MANU/BH/0033/1966

Equivalent Citation: AIR1966Pat154

IN THE HIGH COURT OF PATNA

A.F.O.O. No. 82 of 1965

Decided On: 19.10.1965

Appellants: **Bokaro and Ramgur Ltd.**
Vs.
Respondent: **State of Bihar**

Hon'ble Judges/Coram:
Ujjal Narayan Sinha, G.N. Prasad and S.N.P. Singh, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: N.C. Chatterjee, S.K. Jha, R.S. Rao, K.B. Ralatgi and Madan Mohan Prasad, Advs.

For Respondents/Defendant: Lal Narayan Sinha and Bajrang Sahai, Advs.

JUDGMENT

G.N. Prasad, J .

1. This appeal was originally heard by a Division Bench of this Court composed of Mr. Justice U. N. Sinha and Mr. Justice S. N. P. Singh, who differed in their opinion, in consequence of which it has been laid before me.

2. The appeal is directed against an order of the learned Subordinate Judge of Hazaribagh appointing a receiver of the properties which are the subject-matter of Title Suit No. 16 of 1961 instituted by the State of Bihar on the 9th of May 1961. The appellant, a public limited company, is the first defendant in the suit. Some of the relevant facts necessary for the decision of the present controversy are these:

On the 24th December 1947, Raja Bahadur Kamakhya Narain Singh, the recorded proprietor of Ramgarh estate bearing Tauzi No. 28 of Hazaribagh Collectorate, granted a coal and all mineral lease in and over 312 villages to Rajasthan Mines Limited. Again on the 19th February 1948, the Raja Bahadur granted another coal lease in and over 7500 standard bighas and in 261 other villages with all mineral rights therein to another company, Jharkhand Mines and Industries Limited". The first lessee will hereafter be referred to as Rajasthan and the second lessee as Jharkhand.

On the 27th December, 1949, Rajasthan created four sub-leases out of "its lease in favour of four different companies, and, similarly, on the following day, Jharkhand created six subleases out of its lease-hold interest in the 261 villages in favour of six other companies, one of them being in favour of Kuju Jarangdih Coal Company Limited. The next relevant date is the 14th August 1954. On that date, Jharkhand assigned its right, title and interest in its lease of 7500 standard bighas as also leasehold interest in the 261 other villages to one of its sub-lessees, Kuju Jarangdih Coal Company Limited.

3. The case set up by the plaintiff is that all these transactions are sham and farzi

and were created by the Raja Bahadur with the avowed purpose of defeating or nullifying the scheme of abolition of Zamindari, in respect of which a resolution was adopted by the Bihar Legislative Assembly in August 1946. The Raja Bahadur happened to be a member of the said Assembly and he was fully aware of the Government policy regarding the abolition of Zamindari. He, therefore, floated a number of bogus companies and purported to transfer the coal mining and other mineral rights appertaining to his estate in their favour with a view to save them from the consequences of zamindari abolition legislations which were in the offing. But in fact they remained his property. The Bihar Land Reforms Act (Bihar Act 30 of 1950) received the assent of the President on the 11th September 1950 and came into force on the 25th September 1950. Soon thereafter, a notification under Section 3 of the Act was issued in regard to Ramgarh and Sirampur estates of the Raja Bahadur. But the validity of this Act was challenged by the Raja Bahadur and his stand was upheld by this Court in 1951. Thereafter, in June 1951, the Constitution was amended giving immunity to the Act from attack. On the 3rd November, 1951, fresh notifications under Section 3 of the Act were issued in respect of the estates and tenures of the Raja Bahadur. Eventually, the validity of the Act was upheld by the Supreme Court in 1952 (Vide State of Bihar v. Sir Kameshwar Singh MANU/SC/0020/1952 : AIR 1952 SC 252).

4. In 1953, the Raja Bahadur instituted Title Suit No. 24 of 1953 against the State of Bihar for a declaration that his estate had not vested in the State of Bihar. On the 11th November 1954, the State of Bihar filed Title Suit No. 53 of 1954 against the Raja Bahadur and the Ramgarh group of companies and others for a declaration that the various transactions of 1947, 1948 and 1949 besides other transactions of similar nature entered into in 1950, 1951 and 1952 were sham, colourable, farzi and benami and should, therefore, be declared invalid. In the said suit, the plaintiff (State of Bihar) obtained an ad interim injunction against the defendants who were 76 in number (including Rajasthan and Jharkhand) restraining them from working any mines, collecting any rents and royalties and granting any lease or sub-lease or making any kind of transfer of the suit properties. In spite of the injunction order, Kuju Jarangdih Coal Company Limited (which was defendant No. 8 in Title Suit No. 53 of 1954) transferred its right in and over the properties acquired by it from Jharkhand on the 14th August 1954 as well as its sub-leasehold interest acquired on the 28th December 1949, in favour of Bokaro and Ramgur Limited (the present defendant appellant).

Likewise, during December 1954 and January 1955, Rajasthan, Jharkhand and their sub-lessees, who were all defendants in Title Suit No. 53 of 1954, transferred their lease-hold and other interests in favour of Bokaro and Ramgur Limited the appellant) and one more company. On the 18th July 1956, Title Suit No. 24 of 1953 was disposed of by the learned Additional Subordinate Judge of Hazaribagh who held that the estates of the Raja Bahadur had vested in the State of Bihar with effect from the 26th January 1955, and not with effect from the 3rd November 1951. Against this decision, both the Raja Bahadur and the State of Bihar came up to this Court, and this Court held that the estates of Raja Bahadur had vested on the 3rd November 1951, and not on the later date, as held by the Additional Subordinate Judge. The decision of this Court, which was given on the 16th January 1961, is reported in State of Bihar v. Kamakshya Narain Singh 1961 BLJR 446 An appeal against the said decision is pending before the Supreme Court.

5. In the meantime, on the 28th April 1957, the Raja Bahadur wrote a letter to the Government of Bihar offering certain terms for compromise of all the suits which

were pending at that time, including Title Suit No. 53 of 1951-which had been filed by the State of Bihar. According to the Raja Bahadur and other defendants of Title Suit No. 53 of 1954 a compromise was eventually arrived at with the Government of Bihar in July 1957, as a result of which all the transactions which were the subject-matter of that suit, were accepted as valid by the State of Bihar. But that is denied by the State of Bihar. It appears that certain proceedings were taken in Court by the Raja Bahadur and other defendants of Title Suit No. 53 of 1954 with a view to have the alleged compromise recorded under Order 23 Rule 3 C. p. C. But those proceedings taken in the Hazaribagh Court did not succeed and the order of the learned Subordinate Judge who rejected the application under Order 23 Rule 3 was twice upheld by this Court; once on the 28th April 1958 and again on the 13th January 1959. The judgments of this Court are reported in Basant Narain Singh v. State of Bihar MANU/BH/0147/1958 : AIR 1958 Pat 458 and Bansidhar Estate Collieries and Industries Ltd v. State AIR 1959 Pal 319.

Against the former decision, an application for special leave to appeal was refused by the Supreme Court on the 18th August 1958, After these unsuccessful attempts to record the compromise said to have been entered into by the State of Bihar, one of the defendants. Ramgarh Farm and Industries Limited filed Title Suit No. 16 of 1959 (renumbered as Title Suit No. 16 of 1962) in the Court of the Additional District Judge at Alipur in West Bengal for a declaration that all the previous suits, including Title Suit No. 53 of 1954 pending in the Hazaribagh Court had been compromised, as alleged by the defendants of that suit, on the 16th July 1957. Bokaro and Ramgur Limited (the present appellant), which was originally impleaded as a defendant in the Alipur suit. was subsequently transposed to the category of plaintiff No. 2 in the suit.

