

STATE OF BIHAR & ANR..ETC.

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v.

KHAS KARANPURA COLLIERIES LTD. ETC.

August 6, 1976

[A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

Mines & Minerals (Regulation & Development) Act, 1957—s. 30A Scope of.

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Prior to October 25, 1949, the proprietors of big estates granted mining leases either without payment of royalty or at very low royalty. In most cases the lessees granted sub-leases on similar terms. The Mines and Minerals (Regulation and Development) Act, 1948, prohibited grant of any mining lease except in accordance with rules made under the Act. Rule 41 of the Mineral Concession Rules, 1949 which came into force on October 25, 1949, made it compulsory for every mining lease to include a condition regarding payment of royalty on the minerals. The rule, however, did not apply to leases or sub-leases granted prior to October 25, 1949.

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Under the Bihar Land Reforms Act, 1950 passed by the State legislature, the interest of a proprietor or tenure-holder as well as of the lessee including his rights in mines and minerals, came to an end and vested absolutely in the State. Section 10 provided that the whole or part of the estate or tenure comprised in a subsisting lease shall be deemed to have been leased by the State Government to the holder for the remainder of the term of that lease.

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The Mines and Minerals (Regulation and Development) Act, 1957 which replaced the 1948-Act came into force on June 1, 1958. Section 9(1) of the Act made it obligatory for the holder of a mining lease granted before the commencement of the 1957-Act to pay in respect of any mineral removed by him from the leased area after December 28, 1957, royalty at a specified rate. Section 16 provided that a mining lease granted before October 25, 1949, would be brought into conformity with the provisions of the 1957-Act and the rules. Section 29 provided for the effective continuance of the rules made under the 1948-Act in so far as they related to matters provided for in the 1957-Act and were not inconsistent therewith.

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Section 30A which was inserted in the 1957 Act provides that the provisions of s. 9(1) and of s. 16(1) "shall not apply to or in relation to mining leases granted before October 25, 1949" and empowered the Central Government to direct by notification that all or any of the provisions of ss. 9(1) and 16(1) shall apply to or in relation to such leases subject to such exceptions and modifications if any, as might be specified in that or in any subsequent notification. Section 30A was given retrospective effect.

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In 1967, the High Court, in *Narendra Nath Mandal v. State of Bihar & Ors.* held (i) that a lessee of a mine was liable to pay royalty for the period beginning from November 3, 1951 (date of vesting of an estate under the Bihar Land Reforms Act) to May 31, 1958 by virtue of s. 29 of 1957-Act read with r. 41 and Schedule I of 1949-Rules and (ii) from June 1, 1958 (the date of coming into force of the 1957 Act) to December 31, 1965 by virtue of s. 9(1) of that Act read with the second Schedule thereto because neither s. 30A nor the notification was applicable to the lease in view of the effect of the vesting of estate in the State and the coming into existence of a new lease by force of s. 10 of the Act. After this decision the State issued demand notices to the respondents for payment of royalty in accordance with the decision of the High Court.

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Allowing the respondents' Writ petitions, the High Court quashed the demand notices. The High Court held that *Mandal's* case had been wrongly decided.

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On the question whether the claim for royalty (1) prior to June 1, 1958; and (2) from June 1, 1958 to December 31, 1965 could be sustained.

A Dismissing the appeals of the State,

HELD: (1) The High Court was right in holding that the claim for royalty prior to June 1, 1958 was wholly unfounded and cannot be supported. In *Bihar Mines Ltd. v. Union of India* this Court held that the consequence of the operation of ss. 4(1)(a) and 10(1) of the Bihar Act was that the original contractual leases came to an end on the date of vesting and for the remainder of the terms of those leases fresh statutory leases in favour of the lessees came into being under s. 10(1) of the Act as a result of which from November 3, 1951, the subsisting leases came to be treated as new statutory leases granted by the State Government in terms of s.1D(1) of the Bihar Act, 1950. Rule 41 of the Mineral Concession Rules, 1949 applied only to contractual leases envisaged by Chapter IV of the Rules and not to the statutory leases which came into existence as a result of the deeming provision in s. 10 of the Bihar Land Reforms Act. [169 B; 163 B-D]

Bihar Mines Ltd. v. Union of India [1967] 1 S.C.R. 707; A.I.R. 1967 S.C. 887 followed.

C *Chhatu Ram Horil Ram Private Ltd. v. State of Bihar & Anr.* [1968] 2 S.C.R. 881; A.I.R. 1969 S.C. 177 applied.

