity of the settlements made prior to 5th March 1997.

6. The State of Jharkhand has questioned legality and propriety of the aforesaid directions issued by the writ Court on various grounds – the first and foremost is powers of the writ Court to grant such prayers of the Tata Steel.

PLEADINGS BEFORE THE WRIT COURT

7. The main contention of the Tata Steel is that covenants of the Headlease and Tata Lease envisage its possession over the leasehold lands by virtue of which it can claim surface rights over the GM lands. There are specific pleadings in the writ petition with reference to the Headlease and Tata Lease to support the writ prayer seeking a direction upon the State of Jharkhand not to interfere with its possession over the leasehold lands. The relevant portions of the pleadings in the writ petition on which special emphasis has been laid by the Tata Steel to claim surface rights over the GM lands are extracted below:

> *"17. That in the lease deed dated 21st November 1946 (Annexure-1) it has been clearly stated that the Raja of Ramgarh granted and demised to the lessee underground coal mining right of land in the premises with full liberty.*
> *18. That in the agreement dated 29th March, 1973 (Annexure-3) it has been mentioned with reference to lease deed dated 23rd January 1947 (Annexure-2 & 2A).*
> *19. That it is submitted that in view of the clear stipulations in Annexure 1, 2 and 3 the lease in favour of the petitioner is in respect of surface land as also for mining operation in those eight villages.*
> *20. That the petitioner does not dispute the fact that when the principal lease deed dated 21st November 1946 (Annexure-1) was executed there were some tenants (i.e. raiyats) who held agricultural land in one or other of the eight villages aforesaid.*
> *21. That in view of this fact there is clear stipulation in Annexure-1 that if the lessee take or occupy or use land of tenant or cause damage to such land, the lessee shall pay proper compensation to the person effected."*

8. The Tata Steel has laid a claim to have acquired surface rights also on the basis of payment of surface rent for 1106.93 acres of the GM lands under rule 27(1)(d) of the MC Rules. Therefore, besides covenants in the lease instruments which according to the Tata Steel provide for grant of surface rights by the lessor, the Tata Steel has further pleaded that on payment of surface rent it has acquired surface rights over the GM lands within the leasehold area. The specific pleadings in this regard are the following:

> *"24. That even assuming that the State of Bihar have right and*

interest in the surface land except that which is within the coal field, it is submitted that in view of the terms and condition of the principal lease deed dated 21st November 1946 (Annexure-1) the State of Bihar is bound to grant and make over its right to the petitioner and to no other person, subject to payment of rent by the petitioner.

25. That again even assuming that the State of Bihar have right and interest in the surface land except that which is within the coalfield, it is submitted that State of Bihar know that surface area shall be required by the petitioner for mining operation. Therefore provision has been made in Rule 27(1)(d) of the Mineral Concession Rules 1960 for payment of surface rent.

26. That the petitioner is mining coal by open cast mining method and the surface area of the coalfield is absolutely necessary for that purpose.

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28. That by way of abundant caution, the petitioner applied to the District Mining Officer, Hazaribagh on 9.9.1976 for permission under Rule 27(1)(d) of Mineral Concession Rules 1960 for doing mining over the entire surface measuring 775.12 acres of land belonging to State of Bihar. The details of the land were given in the application dated 9.9.1976.

29. *That the Additional Collector, Hazaribagh by Memo No. 2194 dated 5.8.1977 informed the petitioner that with the approval of the Deputy Commissioner, permission was accorded to it to occupy the surface of the land described in Annexure-5 and make surface rent payment to the Govt. of Bihar."*

9. The State of Bihar took specific objections to the claim of surface rights with reference to the Headlease and Tata Lease and has pleaded that there are raiyats and tenants who are holding agricultural lands in one or other of the eight villages. It has further pleaded that the settlement of raiyats and tenants is admitted by the Tata Steel in its pleadings which in itself would establish that surface rights are reserved with the raiyats and the State.

10. The objections taken by the State of Bihar are pleaded in the following paragraphs of the counter-affidavit:

"5. That it is submitted at the outset that the aforesaid reliefs sought for by the petitioner as mentioned in para-1 of the writ petition are not sustainable in law as well as in the facts and circumstances of the instant case.

It is submitted that in this regard that neither the indenture made between Maharaja Kamakshya Narain Singh Bahadur and Bokaro and Ramgur Limited dated 21st November, 1946 nor the indenture made on 29th March 1973 between the Government of Bihar and West Bokaro Limited inhibits the Government or the Collector (Deputy Commissioner) of Hazaribagh for settling any piece of land comprised in the said lease hold area for the Agriculture purpose. Further there is no provision in said lease deeds dated 23rd January 1947 or dated 29th March 1973 to prevent the Deputy Commissioner Hazaribagh from granting permission to the legal claimant under section-4 of the CNT Act. Moreover the

aforesaid Lease Deeds cannot deprive the statutory rights of occupancy in Korkar land under section-67 of the CNT Act. Hence whenever a person submits an application to the Deputy Commissioner for granting permission to him to covert land into Korkar, he is bound to receive the same, hear the parties and to hold such enquiry as he thinks proper and therefore to pass an appropriate order under section-64 of the CNT Act.

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8. That with respect to the points of law formulated in para-2(i) of the writ petition, it is submitted that the respondents have jurisdiction to settle the surface land within the lease hold area to the cultivators of the village under section-64, 67 and 67(A) of the Chotanagpur Tenancy Act, 1908 and under various circulars of the Government. Respondents are also entitled to settle the rent of land which has been granted to the person by Bhoodan Yagna Committee under section-18 of the Bihar Bhhodan Yagna Act, 1954. By the lease dated 29th March 1973 only the underground coal mining rights have been demised unto the lessee. The proprietory right of the Government on the surface lands remain in tact.

9. That with respect to the statements made in paras-2(ii), (iii) and (iv) of the writ petition, it is stated that the petitioner (lessee) is entitled to cooperate underground coal mining only within the lease hold area under Mineral Concession Rules 1960 as well as according to the provisions laid down in the lease dated 29th March 1973. So far the settlement of Korkar land to the cultivators (as the third para is concerned) the lessee has got no right to do so. Thus the question of deprivation of right of the lessee under Mineral Concessional Rules does not arise as the government or the respondents have not settled the land for mining purposes.

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13. That with respect to the statements made in para-15 of the writ petition, it is stated that State has never recognised the petitioner's right over the surface land within the said area as such the state has got the right to make settlement of the surface land (specially G.M Land) which has been vested to the State after implementation of the Bihar Land Reforms Act, 1950.

14. That with respect to the statements made in para-16 of the writ petition, it is stated that it is a fact that some land have been settled to the villagers under section 18(2) of the Bihar Bhoodan Yagna Act, 1954 and under section 67, 67(A) of the Chotanagpur Tenancy Act, but before settlement a proper enquiry was conducted and istehar was issued inviting objection, if any, but petitioner never objected in the process of settlement of the land and only after settlement the matter has been raised in this writ jurisdiction. Further petitioner has got efficacious remedy available against the settlement but the same has not been exhausted. Moreover all the settlements were done with full knowledge of the petitioner.

15. That with respect to the statements made in para-17 of the writ petition, it is stated that the statements made therein are wrong and denied.

It is stated that Raja of Ramgarh granted and demised the lessee only under ground mining right of land with certain condition, mentioned in the lease deed itself under the caption "Covenants by Lessee".

16. That with respect to the statements made in para-19 of the writ petition, it is stated that only underground mining right in the

land was granted to petitioner-company, surface right was never given to him. It is relevant to note that this land comprised in the schedule of the lease did not contain the number of plot, which is a matter of dispute.

17. That with respect to the statements made in para-20 of the writ petition, it is stated that the admission by the petitioner in this para that there were some tenants who held agricultural lands in one or other of the eight villages, shows that surface right was reserved to the raiyats and sairati interest or tenure in the surface land was reserved to the Raja and after vesting of estate or tenure, it vested to the state not to the company.

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20. That with respect to the statements made in para-24 of the writ petition, it is stated that the same is wrong and denied. There is clear cut provision in the lease deed dated 23rd January 1947 that on the requirement by the company to use the surface area of the land for colliery purpose. Petitioner would be entitled for the same subject to the payment of the estate has got the only authority to grant permission subject to payment of land by the company but the petitioner never applied for the same under Rule-31 of the Mineral Concessional Rule, 1966.

21. That with respect to the statements made in para-25 of the writ petition, it is stated that Rule 27-1(d) clearly speaks that the lessee shall also pay for the purpose of mining operation. It does not mean that entire surface area has been allotted to him. Only the portion of lease land which is used for the colliery purpose, as and when required by the lessee, shall be granted after proper enquiry and for such used, petitioner shall have to pay the rent.

22. That with respect to the statements made in para-26 of the writ petition, it is stated that the lease demised unto this lessee only in underground mining rights of and open cast mining has not been allowed by any government authority on the land. So, the opencast mining carrying over by the petitioner is illegal and beyond the provision of the lease deed."

11. After the aforementioned objections were taken in the counter-affidavit filed by the State of Bihar, letters dated 31st August 1976 and 5th August 1977 issued by the Additional Collector, Hazaribagh were brought on record by the Tata Steel to claim that permission to occupy different portions in the leasehold area has been granted by the Deputy Commissioner, Hazaribagh. A copy of the letter dated 18th January 1999 from the Special Secretary to the Government, Department of Mines and Geology, Government of Bihar has also been produced to fortify the writ pleadings that the Tata Steel has surface rights over the entire leasehold area.

NEW PLEA BY THE PARTIES

12. The validity of the Tata Lease was not challenged before the writ Court but in the present proceeding through the supplementary affidavit dated 18th September 2019 which has been taken on record vide order dated

7th April 2022, the State of Jharkhand has attacked the said lease on the basis of clause (6) of the Tata Lease executed by the State of Bihar in favor of M/s West Bokaro Limited. Now the State of Jharkhand has taken a plea that the Tata Steel has lost all its rights under the Tata Lease by operation of sub-section (2) to section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 (in short, MMDR Act), which restricts the maximum period for a mining lease to 30 years. Obviously, the Tata Steel has taken several objections to this new plea sought to be introduced by the State of Jharkhand. Simultaneously, it has also set-up new pleas of discrimination and *res judicata* to ward-off every objection to validity of the Tata Lease.

13. By referring to the order passed in CWJC No. 2150 of 1997(R) titled *"Tata Iron & Steel Company Limited v. State of Bihar (Now Jharkhand) & Ors."*[1], Mr. Jaideep Gupta, the learned Senior counsel for the Tata Steel has submitted that in the said writ proceeding the State of Bihar raised a specific ground that the Tata Lease executed in favor of M/s West Bokaro Limited had expired and required fresh renewal for further mining and ancillary activities but such plea was not accepted by the writ Court.

14. The doctrine of *res judicata* embodies the rule that a judicial decision should be accepted as correct. This doctrine which is based on public policy also envisages that no man should be vexed twice for the same cause. In "*Daryao v. State of U.P."*[2] the Hon'ble Supreme Court has observed that it is in the interest of public at large that a finality should attach to the binding decisions pronounced by the Courts of competent jurisdiction. There is no doubt to the proposition that the doctrine of *res judicata* is attracted in separate subsequent proceedings and even an erroneous decision remains binding on the parties concerning the same issue. However, to establish a plea of *res judicata* the party relying on a previous decision between the same parties must establish that the issue which is raised in the subsequent proceeding has conclusively been decided by the competent Court between the same parties in a previous proceeding.

15. The Tata Steel has produced the application filed by the State of Bihar in CWJC No.2150 of 1997(R)[1]. There the State of Bihar has taken the following stand:

"(iv) That further an indenture was executed between State of Bihar

1 *2005 (3) JCR 357 (Jhr): 2005 SCC OnLine Jhar 298*
2 *AIR 1961 SC 1457*

and the company West Bokaro Ltd. on 29.03.1973 upon the terms and conditions set out in indenture dated 23.01.1947 between West Bokaro Ltd. & Bokaro & Ramgarh Ltd. From para 6(vi) of the indenture dated 29.03.1973 it is clear that the Govt. of Bihar accepted West Bokaro Ltd. as a direct lessee by operation of Section 10(i) of Bihar Land Reforms (Amendment) Act,

> *"True / photocopy of indenture dated 29.03.1973 is annexed herewith and marked as Annexure-R/1 which forms part of this application."*

(v) That out of 4299.84 Acres leased land 1474.35 Acres of land was duly notified as protected forest by Govt. of Bihar on 11.02.1953 under the provisions of Section 29(3) of the Indian Forest Act, 1927 and 2066.78 Acres G.M. Forests, which also comes under the preview of Forest Land in view of laws laid down by the Hon'ble Supreme Court in Civil Writ Petition No. 202 of 1995 the total forest area within the lease hold thus becomes 1474.35 + 2066.78 = 3541.31 Acres.