During the pendency of the Alipur suit, the Court issued an ad interim injunction restraining the State of Bihar (the plaintiff of Title Suit No. 53 of 1954) as also the plaintiffs of the various other suits (numbering 283 in all), which were pending at Hazaribagh, from proceeding with their respective suits. After a keen contest, the Alipur suit was decreed on the 23rd November 1962 and it was declared that a valid and lawful agreement had been arrived at between the parties and that the defendants of the suit were bound by the compromise. In other words, it was held that the transactions which were impugned as sham or benami had all been accepted by the State of Bihar to be valid and operative. The State of Bihar was, however, not satisfied with the decree passed in the Alipur suit and, accordingly, it filed an appeal, namely, First Appeal No. 369 of 1963, which is still pending in the Calcutta High Court.

6. The present suit, namely, Title Suit No. 16 of 1961 was filed by the State of Bihar in the Hazaribagh Court while the Alipur suit was still pending. The main reliefs which have been claimed in the suit are:

> (i) A declaration that the leases and subleases, to which I have already made reference, are fraudulent, sham, colourable and farzi transactions and they did not pass any title to the transferees, including Bokaro and Ramgur Limited, and that the properties in suit continued to be the exclusive properties in khas possession of the Raja Bahadur and the State of Bihar became entitled to enter into khas possession over the properties covered by those leases and sub-leases in consequence of the publication of the notification under Section 3 of the Bihar Land Reforms Act on the 3rd November 1951;

(ii) A declaration that the other leases and sub-leases which were created in 1950 and thereafter, as also all the transactions of 1954 and 1955 in favour of Kuju Jarangdih Coal Company Limited and/or Bokaro and Ramgur Limited are void, being in contravention of the provisions of the Mineral Concession Rules, 1949, which were extended to Chota Nagpur with effect from the 20th January 1950;

(iii) A decree for khas possession over the areas covered by the impugned leases and subleases and a permanent injunction restraining the defendants from working any of the mines or obtaining any mineral from the said areas or collecting rents and royalties in regard to them; and,

(iv) A decree for compensation amounting to Rs. 5,00,000 or such further sum of money as may be found due to the State on accounting.

7. About a week after the institution of the present suit, the State of Bihar obtained an ad interim injunction, practically on the same terms on which an injunction had been issued in Title Suit No. 53 of 1954 on the 13th November 1954. But upon an application filed by the plaintiff on the 4th August 1961, the injunction order was vacated. In that application the plaintiff had indicated that it proposed to apply for the appointment of a receiver in respect of the properties in suit. No further steps in the matter, however, were taken during the pendency of the Alipur suit and until the filing of the First Appeal No. 369 of 1963 in the Calcutta High Court. Ultimately, on the 6th April 1964, the plaintiff applied for the appointment of a receiver in the present suit, and on the 24th August 1964, a direction was given by the Calcutta High Court to the effect that the Alipur decree did not stand in the way of the plaintiff to prosecute the proceedings for appointment of a receiver in the Hazaribagh Court.

8. In its application for the appointment of a receiver, the plaintiff, after referring to the reliefs which it had claimed in the suit, alleged:

(i) That the mines and minerals in suit were being worked in an unscientific manner and in contravention of the Mineral Concession Rules and other laws and that attempts were being made to take as much coal from the mines as possible in the shortest possible time in order to deprive the plaintiff permanently from obtaining possession there over ;

(ii) That the financial condition of the defendant company had progressively deteriorated from 1953 to 1959 and that its total liabilities, excluding taxes, rents and royalties, stood at Rs. 87,18,148 as against its total asset of Rs. 64,42,497:

(iii) That the affairs of the Company were in the hands of the creatures of the Raja Bahadur who is the Managing Director of the defendant company and there is a conspiracy to enjoy the properties belonging to the plaintiff to the exclusion of the plaintiff, which is the legal and lawful owner of the properties in suit; and,

(iv) That it is just and convenient that a receiver of the suit properties be appointed to take charge of the management of the same during pendency of the suit.

9 . The prayer for the appointment of a receiver was opposed by the defendant company substantially on the following grounds :

(i) All the transactions impugned in the suit are genuine, legal and valid and that the defendant company is lawfully in working possession of the properties in suit;

(ii) Similar claims, as have been made in the present suit, were made in Title Suit No. 53 of 1954, but that suit along with several other suits was compromised by the plaintiff State and the impugned transactions were accepted by it as valid and operative, as held by the Alipur Court in its decree dated the 23rd November 1962;

(iii) The defendant Company was not a party to Title-Suit No. 53 of 1954 and had also no knowledge of the ad interim injunction obtained by the plaintiff State in that suit The existence of the injunction order did not in any way affect the rights of the defendant company acquired between November 1954 and January 1955. The defendant company has a separate entity of its own and it has been conducting the mining operations in accordance with the provisions of the law;

(iv) The plaintiff is not entitled to any compensation from the defendant company; and,

(v) It is false to say that the financial condition of the defendant company has been progressively deteriorating. The allegation of unscientific and wasteful working are false and frivolous.

10. After hearing the parties, the learned Subordinate Judge has come to the following main conclusions:

(i) The Ramgarh estate vested in the State of Bihar on the 3rd November 1951;

(ii) All the transfers impugned in the suit are void, having regard to the provisions of the Mineral Concession Rules, which were framed under the Mines and Minerals (Regulation and Development) Act, 1948, and have been given retrospective operation under the Mines and Minerals Act, 1957;

(iii) The transactions entered into in contravention of the injunction order passed in Title Suit No. 53 of 1954 are hit by the law of lis pendens;

(iv) The lease of 7500 bighas of land obtained by Jharkhand on the 19th February 1948 was followed by a transfer of the proprietary right of the Raja Bahadur in favour of Jharkhand in June 1948 and as a result thereof, the subordinate right originally created had merged in the superior right subsequently acquired by Jharkhand, and after the 3rd November 1951, the entire rights of Jharkhand had vested in the State of Bihar. Jharkhand had. therefore, no right, title and interest in the said lands which it could convey to Kuju Jarangdih Coal Company Limited or which could be acquired by the defendant company in November 1954; and,

(v) The properties in suit are being worked and managed in a wasteful and dangerous manner.

The learned Subordinate Judge summed up his conclusion in the following words:

"Taking into consideration, therefore, that the plaintiff (the State of Bihar)

has been able to make out a prima facie case, as stated in the plaint of the suit, and also taking into consideration the fact that the defendant No. 1 has prima facie no valid and legal title over the properties in suit and also the fact that the properties in suit are being managed and worked in a wasteful and dangerous manner, 1 am of the view that it would be just and convenient to appoint a receiver for the properties in suit.

11. In appeal, Sinha J. was of the view that this is not a fit case for appointment of a receiver and that the order passed by the learned Subordinate Judge must be set aside. His Lordship held that the learned Subordinate judge did not appreciate the effect of the decree passed by the Alipur Court and since the present case has several features in common with Title Suit No. 53 of 1954, it is difficult to hold that the plaintiff has made out a prima facie case for direct possession, which it has claimed in the present suit. His Lordship further held that even assuming that the defendant company acquired no right under the transfers made in its favour in 1954 and 1955. that will not ipso facto entitle the plaintiff to obtain direct possession because before the plaintiff can ask for direct possession, the titles of Jharkhand and Kuju Jarangdih Coal Company Limited have to be displaced, and that cannot be done because neither of them is a party to the present suit. His Lordship was not satisfied that there has been a merger of the subordinate and the superior interests held by Jharkhand and that upon the allegations of the parties as they stand, the plaintiff has not made out a prima facie title to re-enter. His Lordship pointed out that the Mineral Concession Rules having been made applicable to Chota Nagpur in January 1950, the transfers made prior to that date were not affected thereby.