(2) The High Court was also right in its view that the demand for payment of royalty for the period from June 1, 1958 to December 31, 1965 cannot be sustained. [168 G]

D (a) Section 30A which has an over-riding effect on the other provisions of the Act, affords a temporary protection from applicability of ss. 9(1) and 16(1) of the Act not only to the leases granted before October 25, 1949 but also to the statutory leases which came into existence as a result of the operation of s. 10(1) of the Bihar Land Reforms Act and replaced the former category of leases subsisting immediately before the date of vesting in the State of the estates or tenures on the publication of the notifications under s. 3 and 3A of the Bihar Land Reforms Act. This conclusion irresistibly flows from the words "or in relation to" occurring in s. 30A after the words "shall not apply to" and before the words "mining leases granted before the 25th day of October, 1949". These words, enlarge the scope of s. 30A and bring within the umbrella of its protection mining leases granted before October 25, 1949 as also the statutory leases which sprang up in their place by virtue of the legal fiction contained in s. 10(1) of the Bihar Land Reforms Act on the vesting in the State of the estates or tenures. As expressly ordained by s. 10(1) and (2) of the Bihar Land Reforms Act not only the holder of a statutory lease had to be the same as the holder of a subsisting lease for the remainder of the term of that lease but the terms and conditions of the statutory lease had also *mutatis mutandis* to be the same as the terms and conditions of the subsisting lease *i.e.* the original lease except to the extent in sub-s. (2). Thus the statutory lease being inextricably linked up with the subsisting lease which it replaced as a result of the aforesaid provisions of the Act, came within the purview of s. 30A of the 1957 Act. The interpretation sought to be placed by the appellants on the phraseology of s. 30A cannot be accepted as it would unduly restrict and limit the scope of that section and defeat the object which it was intended to effectuate, namely, to mitigate the rigour of liability for payment of royalty under s. 9 of the 1957 Act after the commencement of the Act. If, as contended by the appellants, the protection envisaged by s. 30A is restricted to the leases granted before October 25, 1949, s. 30A would be rendered nugatory because on the coming into being of the statutory leases as a result of s. 10(1) of the Bihar Land Reforms Act, there would hardly be left any mining lease to which s. 30A would be applicable. There can be no room for doubt that the Legislature intended that s. 30A of the 1957 Act should cover the statutory leases as well. [168 F; 169; A-B]

H (b) Statutory mining leases in respect of coal which sprang up under s. 10(1) of the Bihar Land Reforms Act also acquired a temporary immunity from the applicability of ss. 9(1) and 16(1) of the Act until the Central Government came out with a notification making the said provisions applicable with or without modification to these leases. [170 G]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 705-724 of 1971. A

(From the Judgment and Order dated 3-9-1970 of the Patna High Court in C.W.J.C. Nos. 992, 1042, 1088, 1096-1101, 1148-1150, 1194, 1244-1247, 1722/68 and 146/69 respectively).

D. P. Singh, S. C. Agarwal and V. J. Francis, for the Appellants.
Sachin Chaudhary (in CA. 705/71) for Respondent No. 1. B

B. Sen, and S. J. Sorabjee (in CA. 709/71), *S. B. Sanyal, S.C. Banerjee, D. N. Mukerjee and A. K. Nag* for Respondent No. 1 (in CAs. 705-713 & 718 and Respondents in 714/71).

D. N. Gupta, for Respondents (In CAs. 715-717/71).

S. N. Prasad (In CAs. 706/71), *S. P. Nayar and Girish Chandra* for Respondent No. 2 (in CA. 706-708, 713/71). C

A. K. Sen, B. Sen, D. N. Mukherjee and A. K. Nag for Respondent (in CA. 724/71).

The Judgment of the Court was delivered by

JASWANT SINGH, J. This batch of 20 Civil Appeals Nos. 705 to 724 of 1971 by certificate under Article 133(1)(a) of the Constitution which are directed against the common judgment dated September 3, 1970, of the High Court of Judicature at Patna and raise important questions relating mainly to interpretation and scope of section 30A of the Mines and Minerals (Regulation and Development) Act, 1957 (Act 67 of 1957) (hereinafter referred to as 'the 1957 Act'), shall be disposed of by this judgment. D

