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CENTRAL COALFIELDS LTD.

v.

STATE OF JHARKHAND AND ORS.

SEPTEMBER 1, 2005

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[C.K. THAKKER AND P.K. BALASUBRAMANYAN, JJ.]

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Bihar and Orissa Public Demands Recovery Act, 1914—Section 60—Direction to Government company engaged in coal mining for payment of surface rent in coal bearing mining areas by State Government—Plea that recovery of rent not sustainable—Writ petition, dismissal of, on ground of alternative remedy of filing appeal—LPA on the ground that the issue in question decided by Division Bench in earlier decision—Dismissal of LPA on ground of alternative remedy—Correctness of—Held : Order directing payment of rent is subject to appeal under section 60—More so under sections

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6 and 7 of the 1972 Act, State Government has power to make demand of rent—Hence, order allowing alternative remedy of filing appeals justified—Furthermore, in the earlier decision on Division Bench point regarding availability of alternative remedy neither raised nor considered—Company granted liberty to file appeals under 1914 Act—Coking Coal Mines (Nationalisation) Act, 1972—Coal Bearing Areas (Acquisition and Development) Act, 1957—Coal Mines (Nationalisation) Act, 1973.

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Appellant-Government Company is engaged in extracting, selling and distributing coal. For mining purposes it acquired land through Central Government and rights over colliery and mining area. State Government demanded payment of surface rent in coal bearing mining areas under Bihar and Orissa Public Demands, recovery Act, 1914 in possession of the appellant and Certificate Officer initiated proceedings against the appellant for recovery of rent. Company contended that the proceedings were against Mines and Minerals (Regulation and Development) Act, 1957. Coal Bearing Areas (Acquisition and Development) Act, 1957 and also the Coal Mines (Nationalisation) Act, 1973; and that the 1914 Act was not applicable to the present case. Certificate Officer held the Company liable to pay rent. Appellant filed writ petition. Single Judge of High Court dismissed the petition on the ground of availability of alternative remedy under the 1914 Act. Appellant filed LPA challenging the order on the ground that the point in issue was

concluded by decision of Division Bench in *Managing Director National Coal Development Corp.* case that State Government had no authority to demand surface rent. Division Bench upheld the order of Single Judge and dismissed the L.P.A. Hence the present appeal. A

Disposing of the appeals, the Court B

HELD : 1.1. In view of the provisions of Coal Bearing Areas (Acquisition and Development) Act, 1957, Mines and Minerals (Regulation and Development) Act, 1957 and also the Coking Coal Mines (Nationalisation) Act, 1972, the Certificate proceedings could not have been initiated under the Bihar and Orissa Public Demands Recovery Act, 1914. But the action was taken under the 1914 Act and the appellant-Company was directed to make payment. The said order is subject to appeal under Section 60 of the 1914 Act. A reading of the order passed by the Certificate Officer makes it clear that before taking the action, an opinion of the Advocate General of the State of Bihar was sought by the respondent who referred to sections 6 and 7 of the 1972 Act and observed that the State Government had power to make demand of rent from the appellant-Company. Therefore, the Single Judge as well as the Division Bench of the High Court did not commit an error of law in dismissing the petitions and appeals by allowing the appellant to avail of an alternative remedy of filing appeals, and thus, the orders do not suffer from any infirmity. [1133-C, D, E, F] C D E

1.2. The Division Bench of High Court rightly observed that the powers of the Appellate Authority under the Bihar & Orissa Public Demands Recovery Act, 1914 are very wide and the appellant may raise all contentions including the contention as to the jurisdiction of the State Government and/or its officers in initiating Certificate Proceedings against the Company; and that in the decision in *National Coal Development Corporation* case the contention regarding alternative remedy was neither raised nor considered nor a finding had been recorded thereon. Therefore, the appellant-Company is granted liberty to approach the Appellate Authority by filing appeals under the Bihar & Orissa Demands Recovery Act, 1914. [1133-G, H; 1134-A] F G

A From the Judgment and Order dated 25.1.2002 of the Jharkhand High Court in L.P.A. No. 473 of 2001.

WITH

B C.A. Nos. 5454 and 5452 of 2005.

Ajit Kumar Sinha, for the Appellant.

Ms. Pinky Anand, Sr. Standing Counsel, D.N. Goburdhun and Ashok Mathur for the Respondents.

C The Judgment of the Court was delivered by

C.K. THAKKER, J. : Special leave granted.

