A SALIGRAM KHIRWAL

v.

UNION OF INDIA

SEPTEMBER 9, 2003

B [R.C. LAHOTI AND ASHOK BHAN, JJ.]

Mines and Minerals (Regulation and Development) Act, 1957 :

Ss. 11(2) and (3)—Applications for mining lease—Death of one of the
C *applicants after lease was granted in favour of another—Claim of legal heirs—The unsuccessful applicant filing writ petition before High Court after her revision against grant of lease in favour of another person was dismissed by Government—Death of applicant during pendency of writ petition—High Court substituting legal heirs allowing writ petition and*
D *directing the Government to consider application afresh—Held, the deceased applicant in her writ petition was merely canvassing and claiming consideration afresh of her application for the grant—Her entitlement to the grant of mining lease was to be adjudicated upon on the basis of her own qualification and entitlement—The claim of legal heirs shall have to be adjudicated upon on the basis of their own qualifications and their own*
E *entitlement—On the death of the applicant, all that survived to the legal heirs was to make an application afresh and have the same considered in accordance with law—On facts, r.25-A is not applicable—Besides, lease was granted in favour of the successful applicant for 20 years and he has operated the mine for about 23 years—It will be a travesty of justice to*
F *dislodge the successful applicant from the mine after a period of 23 years solely for the purpose of considering an application by a competitor—However, if any prayer for renewal of lease is made hereafter, it shall be treated as an application for fresh grant and the legal heirs of the deceased and any other person shall be entitled to make application—Mineral*
G *Concession Rules, 1960—R.25-A.*

C. Buchivenkata Rao (dead) by his legal representatives **v.** *Union of India and Ors.,* **[1972] 3 SCR 671, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5689 of
H 1994.

From the Judgment and Order dated 23.2.93 of the Orissa High Court in O.J.C. No. 1269 of 1982. A

Jayant Das, Ajit Pudussery and S. Mohanty for the Appellant

Janaranjan Das, Gaurang Biswal, Swetaketu Mishra, Ms. Moushmi Gahlot and Ms. Kirti Mishra for the Respondents. B

The following Order of the Court was delivered :

Late Dr. Sarojini Pradhan, whose heirs are impleaded as respondent Nos. 3 to 8 herein (collectively called hereafter as 'private respondents', C for the sake of convenience) was holding a mining lease over an area of 163.4723 hectares in village Banarai for extraction of lime stone and dolomite. Late Dr. Sarojini Pradhan committed breach of terms and conditions of the mining lease in her favour consequent whereupon the State Government determined her lease and called for fresh applications vide a notification dated 3rd December, 1977. The termination of the D mining lease held by late Dr. Sarojini Pradhan is now only a matter of past history inasmuch as that termination has achieved a finality and is not in dispute in the present proceedings.

Pursuant to the notification dated 3rd December, 1977, nine E applications came to be submitted for the grant of mining lease in terms of sub-Sections (2) and (3) of Section 11 of the Mines and Minerals (Regulation and Development) Act, 1957. The appellant before us and late Dr. Sarojini Pradhan were also amongst the applicants. Having scrutinised all the applications, the Director of Mines, on 31st January, 1979, F recommended the mining lease being granted in favour of the appellant. On 4th December, 1979, the State Government passed an order granting the mining lease in favour of the appellant. The terms and conditions proposed by the State Government were accepted by the appellant on 3rd January, 1980. On 11th January, 1980, the mining lease was executed and the formal grant order in favour of the appellant was issued by the State G Government on 16th January, 1980. Late Dr. Sarojini Pradhan preferred a Revision to the Central Government against the grant in favour of the appellant. But the Revision was dismissed by the Central Government on 29th May, 1982. Some time in the year 1982, Dr. Sarojini Pradhan filed a writ petition in the High Court of Orissa laying challenge to the rejection H

A of her application and to the grant in favour of the appellant. During the pendency of the writ petition, on 10th September, 1987, Dr. Sarojini Pradhan expired. Her legal representatives, the private respondents, prayed for substitution which prayer was allowed by the High Court, leaving it open for consideration at the time of final decision whether any right to
B sue survived to the private respondents or not. The matter was finally heard on 15th December, 1992 and disposed of by the High Court by its decision dated 23rd February, 1993. The writ petition filed by late Dr. Sarojini Pradhan and prosecuted by the private respondents was allowed, the grant in favour of the appellant was set aside and the State Government was directed to consider the applications afresh. Feeling aggrieved by the
C judgment of the High Court, the appellant has filed this appeal by special leave.

The singular submission made by the learned counsel for the appellant is that the right to sue did not survive to the private respondents and,
D therefore, the High Court has committed a serious error of law in hearing the writ petition on merits and then allowing the same. It is submitted by the learned counsel that consequent upon the death of Dr. Sarojini Pradhan, the writ petition ought to have been dismissed as having bated as there was no occasion for allowing substitution in the facts and circumstances of the case. The learned counsel for the private respondents, on the other hand,
E submitted that the right to sue did survive and it is the status and entitlement of the parties by reference to the year 1978, that is the year in which several applications were filed before the State Government, that the claims of the parties should have been adjudicated upon as has been done by the High Court.

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Having heard the learned counsel for the parties, we are of the opinion that the appeal deserves to be allowed and the decision of the High Court deserves to be set aside.