Circumstances leading to these appeals in so far as they would be helpful in appreciating the points involved are : Prior to October 25, 1949, proprietors of big estates like Rajas of Ramgarh and Jharia granted, in exercise of their untrammelled discretion, mining leases of huge tracts of land in the districts of Hazaribagh, Dhanbad, and Singhbhum to various persons for winning and extracting coal for a period of 999 years in lieu of payment of premiums and fixed annual rental. There was in these leases either no stipulation for payment of royalty or the royalty stipulated for was very low. Except in a few cases, the lessees of these mining leases did not work the mines themselves and granted sub-leases thereof more or less on similar terms. E

On September 8, 1948, the Central Legislature passed the Mines and Minerals (Regulation and Development) Act, 1948 (Act No. 53 of 1948) (hereinafter referred to as 'the 1948 Act') under Entry 36 of List I of Seventh Schedule to the Government of India Act, 1935. The Act, as declared in its Preamble, was enacted, as it was considered expedient in public interest to provide *inter alia* for the regulation of mines and for the development of minerals. Sub-section (1) of section 4 of the Act prohibited the grant after the commencement of the Act of any mining lease otherwise than in accordance with the rules made under the Act. Sub-section (2) of section 4 of the Act provided that any mining lease granted contrary to sub-section (1) would be void and of no effect. Section 5 of the Act empower- F
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A ed the Central Government to make rules for regulating the grant of mining leases or for prohibiting the grant of such leases in respect of any mineral or in any area. Section 7 of the Act empowered the Central Government to make rules for the purpose of modifying or altering the terms and conditions of any existing mining lease i.e. any mining lease granted prior to the commencement of the Act, so as to bring such lease into conformity with the rules made under section B 5. In exercise of the powers conferred on it by section 5 of the Act, the Central Government made the Mineral Concession Rules, 1949. Both the 1948 Act and the Mineral Concession Rules, 1949, came into force on October 25, 1949.

C Rule 41 of the Mineral Concession Rules which related to the conditions of mining leases made it compulsory for every mining lease to include a condition enjoining the lessee to pay royalty on the minerals at the rate specified in the First Schedule to the Rules which in case of coal was 5% of the F.O.R. price.

The 1948 Act was extended to Chhota Nagpur by a notification dated January 16, 1950, issued under section 92 of the Government of India Act, 1935.

D The provisions of the Mineral Concession Rules, 1949, did not apply to leases or sub-leases granted anterior to October 25, 1949.

The Constitution of India came into force on January 26, 1950. Articles 246 and 254 of the Constitution which relate to the distribution of legislative powers and Entry 54 of List I (Union List) and Entry 23 of List II (State List) of the Seventh Schedule to the Constitution read thus —

E “Article 246: (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule.

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule. F

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule.

G (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a “State notwithstanding that such matter is a matter enumerated in the State List”.

H “Article 254 : (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the

law made by the Legislature of such State or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

"Entry 54 of List I (Union List). Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

"Entry 23 of List II (State List). Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

The Constitution was followed by the Bihar Land Reforms Act, 1950 (Act XXX of 1950) (hereinafter referred to as 'the Bihar Land Reforms Act') which though passed on September 11, 1950, came into force on September 25, 1950. This legislation, as evident from its preamble, was enacted as it was considered expedient to provide for transference to the State of the interests of proprietors and tenure-holders in land and of mortgagees and lessees of such interests including interest in mines and minerals. On the publication of notifications under sections 3 and 3A of the Bihar Land Reforms Act, the estates or tenures of proprietors or tenure-holder as also the intermediary interests of all intermediaries passed to and became vested in the State. Section 4 of the Bihar Land Reforms Act declared the consequences flowing from the vesting of the estate or tenure in the State. Clause (a) of section 4(1) provided that on publication of the aforesaid notifications, such estate or tenure, including the interests of the proprietor or tenure-holder in any building etc., in trees etc., as also his interest in all sub-soil including any rights in mines and minerals, whether discovered, or undiscovered, or whether being worked or not, inclusive of such rights of a lessee of mines and minerals comprised in such estate or tenure other than the interests of raiyats or under-raiyats shall, with effect from the date of vesting, vest absolutely in the State free from all encumbrances and such proprietor or tenure-holder shall cease to have any interest in such estate or tenure other than the interests expressly saved by