The allegations that the transfers and leases were sham and colourable were irrelevant at the present stage for holding that the plaintiff has made out a prima facie case to re-enter. By way of example, his Lordship pointed out that if the lease created in favour of Jharkhand in February 1948 cannot be held to be a sham transaction, then the assignment made by Jharkhand in favour of Kuju Jarangdih Coal Company Limited in August 1954 may not be a prima facie invalid transaction and, therefore, the plaintiff may fail to obtain a decree for khas possession in respect of 7500 bighas of land included in the 1948 transaction. In any view of the matter, if the plaintiff cannot displace the title of Jharkhand, the Court cannot appoint a receiver in the present suit, to which Jharkhand is no party. His Lordship thought that the conclusion regarding wasteful and dangerous working of the mines arrived at by the learned Subordinate Judge was too cursory for supporting his order under appeal. If the mines were being worked in a dangerous manner, the law would take its own course, but that cannot be a sufficient ground for depriving the possession of the mines of its possession during the pendency of the suit.

12. S. N. P. Singh, J. came to an opposite conclusion and held that the order of the learned Subordinate Judge should be affirmed. His Lordship proceeded upon the footing that having regard to the decree passed by the Alipur Court, it was not open to the plaintiff to challenge the leases and sub-leases created in 1950, 1951 and 1952 so long as that decree stands. His Lordship, however, came to the conclusion that the estates of "the Raja Bahadur had vested absolutely in the plaintiff with effect from the 3rd November 1951 and as a consequence thereof all the mines and minerals appertaining to the said estates had also vested in the State of Bihar, free from all encumbrances. That right of the plaintiff was in no way affected by the decree of the Alipur Court. His Lordship has further held that even if the claim of the plaintiff for direct possession over the properties in suit be not accepted at the present stage in view of the decree passed by the Alipur Court, it was of no consequence because the

plaintiff could still challenge the transactions which took place in 1954 and thereafter, on the ground that they were made in violation of the provisions of the Mineral Concession Rules.

In this connection his Lordship pointed out that the transactions of 1954 were not in issue in Title Suit No. 53 of 1954. Jharkhand or any other company was not in possession of the properties in suit and, therefore there is no bar to the appointment of a receiver because of the provisions of Order 40, Rule 1(2) of the Code of Civil Procedure. The transfers made in favour of the defendant company are prima facie void as they were made in contravention of the Mineral Concession Rules. His Lordship then pointed out that besides claiming khas possession, the plaintiff has also asked for a decree for compensation amounting to Rs. 5,00,000 and, therefore, it had a substantial interest in the properties in suit. The possession of defendant No. 1 was no better than that of a trespasser. The defendant No. 1 has, therefore, no legal or equitable basis to resist the prayer for appointment of a receiver.

His Lordship has further held that upon the materials placed before him, the learned Subordinate Judge was amply justified in holding that the financial condition of the defendant company is unsatisfactory and that the mines involved in the suit are being managed dangerously and in contravention of the Coal Mines Regulations. Therefore, it is just and convenient to appoint a receiver to preserve the properties from waste as also to ensure the payment of money to the plaintiff to which it is legally entitled.

13. After recording their conclusions as aforesaid, their Lordships indicated their difference in the following terms:

> "We have differed in our conclusions in this appeal and the point upon which we have differed \s as follows:
>
> Whether the learned trial Judge has rightly ordered appointment of a receiver during the pendency of the suit and the appeal should be dismissed or whether the application for appointment of a receiver should fail, on the facts and circumstances of the case, and the appeal be allowed."

14. At the outset I must deal with a point which, though raised by the learned Advocate-General appearing for the plaintiff respondent towards the close of his arguments is in the nature of preliminary objection vitally affecting my power to deal with this appeal. There are two provisions of law dealing with a situation arising from difference of opinion among the two Judges composing a Division Bench, one contained in section 98 of the Code of Civil Procedure and the other in Clause 28 of the Letters Patent of this Court. Section 98 lays down that where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such-Judges or of the majority (if any) of such Judges. But where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall*1 be confirmed. There is a proviso to section 98(2) which reads:

> "Provided that where the Bench hearing the appeal is composed of two Judges belonging to-a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such-point shall be decided according to the opinion of the majority (if any) of the Judges who have-heard the appeal, including those who first heard-it."

Clause 28 of the Letters Patent is differently worded and says that in case of difference of opinion between two Judges composing a Division Bench as to the decision to be given on any point, such point has to be stated, and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the-majority of the Judges who have heard the case, including those who first heard it. The basic-difference between these two provisions is that (l) while a reference on the point of difference-is obligatory under Clause 28, it is optional under section 98, and (2) a reference under Clause 28 can be on a question both of law or of fact, but a reference under Section 98 can be on a question of law only.

15. In substance, the contention of the learned Advocate-General is that Clause 28 is- confined to an appeal preferred under Clause 10' of the Letters Patent since it specifically refers to any function which is hereby directed to be performed by this Court "in the exercise of its original or appellate jurisdiction". It has, therefore, no application to the present appeal which is one under section 96 read with Section 108 of the Code of Civil Procedure. It is urged that the judgments of Sinha and S. N. P. Singh, JJ. in the present appeal do not disclose any difference-in opinion on a point of law, nor their Lordships have stated any point of law upon which they have differed and, therefore, the proviso to Section 98(2) is not attracted and the order of the learned Subordinate Judge must be deemed to have been confirmed on the ground that there is no majority of opinion which concurs in a judgment varying or reversing the order under appeal. According to the learned' Advocate General, therefore, this appeal is no longer pending and it has not been validly referred to me.

In support of his contention the learned Advocate General has relied upon a Full Bench decision of the Bombay High Court reported, in Bhuta Jayantsingh v. Lakadu Dhansing MANU/MH/0165/1918 : AIR 1919 Bom 1 (FB) and a Bench decision of this Court reported in Hitendra Singh v. Rameshwar Singh MANU/BH/0190/1925 : AIR 1925 Pat 625 . According to the learned Advocate General, it was in approval of the views taken in these two decisions that section 98(3) was added to the Code in 1928 by the Repealing and Amending Act (18 of 1928). Section 98(3) is in the following terms:

> "Nothing in this section shall be deemed to alter or otherwise affect any provisions of the Letters Patent of any High Court."

16. In my opinion, the true reason why Section 98(3) was inserted in the Code will appear from the decision of Page, J. of the Calcutta High Court in Prafulla Kamini Roy v. Bhabani Nath ILR Cal 1018 : (AIR 1926 Cal 121). There also it was held that where a difference of opinion has arisen between two Judges of the High Court in an appeal from a Subordinate Court to the High Court, Section 98 of the Code, and not Clause 36 of the Letters Patent of that Court (which corresponds to Clause 28 of the Letters Patent of this Court) applies. In course of his judgment, Page J. referred to the conflict between Section 98, as it then stood, and the Letters Patent and observed that it could only be satisfactorily set at rest by the "action of the Legislature now long overdue." It was really in pursuance of this observation of Page, J. that Clause (3) was added to section 98. After this addition, the legal position has become quite clear, namely, that Section 98 applies only to Courts other than the Chartered High Courts, such as Chief Courts or Judicial Commissioners'Courts. It has no application to Chartered High Courts which are governed by their own Letters Patent. Therefore, in an appeal from a Subordinate Court to this Court, which is a Chartered High Court, if there is a difference of opinion between two Judges of the Court on any point,

whether of law or of fact, or about the results of the appeal Clause 28 of the Letters Patent, and not Section 98 of the Code of Civil Procedure, applies.