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(xii) That it is further relevant to mention here that the indenture in 1973 between the company and the Govt. of Bihar was executed in view of the provisions of MM (R & D) Act, 1957. Under Section 8(1) of MM (R&D) Act, 1957 (Amendment) 1998 of 38 the maximum lease period of any lease shall not exceed 30 years. This provision of the Act operates in rem and is also applicable to the statutory leases arising out of sec. 19(1) of the Bihar Land Reforms Act, as pointed out in the indenture dated 29.03.1973. Thus, the lease period of the indenture dated 29.03.1973 has expired, after 30 years, with efflux of time on 28.03.2003."

> *"True/photocopy of the extract of the provisions of MM (R&D) Act, 1957 is annexed herewith and marked as Annexure-R/4, which forms part of this application."*

16. This Court has held as under:

"23. As far as the submissions made by the learned Advocate General with regard to the subsistence of lease is concerned, we are not convinced that the same commenced on or became effective from 27th October, 1964. We are of the view that having regard to the stipulations contained in the agreement dated 29th March, 1973, the same would be subject to the provisions of the Mines and Mineral (Regulation and development) Act, 1957 and the rules made thereunder. Accordingly, in view of the notification dated 22nd May, 1996, issued by the Ministry of Coal, Government of India, whereunder the Central Government declared that sub-section (1) of Section 9 and sub-section (1) of Section 16 of the 1957 Act would apply to the area in relation to the mining leases granted before 25th October, 1949, in respect of coal, with effect from the date of publication of the notification in the Official Gazette, the lease may be brought in conformity with the provisions of the said Act under Section 16 thereunder."

17. On a glance at the order passed in the aforementioned writ

petition, we gather that no finding to the effect that the Tata Lease has become immune from operation of the MMDR Act, as sought to be canvassed on behalf of the Tata Steel, has been rendered by the Court. In that proceeding, the purported violation of the provisions of the Forest (Conservation) Act, 1980 by the Tata Steel in clearing of the forest lands within the leasehold area and the proposed action for the aforesaid contravention were the subject matters before the Court. The Tata Steel had taken a stand that the permission under the Indian Forest Act, 1927 was taken for clearing of the forest lands upon due payment of the value of the forest produce and thereafter the mining operation was started. However, in the meantime, the provisions of the Forest (Conservation) Act, 1980 became operative and the State of Bihar insisted that the Tata Steel was required to seek necessary permission from the Central Government for the mining operations. Therefore, it must be borne in mind that the submission made on behalf of the State of Bihar, that by operation of section 8 of the MMDR Act the Tata Lease had come to an end by efflux of time, should not be torn out of the context. The aforesaid plea was not accepted by this Court because the Court was not convinced that the starting point for the Tata Lease was from 27th October 1964. This Court has, however, finally held that the Tata Steel was required to seek permission from the Central Government for commencing any mining operation under the Forest (Conservation) Act, 1980. The Court has recorded its opinion that the stipulations under the agreement dated 29th March 1973 (Tata Lease) shall be subject to the provisions of the MMDR Act. In fact, in the order passed in CWJC No.2150 of 1997(R)[1], this Court has observed what exactly the State of Jharkhand has pleaded in the present proceeding.

18. The Tata Steel has also taken the ground of discrimination on the basis of the mining leases granted to the Steel Authority of India Limited (IISCO) at Chasnala for Seven Hundred and Fifty years and Jitpur Colliery for Nine Hundred and Ninety-One years. It has pleaded that the State of Jharkhand never objected to these leases which are admittedly for the periods more than what has been provided under the MMDR Act.

19. A plea of discrimination must necessarily be demonstrative of an action in favor of one and an unjust and unfair treatment of the other. As

understood in legal parlance, discrimination involves an element of intentional and purposeful differentiation involving an element of favorable or unfavorable bias for or against a party. A party seeking relief on the ground of discrimination is required to make appropriate pleadings for laying the factual foundation and provide details of the comparable cases so as to demonstrate manifest unequal treatment of equals. Therefore, whether or not there is any justification for the so-called discrimination can be assessed only upon a threadbare examination of the facts of both cases. In *"Mallur Siddeswara Spg. Mills (P) Ltd. v. CCE"*[3] the Hon'ble Supreme Court has observed that it cannot be concluded merely on the basis of general statements that there has been discrimination.

20. In yet another case, in *"Salehbhai Mulla Mohmadali v. State of Gujarat"*[4] the Hon'ble Supreme Court has observed as under:

> *"22. So far as the ground of discrimination is concerned, it is well settled that in order to establish the same it is necessary to make out such case in the pleadings. In the present case no such ground was taken in the plaint nor any facts or material were placed on the record during the trial of the suit or before the High Court and the same cannot be considered for the first time before this Court, specially when the defendants were not given any opportunity to meet the same."*

21. In the supplementary counter-affidavit, the plea of discrimination has been raised by the Tata Steel without any factual foundation and, on this issue, no argument was advanced in course of the hearing. Secondly, the MMDR Act makes a distinction between a private party or private company and a government company or corporation or any undertaking of the Central Government in the matters of grant of lease. As originally enacted, section 8 of the MMDR Act itself contemplated exception in appropriate cases for renewal of the mining lease for a period beyond the statutory period. Now, after the amendment of 2015, there is a specific provision under section 8-A which provides that the Central Government may grant lease to the Government Companies or Corporations for such periods as provided by it. And, section 17 of the MMDR Act provides that the Central Government after consultation with the State Government may undertake mining operations "in any area not already held under any reconnaissance permit, prospecting license or mining lease". The Steel

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3 *(2004) 12 SCC 65*
4 *(1992) 1 SCC 742*

Authority of India Limited is a public sector undertaking under the Central Government and any mining lease granted to it cannot be compared with the Tata Lease executed in favor of the Tata Steel.

22. The learned Advocate General who came for rejoinder has submitted that by operation of section 8 of the MMDR Act the Tata Lease shall be deemed to have lapsed on the expiry of 30 years and it is no longer a valid lease granting coal mining rights to the Tata Steel. It is further submitted that now the amendments of 2015 made in the MMDR Act provide a total period of 50 years for which a mining lease irrespective of the number of renewals may continue and on expiration of the period of 50 years the mining lease can be awarded only through auction. Per contra, Mr. Jaideep Gupta, the learned Senior counsel for the Tata Steel has submitted that the Tata Lease is beyond the purview of section 8 because the Headlease was executed prior to 25th October 1949. This submission has been made with reference to section 16 of the MMDR Act to the effect that since the Headlease which was executed for a period of Nine Hundred Ninety-Nine years was not brought into conformity with the provisions of the MMDR Act within the period of 2 years as provided under section 16 and no further time has been specified by the Central Government in this behalf and, therefore, the Tata Lease must be held in conformity with the provisions of the MMDR Act. In other words, the submission made on behalf of the Tata Steel is that on expiration of the period of 2 years from the commencement of the MMDR (Amendment) Act, 1994, the restrictions under section 8 or any other provision of the MMDR Act shall cease to restrict life of the Tata Lease.

23. There is a recital in the Tata Lease which records that M/s West Bokaro Limited was accepted as a direct lessee to the Government of Bihar on the same terms as incorporated in the Sublease and Supplementary lease, both dated 23rd January 1947. However, the covenants in these instruments have been made subject to the provisions of the MMDR Act.

24. Clause (6) to the Tata Lease dated 29th March 1973 is extracted as under:

> *"6. Subject to the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and the Rules made thereunder, the*

Government accepts the West Bokaro Ltd., as direct leassee upon the terms as set out in the sub-lease and supplementary lease both dated 23rd January, 1947 (copies appended and marked Annexure 'A' collectively), entered into between Bokaro and Ramgur Ltd., and West Bokaro Ltd; the lease in favour of Bokaro and Ramgur Ltd., having, in any view, been extinguished, i.e. either by reason of forfeiture, or if ultimately it is held that there was no forfeiture and that forfeiture did not take place, then by operation of Section 10A of the Bihar Land Reforms Act."

25. The MMDR Act has been enacted to deal with the development and regulation of mines and minerals, except petroleum; the Mines and Minerals (Regulation and Development) Act, 1948 (in short, Mines Regulation Act) exclusively deals with petroleum. What may be the most relevant provision for the present discussions is section 19 of the MMDR Act which provides that any mining lease granted, renewed or acquired in contravention of the provisions of the Act or any Rules or orders made thereunder shall be void and of no effect. Since the applicability of section 8 of the MMDR Act to the Tata Lease has been extensively debated before us, it is necessary to have a glance at the said provision which is extracted below:

"8. Periods for which mining leases may be granted or renewed. — (1) The provisions of this section shall apply to minerals specified in Part A of the First Schedule.

(2) The maximum period for which a mining lease may be granted shall not exceed thirty years:

Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years.

(3) A mining lease may be renewed for a period not exceeding twenty years with the previous approval of the Central Government.

(4) Notwithstanding anything contained in this section, in case of Government companies or corporations, the period of mining leases including the existing mining leases, shall be such as may be prescribed by the Central Government:

Provided that the period of mining leases, other than the mining leases granted through auction, shall be extended on payment of such additional amount as specified in the Fifth Schedule:

Provided further that the Central Government may, by notification in the Official Gazette and for reasons to be recorded in writing, amend the Fifth Schedule so as to modify the entries mentioned therein in the said Schedule with effect from such date as may be specified in the said notification.

(5) Any lessee may, where coal or lignite is used for captive purpose, sell such coal or lignite up to fifty per cent. of the total coal or lignite produced in a year after meeting the requirement of the end use plant linked with the mine in such manner as may be prescribed by the Central Government and on payment of such additional amount as specified in the Sixth Schedule:

Provided that the Central Government may, by notification in the Official Gazette and for the reasons to be recorded in writing,

increase the said percentage of coal or lignite that may be sold by a Government company or corporation:

Provided further that the sale of coal shall not be allowed from the coal mines allotted to a company or corporation that has been awarded a power project on the basis of competitive bid for tariff (including Ultra Mega Power Projects):

Provided also that the Central Government may, by notification in the Official Gazette and for reasons to be recorded in writing, amend the Sixth Schedule so as to modify the entries mentioned therein with effect from such date as may be specified in the said notification."

26. Section 8, as originally enacted, provided that the period for which a mining lease in the case of coal, iron ore or bauxite may be granted shall not exceed 30 years, and in case of other mineral not more than 20 years. It further provided that with previous approval of the Central Government a mining lease for coal may be renewed for a period not exceeding 30 years. By an amendment in 1994, the distinction between coal, iron ore or bauxite and other minerals was removed in respect of the maximum period for which the lease can be granted and it was made uniform to a period of 30 years. A proviso was also added to sub-section (1) to section 8 to the effect that the minimum period for which a mining lease can be granted has been set at 20 years.

27. Section 16 provided that all mining leases granted before 25th October 1949 shall, as soon as may be, after the commencement of the Act be brought into conformity with the provisions of the Act and the Rules made under sections 13 and 18.

28. Section 16(1) of the MMDR Act, as originally enacted, reads as under:

"16. (1) All mining leases granted before the 25th day of October, 1949, shall, as soon as may be after the commencement of this Act, be brought into conformity with the provisions of this Act and the rules made under sections 13 and 18:

Provided that if the Central Government is of opinion that in the interests of mineral development it is expedient so to do, it may, for reasons to be recorded, permit any person to hold one or more such mining leases covering in any one State a total area in excess of that specified in clause (b) of section 6 or for a period exceeding that specified in sub-section (1) of section 8."

29. Since then, there has been significant changes in section 16 of the MMDR Act inasmuch as the expression "as soon as may be after the commencement" was replaced by the expression "if in force at such commencement" through the Amendment Act No. 56 of 1972 and a period

of six months was provided for bringing the mining leases into conformity with the provisions of the MMDR Act and the Rules made thereunder.

