

INTHEHIGHCOURTOFJUDICATUREATCALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

RESERVED ON: 01.05.2025

DELIVERED ON:20.05.2025

PRESENT:

THE HON'BLE MR. JUSTICE TAPABRATA CHAKRABORTY

AND

THE HON'BLE MR. JUSTICE REETO BROTO KUMAR MITRA

F.M.A. NO. 358 OF 2019

SMT. MAMATA BANERJEE AND ANR.

- VERSUS -

EASTERN COALFIELDS LIMITED AND ORS.

Appearance:

Mr. Nilanjan Bhattacharya, Sr. Adv.,

Ms. Urmila Chakraborty, Adv.,

Mr. Amit Meharia, Adv.,

Ms. Paramita Banerjee, Adv.,

Mr. Diptendu Acharya, Adv.,

Mr. Tamaghna Chattopadhyay, Adv.,..... for the Appellants

Mr. Pradip Kumar Dutta, Sr. Adv.,

Ms. Akanksha Mukherjee, Adv.,

Ms. Madhumanti Chakraborty, Adv.,..... for the Respondents

Reetobroto Kumar Mitra, J.:

1. A simple set of facts has been convoluted by myriad litigations.
2. Kenaram Banerjee was the owner of large tracts of land. Kenaram had two sons Satish and Madan. Badal is the son of Satish. Jiten is the son of Madan. Mamata Banerjee and Joy Banerjee(the Appellants) are the widow and son respectively of Badal. ECL has acquired land belonging to Madan as well as land belongs to Badal.
3. The contentions of the petitioners/appellants are that their father\husband predecessor in interest, late Badal Banerjee, (hereinafter “Badal”) was a beneficiary under a scheme promulgated by the authorities (ECL) sometime in 1979, for those persons whose land had been taken for the respondent’s mining purpose. This scheme was known as the “Land Loser Scheme”. In terms of the scheme, a person whose land of at least two acres had been taken by ECL would get an appointment for himself or his immediate family member on compassionate ground. Alternatively, in lieu of compensation appellant would get 20,000 metric tons of coal, to be supplied by ECL, which they would be free to sell in the open market.

4. Admittedly, Badal had been permitted to lift approximately 2100 metric tons of coal. Further lifting of coal by Badal had not been possible on account of paucity of funds at the material time. This is where the dispute arises. In a nutshell, the dispute revolves around the factum of Badal's entitlement under the Land Loser Scheme or, as ECL contends under the Free Sale Scheme. Badal contended it was under the Land Loser Scheme, while ECL, for facts to be enumerated hereinafter, contends it was the Free Sale Scheme.
5. ECL had never denied Badal his entitlement in so many words. However, Badal filed Writ Petition C.O. 10319 of 1992, which was withdrawn on 25th January 1995, as contended, on the assurance of ECL that it would permit Badal to lift further coal.
6. However, since no such coal had been lifted or permitted to be lifted, Badal had to initiate a second Writ Petition WP 1392 of 1998, which was dismissed for default on 8th March 2008.
7. Badal had died by the time the matter was dismissed for default. It was in these aforesaid circumstances, to pursue the rights of Badal, that the present appellants/petitioners, his widow and son, sometime in 2008 filed a Writ Petition being WP No. 17988 of 2008, third in line, which was dismissed on 10th August 2010 on the ground of *res judicata* since the first Writ Petition C.O. 10319 of 1992 had been withdrawn without liberty to file a fresh petition.

8. From this order of dismissal on 10th August 2010, an appeal was preferred, which was also unceremoniously dismissed on 19th September, 2011. This order of the Division Bench of this Hon'ble Court was carried to the Hon'ble Supreme Court sometime in 2012, which was again withdrawn, but this time with liberty to file a review of the order of 19th September 2011 of the Division Bench.
9. The review petition was also dismissed on 13th March 2013, however reserving liberty to the appellants/petitioners herein to file for restoration of WP 1392 of 1998 and consequential substitution of the present appellants in place of Badal. Pursuant to the said liberty, an application was made on 8th November 2013, and the second Writ Petition was restored to file and the present appellants substituted as the petitioners in the said Writ Petition. ECL was also directed to file an opposition to the main writ petition.
10. The Writ Petition was heard on 23th July 2014, and was disposed of with a direction to the authority to consider the claim of the petitioners and pass a reasoned order.
11. The order of 23rd July 2014 disposing of WP 1392 of 1998 assumes relevance because of certain unassailed findings. The findings may be summarised hereunder:

- I. The coal issued to Badal was admittedly upon ECL's acquisition of .22 decimal of land belonging to Badal.
- II. The note sheet of 25th February 1995 and the letter of ECL from its General Manager dated 27th September 1996 were both admitted. The note sheet and the letter both had unqualified admissions to the effect that Badal was indeed a Land Loser and thus a beneficiary under the Land Loser Scheme.
- III. This order had never been challenged by ECL.