The view which I have expressed above is supported by a Full Bench decision of the Madras High Court reported in Dhanaraju v. Bala-kissendas Motilal MANU/TN/0022/1929 : AIR 1929 Mad 641FB) : ILR Mad 563, and by two decisions of this Court; one reported in Debi Prasad Pandey v. Gaudham Rai MANU/BH/0118/1932 : AIR 1933 Pat 67 at p. 69 : ILRPat 772 and the other in Rajnarain v. Saligram ILR Pat 332. Clause 28 governs not merely Clause 10, but also Clause 11 of the Letters Patent which ordains that this Court is a Court of Appeal from the Civil Courts of the State of Bihar. Clause 28 of the Letters Patent being wider in scope than section 98 of the Code of Civil Procedure, because it covers points of fact as well as points of law, a reference to a third Judge in the present appeal is not incompetent merely because there has been no difference of opinion between Sinha and S. N. P. Singh, JJ. on a point of law. The cases relied upon by the learned Advocate General were decided before the insertion of Sub-section (3) in Section 98 of the Code and they have become obsolete. I am, therefore, of the opinion that the point raised by the learned Advocate General is without merit and must be overruled, and I must deal with this appeal as one referred to me under Clause 28 of the Letters Patent. I must, however, indicate that I ought to deal with only such point or points in this appeal upon which there has been a difference of opinion between Sinha and S. N. P. Singh, JJ. This is clear not only from the terms of Clause 28, but also from the decision of this Court in Zainuddin Hussain v. Sohan Lal MANU/BH/0108/1958. In that case, Rai, J. indicated that it is not open to a third Judge to adjudicate upon a point on which there is no difference of opinion between the two Judges who heard the appeal in the first instance. Similar view was taken by a special Bench of the Allahabad High Court in Akbari Begam v. Rahmat Husain MANU/UP/0423/1933 : AIR 1933 All 861 SB : ILR All 39.

17. On the merits of the appeal, elaborate arguments were addressed to me by Mr. N. C. Chatterji for the appellant company in support of the view taken by Sinha, J., and equally elaborate arguments were addressed to me by the learned Advocate General on behalf of the plaintiff respondent in support of the view expressed by S. N. P. Singh, J. A large number of authorities were cited on both sides indicating the principles which must guide the Court in the matter of appointment of a receiver in a pending suit. In contending that this is not a proper case for the appointment of a receiver, Mr. Chatterji relied upon the following decisions :--

(1) John Owen and J. M. Gutch v. Sarah Homan (1953) 4 HLC 997: 10 E. R. 752. In that case the following observations were made by the Lord Chancellor, Lord Cranworth, at p. 1032 :

> "The receiver, if appointed in this case, must be appointed on the principle on which the Court of Chancery acts, of preserving property pending the litigation which is to decide the right of the litigant parties. In such cases the Court must of necessity exercise a discretion as to whether it will or will not take possession of the property by its officer. No positive unvarying rule can be laid down as to whether the court will or will not interfere by this kind of interim protection of the property. Where indeed the property is as it were in medio, in the enjoyment of no one, the Court can hardly do wrong in taking possession. It is common interest of all Parties that the Court should prevent a scramble. Such is the case when a

> receiver of a property of a deceased person is appointed pending a litigation in the Ecclesiastical Court as to the right of probate or administration. No one is in the actual lawful enjoyment of property so circumstanced, and no wrong can be done to any one by taking and preserving it for the benefit of the successful litigant. But where the object of the plaintiff is to assert a right to properly of which the defendant is in the enjoyment, the case is necessarily involved in further questions. The Court by taking possession at the instance of the plaintiff may be doing a wrong to the defendant; in some cases an irreparable wrong. If the plaintiff should eventually fail in establishing his right against the defendant, the Court may by its interim interference have caused mischief to the defendant for which the subsequent restoration of the property may afford no adequate compensation. In all cases, therefore, where the Court interferes by appointing a receiver of property in possession of the defendant before the title of the defendant is established by decree, it exercises a discretion to be governed by all the circumstances of the case ..... In this case Lord Truro did not think the title of the plaintiff was so clearly made out as to justify the Court in turning the defendant out of possession before the plaintiffs had finally established their right, and I am not prepared to say that the conclusion at which he arrived was wrong; on the contrary, I think it was right,"

(2) Sidheswari Dabi v. Abhoyeswari Dabi ILR Cal 818, a Bench decision of the Calcutta High Court, where the principles laid down by Lord Granworth in Owen's case (1853) 4 HLC 997 : 10 ER 752 (supra) were followed, and it was held that the powers of appointing a receiver conferred by section 503 of the Code of Civil Procedure, 1882, must be exercised with a sound discretion, upon a review of the whole circumstances of the case, not merely the circumstances which might make the appointment expedient for the protection of the property, but all the circumstances connected with the right which is asserted and has to be established. It was further held that the Court will not interfere by appointing a receiver where a right is asserted to property in the possession of a defendant claiming to hold it under a legal title unless a strong case is made out.

(3) Chandidat Jha v. Padmanand Singh Bahadur ILR Cal 459, another Bench decision of the Calcutta High Court, wherein a distinction was made between a case in which a temporary injunction may be granted and a case in which a receiver may be appointed. It was held that in both cases, it must be shown that the property should be preserved from waste or alienation. But while for an order of temporary injunction it would be sufficient to show that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged, for the appointment of a receiver a good prima facie title has to be made out.

(4) Satis Chandra Giri v. Benoy Krishna Mukhopadhya MANU/WB/0297/1926 : AIR 1926 Cal 1092. In that case the Court of first instance had directed the appointment of a receiver during the pendency of a suit under Section 92 of the Code of Civil Procedure not only in respect of the properties appertaining to the temple of Tarkeshwar, but also with respect to certain other categories of properties which were claimed by the defendant, the Malianth of Tarkeshwar, as his personal properly. The Calcutta High Court in appeal set

aside the order so far as it related to the latter category of properties in regard to which the title was in dispute, observing as follows:

> "It is quite true that the appointment of a receiver is a discretionary matter, but this discretion must be exercised on sound judicial lines, and if we find that the discretion was not exercised on these lines, there is reason why we should not interfere with the order."

The view taken by the High Court was affirmed by the Judicial Committee in Benoy Krishna Mukherjee v. Satish Chandra Giri 55 Ind App 131: (AIR 1928 PC 49). (of Ind App): (at p. 50 of AIR), Lord Sumner said :

> "On an interim application for a receivership such as this, the Court has to consider whether special interference with the possession of a defendant is required, there being a well founded fear that the property in question will be dissipated or that other irreparable mischief may be done unless the Court gives its protection "

5. M. A. Abbas and Co. Madras v. State of Madras MANU/TN/0310/1962 : AIR 1962 Mad 457, where a Bench of the Madras High Court made the following observation at p. 473:

> "The provisions of Order XL Rule 1 Civil Procedure Code by using the words 'just and convenient' confer a wide and elastic power on the Court to appoint a receiver. The Court need not be uneasy in appointing a receiver in an appropriate case as no narrow words confine or restrict its discretion. But a free hand in the matter should not lead to arbitrariness and a large discretion does not mean an unregulated or capricious exercise of discretion. 'Just and convenient' in Order XL Civil Procedure Code have reference not to any party or the other, but to what the Court feels to be proper in the circumstances of the case. It is not a proper exercise of judicial discretion to appoint a receiver on the ground that no party will be harmed by such appointment. The Court should avoid such a cavalier approach to the question, as a receiver disturbs the person in possession of the subject-matter of the suit."

It was further observed:

> "The object and purpose of the appointment of a receiver is to protect and preserve the subject-matter of the lis for the benefit of the parties who may ultimately be found entitled to it in whole or in part."

(6) Smt. Prosonomoyi Devi v. Beni Madhab Rai ILR All 556. In that case, the sons of a Hindu widow, in possession of her husband s estate under a will, sued their mother as reversioner under the will, for possession of the estate on the ground of various acts of mismanagement and waste, and on the same grounds applied for the appointment of a receiver pendente lite. The allegations of waste and mismanagement were all denied by the defendant. The Judge below acceded to the prayer for appointment of a receiver observing that there was no harm in doing so. It was held by a Division Bench, reversing the decision, that the powers conferred by Section 503 of the Code. of Civil Procedure are not to be exercised as a matter of course. It

is wrong to think that a receiver can be appointed because it can do no harm to appoint one.

> "The charges of waste, mismanagement and immorality are met by a direct denial; and until they have been investigated at the trial of the case, it is impossible to say whether all or any of them are true or not."

Because a plaintiff in his plaint makes violent and wholesale charges of waste and malversation against a defendant in possession of property as executrix under a will or as the tenant for life, and upon this basis applies for a receiver to be appointed, it is not a necessary consequence that such appointment should be made.