30. For that purpose, sub-section (1)(a) has been incorporated in section 16 of the MMDR Act by the Mines and Minerals (Regulation and Development) Amendment Act, 1972 which reads as under:

> *"(1)(a) All mining leases granted before the commencement of the Mines and Mineral (Regulation and Development) Amendment Act, 1972, if in force, at such commencement, shall be brought into conformity with the 'revisions of this Act, and the rules' made thereunder, within six months from such commencement, or such further time as the Central Government may, by general or special order, specify in this behalf."*

31. The aforesaid amendment in sub-section (1)(a) to section 16 was brought in there because the expression "as soon as may be after the commencement" as occurring in section 16(1) was being used a refuge by the mining leaseholders to delay the process of bringing into conformity the mining leases granted before 25th October 1949 into conformity with the provisions of the MMDR Act. Subsequently, by the Amendment Act No. 25 of 1994 the expression "if in force at such commencement" and the period of "six months" as provided under clause (a) to sub-section (1) were deleted and a further period of 2 years from the commencement of the MMDR (Amendment) Act, 1994 was provided for bringing all mining leases in force at the date of commencement of the said Amendment Act in conformity with the provisions of the MMDR Act.

32. The language of clause (a) of sub-section (1) to section 16 is plain and simple and the expressions used thereunder do not admit any ambiguity. After the amendment of 1994, the true construction of section 16 as existing today is that all mining leases in force as on 28th March 1994 (when the Amendment Act of 1994 became operative) must be brought in conformity with the provisions of the MMDR Act and the Rules made thereunder. The expression "or such further time as the Central Government may, by general or special order, specify in this behalf" shall not mean that the period of 2 years would stand automatically extend till the Rules are made by the Central Government in this behalf, as Mr. Jaideep Gupta, the learned Senior counsel for the Tata Steel has endeavored to contend before us. The learned Advocate General has also contended that the Tata Steel was under a duty to take steps to bring the Tata Lease in conformity with the provisions of the

MMDR Act and any lapse on the part of the State of Jharkhand shall not extend the life of the Tata Lease beyond a maximum period of 50 years.

33. The Tata Steel has produced a copy of the letter dated 22nd March 2004 issued by the Under Secretary, Ministry of Coal and Mines, Department of Coal, Government of India. There is an indication in this letter that till the time lease of the Tata Steel is brought in conformity with the provisions of the MMDR Act the lease shall continue with the existing terms and conditions and remains a valid lease.

34. The letter dated 22nd March 2004 is reproduced below:

"No. 13016/4/2004-CA
Government of India
Ministry of Coal and Mines
Department of Coal

New Delhi, dated 22.3.2004

To

The Coal Controller,
1-Council House Street,
Kolkata-700001.

Subject:- Incorporation of condition of captive consumption of coal in the lease deeds of the companies doing captive mining of coal.

Sir,

I am directed to refer to your letter No. CC/Tech/Open Perm./Gen/Pvt./03-04 dated 9.1.2004 on the subject mentioned above and to state the following in respect of the issues raised in your letter relating to TISO, JSPL, M/s Monnet Ispat and M/s INDALCO.

TISCO- The mining leases of TISCO have been granted much before the enactment of the Mines & Minerals (Development & Regulation) Act, 1957 and the terms and conditions of the leases are not in accordance with the provisions of the MM (D&R) Act, 1957. These leases required to be brought in conformity with the provisions of the MM (D&R) Act under Section 16 (1) of the MM (D&R) Act and accordingly a notification has been issued by the Central Government under Section 30A of the MMDR Act declaring that Section 9(1) and Section 16 (1) of the MMDR Act, and any rules made under Sections 13 and 18 of the Act, shall apply to mining leases granted before 25.10.1949 in respect of coal. This requires that the mining leases of TISCO should be brought in conformity with the provisions of the MM (D&R) Act, 1957 and under provisions of Section 16 (1). This implies that the notification of the terms and conditions of the leases will be got done by the State Government through the Controller of Mining Leases. However, till then the existing terms and conditions of the leases will continue to remain valid. In so far as the condition of captive use of coal is concerned, TISCO may be advised for incorporation of the same in the lease deed when its terms and conditions are modified by the State

Government in consultation with the Controller of mining leases. However, TISCO is governed by the provisions of Section 18(1)(b) of the Coal Mines (Taking over of Management) Act, 1973 which stipulates production and use of coal by the Steel and Iron producers from their coal mines to the extent of their requirement for iron and steel production and prohibits disposal of coal in excess thereof to any other party without the previous approval of the Central Government. Since captive mining is statutorily mandated by the above provision, it may not be necessary to ask for incorporation of the condition of captive use in the lease deeds of TISCO and they may be granted opening permission.

2. As regards M/s Jindal Steel & Power Ltd., and M/s Monnet Ispat Limited, it is necessary that the captive-use-of-coal condition is incorporated in the lease deed through execution of additional/ supplementary lease deed. The lease deed being a contractual document, execution of additional supplementary lease deed is not prohibited. Rule 45 (iii) of the Mineral Concession Rules, 1960 provides that the lease may contain such other conditions, not being in-consistent with the provisions of the Act and the rules of MCR, as may be agreed upon by the parties. Further this Department has written to the concerned State Government for incorporation of condition of captive use of coal, under Rule 27(3) of MCR, in the lease deed. In view of the stated position M/s JSPL and M/s Monnet Ispat may be granted mine/ seam opening permissions subject to the condition that they should get incorporated the condition of captive use of coal for their approved end use in their own end-use plant, in their additional/ supplementary lease deed.

Yours faithfully,

Sd/-
(S.K. Kakkar)
Under Secretary"

35. This communication has been used by the Tata Steel as if it has a legal basis to avoid rigors of the mining laws. May be the State of Bihar/State of Jharkhand and the Central Government did not seek compliance of the mining laws and the rules and regulations framed in that behalf but a lessee shall always be bound in law to ensure that the lease granted in its favor complies to the laws in force at the time of execution of the lease as also the laws in force subsequent thereto. The Tata Steel has been in business since long and M/s West Bokaro Limited was one of its subsidiary companies. It therefore cannot take the shelter of ignorance of law for not taking any step towards complying with the requirements under section 16 of the MMDR Act.

36. For the sake of fullness, it is necessary to indicate that through Gazette Notification dated 22nd May 1996, the Central Government has declared that sub-section (1) of section 9 and sub-section (1) of section 16 of

the MMDR Act and any Rule made under sections 13 and 18 of the said Act shall apply in relation to the mining leases for coal granted before 25th October 1949. This notification has been issued under section 30A of the MMDR Act which makes special provisions relating to the mining leases for coal granted before 25th October 1949. Therefore, this is beyond any pale of doubt that a mining lease which does not conform to the provisions of the MMDR Act shall by virtue of section 19 would become void and inoperative, 2 years after commencement of the Amendment Act of 1994. Now, after *"Goa Foundation v. Union of India"*[5], the Central Government has brought in extensive amendments in the MMDR Act one of the effects of which is that no mining lease shall continue beyond a total period of 50 years and on expiration of such period all mining leases shall be awarded through auction.

37. The insistence of the Central Government that all mining leases made prior to 25th October 1949 must be brought in conformity with the mining laws goes back to the Mines Regulation Act. Before the independence, there was hardly any law to regulate the mining activities and mining leases were granted either by the Raja/Maharaja or the British India on payment of Salami, rent etc. It was section 4(1) of the Mines Regulation Act through which the Central Government for the first time declared that no mining lease shall be granted after the commencement of the Act, otherwise than in accordance with the Rules made thereunder. Sub-section (2) to section 4 provided that any mining lease granted contrary to sub-section (1) would be void and of no effect. Therefore, all the existing mining leases were required to be brought in conformity with the Mines Regulation Act and the Rules made thereunder. For this purpose, the Central Government was empowered to make Rules for modifying and altering the terms and conditions of any mining lease granted prior to the commencement of the Mines Regulation Act so as to bring such leases into conformity with the existing laws. Accordingly, the Mineral Concession Rules, 1949 were made by the Central Government in exercise of its powers under section 5 and the Mining Leases (Modification of Terms) Rules, 1956 were made under section 7 of the Mines Regulation Act. From these enactments and subsequent thereto, it can be easily inferred that this is the policy of the

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5 *(2014) 6 SCC 590*

Central Government that all existing mining leases executed prior to 25th October 1949 must be brought in conformity with the mining laws and that is the reason even after the enactment of MMDR Act by which the Mines Regulation Act was repealed the Rules of 1956 continued to be effective by virtue of section 29 of MMDR Act which provides that all Rules made or purporting to have been made under the Mines Regulation Act in so far as they relate to the matters dealt with under the MMDR Act and are not inconsistent therewith shall be deemed to have been made under the MMDR Act, as if this Act was in force on the date on which such Rules were made – these Rules continued till the Mineral Concession Rules, 1960 were enforced.

38. In the interregnum, before the MMDR Act came into force, by operation of the provisions under the BLR Act the intermediaries' rights vested in the State of Bihar and the sub-lessees came to be treated as statutory lessees directly under the State of Bihar. This gave rise to a dispute whether the mining leases granted prior to the vesting shall be considered a new lease or an existing lease and the issue has been settled by a judgment of the Hon'ble Supreme Court in *"Bihar Mines Ltd. v. Union of India"*[6]. The BLR Act came into force on 25th September 1950 and by virtue of the Notification issued thereunder the intermediary rights and interests of all intermediaries passed on and vested in the State of Bihar. The contention raised by the Bihar Mines Ltd. was that the lease which was granted in the year 1928 came to an end and the statutory lease under section 10 of the BLR Act was a new lease and not an "existing mining lease" which could have been modified by the order of the Controller under rule 6 of the Rules of 1956. This proposition was accepted by the Hon'ble Supreme Court. By implication of the judgment in *"Bihar Mines Ltd."*[6] the leases granted even prior to 25th October 1949 are considered new leases the terms and conditions of which are required to be in accordance with the provisions of the Central Act regulating the grant of new mining leases. By virtue of the judgment in *"Bihar Mines Ltd."*[6], which has a specific reference in the Tata Lease that the lessee shall be bound by the decision in *"Bihar Mines Ltd."*[6], the Tata Lease has to be made in conformity with the existing mining laws.

39. Furthermore, the recitals in the Headlease specifically refer to

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6 *AIR 1967 SC 887*

the rules and regulations of the government, the Mines Act and any instruction issued to the lessee by the Inspector of Mines. Similarly, clause (3) of the covenants by the lessee in the Sublease dated 23rd January 1947 refers to the rules and regulations of the government. In the Tata Lease, there are references of MMDR Act at different places and, above all, clause (6) starts with the expression "subject to the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and the Rules made thereunder". It must therefore be construed in law that the lessee had this understanding from the very beginning that it has to comply with the mining laws and the lease must be in conformity with the mining laws. Furthermore, one of the covenants under the Tata Lease is that the parties have bound themselves by the decision in *"Bihar Mines Ltd."*[6] which was pending before the Hon'ble Supreme Court at that time. This agreement between the parties was with reference to a dispute whether enhanced rate of royalty can be applied with effect from 3rd November 1951 or 1st June 1958, but, notwithstanding that, the declaration of law by the Hon'ble Supreme Court in *"Bihar Mines Ltd."*[6] must be applied to the Tata Lease.

