1961

February 10.

M/s. BURRAKUR COAL CO., LTD.

v.

THE UNION OF INDIA AND OTHERS

(And connected petition)

(B. P. SINHA, C. J., S. K. DAS, A. K. SARKAR, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Coal Mines—Law providing for prospecting for coal and acquisition—Validity—"Unworked land", meaning of—"To undertake any operation in the land", meaning of—Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), ss. 4, 5, 6, 7, 8, 13, 14—Constitution of India, Arts. 31A(1)(e), 31(2).

The Coal Bearing Areas (Acquisition and Development) Act, 1957, was enacted, as indicated in the preamble, for providing for the acquisition by the State of unworked land containing or likely to contain coal deposits, and under s. 4(1) of the Act, the Central Government was empowered to issue a notification with reference to its intention to prospect for coal from land in any locality. By s. 5(b) any mining lease granted to a person and in respect of which a notification had been issued shall cease to have effect, and under s. 7 the Central Government was entitled to acquire the mining rights within a period of two or three years from the date of the notification. On July 28, 1960, the Central Government published a notification under s. 4(1) of the Act in respect of an area included in the colliery in which the petitioners had acquired mining rights. Between the year 1932 and the month of May, 1960, the colliery was not worked because it was uneconomical to work it, but the petitioners made an application on December 3, 1959, to the Coal Board for permission to reopen the Colliery and though no reply was received from the Board, the petitioners commenced drilling operations in May, 1960, but discontinued them from August 12, 1960, in view of the notification. The petitioners challenged the validity of the notification on the ground that the preamble of the Act and ss. 4, 5, 6, 7 and 8 show that the Act was applicable only to unworked mines which must mean virgin lands, and not to those which were being worked at the time of notification or which were worked in the past, whereas the petitioners' coalfield had been worked and the working had ceased for some time only due to the unremunerative market for the produce. The petitioners also contended that the Act contravened Arts. 19(1)(g) and 31(2) of the Constitution of India on the grounds (1) that the effect of a notification under the Act was to prevent an owner or lessee of a mine from working for two or three years, which was too long a period and, therefore, the restrictions could not be regarded as

reasonable, (2) that the Act did not contain any provision for compensation for the deprivation of the petitioners' right to carry on their business for two or three years, and (3) that s. 13 of the Act, though it dealt with the payment of compensation, did not provide for compensation for mineral rights.

Held: (1) that the expression "unworked land" occurring in the preamble of the Coal Bearing Areas (Acquisition and Development) Act, 1957, means land which was not being worked at the time of the notification issued under the Act and includes dormant mines.

Where the object or meaning of a enactment is not clear, the preamble may be resorted to to explain it.

In re the Kerala Education Bill, 1957, [1959] S.C.R. 995, referred.

(2) that the Act is applicable not only to virgin lands but also to dormant collieries or unworked lands, including mines which were worked in the past but mining operations therein are not being carried on at present.

(3) that the expression "to undertake any operation in the land" in s. 5(b) of the Act refers to the undertaking of an operation on land not for the first time only but at the resumption of an operation which had been abandoned or discontinued. The resumption of the working of a mine after a casual closure or a closure in the ordinary course of the working of a mine would not fall within the bar created by s. 5(b).

(4) that the restrictions imposed upon an owner or lessee of a mine by which he is prevented from working his mine for a certain period of time under ss. 4 and 5 of the Act are not unreasonable and that the Act does not contravene Art. 19(1)(g) of the Constitution.

(5) that such restrictions amount to a modification of his rights within the meaning of Art. 31A(1)(e) of the Constitution; and that the validity of ss. 4 and 5 of the Act cannot be challenged on the ground that they infringe Art. 31(2) in view of the provisions of Art. 31A(1)(e).

Thakur Raghbir Singh v. *Court of Wards, Ajmer*, [1953] S.C.R. 1049, explained.

Sri Ram Ram Narain Medhi v. *State of Bombay*, [1959] Supp. 1 S.C.R. 489, *Atma Ram* v. *The State of Punjab*, [1959] Supp. 1 S.C.R. 748 and *In re Delhi Laws Act, 1912*, [1951] S.C.R. 793, relied on.

(6) that the Act cannot be challenged on the ground that ss. 5(a) and 13 do not provide for payment of compensation for mineral rights, because ss. 13 and 14 lay down the principles on which compensation is to be determined, and under Art. 31(2) such a law cannot be called in question on the ground of the inadequacy of the compensation provided.

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ORIGINAL JURISDICTION: Petitions Nos. 241 and 242 of 1960.

Petitions under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

P. R. Das, K. Choudhoury, Balbhadra Prasad Singh and *I. N. Shroff*, for the petitioners.

M. C. Setalvad, Attorney-General of India, B. Sen and *R. H. Dhebar*, for the respondents.

1961. February 10. The Judgment of the Court was delivered by

Mudholkar J.

MUDHOLKAR, J.—The petitioner in W. P. 241 of 1960, Messrs. Burrakur Coal Co., Ltd., and the petitioner in W. P. 242 of 1960, Messrs. East India Coal Co., Ltd., claim to have acquired mining rights in two blocks in Mouza Sudamdih and Mouza Sutikdih respectively situated in Dhanbad district in the State of Bihar. On July 28, 1960, the Central Government published a notification bearing no. S. O. 1927 under s. 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (no. 20 of 1957), stating its intention to prospect for coal in an area approximately five sq. miles which includes Sudamdih colliery aud Sutikdih colliery. The petitioners have stated in their respective petitions that in consequence of the issue of the aforesaid notification they are precluded from carrying on any mining operations in the respective collieries and that the Central Government is entitled to acquire mining rights in the area covered by the notification within a period of two years from the date of notification or within such further period not exceeding one year as the Central Government may specify by notification in the Official Gazette. The petitioners have come up to this Court under Art. 32 of the Constitution contending that the aforesaid notification is *ultra vires* and illegal inasmuch as it interferes with their fundamental right to own property and to carry on business. Assuming that an incorporated company is a citizen we may point out that the East India Coal Co., Ltd. is incorporated in the United Kingdom while the Burrakur Coal Co., Ltd. is