D The present appeals arise out of common judgment and order passed by the High Court of Jharkhand, Ranchi on January 25, 2002 in Letters Patent Appeal Nos. 462, 472 and 473 of 2001. By the said order, the Division Bench of the High Court dismissed *intra* court appeals filed by the appellant herein confirming the orders passed by the learned Single Judge.

E To appreciate the controversies raised in the present group of appeals, few facts in the first matter (*Central Coal Fields Limited v. State of Jharkhand & Others*) may be noted.

F The appellant Central Coal Field Limited ('Company' for short) is a Government Company within the meaning of Section 617 of the Companies Act, 1956 having its registered office at Darbhanga, Ranchi. It is one of the subsidiary companies of Coal India Limited. The Company owns various coal mines in Districts Hazaribagh, Giridih, Palamou and Ranchi. The Company is carrying on business in extracting, selling and distributing coal. It is the case of the Company that for the purpose of mining activities, it acquired land through Central Government for mining purposes under the Coal Bearing Areas (Acquisition and Development) Act, 1957. It is also asserted by the Company that it acquired rights over colliery and mining area by virtue of Coal Mines (Nationalisation) Act, 1973. According to the Company, Section 3 of the said Act provides that on the appointed day, the right, title and interest of the owners in relation to coal mines specified in the Schedule "shall stand

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transferred to and shall vest absolutely in the Central Government free from all encumbrances". In view of the aforesaid provision as also Section 10 of Coal Bearing Areas (Acquisition and Development) Act, 1957, the land as well as the rights over the land stood vested in the Central Government and the State Government thereafter had no right, title or interest in the land or rights over such land and no proceedings for recovery of rent could be effected nor any charge could be levied by the State Government from the appellant. In spite of clear legal position, Certificate Proceedings against the appellant for realization of surface rent for mining areas in possession of the Company were initiated by the Certificate Officer (Mines), Dhanbad. The Company, therefore, objected to those proceedings by filing objections on June 12, 1991, *inter alia* contending that the proceedings were against Sections 9 and 9A of the Mines and Minerals (Regulation and Development) Act, 1957. It was also contended that the Bihar & Orissa Public Demands Recovery Act, 1914 would not apply to the case and proceedings were, therefore, required to be dropped. Ignoring valid objections of the Company, an interim order was passed by the Certificate Officer directing the appellant-Company to pay an amount of Rs.78,16,712. According to the appellant-Company, even the Central Government was of the view that the State Government had no such power which is clear from the letter dated February 12, 1999, addressed by the Director of Mines and Coal, Government of India to the Chief Secretary, Government of Bihar, Patna. The appellant-Company stated that the interim order dated February 2, 1999 was passed without considering the objections filed by it and without giving an opportunity of being heard. A petition was, therefore, filed being CWJC No. 651 of 1999 (R). The learned Single Judge allowed the petition by an order dated September 20, 1999, set aside the order of the Certificate Officer and directed him to dispose of the objections filed by the Company by passing an appropriate order in accordance with law. The Certificate Officer, however, rejected the objections and held the Company liable to pay rent and accordingly an order was passed on June 08, 2000.

Being aggrieved by the said order, the appellant preferred a Writ Petition being CWJC No. 2535 of 2000. The learned Single Judge, after hearing the parties, dismissed the petition observing that it was not disputed that order had already been passed by the Certificate Officer against which the appellant-Company could file an appeal as provided under the Bihar & Orissa Public Demands Recovery Act, 1914. The Court also observed that the Appellate Authority would consider the question as to delay in filing the

A appeal, which had occurred as the appellant-Company had approached the High Court.

B The Company filed Letters Patent Appeal against the order passed by the learned Single Judge. It was argued on behalf of the Company that the learned Single Judge was not right in dismissing the appeal on the ground of availability of alternative remedy particularly when the point was concluded by a decision of Division Bench in *Managing Director, National Coal Development Corporation Limited v. State of Bihar & Others*, AIR (1984) Patna 280. Dismissing the appeal and upholding the order of learned Single Judge, the Division Bench observed that Section 60 of the Bihar & Orissa Public Demands Recovery Act, 1914 went to suggest that the right of appeal was “unfettered” and the jurisdiction of the appellate forum “plenary and unbound”. Whether the appellant was or was not liable to pay surface rent or lease money could be decided by the Appellate Authority. The Authority could also consider the basic question as to maintainability of Certificate Proceedings, but it could not be said that the learned Single Judge had committed an error of law in dismissing the petition on the ground of availability of alternative remedy. Regarding the decision of the Division Bench in *National Coal Development Corporation*, the Court observed that the contention as to availability of alternative remedy was not raised in that case. Accordingly, the Letters Patent Appeal was also dismissed. The E appellant has challenged the said order.