40. Clauses (5) and (7) of the Tata Lease which refer to MMDR Act and *"Bihar Mines Ltd."*[6] case are reproduced below:

> *"5. Over and above the amount referred to in terms Nos. 1, 2, 3 & 4 above, the Government shall not be entitled to make any further demand upon West Bokaro Ltd., in respect of the said premises, nor shall the Government claim any interest in respect of the royalties payable from 3rd November 1951 up to this agreement, except to the extent of any further amount payable in accordance with ultimate decision of the Supreme Court in respect of rate of royalty payable with reference to section 9 of the Mines and Minerals (Regulation and Development) Act, 1957.*
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> .....
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> .....
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> *7. The parties agree that if as a result of the Judgment of the Supreme Court in the case of Bihar Mines Ltd., the Judgment of the Patna High Court in cases of Khas Karanpura Collieries and various other Collieries is over-ruled, the Government will be at liberty to enforce any rights which may accrue to them as a result of reversal of the said Judgment, to wit the right to claim royalty at the enhanced rate from 3-11-51 or 1st June, 1958 as the case may be depending on the ratio and effect of the Supreme Court's Judgment. The Government however concedes that the 5% rate came into force from 1-1-66. The West Bokaro Ltd., will not be treated differently from any other working lessee of a mine."*

41. No doubt the issue debated before us is an important question of law. However, without there being any factual foundation laid in the

pleadings a declaration on validity or invalidity of the Tata Lease may not be proper. The effect of sections 8 and 16 of the MMDR Act in relation to which both sides have different arguments to raise was never debated before the writ Court. As mentioned hereinabove, the State of Jharkhand has taken a stand that by operation of law the Tata Lease has become inoperative and the Tata Steel has lost its right to enjoy the privileges under the Tata Lease. On the other hand, the Tata Steel has raised several objections to raising of a new plea for the first time in the present proceeding, and has taken a stand that the limitation under section 8 which provides the maximum period for which a mining lease can be granted shall not apply to the Tata Lease and the same shall remain in force for Nine Hundred and Ninety-Nine years. Mr. Jaideep Gupta, the learned Senior counsel for the Tata Steel has submitted that there are several other ancillary issues which may be required to be looked into before a final decision is rendered on validity or invalidity of the Tata Lease. Even the supplementary affidavit dated 18th September 2019 through which this issue has been sought to be raised by the State of Jharkhand does not contain sufficient factual foundation to deal with this issue. We would therefore refrain from making a declaration on this controversy and leave the matter for the State of Jharkhand and the Central Government to take a decision in the matter.

MC RULES AND SURFACE RIGHTS

42. The Tata Steel has claimed surface rights over 2054.70 acres of the GM lands on the basis of payment of surface rent and permission by the Deputy Commissioner to occupy different parts of the aforesaid GM lands. It has brought on record the letters from the Additional Collector, Hazaribagh communicating the decision of the Deputy Commissioner, Hazaribagh to permit the Tata Steel to occupy 1106.93 acres of the GM lands for mining operations. Mr. Jaideep Gupta, the learned Senior counsel for the Tata Steel has referred to the letter dated 18th January 1999 of the Special Secretary to the Government of Bihar, Department of Mines and Geology, to submit that the State of Bihar must be held to have recognized surface rights of the Tata Steel over the leasehold area once permission to occupy 1106.93 acres of the GM lands is accorded by the competent authority. This communication

which refers to surface rights and open cast mining by the Tata Steel has been countered by the learned Advocate General urging that every communication by an officer of the State of Bihar may not represent the stand of the State and, in any event, would not be binding on the State of Jharkhand. It is submitted that the Department of Mines which alone could have explained the nature and relevance of the said communication was not made a party in the writ proceeding.

43. The letter dated 18th January 1999 from the Special Secretary to the Government, Department of Mines and Geology, Government of Bihar is extracted below:

Government of Bihar
Department of Mines and Geology
Letter No.-4B/M.D.180-37/95---/M./Patna, dated-18.01.99

From,
Sri Siyaram Sharan Sharma,
The Special Secretary to the Government.

To,
The Chief Conservator of Forest-cum-Nominated Officer,
Government of Bihar.

Subject: Regarding M/s TISCO Company, Ghatotanr Colliery.

Sir,

As directed, with reference to above noted subject and your letter dated 1007 dated 20.08.98, I am to say that opinion of the Law Department has been obtained with respect to the queries made in the above letter. As per the opinion of the Law Department, the para wise response is as under:

1. As per Notification No.295 dated 22.05.96 of the Ministry of Coal, Government of India, section 9{1} and 16{1} of M.M.R.D. Act shall be applicable on the coal mining lease granted before 25.10.49 from the date of publication of above notification in the official gazette. In this connection, communication has been made with the Government of India for modification, but final decision thereon is still awaited. Thus, this mining lease is valid till now.

2. If any lease holder uses the part of an area on lease for mining operations or work related to it, their surface rent shall be payable for entire such area.

3. Registered lease deed of lease holder includes entitlement of underground mining along with quarrying. As per the opinion of Law Department, quarry also means open cast mining. Therefore, open cast mining done by the lease holder shall not be considered as violation of the terms of lease.

Yours faithfully,
Sd/-18/1/99
{Siyaram Sharan Sharma}
Special Secretary to the Government

44. The letter dated 18th January 1999 by the Special Secretary to the Government of Bihar has been issued with reference to the letter dated 20th August 1998. However, this letter which was written by the Chief Conservator of Forest-cum-Nominated Officer, Government of Bihar has not been brought on record and the State of Jharkhand has raised an objection that the Department of Mines was not made a party in the writ proceeding. Besides that, the letter dated 18th January 1999 records that sections 9(1) and 16(1) of the MMDR Act shall be applicable to all such coal mining leases which were granted prior to 25th October 1949 and, accordingly, a communication was sent to the Government of India for modification of the Tata Lease in respect of which final decision of the Central Government was awaited. This seems to us that it escaped attention of the writ Court that there is no provision in the MC Rules for making a declaration on surface rights to a lessee even by an officer of the State Government. The MC Rules merely lay down the procedure for grant of mining lease and payment of royalty, surface rent, dead rent etc. It provides the conditions to be incorporated in a mining lease and the other mines connected therewith. Rule 27 itself contains several conditions which a lessee is required to fulfill – payment of surface rent is just one of the conditions. The letter dated 18th January 1999 by the Special Secretary, Department of Mines and Geology, State of Bihar is simply an acknowledgment of the payments of surface rent made by the Tata Steel and the contents therein cannot be read *de hors* the statutory provisions.

45. Initially, there was no concept of dead rent or surface rent which a lessee is required to pay under the MMDR Act and the MC Rules and even the rate of royalty was fixed by the lessor. The MMDR Act contains separate provisions for the payment of royalty and dead rent whereas surface rent is payable under rule 27(1)(d) of the MC Rules. Under sections 9 and 9-A of the MMDR Act, the holder of a mining lease is required to pay royalty and dead rent as provided under the Schedules appended to the Act. Whereas, rule 27(1)(d) of the MC Rules provides that the lessee shall pay surface rent for the surface area used by him for the purpose of mining operations but the amount so payable should not be exceeding the land revenue, water and cesses assessable on the land as may be specified by the State Government.

The expressions “surface rent”, “dead rent” and “royalty” have different and distinct meanings and connotations in the legal parlance. The dead rent is payable on a mining lease in addition to royalty and other rents or charges whether the mine is being worked or not. It may be that the mine is not worked properly or not worked at all so as to yield enough return to the lessor through royalty. Therefore, to ensure regular income for the lessor a fixed amount which is called dead rent is required to be paid by the lessee. While this is the purpose, it can be said that the dead rent is a kind of rent or charge paid by the lessee to compensate the lessor for the area not under mining operations. In Halsbury's law of England, it is stated that the dead rent which is otherwise known as minimum rent or certain rent is to ensure a minimum income to the lessor in respect of the demise. As regards surface rent, the MC Rules provide that the lessee under a mining lease shall pay surface rent for the area utilized by it. Whereas, it is well known that royalty is calculated on the quantity of minerals extracted or removed. Simply put, dead rent is paid for the whole area, surface rent is paid for the area under mining operations and the royalty is paid for the quantity of minerals extracted or removed. The writ Court, however, completely misconstrued the scope of the MC Rules and has held that the lessee cannot be denied access over the surface of the leasehold area on payment of rent under the MC Rules.

46. The discussions by the writ Court on this issue are in the following terms:

> *“10. From the above stated facts, what emerges is that the lease was primarily granted to the petitioner for carrying out mining operations and the petitioner was allowed to exercise surface rights over portions of the lease hold areas for carrying out their mining operations. By a clarification issued on 18.01.1999 by the concerned Department of the State of Bihar and in the light of the Notification issued by the Ministry of Coal, Government of India, it has been clarified that under a lease deed in mining operations the lessee is entitled to carry out quarrying operations in addition to underground mining operations. Thus, the lessee is entitled to carry out open cast mining over the surface areas within the lease hold lands. The lessees, therefore, cannot be denied access over the surface of the lease hold areas particularly when the permission under the Mineral Concession Rules to use and occupy the surface areas over the specified lands within the lease-hold area is granted to the lessee on payment of rent/royalty. It may be mentioned here that as reflected from the various annexures filed by the petitioner in July, 1976, the petitioner had filed an application before the District Mining Officer, Hazaribagh in terms of Rule 27(1)(d) of the Mineral Concession*

Rules, 1960 as also in terms of the deeds of the mining lease for grant of settlement in respect of specific operations of Gair Majarua lands pertaining to various Khatas. The matter on being referred by the District Mining Officer to the Additional Collector, Hazaribagh, the order of settlement as prayed for by the petitioner was passed in favour of the petitioner after obtaining prior approval of the Deputy Commissioner, Hazaribagh and such settlement was made by affixing rent payable by the petitioner according the rate stipulated in the order. Thus, after grant of settlement in respect of the Gair Majarua lands, the petitioner took possession of the demised lands and began to pay the stipulated rent as fixed in terms of the deed of mining lease. As the mining lessee of the State, the petitioner is entitled to use any surface land for the purposes of the mining operations although if in carrying out the mining operations, any damage is caused to the surface lands, the petitioner would be liable to pay compensation. Thus, whenever the state grants the mining lease, it leases out its right over the surface lands and it is deemed, therefore, that on granting the mining lease in favour of the petitioner, the State has leased out its right over the surface lands in favour of the petitioner.

11. Learned counsel for the Respondents would argue that even under the original indentures, namely, Annexure-1 and 1/A, the lessees were granted only underground mining rights and further, that there were in existence lands, within the lease hold area, which were under the occupation of the tenants either for agricultural purposes or persons, who had constructed house structures thereon and the lessee was bound under the deed of lease to compensate any person, who was in occupation of the operations of the lands within the lease-hold areas. Learned counsel for the Respondents further submits that the petitioner did not have actual physical possession of the entire lands although permission under the mining lease and under the Mineral Concessions Rules, was given to the petitioners and neither did the petitioner make use of the lands for any mining purposes and, therefore, the Respondent-State was entitled to make settlements of such unoccupied lands, which were either in occupation of private individuals as Korkar lands or to individuals who were landless.

12. This argument of the learned counsel cannot be accepted. Undisputedly, even though the lease for mining purposes was granted for a large chunk of lands, the possession of which was promptly taken by the lessees, but an area of more than 2,000 acres of lands remained as waste lands and recorded as Gair Majarua lands of the Respondent-State. This was the condition as it existed even in the year 1976, when the petitioner had applied for the use of the surface lands, falling within these Gair Majarua lands and for which permission was granted by the representatives of the Respondent-State in favour of the petitioner. The inference from these facts is that prior to 1976 when the lands under reference in this case were recorded as Gair Majarua lands, it remained as waste lands without any portion thereof being in occupation of any private individual. The matter would have been different, in case of persons, who were in occupation of the lands at the time when the indenture of lease were executed in favour of the lessees. In view of the fact that the Respondent-State had granted the mining lease and had also granted permission to use the surface lands for mining purposes in favour of the petitioner and had accepted surface rent from the petitioner and in view of the fact that the petitioner had expressed that they had required the lands for mining operations including quarrying

operations, the Respondent-State could not have made settlement of any such lands in favour of private individuals. Even if, applications for settlement of the lands were filed by private individuals on the grounds that they had subsequently prepared and developed the lands as Korkar lands, it was incumbent upon the concerned authorities of the Respondent-State to give notice to the petitioner and to offer the petitioner opportunity to be heard on the claims of the private individuals, since such claims had the effect of being adverse to the interest of the petitioner over the lease hold lands. Though the Respondents had claimed that before making settlements of the private individuals, prior general notice was issued inviting objections but the Respondents have not stated that the petitioner were specifically informed or notified about such applications. The consistent assertions of the petitioner is that all such settlements, the details of which have been mentioned in the supplementary affidavit, were made by the representatives of the Respondent-State, without the knowledge and behind the back of the petitioner. The petitioner have also claimed that such settlements were being made arbitrarily and in an irregular manner in spite of repeated protests lodged by the petitioners. When the matter was brought to the notice of this Court by the petitioner in the writ application, this Court vide its order dated 05.03.1997 while, directing the Respondents to file a counter affidavit to clearly indicate as to under what circumstances, the lease-hold area of the petitioner is being settled to others, had further ordered that the settlement, if any, made during the pendency of this writ application shall be subject to the ultimate result of the writ application. The petitioner's grievance is that even after passing of the aforesaid order by this Court, in this writ application, the Respondents have continued to make settlements of various portions of all the lease-hold lands to private individuals. Learned counsel for the petitioner has referred to the list contained in Para 4 of the petitioner's third supplementary affidavit, which contains the details of the names of private settlees and the date or period when such settlements in favour of the private individuals were made by the representatives of the Respondent-State, some of which referred to the years between 2001 to 2005. The Respondents have not given specific details as to under what circumstances and on what grounds such settlements were made in favour of the settlees referred to by the petitioner."