> "If any such doctrine or principle were to be recognised, Section 503, instead of serving the useful purpose for which it was framed, would give unscrupulous and rancorous litigants an engine for the most unjustifiable interference with the rights of property under the pretence and protection of legal sanction."

(7) Anandi Lal v. Ram Sarup MANU/UP/0187/1936 : AIR 1936 All 495. In that case, the question arose whether under the provisions of the Civil Procedure Code it was competent to appoint a receiver of the property covered by a simple mortgage deed pending the decision of an appeal against the preliminary mortgage decree. It was held by a Full Bench of the Allahabad High Court that a simple mortgagor has a right to remain in possession and to appropriate the profits of the mortgaged property till the sale has actually taken place and that right cannot be defeated by the appointment of a receiver. If a mortgagee who has obtained a decree finds that his mortgagor is causing injury which would diminish the value of the mortgaged property, then his only remedy is to proceed under the provisions of Order 39. Under the provisions of Civil Procedure Code, it is, therefore, competent to appoint a receiver provided the party applying for the appointment of a receiver can establish that he has a present right to remove the opposite party from possession and custody of the mortgaged property. Sulaiman, C. J. (as he then was) who was one of the members of the Full Bench observed that the authority to appoint a receiver is prescribed in Order 40 Rule 1. A Civil Court cannot, therefore, act outside that rule.

Mr. Chattcrji also relied upon the following passage at page 135 in Law Relating to Receivers by Woodroffe (Sixth Edition):

> "What must be shown to obtain relief must of course differ in each case, but in England it must be shown that the appointment is 'Just or convenient' and in this country that it is 'necessary' for the realization, preservation or better custody or management of the property, and the necessity will only exist where the applicant has a strong case or at any rate a good prima facie title to the property sought to be protected. The language of the present Code--'just and convenient'--has been brought into line with the English law--Editor".
>
> (It should be remembered that Sir John Woodroffe had played a vital role in the drafting of the Civil P. C., 1908, and so his views,

naturally, are entitled to great weight).

18. Pressing for the opposite point of view, the learned Advocate-General relied upon the following decisions:

(1) Venkanna v. Narasimham I L R Mart 984 : MANU/TN/0036/1921 : AIR 1921 Mad 234 (2)). In that case the nearest reversioner instituted a suit against the widow of the last male holder (and others) for the appointment of a receiver of the estate, alleging that the widow had committed many acts of waste and should be prevented from committing further waste. In the alternative he prayed for security to be taken from the defendants and for permanent injunction against further waste. The Subordinate Judge who tried the suit found the plaintiff's case of waste to be true, but he refused to appoint a receiver as a primary relief. He, however, granted the relief of injunction and directed the widow to furnish certain security. The decree provided that upon failure to furnish the security, the plaintiff was appointed receiver to take possession of the assets of the estate. Against the decree refusing the primary relief for appointment of a receiver, the plaintiff preferred an appeal before the Madras High Court. The report does not show that the High Court granted the said primary relief to the plaintiff, but it did allow the appeal quoting the following observations of Sir Barnes Peacock in Nabin Chunder Chukerbutty v. Issur Chunder Chukkerbutty, Beng L R Suppl. 1008 (FB) :

> "Reversionary heirs presumptive have a right, although they may never succeed to the estate, to prevent the widow from committing waste; and I have no doubt that, if a proper case were made out, reversionary heirs would have a sufficient interest, as well as creditors of the ancestor, by suit against the widow and the adverse holder, to have the estate reduced into possession so as to prevent their rights from becoming barred by limitation."

(2). Satya Narain Singh v. Srimati Rani Keshabati MANU/WB/0265/1913 : 18 CWN 537 : (AIR 1915 Cal 35). In that case, the plaintiff, a minor, sued for a declaration that certain documents executed? by his adoptive mother in possession of his father's estate under a Will were void and inoperative, for administration of the estate, for appointment of a receiver and for an injunction restraining the defendant from dealing with the estate. He also applied for the appointment of a receiver pendente lite on the ground of gross mismanagement and waste of the estate. The allegations of waste and mismanagement were made out, but the Subordinate Judge declined to appoint a receiver. In appeal, a Division Bench of the Calcutta High Court noticed that one of the main questions in the case was whether the plaintiff was entitled to immediate possession against the defendant or whether the latter was entitled to retain possession for her life. But without expressing any opinion on this matter, their Lordships observed that upon the materials clear case had been made out for the appointment of a receiver, because if the existing state of things were allowed to continue, the whole estate would be jeopardised and would not remain intact for long. Their Lordships accordingly allowed the appeal and directed that a receiver be appointed as prayed by the plaintiff.

(3). Hiralal Patni v. Loonkaran Settiya MANU/SC/0015/1961 : AIR 1962 SC

> 21. In that case the facts, so far as they are relevant, are these. A suit was instituted by a creditor for recovery of his dues from the assets of a partnership business consisting of three spinning mills and one flour mill. Pending the suit, two joint receivers were appointed to run the three spinning mills. By a subsequent order the trial Court directed the receivers to take possession also of the share of one of the defendants Hiralal Patni in the said mills. In due course a preliminary decree was passed in the suit. The decree gave to the creditor a right to apply for a final decree for sale of the assets of the defendants and also for a personal decree against the partners in case the sale proceeds were not sufficient to discharge the decree. The preliminary decree directed the receivers to continue on the property until discharged. Against this decree Hiralal Patni preferred an appeal to the Allahabad High Court and the High Court appointed another receiver in place of the joint receivers appointed by the trial Court.

In the meantime the trial Court prepared some scheme for running the mills and the parties preferred appeals to the High Court against that scheme. These appeals were compromised and under the terms of the compromise the parties agreed to take the different mills on lease for three years from the receiver. Such a lease was executed by the receiver in favour of Hiralal Patni on January 14, 1956. Under the lease deed it was agreed that he should redeliver the demised premises to the receiver upon the expiry of the term. On March 14, 1956, a final decree was passed in the suit for sale of the properties. After the expiry of the term, Hiralal Patni did not re-deliver the property to the receiver and maintained that he was entitled to continue in possession and the receiver had no power to dispossess him though he could continue, after the final decree, for the limited purpose of accounting and discharge of debts. Upon these facts the Supreme Court held that the suit had not been finally disposed of, that the receiver bad to continue until finally discharged, that the Court has ample power to continue the receiver even after the final decree if the exigencies of the case so require and that the Court, acting through the receiver, could dispossess Hiralal Patni who was a party to the suit, by a summary process and not necessarily by directing the receiver to file a suit for eviction. In this context their Lordships pointed out.

> "The Court may, for the purpose of enabling the receiver to take possession and administer the property, by order, remove any person from the possession or custody of the property. Sub-rule (2) of Rule 1 of the Order limits that power in the case of a person who is not a party to the suit, if the plaintiff has not a present right to remove him. But when a person is a party to the suit, the Court can direct the receiver to remove him from the possession of the property even if the plaintiff has not a present right to remove him."

The learned Advocate-General also drew my attention to the following passages from Kerr on Receivers (13th Edition):

> "The appointment of a receiver against a tenant for life will, as under the old law, be made where he does not apply the income in keeping down incumbrances or omits to keep leaseholds in repairs according to the covenants in the leases. In cases where a tenant for life does not fulfil his obligations to maintain and insure improvements under Section 88 of the Settled Land Act, 1925, it is conceived that a receiver will be appointed, (page 17).

> The right to the appointment of a receiver is one of the rights which accrue to an equitable mortgagee whose security has become enforceable as one of the steps in realisation, (page 29).
>
> General creditors may, like specific incumbrances, have a receiver of the property of their debtor provided they can show to the Court the existence of circumstances creating the equity on which alone the jurisdiction arises. Thus, where it is made to appear that an executor or devisee is wasting the personal or real estate, a receiver may be appointed in administration proceedings commenced by simple contract creditors, who may also obtain the appointment of a receiver of real and personal estate pending a grant of probate, (page 36)."