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A or under the provisions of the Act. Thus the interest of the proprietor or tenure-holder including his rights in mines and minerals, inclusive of rights of a lessee of mines and minerals came to an end and vested absolutely in the State. Having once so vested, certain rights were conferred by statute on the proprietors and tenure-holders and the lessees. Section 9 of the Bihar Land Reforms Act provided that mines which were in operation at the commencement of the Act and were being worked directly by the intermediary shall be deemed to have been leased by the State Government to the intermediary and he would be entitled to retain possession of those mines as a lessee thereof. The lease by the State Government to the intermediary, according to sub-section (2) of section 9 was to have such terms and conditions as might be agreed upon between the State Government and the intermediary or in the absence of such agreement, as might be settled by the Mines Tribunal appointed under section 12 of the Act provided that all such terms and conditions had to be in accordance with the provisions of any Central Act for the time being in force regulating the grant of new mining leases. According to the proviso, such terms and conditions were to be in accordance with the provisions of the 1948 Act which was in force at the time the estate vested in the State of Bihar. The mines in the present cases, it may be mentioned, were not worked by the intermediary lessees. Section 10 of the Bihar Land Reforms Act which dealt with leases of mines and minerals which subsisted on the date immediately preceding the date of vesting of the estate or tenure provided :

“10. Subsisting leases of mines and minerals—

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

F (2) The terms and conditions of the said lease by the State Government shall *mutatis mutandis* be the same as the terms and conditions of the subsisting lease referred to in sub-section (1), but with the additional condition that, if in the opinion of the State Government the holder of the lease had not, before the date of the commencement of this Act, done any prospecting or development work, the State Government shall be entitled at any time before the expiry of one year from the said date to determine the lease by giving three months' notice in writing :

G Provided that nothing in this sub-section shall be deemed to prevent any modifications being made in the terms and conditions of the said lease in accordance with the provision of any Central Act for the time being in force regulating the modification of existing mining leases.

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(3) The holder of any such lease of mines and minerals as is referred to in sub-section (1) shall not be entitled to claim any damages from the outgoing proprietor or tenure-holder on the ground that the terms of the lease executed by such proprietor or tenure-holder in respect of the said mines and minerals have become incapable of fulfilment by the operation of this Act.”

The consequence of the operation of sections 4(1)(a) and 10(1) of the Bihar Land Reforms Act as held by this Court in *Bihar Mines Ltd. v. Union of India*⁽¹⁾ and reiterated in *Chhatu Ram Horil Ram Private Ltd. v. State of Bihar & Anr.*⁽²⁾ was not that the old original contractual leases of mines and minerals comprised in the estate and subsisting on the date of vesting continued with the Government substituted as lessor in place of original lessor but was that the original contractual leases came to an end on the date of vesting as a result of section 4(1)(a) of the Act and for the remainder of the terms of those leases, fresh statutory leases in favour of the lessees came into being under section 10(1) of the Act.

All the estates of Jharia Kajya within which the leases in question fell became vested in the State of Bihar on November 3, 1951, Thenceforth i.e. from November 3, 1951, the subsisting leases came to be treated as new statutory leases granted by the State Government in terms of section 10(1) of the Bihar Land Reforms Act in view of the decision of this Court in *Bihar Mines Ltd. v. Union of India* (supra).

In 1956 the Mining Leases (Modification of Terms) Rules, 1956 providing for the modification and alteration of the terms and conditions of the mining leases granted prior to the commencement of the 1948 Act so as to bring them in conformity with the terms and conditions of the mining leases granted after the commencement of the 1948 Act in accordance with the Mineral Concession Rules, 1949, were promulgated under section 7 of the 1948 Act on September 4, 1956. These Rules by virtue of the definition of the “existing mining lease” contained in rule 2(c) of the Mining Leases (Modification of Terms) Rules, 1956 were made expressly inapplicable to mining leases in respect of coal granted before October 25, 1959—the date of commencement of 1948 Act, with the result that the mining leases or sub-leases of the respondents were not affected by the provisions of the 1948 Act or the rules made thereunder.

The 1948 Act was replaced by the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957) (hereinafter referred to as ‘the 1957 Act’) which though after being passed by the Parliament under Entry 54 of List I of the Seventh Schedule to the Constitution received the assent of the President on December 28, 1957, came into force on June 1, 1958. Section 9 of the 1957 Act provided:—

“9. Royalties in respect of mining leases:—

(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything

(1) [1967] 1 S.C.R. 707 : A.I.R. 1967 S.C. 887.

(2) [1968] 2 S.C.R. 881 : A.I.R. 1969 S.C. 177.

A contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed by him from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

B (2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral "removed by him from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.