47. Rule 27(1)(d) of the MC Rules reads as under:

"(d) the lessee shall also pay for the surface area used by him for the purpose of mining operations, surface rent and water rate at such rate, not exceeding the land revenue, water and cesses assessable on the land, as may be specified by the State Government in the lease."

48. On a plain reading of clause (d), it is apparent that surface rent is paid only for the extent of surface area which is under use, occupation and possession of the lessee for the mining operations and not for whole of the mineral area comprised under the lease over which no mining operation is carried on. Therefore, payment of surface rent for the mineral area over which mining operation is not contemplated in the immediate future is not

required and any payment of surface rent for such mineral area which is not presently required by the lessee would be irrelevant and inconsequential. The Headlease, Sublease and Tata Lease all have made provisions for compensation for taking possession and use of the leasehold areas which are under occupation of the tenants or other persons. These instruments have a reference about cultivated portions of land, temples, place of worship, burial, burning grounds etc. which obviously were not in possession of the Tata Steel.

49. The covenants by the lessee in the Headlease, Sublease and Company's covenant in the Sublease which have been referred to by the parties are reproduced below:

Relevant portions of covenants by lessee of Headlease

"3. The Lessees will as soon as possible after the commencement of the term hereby granted start and work and develop the mines of coal hereby demised and carry on coal mining operations in as skillful and workmanlike a manner as possible so as to obtain the largest possible quantity of best steam coal and so as to obtain the largest possible quantity of best steam coal and so as to comply with the rule and regulations from time to time promulgated by the Government in that behalf and with as little damage as possible to the surface of any portion of the said 1and under cultivation and to the building and erections thereon and shall indemnify the Raja against all damage he may suffer by reason of any negligent working of the mines hereby demised.

4. In carrying on the mining operations contemplated by these presents the Lessees will at all times obey and not in accordance with any lawful instructions which may from time to time be given to the lessees by any Government Inspector of Mines under the Mines Act.

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6. In case the Lessees shall at any time or times during the said term take or occupy or use any of the cultivated portions of the said land now or hereafter to be in occupation or tenants or other persons or cause any injury or damage to any part of the said land or any building, erections, trees or crops thereon then and in every such case the Lessees will pay to the tenants or occupiers of the said land so taken occupied used injured as aforesaid proper compensation for or in respect of such taking occupation use or injury the amount or such compensation to be arranged between the Lessees and such tenants or occupiers and shall indemnify the Raja from and against all actions proceedings, claims, and demands in respect of any such occupation cause or injury.

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12. The Lessees shall at all times permit the Raja his tenants servants and agents and the holders for the time being of any other mining leases of any lands in the said Bokaro & Ramgur Coalfields to use for the purposes of their business all roads or paths over the lands hereby demised but to that the due and proper conduct of the

lessees business shall not be interfered with by any such user.
13. To leave such quantities of coal as may be necessary for the support of any house or building now existing or which may hereafter be erected on the said lands herein comprised.
14. To pay to the Raja proper compensation calculated at the prevailing market rate for any trees that may be cut down or destroyed by the Lessees such compensation to be paid on the day for the payment of minimum royalty next following such event.
15. The Lessees shall not in the exercise of any of the rights hereinbefore granted in respect of the surface of the said Coal Fields interfere with or disturb any existing temples, places of worship, burial or burning grounds."

Clause (3) of covenants by lessee of Sublease

"3. That the Lessee will as soon as possible after the commencement of the term hereby granted start and work and develop the mines of coal hereby demised and carry on coal mining operations in as skillful and workman like a manner as possible so as to obtain the largest possible quantity of best steam coal and so as to comply with the rules and regulations from time to time promulgated by the Government in that behalf and with as little damage as possible to the surface of any portion of the said land under cultivation and to the buildings and erections thereon and shall indemnify the Company against all damage it may suffer by reason of any negligent working of the mines hereby demised."

Clause (2) of company's covenants of Sublease

"2. That if so required by the Lessee the Company shall procure from the superior landlord and grant or make over to the Lessee all the superior landlord's rights and interests in so much of the surface rights of and in the premises as may be required for Colliery purposes subject to the payment of rent in the case of waste land at the rate of four annas per standard Bigha per annum and in the case of cultivated land of such rent and salami as may be customary in the village in which the said lands are situated PROVIDED ALWAYS that upon the Lessee ceasing to require any such surface rights for such Colliery purposes it shall forthwith surrender the same to the Company or to the superior landlord as the Company may direct."

50. About 50 years back, the Tata Steel made an application under rule 27(1)(d) of the MC Rules for the surface rights over 775.12 acres of the GM lands and thereafter several affidavits/supplementary affidavits have been filed by the Tata Steel but there is not a whisper even in the written submissions filed by the Tata Steel that any portion of the aforementioned GM lands has been utilized or is under any mining operations by the Tata Steel. The area of 775.12 acres of the GM lands as described under the schedule of the letter dated 9th September 1976 is spread over five villages and comprises the GM Khas lands as well as the GM Aam lands – 1.70 acres are the GM Aam lands. The question which at once comes to the fore is

whether the State of Jharkhand can or cannot exercise its powers under the CNT Act to grant settlement for agricultural purposes over any part of the leasehold area which is not required by the Tata Steel in the immediate future for mining purposes. This is a well accepted proposition in law that a mining lease on payment of surface rent does not assume the character of a sale and it continues to be a lease with mining rights. Even otherwise, the State of Jharkhand does not do away with its right to re-enter and terminate the lease and obtain possession over the leasehold area just by granting permission and making the surface available to a mining lease holder for the mining operations. The underlying principle running through the mining laws is that the control of mines shall always remain with the State. The Tata Steel seems to have correctly understood the legal position that permission of the State Government under rule 27 of the MC Rules is necessary for carrying the mining operations over the said area and that is the reason it has written the letter dated 9th September 1976 whereby the Tata Steel communicated its intentions to the Mining Officer to start mining operations over 775.12 acres of the GM lands for raising the production of raw coal. The judgments in *"M/s. Bharat Coking Coal Ltd. v. The State of Bihar & Ors."*[7] and *"Tata Iron and Steel Company Limited v. The State of Bihar (now Jharkhand) & Ors."*[1] do not lay down a law that a mining leaseholder shall have surface rights over the entire leasehold area irrespective of its use and occupation for carrying mining operations. On the contrary, in *"Sri Tarkeshwar Sio Thakur Jiu v. Dar Dass Dey & Co."*[8], the Hon'ble Supreme Court has held that owing to inaccessibility of minerals in the earth the actual physical possession of the mineral fields must necessarily be partial. Therefore, there is a fallacy in the argument that by making payment under rule 27(1)(d) of the MC Rules surface rights over 2054.70 acres of the GM lands shall vest in the Tata Steel. The State of Jharkhand has rightly pleaded that the Tata Steel shall have underground mining rights and for that purpose surface to the extent over which mining operations are intended shall be made available to it.

51. The learned Senior counsel for the Tata Steel has placed reliance on clause (2) of the lessor's covenants under the Headlease to fortify his

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7 *AIR 1991 Pat 61*

8 *AIR 1979 SC 1669*

submission that surface rights over the leasehold area shall vest with the Tata Steel. It is contended that the expressions Superior Landlord's rights and surface rights referred to therein make it incumbent upon the State of Jharkhand to grant surface rights to the Tata Steel.

52. Clause (2) of the lessor's covenant under the Headlease reads as under:

> *"2. To grant or make over to the Lessees all the Raja's rights and interests in so much of the surface rights of and in the properties hereby demised as may be required for colliery purposes subject to the payment of rent in the case of waste lands at the rate of four annas per Bigha per annum and in the case of cultivated lands of such rent and Salami as may be customary in the village in which said lands are situated provided always that upon the Lessees ceasing to require any such surface rights for such colliery purposes they shall forthwith surrender the same to the "Raja"."*

53. The aforesaid clause (2) under the Headlease has been incorporated in the Tata Lease executed by the State of Bihar in favor of the Tata Steel with minor modifications, which reads as under:

> *"2. Whereas by an Indenture of Headlease date the 21st day of November 1946 and expressed to be made between Maharaja Kamakshya Narain Singh Bahadur (hereinafter referred to as "the Raja") of the one part and Bokaro & Ramgur Ltd. a Company duly incorporated under the Indian Companies Act 1882 having its Registered Office at Wellesley House, Wellesley Place, in the Town of Calcutta (herein-after called "the Company") of the other part for the consideration therein mentioned the Raja demised unto the Company the underground coal mining rights of and in the land and premises specified in the Schedule thereto subject to the benefit of several convenants and provisions contained therein (including a covenant by the superior landlord to grant or to make over to the Company all the superior landlord's rights and interest in surface rights required for Colliery purposes)."*

54. A glance at the aforesaid recitals in the Tata Lease makes it crystal clear that surface rights shall be provided to the lessee for the purpose of carrying mining operations. The recitals in these instruments, which refer to rights of the Superior Landlord that may be granted or made over to the Tata Steel for the coal mining, are controlled by the expressions "as may be required for colliery purposes" in the Headlease and "required for colliery purposes" in the Tata Lease. These covenants cannot be stretched so far to vest surface rights in the Tata Steel over the entire GM lands or even to 1106.93 acres of the GM lands for which surface rent has been paid by the Tata Steel.

55. The learned Senior counsel for the Tata Steel has also referred to

the definition of "mine" under the Mines Act, 1952 and the Coal Mines (Nationalisation) Act, 1973 to support the writ Court's declaration that the surface rights shall vest in the Tata Steel.

56. The relevant portions of the definition of "mine" under the Mines Act, 1952 and the Coal Mines (Nationalisation) Act, 1973 are extracted below:

Section 2(1)(j) of Mines Act, 1952

"2(1)(j) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes-
(i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields;
(ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;
(iii) all levels and inclined planes in the course of being driven;
(iv) all open cast workings;
(v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;
(vi) all adits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;
(vii) all protective works being carried out in or adjacent to a mine;
(viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;
(ix) all power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;
(x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;
(xi) any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on."

Section 2(h) of Coal Mines (Nationalisation) Act, 1973

"2(h) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes—
(i) all borings and bore holes;
(ii) all shafts, whether in the course of being sunk or not;
(iii) all levels and inclined planes in the course of being driven;
(iv) all open cast workings;
(v) all conveyors or aerial ropeways provided for bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;
(vi) all lands, buildings, works, adits, levels, planes, machinery and equipments, instruments, stores, vehicles, railways, tramways and sidings in, or adjacent to, a mine and used for the purposes of the

mine;
(vii) all workshops (including buildings, machinery, instruments, stores, equipment of such workshops and the lands on which such workshops stand) in, or adjacent to, a mine and used substantially for the purposes of the mine or a number of mines under the same management;
(viii) all coal belonging to the owner of the mine, whether in stock or in transit, and all coal under production in a mine;
(ix) all power stations in a mine or operated primarily for supplying electricity for the purpose of working the mine or a number of mines under the same management;
(x) all lands, buildings and equipments belonging to the owner of the mine, and in, adjacent to or situated on the surface of, the mine where the washing of coal obtained from the mine or manufacture, therefrom, of coke is carried on;
(xi) all lands and buildings [other than those referred to in sub-clause (x) wherever situated, if solely used for the location of the management, sale or liaison offices; or for the residence of officers and staff, of the mine;
(xii) all other fixed assets, movable and immovable, belonging to the owner of a mine, wherever situated, and current assets, belonging to a mine, whether within its premises or outside."

57. It is submitted that the expression "mine" as defined under the aforesaid statutes has been assigned wider meaning and includes borings, shafts, open cast workings and all conveyors, ropeways, tramways, railways etc. for bringing into or the removal from a mine of minerals or other articles or for the removal of refuse therefrom. The learned Senior counsel has referred to the aforesaid clause in the Headlease which covenants the underground coal mining rights of and in the premises with full liberty and power to the lessee to carry on all other works including to dig, sink, repair and use all pits, shafts, drifts, levels, water gates and to form and erect buildings, workshop, store houses, godowns, furnace brick kiln and to form all such railways, tramways and other roads and communications as may be necessary in the premises, to contend that the Tata Steel has a contractual as well as statutory right to possess and use the entire surface of the leasehold area. The learned Senior counsel for the Tata Steel would contend that it is unimaginable that without having surface rights any mining operation including quarrying and open cast mining for which permission has been granted to the Tata Steel can be carried on. By way of an illustration, the learned Senior counsel for the Tata Steel has endeavored to portray that it would be obnoxious to even think that underground mining operations can go on while the surface is occupied by Malls, Cinema Halls and residential and official complexes.