12. Pursuant to this order of 23rd July 2014, the respondent authorities had called the appellants for a hearing. After the hearing, in which the letter of 27th September 1996 was placed, proceeded to pass an order, holding *inter alia* that coal issued to Badal was under the Free Sale Scheme and not the Land Loser Scheme. It also held that ECL, upon acquiring the land of Badal's grandfather Kenaram, had actually given employment to a nominee of Madan (Badal's uncle), his son Jiten. It also held that there was currently no provision to issue coal to land losers. On these aforesaid findings, the order of 9th October, 2014 [at page 216 of the paper book] was passed by the authority appointed by ECL.

13. It is this order of 9th October 2014, denying the rights of Badal to get any further coal, that was challenged by the petitioners/appellants herein by way of a fourth Writ Petition, WP 500 of 2014.
14. These facts as stated above are admitted facts from both sides, whom we have heard in great detail and considered documents which the parties have relied upon.
15. Mr. Bhattacharya, learned senior advocate appearing for the appellants, has made out a simple case that Badal, being a land loser, was entitled to the benefit bestowed to a land loser under the Land Loser Scheme promulgated by ECL in 1979. The fact that Badal was unable to lift the desired quantity of coal at the material time, cannot disentitle Badal from lifting the coal at all.
16. He has drawn our attention to several documents, including the admissions of ECL not only to Badal's right as a land loser but also his entitlement under the scheme at pages 99A, 123A, and 208/208A of the paper book.
17. The other interesting fact of this issue is that the communication of the General Manager dated 27th September 1996, which was produced and relied upon by the present appellants at the hearing held before the authorities appointed by ECL pursuant to which the order of 9th October

2014 was passed, is conspicuously silent about the said letter, and not a word has been reflected in the order while holding that Badal was not a Land Loser but a beneficiary under the Free Sale Scheme. This silence in the order is unexplained and reflects ECL's inability to answer this issue.

18. Mr. Pradip Dutta, learned Senior Advocate appearing for ECL, has raised three principal points.

I. The first point is that the Badal was not the owner of two acres of land and hence would not fall under the Land Loser Scheme promulgated by ECL.

II. Second, Badal, having a paucity of funds at the material time, was not ready or willing to perform his contractual obligation of lifting the coal, and hence, the present claim, which is in the nature of specific performance of contract, cannot be permitted.

III. Third, there has been a delay of 12 years in pursuing the claim of Badal, the first Writ Petition having been filed in the year 1992, while the cause of action, if any, arose in 1980.

19. The first point of Mr. Dutta is contrary to the records. The letter of 25th September 1996 clearly states that Badal was a land loser and was entitled to

the rights of a land loser under the said scheme. There was no response from Mr. Dutta in so far as the letter of 25th September 1996 was concerned. The second document, which constitutes an admission, the letter of 27th September, 1996 was admitted, with the contention that the same being an internal document cannot give a right to the concerned person (Badal).

20. The second point urged by Mr. Dutta, that Badal was not ready or willing to perform his contractual obligation as he did not have funds to take delivery of coal, is rather far-fetched. There was no contract, as such, between Badal and ECL, the entitlement of Badal emanated from a scheme promulgated by ECL sometime in 1979 and therefore cannot be considered as a contract. Further, the question of being ready or willing to perform his obligations to take delivery of coal cannot be ascribed in the present facts and circumstances.

21. Third, on the question of delay, Mr. Dutta has urged that there is no justification for the delay of 12 years for Badal to approach the Hon'ble Court or take any steps to vindicate his rights by taking delivery of the coal. This also is factually incorrect, as it appears from the documents disclosed that Badal had made repeated representations, all of which are on record, starting from 1980 till about 1990. None of these representations have been considered by ECL in any manner whatsoever, ECL has maintained conspicuous silence regarding the repeated representations of Badal. In fact, even when the first Writ Petition was withdrawn by Badal, ECL

had given an assurance that it would consider the case of Badal favourably once the Writ Petition was withdrawn. In fact, even in 1994, pursuant to the meeting between Badal and ECL, minutes drawn up categorically state that ECL, as per its rule/policy, granted 20,000 metric tons of coal to Badal, out of which 2100 metric tons had been lifted, and the balance 17,900 metric tons were to be lifted by Badal. Repeated representations starting from as early as 1980 till about 1997/1998 found no favour with ECL. In fact, Badal had also requested to lift a limited quantity of coal of 25 metric tons per day to facilitate his rights under the scheme.