19. Upon the authorities referred to above, it appears to me abundantly clear that in the matter of appointment of receiver of the property in dispute before it, the Court has a wide discretion. But it will not appoint a receiver unless from the materials brought to its notice it is satisfied that it is just and convenient to do so. Different consideration will arise in different cases; but in a case of disputed title, like the present, where the plaintiff seeks recovery of possession, the Court will appoint a receiver if it is satisfied on two matters: (1) that the title which the plaintiff has set up is prima facie good; and (2) that the property is in danger of being wasted or dissipated or being so dealt with as to get irretrievably out of the reach of the plaintiff who is prima facie entitled to its possession. Of course, the Court will slay its hands if it finds that the property is in possession of a stranger whom the parties to the action have no present right to dispossess. But this latter contingency does not arise in the present case, because as pointed out by S. N. P. Singh, J., it is nobody's case that any person who is not a party to the suit is in possession over the disputed mines and minerals. Even Mr. Chatterji has concerted before me that he does not oppose the appointment of a receiver on such a ground.

20. The chief opposition to the prayer for appointment of a receiver is raised on the ground that upon the case as laid in the plaint, the plaintiff has no prima facie title or right to khas possession over the mines and minerals in dispute.

21. The plaintiff's case as set up in the plaint has to be considered in the light of some of the provisions contained in the Bihar Land Reforms Act, 1950 (hereinafter to be referred to as the Act). Section 4(a) of the Act, upon which strong reliance has been placed on behalf of the plaintiff, lays down, inter alia, that as from the date on which the notification under section 3(1) is published in the Official Gazette, the estate or tenure of the proprietor or tenure-holder, specified in the notification, and;

> "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" shall vest absolutely in the State free from all encumbrances and "such proprietor or tenure-holder shall cease to have any interests in such estate or tenure, other than the interests expressly saved by or under the provisions of this Act."

If the leases of 1947 and 1948 and the subleases of 1949 are faked and colourable, then there can be no difficulty in holding that under Section 4(a), the plaintiff acquired absolute title and right to khas possession over the mines and minerals in question, and that title and right was in no way affected by the transactions of the

period subsequent to the 3rd November, 1951.

But there are two obvious impediments in accepting this part of the plaintiff's case. In the first place, so far there is no evidence upon which the Court would be justified in saying that the leases and sub-leases of 1947-49 are faked and colourable. Such evidence can only be expected to come on the record when the suit proceeds to trial. At present there is a bare allegation to this effect which has been denied on behalf of the appellant. Merely on the footing that as a member of the Legislature the Raja Bahadur was aware of the policy of the Government to abolish zamindaries, it cannot be assumed that he had entered into fictitious transactions, with a view to prevent his property from vesting in the State. Secondly, there is the decision of the Alipur Court, the effect of which is that the impugned transactions were accepted by the plaintiff as genuine and valid. Merely because an appeal from that decision is pending before the Calcutta High Courts, its force is not lost.

The learned Advocate General contended before me that upon the materials placed by the defendant company before the Alipur Court, it cannot be held that a concluded compromise had been arrived at with the State Government and that, at best, there was some agreement between the defendant and an individual Minister of the State Government. In this connection the learned Advocate General relied upon Article 299 of the Constitution and a decision of the Supreme Court in Bachhittar Singh v. State of Punjab MANU/SC/0366/1962 : AIR 1963 SC 395 and urged that a contract with the State Government must fulfil two ingredients; (i) that the order accepting the contract must he expressed to be made in the name of the Governor; and, (ii) that it must be communicated to the person concerned Until these two requirements are fulfilled, there can be no contract which can bind the State Government. The argument of the learned Advocate General amounts to saying that the decision of the Alipur Court is wrong, but as at present advised, I do not propose to express my, concluded opinion on this matter. This is a question which should be agitated in the appeal pending before the Calcutta High Court. For the present purposes, the decision must be accepted as correct.

It was also contended by the learned Advocate General that the Alipur decision is inadmissible in evidence, and in support of this contention he relied upon Smt. Purnima Debya v. Nand Lal Ojha MANU/BH/0069/1931 : AIR 1932 Pat 105, whereir Fazl Ali, J. (as he then was) took the view that unless a judgment is relevant under sections 40 to 42of the Evidence Act, it is not evidence at all so far as regards the matter which it decides. His Lordship, however, also made it clear that a judgment other than a judgment referred to in sections 40 to 42 may be admissible to prove that a right was asserted or denied under Section 13 of the Evidence Act, or to explain or introduce facts in issues or to explain the history of the case. Therefore, Section 13 of the Evidence Act enables this Court to hold that the right which the defendant company is claiming in the present litigation was not merely asserted, but also recognized in the Alipur litigation, and that should be enough for our present purposes. I must, therefore, proceed upon the footing that the leases of 1947-48 and the sub-leases of 1949 are genuine and valid transactions, and that they stand in the way of the plaintiff's claim to khas possession having regard to the provisions of Section 10(1) of the Land Reforms Act which deals with subsisting leases of mines and minerals and provides :--

> "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 lease-hold property."

In my view, the right which vested in the State under Section 4(a) was subject to the rights of the lessees and sub-lessees under the 1947-49 transactions and the latter were entitled to retain possession of the mines and minerals in question, while only the superior landlord's light of a lessor which belonged to the Raja Bahadur vested in the State Government. In this view of the matter, I respectfully agree with Sinha, J. that "it is difficult to hold that the plaintiff has made out a prima facie case of direcl possession claimed in the instant case." It will be noticed that even S. N. P. Singh, J. was prepared to assume that it was not open to the plaintiff to challenge the leases and subleases which were executed in 1950, 1951 and 1952 so long as the decree passed by the Alipur Court stands. His Lordship, however, referred to the notification under Section 3(1) of the Land Reforms Act and observed that "as a consequence of the vesting of the estates of the Raja Bahadur of Ramgarh in the State of Bihar, all the mines and minerals in the estates of the Raja Bahadur also vested in the State of Bihar free from all encumbrances". But his Lordship has not considered the effect of Section 10(1) of the Act which clearly shows that the plaintiff did not get the right of khas possession by virtue of the notification under Section 3(1) of the Act.

22. To get over this difficulty, the learned Advocate General drew my attention to Section 10A which was added to the Land Reforms Act by Bihar Act 4 of 1965. Sub-section (1) of Section 10A provides :--

> "The interest of every lessee of mines and minerals which is subject to a sub-lease shall, with effect from such date as may be notified in this behalf by the State Government in the official Gazette, vest in the State and thereafter the sub-lessee whose lease is not subject to any further sub-lease shall hold his lease directly under the State Government and the provisions of Sub-sections (2) and (4) of Section 10 shall, mutatis mutandis, apply to his lease."

My attention was also drawn to Revenue Department Notification No. A/ME-10I3/64-9732-LR dated the 24th October 1964 whereby the Governor of Bihar was pleased to declare that "tin: interest of every lessee of mines or minerals which is subject to a sub-lease shall vest in the State with effect from the twenty-seventh day of October 1964" and that "after the aforesaid date, the sub-lessee whose lease is not subject to any further sub-lease shall hold his lease directly under the State Government and the provisions of Sub-sections (2) and (4) of Section 10 shall, mutatis mutandis, apply to his lease." This notification was published in the Bihar Gazette Extraordinary on the 26th October 1964.

But even under Section 10A of the Act, the rights of the sub-lessees to retain possession over the mines and minerals in question remained intact and, at best, the interest of Rajasthan and Jharkhand under the leases of 1947-48 were wiped off. The other transactions of 1949 and thereafter were, in no way, affected except to the extent indicated in Sub-sections (2) and (4) of Section 10. In other words, Kuju Jarangdih Coal Company Limited had still the right to remain in working possession of the mines and minerals in question under its sub-lease of 1949, and that right subsequently passed to the defendant company in 1954. A case of merger was set up

in paragraph 44 of the plaint, wherein it was alleged that on the 3rd June 1948 the Raja Bahadur had executed two leases in favour of the defendant company in respect of the same area which was covered by the lease of February 1948 in favour of Jharkhand, and on the very next day, he had executed another conveyance in favour of Jharkhan, the effect of which was that Jharkhand acquired both the lessee's and the lessor's interest in respect of that area.