C (3) The Central Government may by notification in the official gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification :

Provided that the Central Government shall not—

- D** (a) fix the rate of royalty in respect of any mineral so as to exceed twenty per cent of the sale price of the mineral at the pit's head, or
- (b) enhance the rate of royalty in respect of any mineral more than once during any period of four years.

E It will be noticed that sub-section (1) of the above quoted section made it obligatory for the holder of a mining lease granted before the commencement of the 1957 Act notwithstanding anything contained in the instrument of his lease or in any other law in force at the commencement of the 1957 Act to pay in respect of any mineral removed by him from the leased area after December 28, 1957, royalty at the rate specified in the Second Schedule of the 1957 Act which for coal was fixed at 5% of F.O.R. price subject to a minimum of fifty N. P. per ton.

F Section 16 of the 1957 Act provided that mining leases granted before October 25, 1949 would, as soon as might be, after the commencement of the 1957 Act, be brought into conformity with the provisions of the 1957 Act and the rules made under sections 13 and 18 thereof.

Section 29 of the 1957 Act provided for the effective continuance of the rules made or purported to have been made under the 1948 Act in so far as they related to matters provided for in the former Act and were not inconsistent therewith.

G The effect of section 9 of the 1957 Act as held by this Court in *State of Madhya Pradesh & Anr. v. Dadabhoys New Chirimiri Ponri Hill Colliery Co. Pvt. Ltd.*⁽¹⁾ was that the rate of royalty was enhanced in case of those lessees who, under the leases obtained by them before the commencement of the Act, were paying a rate lesser than 5% while the royalty payable by lessees similarly placed was reduced if they were paying royalty at a higher rate. As the enhancement envisaged by section 9 of the 1957 Act was apprehended to lead to an increase in the cost of production of coal which is a vital mineral for

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(1) [972] 2 S.C.R. 609.

the industrial development and occupies a basic position in the economy of the country, various representations were made to the Government of India to reduce the royalty. Impelled by these representations, the Central Government moved a Bill in March, 1958, being Bill No. 33 of 1958, and got, by means of Mines and Minerals (Regulation and Development) Amendment Act, 1958, section 30A inserted in the 1957 Act reading as follows :—

“30A. Notwithstanding anything contained in this Act the provisions of sub-section (1) of section 9 and of sub-section (1) of section 16 shall not apply to or in relation to mining leases granted before the 25th day of October, 1949 in respect of coal but the Central Government, if it is satisfied that it is expedient so to do, may by notification in the official gazette direct shall all or any of the said provisions (including any rules made under sections 13 and 18) shall apply to or in relation to such leases subject to such exceptions and modifications, if any, as may be specified in that or in any subsequent notification.”

This section, it would be seen, consisted of two parts. Under the first part, the provisions of sections 9(1) and 16(1) were expressly made inapplicable to or in relation to pre-October 25, 1949 mining leases for coal. The second part empowered the Central Government on being satisfied that it was expedient so to do to direct by notification that all or any of those provisions (including the rules made under sections 13 and 18) would apply to or in relation to such leases subject to such exceptions and modifications, if any, as might be specified in that or any subsequent notification. The “exceptions and modifications” which could be so specified in the notification were obviously in regard to the application, when such application was decided upon, of sections 9(1) and 16(1) and the relevant rules.

The aforesaid section 30-A was given a retrospective effect by virtue of section 2 of the Amendment Act 15 of 1958.

Vide notification No. GSR-432 dated May 29, 1958, the 1957 Act was brought into force with effect from June 1, 1958.

By notification No. S.O. 3094 dated December 29, 1961, the Central Government in exercise of the powers conferred on it by the second part of section 30A of the 1957 Act, directed the provisions of sub-section (1) or section 9 to apply with immediate effect to or in relation to mining leases in respect of coal granted before October 25, 1949 subject to the modification that lessees were required to pay royalty at the rates specified in the agreements between them and the lessor or at the rate of 2½% on F.O.R. price of coal, whichever was higher, in place of the rate of royalty specified in respect of coal under the Second Schedule.

After the notification, the State Government started demanding royalty at 2½% and initiated proceedings under the Public Demands Recovery Act to realize royalty at 2½% for the period between 29.12.1961 and 31.12.1965.

On October 26, 1964, the Bihar Land Reforms Act was amended by insertion of section 10-A originally by the Bihar Amendment Ord-

A nance No. 3 of 1964 which was subsequently replaced by the Bihar Land Reforms (Amendment) Act, 1954 (Bihar Act 4 of 1965). Under this newly added section, the lessees' interest in mines and minerals which were subject to sub-leases also came to vest in the State of Bihar. Thus the State also acquired the right to sub-lease. On October 27, 1964, the interests of Chakroborty and Adhikaris from whom sub-leases appear to have been taken in the beginning of the

B current century vested in the State of Bihar.