22. A further note sheet has also been referred, which does not find place in the paper book, one of 31st May 1990, by which ECL had admitted that they were in possession of the land of Badal, without any further explanation as to how they were in possession of such land and what was the consequence of being in possession of such land. It is in this factual conspectus that the parties have relied upon certain decisions to which we now advert.

23. Mr. Dutta, learned Senior Advocate appearing for ECL, has relied upon three decisions:

- I. The first of these decisions, reported in 1995 (4) SCC 683, states that the powers under Article 226 of the Constitution of India cannot be exercised by the High Court in granting relief to a person without

considering his disentitlement for such relief due to his blameworthy conduct of undue delay in claiming the same. In the present case, the delay, if at all, cannot be attributed to the conduct of Badal, who died in 2008. Badal had been pursuing his right from 1980 by way of representations and indeed had filed the first Writ Petition way back in 1992. Hence, it cannot be said that the Badal was disentitled to his right by virtue of blameworthy conduct. The conduct of ECL in ignoring Badal's representations repeatedly, in spite of giving him some hope that his case would be considered, is the attributable reason for the delay.

II. The second decision, reported in 2006 (4) SCC 332, deals with the exercise of jurisdiction in a belated Writ Petition. It is an undisputed proposition that delay or laches is a factor to be borne in mind by the High Court while exercising its discretionary power under Article 226 of the Constitution. In the present case, the predecessor in interest of the present appellant, Badal, had been pursuing his rights ever since they were denied to him, starting in 1980. It cannot be said that Badal had remained silent. In fact, unlike the case relied upon, where a representation made in a labour matter had no reference to the dispute, in the present case, Badal had repeatedly made successive representations categorically stating and urging the authorities to grant his entitlement as a beneficiary under the

Land Loser Scheme. Hence, the said decision is factually different from the present case and cannot be applied.

III. The third decision, reported in 2019 (2) SCC 329, stipulates that disputed questions of fact cannot be gone into in a Writ Petition. This proposition also is not in dispute. However, in the present case, the facts are fairly undisputed. It is not disputed that Badal had been given coal, part of which he had taken delivery of, and the rest he had sought to receive in a staggered manner.

24. The case of ECL that Badal was never a land loser and instead fell within the contours of the Free Sale Scheme is completely belied by certain documents which constitute admission by ECL, which ECL has admitted even whilst arguing that the contents thereof cannot be denied by them. The first of such admissions results from a letter of the General Manager of ECL dated 27th September 1996 appearing at page 99(typed copy at 99A), whereby the General Manager has unequivocally admitted that the land owned by Badal had been acquired for mining purpose. The retort of ECL to such an admission is that it was an internal document of ECL. A document circulated internally admitting the right of a person cannot simply be ignored as it is an “internal document”, as argued.

25. The second admission arises from a document at page 123 (typed copy at 123A), whereby the details of land taken from Badal and coal received

by Badal in lieu thereof have also not been challenged by the authorities. They have merely stated that this is a replication of information provided in the Writ Petition. Bereft of this rather flimsy argument, it has not been denied, disputed, nor has it been explained by ECL as to their stand in respect thereof. Clearly, ECL is not in a position to challenge the particulars as disclosed in the document and indeed has not done so.

26. In addition to the aforesaid documents, a note sheet/minutes of meeting at page 208A recording Badal's request for being supplied with further coal has not been denied, disputed, nor set aside by ECL. Even at the time of arguments, this document was given a free flow.

27. It is not in dispute that Badal had lost .22 decimal of land, which had been acquired by ECL for its mining purpose, of which ECL is still in possession. It is not in dispute that Badal, being a Land Loser, was entitled to delivery of such coal.

28. In fact, the representations made by Badal, in which all of the aforesaid points were urged, were neither denied nor disputed by ECL, nor did ECL dispute the fact that it was in possession of Badal's land.

29. A feeble resistance was also made on the ground that the family of Badal was already provided with compassionate appointment of Jiten, son of Madan

(Badal's uncle). As is evident from the genealogical table, Kenaram had two sons, Satish and Madan, who had succeeded to his estate in equal shares. Thus, the compassionate appointment of Madan's son cannot be construed as a fulfilment of ECL's obligation under the scheme towards Badal, who is the son of Satish. In the aforesaid conspectus of facts, it is clear that ECL has absolutely no ground to deny and deprive Badal and his successor in interest of the benefits of the Land Loser Scheme, which they have done since 1980.