We have heard learned counsel for the parties.

F The learned counsel for the appellant strenuously urged that the demand made by the State Government for payment of surface rent in a coal bearing mining area and initiation of proceedings for taking coercive steps for recovery of such rent were not sustainable in the light of the provisions of Coal Bearing Areas (Acquisition and Development) Act, 1957 as also the Coal Mines (Nationalisation) Act, 1973. It was also contended that in view of the decision of the Division Bench in *National Coal Development Corporation* holding that the State Government had no authority to demand surface rent, the High Court ought not to have dismissed the petitions/letters patent appeals on the ground of alternative remedy. In any case, when the question of jurisdiction had been raised, the High Court ought to have decided it, as it would go to the root of the proceedings. It was, therefore, submitted H that the impugned orders are required to be set aside by remanding the matters

to the High Court to be decided in accordance with law.

The learned counsel appearing for the State Government, on the other hand, supported the orders passed by the High Court. He submitted that the points which have been argued before this Court were urged before the High Court and the High Court held that in the light of statutory provisions, the appellant was bound to avail of the alternative remedy. Regarding earlier decision of the Division Bench, the High Court rightly observed that the point as to availability of an alternative remedy was never raised. No fault, therefore, can be found against the impugned orders and the appeals deserve to be dismissed.

Having heard the learned counsel for the parties, in our opinion, the appeals deserve to be disposed of by making certain observations. It is no doubt true that according to the appellant- Company the Certificate Proceedings could not have been initiated under the Bihar & Orissa Public Demands Recovery Act, 1914, in view of the provisions of Coal Bearing Areas (Acquisition and Development) Act, 1957, Mines and Minerals (Regulation and Development) Act, 1957 and also the Coking Coal Mines (Nationalisation) Act, 1972. But it also cannot be overlooked that the action has been taken under the Bihar & Orissa Public Demands Recovery Act, 1914 and the appellant-Company was directed to make payment. The said order is subject to appeal under Section 60 of the said Act. A reading of the order dated November 17, 1999 passed by the Certificate Officer makes it clear that before taking the action, an opinion of the Advocate General of the State of Bihar was sought by the respondent. Referring to the provisions of Coking Coal Mines (Nationalisation) Act, 1972, the Advocate General opined that such amount could be claimed by the State Government from the appellant-Company. Reference was made to Sections 6 and 7 of the said Act and it was observed that the State Government had power to make demand of rent from the appellant-Company. In view of the above position, it cannot be said that the learned Single Judge as well as the Division Bench had committed an error of law in dismissing the petitions and appeals by allowing the appellant to avail of an alternative remedy of filing appeals. Those orders, therefore, do not suffer from any infirmity. As observed by the Division Bench, the powers of the Appellate Authority under the Bihar & Orissa Public Demands Recovery Act, 1914 are very wide and the appellant may raise all contentions including the contention as to the jurisdiction of the State Government and/or its officers in initiating Certificate Proceedings against the Company.

A Regarding the earlier decision in *National Coal Development Corporation*, the High Court was right in observing that the contention regarding alternative remedy was neither raised nor considered nor a finding had been recorded thereon. In view of the said fact also it would be appropriate if the appellant-Company is granted liberty to approach the Appellate Authority by filing appeals under the Bihar & Orissa Public Demands Recovery Act 1914.

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C Since the appellant-Company had filed petitions, *intra* court appeals and the appeals in this Court, it would be in the interest of justice and we direct, that if appeals under the Bihar & Orissa Public Demands Recovery Act, 1914 are filed within a period of two months from today, the Appellate Authority will entertain them without raising any objection as to limitation. The Appellate Authority will hear the parties and decide the appeals in accordance with law as expeditiously as possible preferably within three months from filing of the appeals without being influenced in any manner by the observations made by the learned Single Judge, the Division Bench or by us in the present appeals. We may clarify that we are disposing of the appeals upholding the preliminary objection of the State Government regarding availability of alternative remedy of appeals and we may not be understood to have expressed any opinion one way or the other on merits and all contentions of all parties are kept open.

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E For the foregoing reasons, the appeals are disposed of. In the facts and circumstances of the case, however, there shall be no order as to costs.

N.J.

Appeals disposed of.