On January 1, 1966, a notification being S.O.No. 81 of 1966, was issued by the Central Government under section 30A of the 1957 Act superseding the notification No. S.O. 3094 dated December 29, 1961 and applying the provisions of section 9(1) of the 1957 Act to leases granted prior to the commencement of the said Act.

C On October 3, 1966, this Court pronounced judgment in *Bihar Mines Ltd. v. Union of India* (supra) holding therein that the whole or that part of the estate or tenure comprised in any lease of mines and minerals would, with effect from the date of vesting, be deemed to have been leased out by the State Government to the holder of the subsisting lease (i.e. the first lessee) for the remainder of the period of the lease and that the statutory lease thus held by the

D head lessee from the State Government under section 10 of the Bihar Land Reforms Act, would be a new lease granted after October 25, 1949, and that the sub-leases would also be deemed to be new leases granted by the new lessee from the State Government, as the rights of the original lessee under the original lease had ceased on the vesting of the estate, and he was to be deemed to have got a new lease from the State.

E On December 22, 1967, the Patna High Court held in *Narendra Nath Mandal v. State of Bihar & Ors.*(¹) that a lessee of a coal mine was liable to pay royalty for the period beginning from the date of vesting of an estate under the Bihar Land Reforms Act to May 31, 1958 at 5% of F.O.R. price of coal subject to a minimum of eight paise per ton by virtue of section 29 of the 1957 Act read with Rule 41 and Schedule I of Mineral Concession Rules, 1949, and at the

F same rate from the date on which the 1957 Act came into force by virtue of section 9(1) of the said Act read with Second Schedule thereto because neither section 30A nor the notification issued there- upon was applicable to the said lease in view of the effect of the vesting of estate in the State of Bihar and the coming into existence of a new lease by force of section 10 of the Act which could not be

G said to be a lease granted before October 25, 1949 which alone was the subject matter of section 30A of the 1957 Act.

In June 1968, demands were made by the District Mining Officer, appellant No. 2 herein, for payment of royalty at the rate specified in the Mineral Concession Rules, 1949 in respect of the period commencing from November 3, 1951—the date of vesting of the estates of the head lessors under the Bihar Land Reforms Act—till May 31, 1958 and in respect of the period from June 1, 1958—the date of coming into force of the 1957 Act to December 12, 1965, at the rate

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(1) C. J. C. 653 of 1965 (Patna H. C.)

specified in the Second Schedule to the 1957 Act, after setting off $2\frac{1}{2}\%$ already realised, in view of the decision in *Narendra Nath Mandal's* case (supra). Aggrieved by these demands, the respondents filed petitions in the High Court of Patna for issue of writs of *certiorari* and *mandamus* quashing the demand notices and restraining the State from demanding royalty as indicated above. A

The case as set up by the respondents in the writ petitions was that as Rule 41 of the Mineral Concessions Rules, 1949, requiring royalty to be paid at the rate specified in Schedule I to the rules, applied only to a lease granted under the said Rules after the commencement of the 1948 Act and had no application to the leases and sub-leases of the respondents, royalty could not be claimed on the basis of 5% of F.O.R. price of coal in respect of the period between the date of vesting under the Bihar Land Reforms Act and May 31, 1958— the date immediately preceding the date on which the 1957 Act was brought into force; that as regards the period between June 1, 1958 and December 28, 1961 royalty at contractual rates alone was payable because the provisions of section 9(1) of the 1957 Act had no application to statutory leases deemed to have come into existence under section 10(1) of the Bihar Land Reforms Act and alternatively because by virtue of the provisions of section 30A of the 1957 Act the provisions of section 9(1) of the said Act were not applicable to or in relation to the mining leases in respect of coal granted before October 25, 1949 until the Central Government, by notification, decided otherwise; that as regards the claim in respect of the period from December 29, 1961 to December 31, 1965 royalty at $2\frac{1}{2}\%$ of F.O.R. price of coal had already been paid by the respondents as per notification of the Central Government issued in exercise of the power under section 30A of the 1957 Act and having itself invited and accepted this payment in full discharge of the respondents' liability for royalty payable for the said period, the State was not entitled to unilaterally revoke the aforesaid discharge or satisfaction and claim further royalty at $2\frac{1}{2}\%$ of F.O.R. price of coal over and above what has already been paid. B
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In reply the appellants herein submitted *inter alia* that the demands were lawful, that the combined effect of sections 9 and 29 of the 1957 Act read with Second Schedule thereto and the Mineral Concession Rules, 1949 was that the respondents who were lessees or sub-lessees were liable to pay royalty at the rate of 5% of F.O.R. price of coal from the date of vesting of the respective estates of the proprietors who had granted head leases in the State of Bihar for the entire period in question; that section 9(1) of the 1957 Act was very comprehensive and applied to all leases whether contractual or statutory which came into existence before the 1957 Act was brought into operation; that section 30A of the 1957 Act applied only to leases in respect of coal which had been granted before October 25, 1949 and not to the new statutory mining leases of the respondents deemed to have been granted by the State Government before the coming into operation of the 1957 Act under the provisions of section 10 of the Bihar Land Reforms Act; and that the provisions of s. 9(1) of the 1957 Act G
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A could not be taken to have been suspended by s. 30A of the Act so far as the leases in question were concerned.