58. The expression "mine" as defined under the aforementioned statutes refers to the area under mining operations and not whole of the mineral area. We find the basis for this interpretation from the wordings of the definition of "mine" which provides that "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on. The use of the "present perfect continuous" tense such as "has been" and "is being" clearly refers to something which is carried on presently. A plain reading of the main clause of the definition section makes it abundantly clear that "mine" means that part of the mineral area which has been or is presently under mining operations. The other clauses of the definition section merely indicate that the ancillary works which may be necessary for the working of a mine shall also be covered under the expression "mine". This has further been made clear by use of the words "and includes" before the other activities are enumerated under different clauses of the definition of "mine".

MAINTAINABILITY OF THE WRIT PETITION AND DIRECTIONS ISSUED BY THE WRIT COURT

59. The reliefs sought in the writ petition are in the nature of permanent mandatory injunction restraining the State of Bihar (now, State of Jharkhand) not to make any settlement in favor of any person within the leasehold area of 13007 Bigha of lands under the Indenture dated 1st March 1946 (sic. Tata Lease) and to refrain from interfering in any manner directly or indirectly with possession of the Tata Steel over the leasehold lands.

60. The following prayers have been made by the Tata Steel in CWJC No. 363 of 1997(R):

> *"A. A writ or order or direction in the nature of mandamus commanding the respondents not to make settlement of any land in any manner with any person which is within the lease hold area of 13007 Bighas of the petitioner as mentioned and described in indenture dated 1st March, 1946 and as accepted by State of Bihar by indenture dated 29th March, 1973.*
> *B. A writ or order or direction in the nature of mandamus commanding the respondents not to pass any order with regard to any claim made by any person in respect of any surface land in lease hold area of the petitioner.*
> *C. A writ or order commanding the respondents to refrain from interfering in any manner directly or indirectly with the possession of the petitioner over the leasehold land.*
> *D. Any other relief or reliefs which the petitioner may be in the*

circumstances of the case be found entitled.
E. Cost of this case be ordered to be paid to the petitioner by the respondents."

61. Apparently, the prayers in the writ petition are couched in a language with widest possible amplitude inasmuch as the Tata Steel seeks an order/direction to the State of Jharkhand "not to make settlement of any land" and "in any manner" with "any person" within the leasehold area – prayer "A". It further seeks a direction against the State of Jharkhand not to pass any order with regard to "any claim" made by "any person" in respect of "any surface land" in the leasehold area. In essence, these prayers are in the nature of permanent injunction and goes even to the extent of restraining the State of Jharkhand to exercise statutory powers under the CNT Act – prayer "B". It is well-settled that the claim of possession of the applicant cannot be based upon inferences drawn from the circumstances. It is stated at bar that the writ petition was confined to 2054.70 acres of the GM lands which were under khas possession of Zamindar before the Tata Lease was created by an agreement between the Tata Steel and the State of Bihar. A relief of permanent injunction cannot be granted even by a civil Court where the applicant was not able to prove his actual possession over the suit land on the date of filing of suit. The Tata Steel admits that there are private settlements existing over portions of the leasehold area and it shall be liable to pay compensation etc. in terms of clause (6) of the Headlease dated 21st November 1946 for evicting the settlees who were there prior to 29th March 1973. Mr. Jaideep Gupta, the learned Senior counsel for the Tata Steel would submit that it was the illegal settlements made by the State of Bihar which prompted the Tata Steel to approach the writ Court. However, the factual foundation for seeking the aforesaid reliefs against the State of Jharkhand was so weak that the Tata Steel had to file as many as three supplementary affidavits to add more facts to the writ averments. The permission granted by the Deputy Commissioner, Hazaribagh to the Tata Steel over an area of 1106.93 acres in six villages do not lay a foundation for seeking permanent injunction against the State of Jharkhand. There was no challenge to the individual settlements granted by the State of Bihar and the settlees were not made party in the writ proceeding. Above all, in the circumstances of the case, a direction to the State of Jharkhand not to grant fresh settlement to any

individual within the leasehold area is to injunct it from exercising its statutory powers under the CNT Act.

62. The State of Jharkhand has posed a serious challenge to the writ Court's power to issue the impugned directions dated 31st August 2007 on the ground that the writ petition involving disputed questions of fact of complex nature and that too relating to the right, title and interest in land are beyond the purview of writ jurisdiction. On behalf of the Tata Steel, it has been contended that no disputed questions of fact was involved in the writ petition inasmuch as the execution and validity of the Tata Lease and covenants thereunder are not disputed by the State of Jharkhand. It is further submitted that the State of Jharkhand accepted surface rent for 1106.93 acres of the GM lands and the Deputy Commissioner, Hazaribagh has granted permission to the Tata Steel to use and occupy the aforesaid extent of the GM lands and while so what fell for consideration before the writ Court was a simple issue as to rights of a lessee which has paid surface rent and obtained permission of the competent authority to take possession of a part of the leasehold area.

63. Voluminous compilations of judgments have been filed by both parties to lay support to their respective contentions, particularly on maintainability of the writ petition and powers of the writ Court.

64. Mr. Jaideep Gupta, the learned Senior counsel for the Tata Steel has referred to the judgments in *"Gunwant Kaur & Ors. v. Municipal Committee, Bhatinda & Ors."*[9]*;* "*Century Spinning and Manufacturing Company Ltd. & Anr. v. The Ulhasnagar Municipal Council & Anr."*[10] and; *"Popatrao Vyankatrao Patil v. State of Maharashtra & Ors."*[11]*,* to submit that the writ Court was justified in entering into the merits of the case as the questions of fact which fell for determination did not require any elaborate evidence to come to a finding that surface rights vested in the Tata Steel which has mining rights over the leasehold area. *"ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation of India Ltd. & Ors."*[12] has been pressed hard for the proposition that merely because some dispute regarding interpretation of different covenants under the Headlease, Sublease and Tata Lease have been raised by the State of Jharkhand the writ petition

9 *(1969) 3 SCC 769*
10 *(1970) 1 SCC 582*
11 *(2020) 19 SCC 241*
12 *(2004) 3 SCC 553*

cannot be said to have involved disputed questions of fact and the writ Court was well within its powers to go into such issues and decide the objections, if facts permit, as has been done in the present case.

65. There is no absolute rule of law that a petition under Article 226 of the Constitution of India shall not be entertained by the writ Court because one party has raised a dispute on facts or, that some questions of fact may fall for determination while considering the right to relief of the aggrieved party. This is also a well-settled proposition in law that the decision of the High Court to entertain or not to entertain a petition under Article 226 of the Constitution of India against a particular State action is fundamentally discretionary and the limitations on exercise of such discretionary jurisdiction are self-imposed. In *"A.V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani & Anr."*[13] the Hon'ble Supreme Court has observed that it is not possible or, even if were, it would not be desirable to lay down any inflexible rule as to exercise of writ jurisdiction which shall apply with rigidity in every case – it depends on the facts of each particular case. Therefore, powers of the High Court under Article 226 of the Constitution of India must be exercised in a judicious and reasonable manner and in the interest of justice. The powers under Article 226 of the Constitution of India are extraordinary, plenary and without any fetters but, at the same time, it is widely accepted that exercise of the powers under Article 226 of the Constitution of India should confirm to the judicially evolved rules and principles. One of such rules is that the claim raised by the petitioner should be determined on the basis of the factual position acknowledged by the respondent. This is so because the High Court in exercise of its powers under Article 226 of the Constitution of India would ordinarily act upon indisputed facts and not adjudicate a matter where the foundational facts are disputed. In *"Dwarka Prasad Agarwal (D) by Lrs & Anr. v. B.D. Agarwal & Ors."*[14] the Hon'ble Supreme Court has observed that the High Court while exercising the power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority and, that the remedy under Article 226 of the Constitution of India cannot be invoked for resolution of a

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13 *AIR 1961 SC 1506*
14 *(2003) 6 SCC 230*

private law dispute as contradistinguished from a dispute involving public law character.

66. The dispute in the present case pertains to the GM lands spread over 2054.70 acres which according to the writ averments were in possession of the State of Bihar. The aforementioned piece of land covers eight villages and are inhabited by the local people. The Tata Steel never put forth a claim that the entire leasehold area is under its use and occupation rather admits that there are settlements made prior to 29th March 1973 which can be removed on payment of compensation. The Headlease recognizes that a portion of the leasehold area is under cultivation and there are buildings and other structures standing over different portions of the leasehold area. The writ Court has also recorded that the Tata Steel has possession over some portions of the leasehold area which are required for mining operations. The State of Jharkhand has therefore advanced a specific plea that since there are settlements existing over the GM lands within the leasehold area, the Tata Steel cannot lay a claim for surface rights on mere payment of rent. This objection has been brushed aside by the writ Court observing that the character of whole of the GM lands did not change even after 1976, when the application was filed by the Tata Steel to seek permission of the State of Bihar to start mining over 775.12 acres of the GM lands. The writ Court has further held that prior to 1976 there was no settlement and after that also no part of the GM lands was under occupation of any third party. Now, this is a question of fact which could not have been decided by the writ Court and moreover a presumption that character of the GM lands did not change after 1976 and the GM lands are not under occupation of any individual cannot be raised without factual foundation. To dispute the Tata Steel having surface rights over the leasehold area, the State of Jharkhand has pleaded that M/s Central Coalfields Limited has acquired lands within the leasehold area in Pundi, Parej, Burughuttu, Duni and other villages vide Notification No.2127 dated 11th June 1964 under the Coal Bearing Areas (Acquisition and Development) Act, 1957. The State of Jharkhand has brought on record a copy of the said Notification dated 11th June 1964 issued by the Central Government to demonstrate that about 8140.75 acres of the leasehold lands are occupied by the villagers. The State of Jharkhand has further pleaded that

except for an area of 156 acres of land which has been purchased by the Tata Steel ground rent has not been paid by it for any part of the leasehold area.

67. Surprisingly, the writ Court has recorded a finding that immediately upon execution of the lease deed the Tata Steel promptly took over possession of the leasehold lands. As a matter of fact, there is no dispute raised by the Tata Steel that the settlements made by the State of Bihar over some portions of the GM lands and even the adjoining areas are not under its use and occupation. The Tata Steel has pleaded that the settlements made by the State of Bihar made it difficult to carry on mining operations but any description of the area intending for mining operations has not been provided. On the other hand, the State of Jharkhand has pleaded that no details of the leasehold area already worked over has been provided and the Tata Steel did not hand over possession of any portion of the leasehold lands to the State of Jharkhand which was already worked over. It is thus quite apparent that there was serious dispute on facts before the writ Court and such dispute was not flimsy or imaginary rather a real dispute touching upon the powers of the writ Court to grant the prayers in the writ petition.

68. In *"D.L.F Housing Construction (P) Ltd. v. Delhi Municipal Corpn. & Ors."*[15] the Hon'ble Supreme Court has held that in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved, the writ Court is not the proper forum for seeking relief. It has further been held that the right course for the High Court to follow is to dismiss the writ petition on the preliminary ground without entering upon the merits of the case.

69. As can be seen from the prayers made in the writ petition, the Tata Steel did not seek any declaration as regards surface rights over the entire leasehold area but the writ Court ignored every objection raised by the State of Jharkhand and has held that on granting the mining lease in favor of the Tata Steel the State has leased out its rights over the surface land in the favor of the Tata Steel. A basic requirement under Order VI Rule 2(1) of the Code of Civil Procedure is that every pleading shall contain a statement in concise form of the material facts on which the party relies for his claim or defence, as the case may be. The principle behind such rule is that the other side has sufficient intimation of the case pleaded against him. This

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15 *(1976) 3 SCC 160*

requirement in law takes the issue towards sufficiency of pleadings, that it is necessary for the parties to plead their case precisely with sufficient foundational facts in the pleadings. It is fundamental in law that a decision in a case cannot be based on the grounds outside pleadings of the parties. This rule of procedure was once observed by Lord Dunedin; that "no amount of evidence can be looked into upon a plea which was never put forward"[16]. In "*J. K. Iron and Steel Co. Ltd., Kanpur v. The Iron and Steel Mazdoor Union, Kanpur"*[17] the Hon'ble Supreme Court has observed that though the Tribunals are not bound by the technicalities of civil Courts it is not open to the Tribunals to fly off at a tangent and, disregarding the pleadings, to reach any conclusions that they think are just and proper. There was no foundation laid in the writ petition and the Tata Steel did not even seek a declaration that surface rights shall vest in it. Therefore, besides on merits as discussed in the preceding paragraphs, the declaration by the writ Court that surface rights shall vest in the Tata Steel is liable to be set-aside on this ground also.