30. This brings us to the enforceability of the scheme, since ECL has in no uncertain terms already stated that both the Land Loser Scheme and The Free Sale Scheme have been abolished and are no longer in force. Thus, to direct ECL to make supply of the coal to the appellants herein under the Land Loser Scheme, would render the instant order unenforceable.

31. However, it cannot be denied that ECL has in the milieu of facts breached its obligation under the Land Loser Scheme in so far as the appellants are concerned.

32. In the circumstances, we find that the learned Single Judge has not considered the aspect of Badal's entitlement as the predecessor of the petitioners/appellants herein and has dismissed the Writ Petition without considering these aforesaid facts. The factum of admissions by ECL are also unaddressed in the order impugned. The learned Single Judge proceeded on

the basis that Badal was unable to produce any title deed or any record of right pertaining to his land of 2.10 acres, which had been acquired by ECL. The learned Single Judge proceeded to hold that the Writ Court, not being a Court of title, could not go into such facts, and without the requisite document of title and possession, the learned Single Judge was unable to give any relief to Badal. It also weighed with the Learned Judge that Jiten, the son of Madan, Badal's uncle, has been granted employment by ECL against the land of Madan. Hence, the question of any further compensation in respect of the land did not arise.

33. It is not in dispute that Badal's land had been acquired by ECL, as admitted from the documents discussed hereinbefore, namely the two note sheets, the letter of the General Manager, and the particulars of land at page 208. Badal's entitlement to the land not having been questioned by ECL at any point of time, the question of Badal failing to provide any document of title was redundant. It is also not in dispute that the estate of Satish and Madan were distinct and separate. Thus, any usufruct to Madan as a land loser cannot be construed as such to cover the entitlement of Satish (Badal's father). In the circumstances, we are unable to agree with the findings and the consequential dismissal of the Writ Petition by the learned Single Judge.

34. Thus, we set aside the order of the learned Single Judge dated 8th January, 2018.

35. Having set aside the impugned order, we are now faced with a rather onerous task of balancing the rights of the parties. ECL has not been in a position to supply the coal, which it ought to have supplied to the predecessor of the appellants herein, due to a change in their Policy. We have not been apprised of the price of the coal at the material time or even thereafter, nor of the cost of lifting such coal by the appellants, by either of the parties. It could be an empty formality to pass an unenforceable order directing ECL to supply the balance 17,900 metric tons of coal.

36. In the dispensation of justice, Courts are prevented from innovating at pleasure. Neither can they don the helmet of a *'knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness.'* At all times, Courts are expected to draw *'inspiration from consecrated principles'* [See *'The Nature of Judicial Process'* by Benjamin Cardozo-J]. Judiciary has a very strong sense of justice and it works to maintain social justice and fairness. Equity regards as done, which should have been done. Bearing such principle in mind, this Court cannot help but observe that there may arise certain situations which require untangling of a complicated mesh of competing rights; where the Court may be required to innovate, not at pleasure but within the realm of perennial common law principles of equity and good conscience, so as to arrive at an equilibrium of rights i.e., find the best possible solution. Today, this Court finds itself in the midst of one of such situations.

37. The quantum of compensation would, however, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved. The appellants have suffered distraught pain due to the stone-walled response from an apathetic administration. They have been deprived of their claim for a substantial period of time, which on its own merit, is a matter of great suffering. Since it is an admitted position that ECL had acquired the land of Badalin the year 1980 and the litigation had continued for more than 32 years, we are of the view that ends of justice would be met if ECL is directed to pay a lump sum amount of Rs. 25 lakhs to the appellants.
38. Accordingly, this Court directs the respondents to disburse an amount of Rs. 25 lakhs in favour of the appellants, within a period of six weeks from date.
39. With the aforesaid directions, the appeal and the connected applications are disposed of.
40. All interim orders stand vacated or altered in terms of the aforesaid order.
41. There shall, however, be no order as to costs.

42. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Reetobroto Kumar Mitra, J.)

(Tapabrata Chakraborty

Later

Mr. Pradipta Basu, learned counsel for the Eastern Coalfields Limited prays for stay of operation of the judgment.

Such prayer is considered and refused.

(Reetobroto Kumar Mitra, J.)

(Tapabrata Chakraborty, J.)