All the writ petitions were heard by a Sepcial Bench of five Judges of the High Court. The said Bench by its judgment and order dated September 3, 1970 allowed all the writ petitions filed by the respondents and quashed the impugned notices holding that *Narendra Nath Mandal's* case (supra) had been wrongly decided; that rule 41 of the Mineral Concession Rules, 1949 made under section 5 of the 1948 Act which was claimed by the appellants to have been continued in force by virtue of section 29 of the 1957 Act and to justify the demand for royalty for the period prior to June 1, 1958 was applicable only to contractual grants envisaged by the said Rules and could have no application to statutory leases arising by virtue of section 10 of the Bihar Land Reforms Act; that there was no warrant for pushing back section 9 of the 1957 Act by virtue of section 29 thereof to any date anterior to that on which the said Act came into force; that as section 30A of the 1957 Act on its true interpretation, imposed a temporary bar on the operation of the provisions of section 9(1) not only in respect of mining leases granted before October 25, 1949 in respect of coal but also in relation to those leases which expression covered the statutory leases of the respondents which must be deemed to have come into existence with effect from the date of vesting under the Bihar Land Reforms Act, the demand for royalty for the period commencing from June 1, 1958 to December 31, 1965 was also unjustified and illegal.

Aggrieved by the judgment and order of the Special Bench of the High Court, the appellants filed a petition in the High Court under Articles 132 and 133(1)(a) of the Constitution for grant of certificate of fitness for appeal to this Court. The High Court by its order dated January 22, 1971 granted the certificate of fitness under Article 133(1)(a) of the Constitution enabling the appellants to prefer the aforesaid appeals to this Court.

Counsel for the parties have reiterated before us the contentions urged on behalf of their clients before the High Court.

Two important questions arise for determination by us in these appeals : (1) whether the claim for royalty in regard to the period prior to June 1, 1958 can be sustained; (2) whether the claim for royalty in regard to the period from June 1, 1958 to December 31, 1965 is justified.

So far as the demand for royalty at 5% of F.O.R. price of coal for the period prior to June 1, 1958—the date on which the 1957 Act came into force—is concerned we are of opinion that it is not justified in view of the fact that Rule 41 of the Mineral Concession Rules, 1949 applied only to contractual leases envisaged by Chapter IV of the said Rules (which were made *inter alia* for regulating the grant of mining leases in respect of any mineral) and not to the statutory leases which came into existence as a result of the deeming provision embodied in section 10 of the Bihar Land Reforms Act. This view is in accord with the decision of this Court in *Chhatu Ram's* case (supra) where dealing with Rule 40 of the Mineral Concession Rules

1949 which relates to the period of lease, Shah, J. who delivered the judgment of the Court observed that the rule manifestly applied to grants made by the Government and had no application to statutory leases arising by reason of section 10 of the Bihar Land Reforms Act. We, therefore, find ourselves in complete agreement with the High Court that the claim for royalty for the period prior to June 1, 1958, is wholly unfounded and cannot be supported.