Reference has been made by the learned counsel for the private
G respondents to the relevant provisions, tracing the history of legislative changes, in support of his submission that the law as enacted by Rule 25A of the Mineral Concession Rules, 1960, introduced by way of amendment with effect from 1st April, 1991, is only clarificatory of the position of law which should be deemed to have been always the same as was clarified
H by the amendment. Under the Mineral Concession Rules, 1949, Rule 28(3)

provided that in the event of death of an applicant before grant of mining lease, the fee paid under sub-Rule (1) shall be refunded to his legal representatives. The learned counsel for the priviate respondents submitted that there was a specific provision wherefrom it could be spelled out that the death of an applicant entailed implicit rejection of the application leading to refund of fee to the legal representatives. The Mineral Concession Rules, 1949 were repealed by the Mineral Concession Rules, 1960 which contained no provision corresponding to Rule 28(3) of the 1949 Rules. However, with effect from 1st April, 1991, Rule 25A was introduced in the body of the Mineral Concession Rules, 1960 which provides as under :

> "*25A. Status of the grant on the death of applicant for mining lease.*— (1) Where an applicant for grant or renewal of mining lease dies before the order granting him a mining lease or its renewal is passed, the application for the grant or renewal of a mining lease shall be deemed to have been made by his legal representative.
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> (2) In the case of an applicant in respect of whom an order granting or renewing a mining lease is passed, but who dies before the deed referred to in sub-rule (1) of rule 31 is executed, the order shall be deemed to have been passed in the name of the legal representative of the deceased."

The learned counsel submitted that this amendment is clarificatory in nature and merely recognises by way of restatement the law as had always prevailed. However, we find it difficult to agree with the learned counsel.

Firstly, Rule 25A, on its plain reading, does not have any applicability to the situation emerging from the facts of the present case. The rule contemplates *the death of an applicant* for grant or renewal of mining lease *expiring before the order granting him a mining lease or its renewal is passed.* (Emphasis supplied). In the present case, the death has been of an applicant in whose favour any order for the grant of lease was never passed. The legal position shall have to be determined *de hors* the Rule 25A.

The position of law came to be examined by this Court in *C. Buchivenkata Rao (dead) by his legal representatives* v. *The Union of India & Ors.*, [1972] 3 SCR 671. It was a case of mining lease. Their Lordships stated the law in the following words.

A "It has to be remembered that, in order to enable a legal representative to continue a legal proceeding, the right to sue or to pursue a remedy must survive the death of his predecessor. In the instant case, we have set out provisions showing that the rights which an applicant may have had for the grant of a mining lease, B on the strength of an alleged superior claim, cannot be separated from his personal qualifications. No provision has been pointed out to us in the rules for impleading an heir who could continue the application for a mining lease. The scheme under the rules seems to be that, if an applicant dies a fresh application has to be presented by his heirs or legal representatives if they themselves C desire to apply for the grant of a lease."

Their Lordships clearly held that once the applicant has died, the legal representatives of the deceased applicant shall have to file a fresh application setting out their own qualifications whereon would be determined D their entitlement to the grant. It was submitted before their Lordships that the legal heirs of the deceased applicant should be assumed to be possessing the same rights which the deceased may have had to obtain the lease which rights would survive to the legal heirs and vest in them. Their Lordships specifically turned down the plea and refused to accept the correctness of the assumption sought to be canvassed. E

The learned counsel for the private respondents tried to distinguish the law laid down in the case of *C. Buchivenkata Rao* (supra) by submitting that the case deals with 1949 Rules and cannot be pressed into service for interpreting the 1960 Rules. Such a distinction cannot be drawn. The F statement of law made by their Lordships is not confined to 1949 Rules. It states the law as would prevail if there is no provision in the Rules either way.

We also find it difficult to agree with the submission that the 1991 amendment in the Rules is merely clarificatory and the provisions contained G in Rule 25A should be read as if declaring the law as it prevailed even in the absence of the rule. Firstly, there is nothing in the language of Rule 25A to support such a submission. Secondly, the amendment introduced on 1st April, 1991 is not made retrospective in operation. At the cap of it all, as we have already said hereinabove, Rule 25A has no applicability H to the facts of the case at hand.

Late Dr. Sarojini Pradhan in the writ petition filed before the High Court was merely canvassing and claiming consideration afresh of her application for the grant. There was no vested right accrued to her for the grant. The entitlement of late Dr. Sarojini Pradhan to the grant of mining lease was to be adjudicated upon on the basis of her own qualifications and entitlement. The claim of the legal heirs shall have to be adjudicated upon on the basis of their own qualifications and their own entitlement. Needless to say, on the death of Dr. Sarojini Pradhan, all that survived to the legal heirs was to make an application afresh and have the same considered in accordance with law.

There is an additional fact which cannot be overlooked. The grant in favour of the appellant was made in the year 1980 by way of a mining lease for twenty years. That period has expired during the pendency of these proceedings. In terms of the mining lease, the appellant is entitled to one renewal. The learned counsel for the parties are unable to state at the Bar, for want of instructions, whether the appellant has applied for any renewal and, if so, with what result. Be that as it may, the appellant has operated the mine for a period of about 23 years by this time and substantial investment must have been made by the appellant for operating the mine. It will be a traversity of justice to dislodge the appellant from the mine after a period of 23 years solely for the purpose of considering an application by a competitor which application may or may not be allowed at the end. In the facts and circumstances of the case, in our opinion, it would meet the ends of justice if it is directed that any prayer for renewal of lease made hereinafter shall be treated as an application for a fresh grant and therein the private respondents or any other person shall be entitled to make an application for grant in his favour and to oppose the grant in favour of the appellant herein.

The appeal is allowed. The impugned judgment of the High Court is set aside, subject to the observation made hereinabove.

No order as to costs.

R.P. Appeal allowed.