70. The next issue is that the writ petition primarily revolved around different Instruments/Indentures which trace their origin in the Principal Indenture and all of which finally culminated into the Tata Lease after a compromise between the State of Bihar and M/s West Bokaro Limited. The objection taken by the State of Jharkhand is that interpretation of covenants in the Tata Lease and other instruments was beyond the purview of the writ jurisdiction. Mr. Ashutosh Anand, the learned Additional Advocate General has contended that any adjudication or enforcement of the contractual rights and obligations of the parties is not permissible in a writ proceeding.

71. There is a history behind execution of the Tata Lease by the State of Bihar in favor of M/s West Bokaro Limited. The Indenture dated 26th November 1907 for the "prospecting rights" of coal was executed between Late Sri Sri Maharaja Ram Narayan Singh Bahadur of Padma, Theodore Hubert Bennertzo and the Trustees for and on behalf of the Bokaro Coal Syndicate. The Principal Indenture granted liberties and license for 3 years to the "licensee" with an option to him to give one month's notice in writing to the Maharaja for an extension of the period of the prospecting license. The Maharaja of Ramagur Raj died on or about 26th January 1913

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16 *"Siddik Mahomed Shah v. Mt. Saran" AIR 1930 PC 57*

17 *AIR 1956 SC 231*

leaving behind a minor son, aged about 15 years, who also died on 10th April 1919. At that time, Maharaj Kumar Lakshmi Narain Singh had a minor son aged about 2 years who attained majority on 10th August 1937. There are references of the Indentures dated 28th February 1908, 13th December 1917, 13th March 1922 and 18th July 1932 by which the period of the prospecting license granted under the Principal Indenture was extended from time to time for the periods ranging between 3 years to 10 years. On 21st November 1946, the Headlease was executed between Maharaja Kamakshya Narain Singh Bahadur and Bokaro & Ramgur Limited in which there is a reference of several claims by various persons which the late Maharaja emphatically repudiated. The Headlease however contained a recital that all claims made adversely to the Maharaja were finally disposed of in his favour, or the lands which were in khas possession of the Maharaja were not disputed by any person. On attaining majority, the Maharaja of Ramgur Rajya challenged validity of the Principal Indenture and made certain claims against the "licensee" (as described in the Indenture dated 26th November 1907). The dispute was finally resolved by some amicable settlement whereunder the Headlease was executed between Maharaja Kamakshya Narain Singh Bahadur and M/s Bokaro & Ramgur Limited. The covenants under the Headlease provided that the lessee shall comply with the rules and regulations promulgated by the Government with as little damage as possible to the surface of any portion of the land under cultivation and the buildings and erections thereon and shall indemnify the Raja against all damages caused by the lessee. The Headlease contained further covenants to the effect that the lessee shall pay compensation for occupying and using any cultivated portion under the occupation of tenants or other persons; the agent of the Raja shall have the right to enter, inspect and examine all works; lessee shall follow and obey the orders and instructions of the Mining Inspector; the tenant's servants and agents of Raja and the holders for the time being of any other mining lease shall be permitted to use all roads, pathways etc. for the purpose of their business and; the lessee shall not interfere with or disturb any existing temple, place of worship, burial or burning ground etc. Similarly, the covenants under the Tata Lease refer to several other previous Instruments and the Tata Steel has made extensive

references thereof in the writ petition.

72. The very nature of pleadings by the Tata Steel wherein extensive reference of different Indentures has been made required interpretation of covenants of the lessee and lessor. The writ Court was therefore drawn to a wrong path and it recorded a finding based on the interpretation of covenants in different Indentures. However the disputes relating to interpretation of a covenant in the Indenture and a declaration about the rights of a party on such interpretation cannot be agitated in a petition under Article 226 of the Constitution of India. Even so, the State of Jharkhand has pointed out that the Principal Indenture executed between Sri Sri Maharaja Ram Narayan Singh Bahadur, Theodore Hubert Bennertzo and Alfred Emest Mitchel (the "licensee") as Trustee for and on behalf of an unincorporated Syndicate known as the Bokaro Coal Syndicate has not produced before the Court and for such defect in pleadings of the Tata Steel which has heavily relied on the Headlease, Sublease, Supplementary Lease and Tata Lease, no relief which primarily rests on such instruments can be granted to it.

73. Similarly, the direction by the writ Court for enquiry by an officer designated by the State of Jharkhand into the individual settlements prior to 5th March 1997 is flawed in law for several reasons. The entire leasehold area spread over eight villages within the district of Hazaribagh (now falling under the districts of Hazaribagh and Ramgarh) are governed by the CNT Act. This aspect has not been considered by the writ Court while issuing the direction that an officer specially designated by the State of Jharkhand shall make enquiry into the individual settlements made prior to 5th March 1997 – on this day, interim order was passed by the writ Court.

74. The CNT Act lays down an elaborate procedure for fixation of rent, settlement of waste lands, conversion of land into Korkar and correction in the record of rights. Under the CNT Act, the Deputy Commissioner has powers to grant permission to convert GM land into Korkar land. A tenant having right to cultivation is deemed to have acquired a right to hold the land for the purpose of cultivation. Such right has been conferred upon a tenant notwithstanding that he uses the land for the purpose of gathering the produce or grazing cattle. There are different kinds of

raiyats, tenure-holders, Mundari Khunt-Kattidars etc. who are entitled to hold lands on payment of rent. Section 4 of the CNT Act provides class of tenants such as tenure-holders, under tenure-holders, occupancy raiyats, non-occupancy raiyats, under raiyats, raiyats having khunt-katti rights and Mundari khunt-kattidars. Section 5 defines tenure-holder to mean a person who have acquired from the proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing under cultivation by establishing tenants on it, and includes the successor-in-interest of persons who have acquired such a right and the holder of tenure entered in any register prepared and confirmed under the CNT Act – but, does not include a Mundari khunt-kattidar. A "tenure-holder" is a person who has acquired from the proprietor, or from another tenure-holder, a right to hold land for the purpose of collecting rents or bringing under cultivation by establishing tenants on it and includes (a) successor-in-interest of persons who have acquired such a right and, (b) the holder of tenures entered in any register prepared and confirmed under Chota Nagpur Tenures Act, 1869 (Beng. Act 2 of 1869). Furthermore, a separate record is prepared for the Landlord's Privileged Lands and such lands are exempted from operation of Chapter-IV which deals with occupancy raiyat and Chapter-VI which deals with non-occupancy.

75. Section 6 of the CNT Act provides that "raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself or by members of his family, or by hired servants or with the aid of partners; and includes the successor-in-interest of persons who have acquired such a right. The explanation to section 6 clarifies that a tenant having right to cultivation shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it. The raiyats, tenure-holders including under-tenure holders, occupancy raiyats, tenants holdings, under-raiyats and Mundari khunt-kattidars fall under the category of tenants, who are entitled to hold lands on payment of rent. Under section 16, every "raiyat" who immediately before the commencement of the Act has any right of occupancy in any land by the operation of any enactment or by local custom or usage or otherwise shall have right of occupancy in that

land, notwithstanding the fact that he may not have cultivated or held the land for a period of 12 years. Therefore, the rights of the villagers/settlees and nature of the settlements over the leasehold lands would necessarily involve complicated questions of law and fact.

76. The powers of the Deputy Commissioner to make settlement is provided under section 64 which lays down that every cultivator or landless laborer resident of a village or a contiguous village has the right to convert land in that village into “korkar”, with permission of the Deputy Commissioner, notwithstanding anything contained in any record of rights or any custom or usage to the contrary. Sub-section (2) to section 64 provides that the Deputy Commissioner shall serve a notice upon the landlord of the date on which he intends to hear the application seeking permission to convert land into 'korkar” and after hearing the parties and holding such enquiry as he thinks proper shall either grant or refuse the permission. The proviso to sub-section (1) to section 64 clarifies that no permission of the Deputy Commissioner is required to convert the land into “korkar” by a cultivator where he was entitled on the date of the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1947, by virtue of any entry in the record of rights or any local custom or usage to convert such land into “korkar” without consent of the landlord. And, section 67 provides that every raiyat who cultivates or holds land which he or any member of his family has converted into “korkar” shall have a right of occupancy in such land even though he has not cultivated or held the land for a period of 12 years. Under section 67-A, after the expiry of a period of 4 years from the end of the agricultural year in which the first crop was harvested, the landlord may assess rent on such land which has been converted into “korkar” and shall send the same to the Deputy Commissioner who shall settle the rent for such land. Sub-section 5 to section 67-A provides that a person who has converted land into “korkar” may also file an application before the Deputy Commissioner for assessment of the rent. Just to indicate, the Tata Steel has itself raised an apprehension that several persons have claimed settlement of the GM lands through Sada Hukumnama by ex-Zamindar and some of which have been found forged. It has sought to fortify its apprehension through the orders passed in “*Jagdish Mahto v. State of Bihar & Ors.”*[18]*, “Mahabir*

[18] *2006 SCC OnLine Jhar 511*

Kansi v. State of Jharkhand & Ors."[19], *"Lekho Prasad v. State of Jharkhand"*[20] and *"Shakuntala Patodia v. State of Jharkhand"*[21]. In this context, therefore, the effect of section 84 of the CNT Act would have also to be looked into. Section 84 provides that in any suit or other proceedings in which a record of rights prepared and published under the CNT Act or duly certified copy thereof or extract therefrom is produced, every entry in a record of rights published under sub-section (3) to section 83 shall be presumed to be correct until it is proved, by evidence, to be incorrect.

77. In view of the aforesaid statutory regime under the CNT Act, the settlements made by the State of Bihar cannot be scrutinized and decided by an executive officer even after hearing the Tata Steel and the settlees because rights of the settlees and the settlements granted by the State of Bihar cannot be examined and decided in a summary manner, as directed by the writ Court. The dispute of this nature can be resolved only in a proceeding before the civil Court where the parties by leading evidence may prove a fact. The writ Court by creating an extra-statutory authority which shall exercise powers of the civil Court has committed a serious error in law. The writ Court in exercise of the powers under Article 226 of the Constitution of India cannot devise a separate mechanism or create a forum for adjudication of disputes arising from a contract. The writ Court has in fact gone one step ahead and held that if a settlement is found illegal the same shall be deemed as cancelled. In such eventuality, the aggrieved settlee can have only the forum of the civil Court to challenge the decision by the designated officer. Now if this is the final result the aforesaid direction by the writ Court is likely to yield, the entire exercise by the designated officer would be a futility which may bring insurmountable sufferings to the settlees. In our opinion, the writ Court cannot issue sweeping directions keeping at bay every requirements in law.

78. It is submitted that any settlement made by the State of Jharkhand after the interim order passed by the writ Court over a portion of the aforementioned piece of land would be contrary to law and the writ Court has rightly declared such settlements after 5th March 1997 null and void.

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19 *2008 (4) JCR 428 (Jhr)*
20 *2014 SCC OnLine Jhar 2977*
21 *2015 (3) JLJR 188*

79. On 5th March 1997, the writ Court has passed the following order:

> *"03/05.03.1997 Put up this case for admission after four weeks enabling the learned counsel for the State to take instruction in the matter and to file a counter affidavit. Counter affidavit shall clearly indicate as to under what circumstance the lease hold area of the petitioner is being settled to others.*
>
> *However, the settlement, if any, made during the pendency of this application shall be subject to the ultimate result of the writ application."*

80. The aforesaid order dated 5th March 1997 has continued till final disposal of the writ petition. The order dated 5th March 1997 can at best be treated as a notice to the State of Bihar that the final decision in the writ petition shall have a bearing on the settlement(s) made during pendency of the writ petition. The order dated 5th March 1997 which has been labelled as an interim order does not put a restrain or an embargo on making further settlements by the State of Bihar. By virtue of such an order, a declaration that the settlements made after 5th March 1997 are null and void cannot be made by writ Court. The Tata Steel has made allegation that the State of Bihar has been making settlements over the leasehold area without notice to it but by the time the Tata Steel approached the writ Court it had knowledge about few such settlements. Still, those persons were not impleaded as party before the writ Court. The State of Jharkhand has also disclosed name of several persons who are in possession over different portions of the leasehold area but those persons were not impleaded as party respondents in the writ petition.