So far as the demand for royalty for the period beginning with June 1, 1958 and ending with December 31, 1965 is concerned, we are of the opinion that no exception can be taken to the view expressed in this behalf by the High Court in its judgment under appeal. This becomes abundantly clear from a close scrutiny of section 30A (supra) of the 1957 Act, the provisions whereof may usefully be recalled at this stage. Before examining, however, section 30A, it would be profitable to advert to section 9 (supra) of the Act. This section, it would be seen consists of three parts. Sub-section (1) casts a liability on the holder of a mining lease granted before June 1, 1958—the date of the commencement of the Act—to pay royalty in respect of any mineral removed by him from the leased area after that date at the rate for the time being specified in the Second Schedule, notwithstanding anything contained in the instrument of lease or in any law in force on the aforesaid date of the commencement of the Act. Sub-section (2) makes also the holder of a mining lease granted on or after June 1, 1958 liable to pay royalty in respect of any mineral removed by him from the leased area at the rate for the time being specified in the Second Schedule. Sub-section (3) empowers the Central Government to amend the Second Schedule and enhance or reduce the rate of royalty in respect of any mineral by issue of a notification subject to the restriction contained in the proviso to this sub-section. Section 30A which, as is evident from its opening words, has an overriding effect on the other provisions of the Act affords a temporary protection from applicability of section 9(1) and section 16(1) of the Act not only to the leases granted before October 25, 1949, but also to the statutory leases which came into existence as a result of the operation of s. 10(1) of the Bihar Land Reforms Act and replaced the former category of leases subsisting immediately before the date of vesting in the State of the estates or tenures on the publication of the notifications under sections 3 and 3A of the Bihar Land Reforms Act. This conclusion irresistibly flows from the words “or in relation to” occurring in section 30A of the 1957 Act after the words “shall not apply to” and before the words “mining leases granted before the 25th day of October, 1949”. The aforesaid words which are of great significance enlarge the scope of section 30A and bring within the umbrella of its protection the mining leases granted before October 25, 1949 as also the statutory leases which sprang up in their place by virtue of the legal fiction contained in Section 10(1) of the Bihar Land Reforms Act on the vesting in the State of the estates or tenures. As expressly ordained by sub-sections (1) & (2) of section 10 of the Bihar Land Reforms Act, not only the holder of a statutory lease had to be the same as the holder of a subsisting

A lease for the remainder of the term of that lease but the terms and conditions of the statutory lease had also *mutatis mutandis* to be the same as the terms and conditions of the subsisting lease i.e. the original lease except to the extent mentioned in sub-section (2). Thus the statutory lease being inextricably linked up with the aforesaid subsisting lease which it replaced as a result of the aforesaid provisions of the Act came within the purview of section 30A of the 1957 Act. The interpretation sought to be placed by the appellants on the phraseology of section 30A, of the 1957 Act cannot be accepted as it would unduly restrict and limit the scope of that section and defeat the object which it was intended to effectuate viz. to mitigate the rigour of liability for payment of royalty under section 9 of the 1957 Act at the rate specified in the Second Schedule in respect of the coal removed from the leased area after the commencement of the Act. If as contended by the appellants, the protection envisaged by section 30A is restricted to leases granted before October 25, 1949, section 30A would be rendered nugatory because on the coming into being of the statutory leases as a result of section 10(1) of the Bihar Land Reforms Act, there would hardly be left any mining lease to which section 30A of the 1957 Act would be applicable. Thus there can be no room for doubt that the Legislature intended that section 30A of the 1957 Act should cover the aforesaid statutory leases as well. It will be apposite in this connection to refer to the following statement of objects and reasons given in the Bill which sought to introduce section 30A in the 1957 Act with retrospective effect which can be usefully resorted to for ascertaining the true scope of section 30A and the extent of the protection afforded by it :—

E “... It is considered that these changes will have numerous undesirable consequences. The areas covered by these mining leases are principally in West Bengal and Bihar and they account for as much as 80 per cent of the total coal production in the country. The royalties paid on this coal vary over a wide range but are generally much below the rate per ton prescribed in the Second Schedule. A sudden and uniform increase of these royalties is likely to have an unsettling effect in the industry and may retard the programme of coal production under the Second Five Year Plan.”

G Thus the above discussion makes it crystal clear that the statutory mining leases in respect of coal which sprang up under section 10(1) of the Bihar Land Reforms Act also acquired a temporary immunity from the applicability of sections 9(1) and 16(1) of the Act until the Central Government came out with a notification making the said provisions applicable with or without modification to these leases. Accordingly, we have no hesitation in holding in agreement with the High Court that the further demand for royalty for the second period indicated above cannot also be sustained.

H For the foregoing reasons, we find no force in these appeals which are dismissed. In the circumstances of the case, the parties are left to pay and bear their own costs of these appeals.

P.B.R.

Appeals dismissed.