But the question is not so simple, because the case of the defendant company is that the transfer of the proprietary interest made by the Raja Bahadur to Jharkhand was on the footing to leases granted to the defendant company on the 3rd June 1948, and after surrender of those two leases by the defendant company, the mistake was rectified and, therefore, no question of merger of Jharkhand's lease-hold with the proprietary right had really arisen. This question cannot be decided in a summary proceeding like the present and must be left for investigation at the stage of the trial. For the present, it is enough to notice that Jharkhand had purported to deal with its lease-hold rights even in 1954, showing thereby that no question of merger had arisen.

23. For the reasons set forth above, I have come to the conclusion that under the provisions of the Bihar Land Reforms Act, the plaintiff has failed to make out a case of prima facie title to enter into khas possession over the mines and minerals in question. Its interest is confined to its right to receive rents and royalties which under Section 10(4) of the Act are the first charge upon the property. But no claim for rents and royalties has been made in the present suit and, therefore, this is not a relevant consideration on the question of appointment of a receiver. The plaintiff has, no doubt, made a claim for compensation for about rupees five lacs, but that claim is interlinked with its claim for khas possession, and since, in my view, the plaintiff has not made out a prima facie case for khas possession, it must follow that it has also not made out a prima facie case for compensation.

24. It is necessary, however, to deal with another branch of the learned Advocate General's argument. The argument, in substance, is that the transactions of 1954 and 1955 in favour of Kuju Jarangdih Coal Company Limited and the defendant company were invalid having regard to the provisions of the Mines and Minerals (Regulation and Development) Act, 1948, which was later amended and substituted by the Mines and Minerals (Regulation and Development) Act, 1957. Under the 1948 Act, certain rules were framed, known as the Mineral Concession Rules, 1949, which were extended to Chota Nagpur in January 1950. The 1957 Act, which is more or less in the same terms as the 1948 Act, is intended to invest the Union to take under its control the regulation of mines and the development of minerals in certain respects. Particularly relying upon Sections 4, 19 and 21 of the 1957 Act and upon Rule 37 of the Mineral Concession Rules (which were framed under the 1948. Act, but continued to remain in force by reason of Section 29 of the 1957 Act), the learned Advocate General contended that the transactions of 1954 and 1955 in favour of Kuju Jarangdih Coal Company Limited and the defendant company having been entered into in violation of these provisions of the law must be struck down as void and it must be held that the defendant company had no authority whatsoever to work the mines and minerals in question. This has been put forward as a ground for the Court's intervention by appointment of a receiver.

It seems to me, however, that this is not a valid ground for appointment of a receiver. By contravening the relevant provisions of the 1957 Act and Rule 37 of Mineral Concession Rules, 1949, the transferees might have exposed themselves to

the penalties indicated in Section 21 of the 1957 Act, but that does not mean that the Kuju Jarangdih Coal Company Limited or the defendant company acquired no rights in the disputed properties or, at any rate, the plaintiff became entitled to enter into khas possession over the same. There is nothing in the 1957 Act or the Mineral Concession Rules, 1949, which might indicate that by reason of violation of their provisions a right of re-entry accrued to the plaintiff. A receiver cannot be appointed on the mere ground that there has been a violation of certain provisions of the 1957 Act or Rule 37 of the Mineral Concession Rules, 1949. No right of re-entry could also accrue in favour of the plaintiff on the ground that the transactions of 1954-55 may have been affected by the law of lis pendens as held by the learned Subordinate Judge. I have, therefore, come to the conclusion that one of the essential requirements for the appointment of a receiver is lacking in the present case.

25. The next question which I propose to consider is, whether the mines and minerals in question are being worked in a wasteful and dangerous manner by the defendant company so as to call for the Court's intervention by appointment of a receiver. On this point, there is no unanimity between Sinha and S. N. P. Singh, JJ. Sinha, J., however, has not gone into this matter in detail and has merely indicated that the finding of the learned Subordinate Judge as to wasteful and dangerous working of the mines is too cursory to support his order under appeal. His Lordship has further observed that if the mines and minerals are being worked in a dangerous manner, law will take its own course, and as to wasteful working, his Lordship has said that this is the concern of the party who is actually working the mines. But S. N. P. Singh, J. has discussed certain materials brought on the record in support of this part of the plaintiff's case and has upheld the finding of the learned Subordinate Judge on the point.

26. Turning to the order of the learned Subordinate Judge, I find that he has really not dealt with this question in a satisfactory manner. In paragraph 24 of his order, he has observed :

> "On behalf of the plaintiff the State of Bihar) a large number of true copies of inspection notes made by the Inspector of Mines of the Kedia and Jharkhand Collieries have been filed to show that defendant No. 1 has been working the mines in a wasteful and dangerous manner. There is no doubt that a perusal of the inspection notes clearly shows that defendant No. 1 was not following the rules and regulations which they were bound to following (sic) according to the rules and regulations governing the working of the mines."

Then he has concluded in paragraph 32 that the properties in suit are being managed and worked in a wasteful and dangerous manner.

27. The materials which weighed with S. N. P. Singh, J. are these:

> (i) An affidavit referred to as the supplementary affidavit sworn by one Bhuwaneshwari Prasad and filed on behalf of the State of Bihar;
>
> (ii) An inspection note of Sri S. P. Taneja, Inspector of Mines, Ramgarh Inspection Region, dated the 7th May, 1963;
>
> (iii) An accident report dated the 27th March 1963; and,
>
> (iv) Certain inspection reports in respect of Kedia and Jharkhand Collieries. I proceed to examine these materials.

28. Paragraph 3 of the supplementary affidavit which has been quoted by his Lordship in extenso shows that the defendant company incurred net losses aggregating to Rs. 11,79,026 between 1950 and 1954. It earned a profit of Rs. 75,374 in 1955 but suffered further losses in 1956 and 1957. In 1958, it had a small profit of Rs. 11,277, but at the end of that year, the total debit balance stood at Rs. 17,44,098. There can be no doubt that this is an indication of the progressively deteriorating financial condition of the defendant company which has been sought to be explained on its behalf by attributing the losses to the restrictive and regulatory legislations that have recently been enacted. The explanation may not be acceptable, but it cannot follow that the losses suffered by the defendant company are necessarily an indication of wasteful and dangerous working of the mines. The losses may well have occurred due to defective or top heavy administration of the affairs of the company, an indication of which has been given by the plaintiff itself in paragraph 17 of its receivership application in the following words:

> "17. That Sri Bateshwar Pd. Singh former Chief Manager of the Raja Bahadur and his 'most trusted man is the legal advisor of the company and is holding a place of profit and has been working various coal mines for his benefits through his relatives which will appear clear from the contracts mentioned in serials 8, 9, 10 and 12 to schedule 'C'. Relatives of Raja Bahadur, the managing Director of the company are doing business in the properties of the company under alleged Managing and raising-cum-selling contracts from the company on very low rates and by appointing sub-selling contractors on very high and fabulous rates. The contracts of these relatives are described in items Nos. 1 to 5, 11, 13 and 14 of the schedule 'C'. Kumar Basant Narayan Singh, Kumar Inder Jitendra Narayan Singh and Kumar Pratap Singh brother, son and Mousera brother respectively of the Ra.ja Bahadur are holding key posts in the company. The persons constituting Board of Directors of the Company are his own men. All these facts will show that there is a conspiracy to enjoy the property of the plaintiff by the Raja Bahadur and his men in the name of defendant No. 1 who as submitted above cannot have any legal title to the suit properties to the exclusion of the plaintiff who is the legal and lawful owner of the properties in suit."