81. The proceedings in this Letters Patent Appeal indicate that the applications for intervention by individuals claiming some sort of rights through settlements made by the State of Bihar, or on the basis of a Hukumnana, or being khatiyani raiyat came to be filed immediately after the writ petition filed by the Tata Steel was allowed. By an order dated 25th November 2008, this Letters Patent Appeal was admitted for hearing and a liberty was given to the party which was affected on account of user of surface rights by the Tata Steel to approach this Court by filing an application for early hearing. This Court has further indicated in the said order that the application for intervention shall be considered at the final

hearing of the appeal, if necessary. Thereafter, several other applications for intervention have been filed and one such application was dismissed by an order dated 31st October 2018 with cost of Rs.5,000/-. However, in view of the order dated 25th November 2008, I.A. No.3247 of 2008 filed by Yasoda Ganjhu and I.A. No.4657 of 2013 filed by Pyari Mahto, both with a prayer for intervention, remained on board by virtue of the order dated 7th April 2022 for hearing the applicants at the time of the final hearing. I.A. No.4657 of 2013 has been filed by Pyari Mahto who claims himself descendant of a settled raiyat since 1932-33. Mr. S.N. Das, the learned counsel for the applicant has submitted that this application has been filed on a perceived apprehension that the applicant may be evicted by virtue of any order/direction passed by this Court. I.A. No.3247 of 2008 has been filed by Yasoda Ganjhu claiming himself also a settled raiyat since 1932-33 who has been paying rent for a piece of land falling within the leasehold area. At the time of the final hearing, the learned counsels for the applicants have submitted that if at all the applicants have to be evicted that should be in accordance with law after complying with rule 72 of the MC Rules which makes a statutory provision for paying compensation to the settled raiyat.

82. In summation, there was no proper foundation in the pleadings and the prayers made in the writ petition were not at all entertainable by the writ Court. The pleadings in the writ petition on their own are not sufficient to grant any relief to the Tata Steel. The writ petition has been drafted like a plaint in civil suit which in the face of objections put forth by the State of Jharkhand required oral evidence to claim the reliefs as prayed for by the Tata Steel. The loosely drafted pleadings cannot be made a ground to defeat genuine claims but, at the same time, the Court cannot ignore the basic rules of law in this regard. There are marked distinctions between a proceeding in the civil Court and before a writ Court and the writ Court is required to see whether the fundamental facts and requirements in law are fulfilled or not for issuing directions. While considering validity of the impugned action or inaction by the State, the High Court need not restrict itself to pleadings of the parties and would be free to satisfy itself whether any case as such is made out by the party invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. We are of the opinion that in a writ

petition which involved such important issues in law, prayers made by the Tata Steel could not have been granted by the writ Court.

83. In *"Punjab Financial Corpn. v. Garg Steel"*[22] the Hon'ble Supreme Court has observed as under:

> *"7. Time has come when this Court needs to emphasise that in cases where writ of mandamus is sought, the High Courts should be very particular in finding out from the averments of the writ petition whether there exist proper pleadings. ..."*

AFTERWORDS

84. In the end, we must record our opinion on the executive powers of the State to distribute national wealth to the individuals. We are inclined to pen this for the reason that in a democracy like India where the Constitution of India has cast a duty on the State to strive to promote the welfare of the people by securing and protecting a social order imbibed with justice, social, economic and political in all the institutions of the national life, the executive can take a decision only in the furtherance of public interest. The aspirations of the people of India as engraved in Article 38 of the Constitution further enjoins upon the State to strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only among individuals but also amongst groups of people residing in different areas or engaged in different vocations. The constitutional goal of building a welfare State and an egalitarian social order is further reflected in clauses (b) & (c) of Article 39 of the Constitution of India. These provisions in the Constitution are intended at bringing about a kind of social revolution. The Constitution seeks to fulfill the basic needs of the people of this country and to change the structure of the society, without which, as observed by the Hon'ble Supreme Court in *"Kesavananda Bharati v. State of Kerala"*[23], political democracy would have no meaning. It would be therefore more consistent with the policy under the Constitution of India that the executive powers of the State are not exercised in a manner so as to render individualistic justice but in furtherance of the constitutional scheme and rights of the common man. Hence, in a case for renewal of a mining lease of Chromite ore to a lessee holding about 55% of the area of the reserve of the entire country, the State's decision to limit the lease area to

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22 *(2010) 15 SCC 546 (2)*
23 *(1973) 4 SCC 225*

the lessee's needs so as to avoid monopoly and ensure equitable distribution has been upheld by the Hon'ble Supreme Court[24].

85. With this preface, we say that whatever was the reason or some compulsion under which the Tata Lease was executed by the State of Bihar for Nine Hundred and Ninety Nine years, the executive powers of the State could not have been exercised in teeth of the mandatory provisions under the MMDR Act. The provisions of the MMDR Act clearly carry the intention of the legislature that there should be a complete regime for distribution of the mining leases. Section 6, as originally enacted, provided that no person shall acquire in any one State one or more mining leases covering a total area of more than 10 square miles, subject to the Central Government forming an opinion that in the interest of mineral development it is necessary to permit any person to acquire mining leases covering an area in excess of the maximum area provided thereunder. By the Amendment Act No. 56 of 1972, section 6 was amended to limit the total area of mining leases to not more than 10 square kilometers. There were further amendments in 1986, 1999 and 2015 in section 6 but the maximum area of one or more mining leases held by any person has remained restricted to 10 square kilometers. As noticed hereinbefore, section 8 has restricted the period of the mining lease and now an altogether new regime has come in place after the amendments of 2015 in the MMDR Act. The object behind fixing the maximum area and period of a mining lease seems to be that the State should not grant and distribute State largesse indiscriminately.

86. The origin of a lease may be traced in the Code of Hammurabi which is a collection of the legal decisions made by Hammurabi during his reign as King of Babylon – inscribed on a stele. One may also find references of leasing transactions in ancient Sumer which dates back 2000 BC. er. on clay tablets which were found in the Sumerian city of Ur – leases were for one year only. A lease contemplates a demise or a transfer of a right to enjoy land for a term or in perpetuity in consideration of a price paid or promised or of money, a share of crops, services or other things of value to be rendered periodically or on a specified occasion to the transferor. It is clear from the plain wordings of section 105 of the Transfer of Property Act, 1882 (in short, TP Act) that a lease is not a mere contract but is a

[24] *"Tata Iron & Steel Co. Ltd. v. Union of India" (1996) 9 SCC 709*

transfer of an interest in the immovable property but unlike sale there is no transfer of ownership or interest in the demise to the lessee *("Bhatia Cooperative Housing Society Limited v. D.C Patel"[25]).* Etymologically a lease as defined under section 105 of the TP Act is different from a mining lease. In English law, a mining lease is not strictly speaking a lease for it involves a destruction or consumption of the subject-matter. However, the definition of "lease" in section 105 of the TP Act is wide enough to cover a mining lease. It has been held that a right to carry on mining operations in land to extract a specified mineral and to remove mineral is a right to enjoy immovable property within the meaning of section 105. However, while a lease shall be regulated under the TP Act, the mining lease has also to abide by the conditions under the MMDR Act and the Rules framed thereunder. A lease can be executed between two persons both being private individuals or between an individual and the State or any instrumentality of the State. But a distinction has to be drawn between a lease executed between two individuals and a mining lease which the State alone can grant either in favor of a private individual, or to a government company, corporation etc.

87. The Tata Lease executed by the State of Bihar starts with the expression "subject to the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and the Rules made thereunder" under clause (6) but nowhere mentions the period of lease. The Tata Lease also does not mention the total area covered under the lease. However, there is a covenant in the Tata Lease that the lease has been granted on the same terms and conditions as provided under the Sublease and Supplementary lease and, therefore, it may be understood as if the Tata Lease is for a period of Nine Hundred and Ninety-Nine years and for an area of 13007 Bighas spread around eight villages under the districts of Hazaribagh and Ramgarh. A period of Nine Hundred and Ninety-Nine years may be construed a period in perpetuity. It may also be considered an indefinite period and a mining lease for an indefinite period shall be void being against the public policy. The word "perpetuity" simply means indefinite period. The "rule against perpetuity" is applied to prevent property interests from being tied up for generation after generation after the death of lessor, trustor etc. The "rule against perpetuity" aims at providing benefits accruing from property to the

[25] *AIR 1953 SC 16*

future generation and therefore this rule takes exception to creation of future remote interest. The philosophy behind this rule seems to be that if future remote interests are created in the property the society will be deprived of any benefit arising out of that property. Because it is important to ensure free circulation of property both for trade and commerce as well as for betterment of the property, the policy of law is to prevent the creation of perpetuity.

88. Section 14 of the TP Act incorporates the "rule against perpetuity" and provides that no transfer of property can operate to create an interest which is to take effect after the life time of one or more persons living at the date of such transfer and the minority of someone who shall be in existence at the expiration of that period and to whom, if he attains full age, the interest created is to belong. The Indian Succession Act also incorporates a similar provision in section 114 which provides that no bequeath is valid whereby the vesting of the thing bequeathed may be delayed beyond the life time of one or more persons living at the testator's death and the minority of some persons who shall be in existence at the expiration of that period, and to whom if he attains full age the thing bequeathed is to belong. At common law, the length of time is fixed at 21 years after the death of an identifiable person alive at the time when such interest was created. The rule forbids a person from creating future interests in property that would vest beyond 21 years after the life time of those living at the time of creation of the interests. Therefore, it is sometimes expressed as "life in being 21 years" or called the "dead hand control".

89. The "rule against perpetuity" has its origin in "Duke of Norfolk's"[26] case. This rule is closely related to another doctrine in the common law of property, the rule against unreasonable restraints on alienation. In that case, Henry Frederick Howard, 22nd Earl of Arundel, tried to create a shifting executory limitation so that some of his properties would pass to his eldest son who was mentally deficient and then the other property would pass to his second son and then to his fourth son. When his second son Henry Howard, 6th Duke of Norfolk's, succeeded to his elder brother's property he thought not to pass other property to his younger brother Charles, who sued to enforce his interest. The House of Lords has held that such a shifting condition could not exist indefinitely. Though, the TP Act or

[26] *(1682) 3 Ch Cas 1; 22 ER 931*

the general laws do not abhor a lease in perpetuity the State is bound to act in a manner so as to promote public trust and cannot act to the detriment to public interest. In *"Centre for Public Interest Litigation & Ors. v. Union of India & Ors."*[27] the Hon'ble Supreme Court has held that the State is the legal owner of the natural resources as the trustee of the people and any distribution of the natural resources must be in the larger public good. Therefore, there must a kind of rule against "perpetuity" be applied against execution of a mining lease for such a period. Still otherwise, what may be proper and legal for a private individual may not be proper for the State to do.

90. In view of our discussions on the powers of the writ Court to grant the aforementioned prayers to the Tata Steel, we have formed an opinion that the order dated 31st August 2007 passed in CWJC No. 363 of 1997(R) suffers from serious infirmities in law and, therefore, the said order is set-aside. As a consequence thereof, the writ petition being CWJC No. 363 of 1997(R) is dismissed.

91. LPA No. 27 of 2008 is allowed.

92. I.A. No. 4548 of 2013 which has been filed by the Tata Steel for a direction upon the State of Jharkhand to prevent entry of a third party in the leasehold area is dismissed. I.A. No.3247 of 2008, I.A. No.4657 of 2013, I.A. No.7668 of 2017 and I.A. No.6791 of 2018 do not require any specific order and are disposed of as such.

(Shree Chandrashekhar, J.)

(Ratnaker Bhengra, J.)

(Ratnaker Bhengra, J.)

Jharkhand High Court, Ranchi
Dated: 12th January 2023
R.K./Amit/Sudhir/Tanuj
A.F.R.

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27 *(2012) 3 SCC 1*