Bad management of the affairs of the company, for which the responsibility must lie with its managing Director or the Board of Directors, does not mean that the mines and minerals are being destroyed, damaged, wasted or worked dangerously. This is, therefore, not a relevant factor on the question of waste or dangerous working of the mines.

29. The deteriorating financial condition of the company has also been relied upon in another context. It has been urged by the learned Advocate General that on this account, the dues of the plaintiff in respect of rents and loyalties have been put in jeopardy. This has been denied on behalf of the defendant company and it has been urged on its behalf that it is in possession of sufficient assets to meet its obligation in respect of rents and royalties. I do not, however, propose to go into this matter because in the present suit, the plaintiff has made no claim against the defendant for rent and royalties. It has claimed compensation which is ancillary to its claim for recovery of it has possession. But as I have pointed out, the plaintiff has failed to make out a claim for khas possession.

30. I now pass on to Inspector Tane.ja's report dated the 7th May, 1963. It appears that the said Inspector paid a surprise visit to Jharkhand Colliery in the morning of

the 25th March 1963. No work was being done in Quarries Nos. 1, 3 and 4, or in Quarries Nos. A, B, C and D. Work was being done only in Quarries Nos. 2 and 5 and in No. E Quarry. The Inspector noticed certain violations of the Coal Mines Regulations, 1957, the nature of which will appear from the following :

> Regulation 98--Sides in alluvial soil or in other similar ground and in column were not kept sloped properly or benched as prescribed under this Regulation. Benches in alluvial soil were up to 3 metres and in coal up to 5 metres. Loose overburden was generally lying at the edges of the quarry. Condition of quarry No. 3 was quite" dangerous. There was generally one bench about 8 metres high with alluvial soil and dumped overburden about 2 to 3 metres thick at the top. There was no place in work in column Nos. 3 and 4 quarries. Work in these quarries should not be resumed without permission from the Department.
>
> Regulation No. 170--There were some huts made of tree branches and leaves within 100 metres of the quarry, and so not providing proper protection from flying missiles at the time of blasting. Blasting in the quarries should be stopped till all the huts lying within 300 metres of the quarries are demolished. Blasting shelter should be provided for the shot-firer so that he can take proper shelter at the time of blasting.
>
> Regulation No. 112 read with C. I. Ms. Circular No. 11 of 1959--Some of the open cast workings were not kept fenced. These should be fenced as per the above circular.
>
> Regulation No. 107 :--There was no demarcation of boundary on the surface by means of boundary pillars. Management may be asked to complete the demarcation of boundary on the surface immediately.
>
> Regulation No. 113 :--From the condition of quarries, it appeared that proper supervision was not being exercised by the mining Sardars. Management should appoint separate mining Sardar in each quarry.
>
> Regulations Nos. 6 and 61 :--There were four abandoned quarries in block VII. No notice of abandonment appeared to have been given to the Department.

The Inspector also noticed the following violations of the Mines Rules, 1955:

Rest shelters were not provided as per Rules 62-63. There was no proper arrangement of drinking water in the open cast workings (Rules 30-32). Adequate latrine and urinal accommodation was not provided on the prescribed scale (Rules 33-36). A suitable ambulance room with prescribed equipment and staff was not provided (Rule 43). No canteen was yet provided (Rule 64). A welfare officer had not been appointed (Rule 72). The report ended thus :--

> "As most of the violations are repeated ones and some are of very serious nature, so suitable action may be taken against the management."

31. I have referred to Inspector Taneja's report at length because in my opinion it does not show that the mines and minerals in dispute are being worked in such a wasteful and dangerous manner as to justify their being taken away from the possession of the defendant company and put in charge of receiver. The dangers

reported by Mr. Taneja were not to the property, but to the safety of the workers engaged in the mining operations. His report gives no indication of waste or destruction of the mines and minerals. Ensuring the welfare and safety of the mines is no doubt desirable, but it is not a relevant consideration for the appointment of a receiver in this suit.

32. The next document relied upon by the plaintiff, namely, the Accident Report of the 27th March 1963, does not stand on any different footing. No doubt, it shows that during an open cast working in the Jharkhand Colliery on the 19th February 1963, a mass of alluvial soil and loose earth measuring 6 metres x 6 metres and having a maximum thickness of 1.8 metres came down from the side at an average height of 3 metres and, as a result, 6 miners were buried of whom 4 died instantaneously and 2 received minor injuries. It was felt that had Regulations 96 and 112 of the Coal Mines Regulations, 1957, been complied with, the accident would have been averted. But no conclusion of waste or destruction of the mines and minerals can justifiably be drawn from this event.

33. Among the other inspection reports, I was referred to a note dated the 19th January 1956 made by Sri G. S. Jabbi, the then Deputy Chief Inspector of Mines in India, in regard to what he noticed in the Dhori Colliery, about three months earlier, on the 22nd October 1955. It reads :

> "While passing I noticed a quarry being worked on the south side of the Dumari-Bokaro District Board Road. I inspected the quarry accompanied by Kunja Gosai, the overman. Upper Kargali seam was being worked. The sides of the soft over-burden were vertical and were as much as 20 feet high. The coal side has also been undercut at places. Work was being done under dangerous conditions. I asked the overman to stop work at the dangerous places and also to inform the manager. The management may be required to explain why criminal proceedings should not be instituted against the agent and the manager." This again shows that the danger was to the workers engaged in the quarrying operations, but it is wholly insufficient to make out waste, damage or destruction to the property in suit. Besides, it is much too state a material for our present purposes.

34. It is significant to note that in its receivership application, the plaintiff has not even alleged that the defendants have been committing waste or destruction of the mines and minerals in suit or working them in a dangerous manner. The only relevant averment to be found in the said application is to the following effect :

> "The Kedla Jharkhand Block of Collieries are reported by Mr. Browne, an eminent geologist, to contain 67 million tons of superior quality of coal and the Raja Bahadur is making all possible attempts through M/s Bokaro and Ramgur Ltd. and its raising-cum-selling agents to extract, remove and dispose of as much coal as possible for its benefits by any means in the shortest possible time pending disposal of T. S. No. 53 of 1954. To achieve this end the Raja Bahadur has, through the defendant No. 1, been creating raising-cum-selling contracts in favour of his friends, favorites and near relations. These contracts are really subleases made in direct contravention of the Mineral Concession Rules and other laws and the undertakings therein for minimum extraction in a year are such as are bound to make the so-called contractors to go in for easy coal in an unscientific manner. All attempts are being made to take out the maximum quantity of coal in the

> shortest possible time and thereby to deprive the plaintiff permanently of the coal to which the plaintiff is lawfully entitled, and there does not appear to be any possibility of recovery of the price of the coal extracted from defendant No. 1"

In other words, the real emphasis of the plaintiff is upon its title and right to khas possession, and upon its claim for compensation, rather than upon waste, damage or destruction of the mines and minerals in suit. Even so, no material has been brought to my notice to support the allegation of extraction of the maximum quantity of coal in the minimum possible time.

35. Thus having given a careful consideration to the relevant materials relied upon by the plaintiff I have come to the conclusion that the plaintiff has failed to show that there is such a present or impending danger of waste, destruction or mismanagement of the property in suit as to call for the Court's interference by appointment of a receiver pendente lite.

36. At this stage I ought to mention that an affidavit was filed in this Court on behalf of the plaintiff bringing on record the fact that in the month of May 1965, the Dhori Colliery was the scene of a worst ever-known explosion resulting in the death of a record number of miners and alleging that this was due to the negligence of the management of the defendant company. The allegation of negligence has been denied on behalf of the appellant, and it appears that the cause of the disaster is under investigation which is being conducted by Mr. Justice S. K. Das, a retired Judge of the Supreme Court. In the circumstances, I have thought it fit not to base my decision upon this new material.

37. For the reasons set forth above, I have come to the conclusion that the plaintiff has failed to make out a case for the appointment of a receiver in this case. I, therefore, agree with Sinha, J. that the order passed by the learned Subordinate Judge must be set aside and the appeal must be allowed. In the circumstances, however, there will be no order as to costs.