incorporated in India. Therefore, in so far as the rights conferred by Art. 19 are concerned it may only be the latter which is entitled to the protection of the Constitution but not the former company. Both the petitioners, however, contend that the right conferred by Art. 31(2) of the Constitution is also infringed by the aforesaid notification and if their contention is correct they will be entitled to protection in respect of that right inasmuch as it is not limited to the citizens of India as is the case with regard to the rights enumerated in Art. 19. Both the petitions were argued together though the arguments were addressed mainly with reference to the case of Burrakur Coal Co., Ltd. and, therefore, it is that case with which we will deal fully. After dealing with the arguments advanced with reference to that case we will deal briefly with the other case.

The challenge to the notification rests on two grounds, firstly that the notification is *ultra vires* the Act and secondly that the Act is itself *ultra vires* the Constitution.

The petitioner's learned counsel Mr. P. R. Das contends that the Act applies to "unworked" coal mines—which according to him, mean virgin lands—and not to those which are being worked at present or which were worked in the past. In support of this contention he strongly relies upon the preamble to the Act. The preamble runs thus:

> "An Act to establish in the economic interest of India greater public control over the coal mining industry and its development by providing for the acquisition by the State of unworked land containing or likely to contain coal deposits or of rights in or over such land, for the extinguishment, or modification of such rights accruing by virtue of any agreement, lease, licence or otherwise, and for matters connected therewith."

His argument proceeds to the length of saying that even abandoned mines are not touched by the Act. According to him, however, the Sudamdih colliery was not an abandoned mine nor could it be regarded as abandoned because, though it was not actually worked

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between the year 1932 and the month of May, 1960, the petitioner had purchased it for a large consideration amounting to over Rs. 1,46,000 and thereafter it paid annually the minimum rent and royalty which totals upto over Rs. 1,23,000 from May 1, 1939, to June 30, 1960. According to the petitioner the mine was not actually worked during this period because in the petitioner's opinion it was uneconomical to work it. The petitioner in fact made an application on December 3, 1959, to the Coal Board as required by the provisions of the Coal Mines (Conservation and Safety) Act, 1952 (XII of 1952), for permission to reopen the colliery but it did not receive any reply from the Coal Board. Even so, the petitioner commenced drilling operations in the beginning of May, 1960 and carried them on till August 12, 1960, during which a depth of 235 ft. was reached at one point. The petitioner, however, stopped these operations consequent upon the publication of the impugned notification in the Gazette of August 6, 1960. We are mentioning these facts because on their basis a further argument is raised by Mr. Das to the effect that prior to the issue of the notification the mine was being actually worked. Before, however, we deal with that argument we must consider the main contention of Mr. Das which is to the effect that the Act applies only to virgin land.

Mr. Das contended that the preamble to an Act is a key to understanding the provisions of the Act and referred us in this connection to the advisory opinion of this Court *in re the Kerala Education Bill, 1957* (1). In that case Das, C. J., who delivered the opinion of the Court has observed:

> "The long title of the said Bill (The Kerala Education Bill, 1957) describes it as 'A Bill to provide for the better organisation and development of educational institutions in the State'. Its preamble recites thus: 'Whereas it is deemed necessary to provide for the better organisation and development of educational institutions in the State providing a varied and comprehensive educational service

(1) [1959] S.C.R. 995, 1022.

throughout the State'. We must, therefore, approach the substantive provisions of the said Bill in the light of the policy and purpose deducible from the terms of the aforesaid long title and the preamble and so construe the clauses of the said Bill as will subserve the said policy and purpose".

While holding that it is permissible to look at the preamble for understanding the import of the various clauses contained in the Bill this Court has not said that full effect should not be given to the express provisions of the Bill even though they appear to go beyond the terms of the preamble. It is one of the cardinal principles of construction that where the language of an Act is clear, the preamble must be disregarded. Though, where the object or meaning of an enactment is not clear, the preamble may be resorted to to explain it. Again, where very general language is used in an enactment which, it is clear must be intended to have a limited application, the preamble may be used to indicate to what particular instances the enactment is intended to apply (1). We cannot, therefore, start with the preamble for construing the provisions of an Act, though we would be justified in resorting to it, nay, we will be required to do so, if we find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application.

Mr. Das then contended that the various provisions of the Act clearly show that Parliament intended the Act to apply only to virgin land. In support of this contention he referred to the provisions of ss. 4, 5, 6, 7 and 8 of the Act. He pointed out that whenever it appears to the Central Government that coal is likely to be obtained from land in any locality it is empowered by sub-s. (1) of s. 4 to give notice of its intention to prospect for coal therein. According to him, where a mine has been worked at some time in the past all the necessary information would be available in the working plan of the mine, and, by way of illustration pointed out that the fullest information

(1) Craies—Interpretation of Statutes, 5th Edn., pp. 188, 189.

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was available in the working plan, Annexure B1 of the Sudamdih colliery. He further pointed out that this information was in fact in the possession of the Government as would appear from Annexure B which was appended to the notification of July 20, 1960. We may point out that this annexure sets out that this is a statement of percentage of worked and unworked areas in different coal mines and after setting out the various seams which have been proved, the percentages of worked and unworked areas have been specified therein. Prospecting, according to Mr. Das, would be necessary only if nothing is known about an area and therefore there can possibly be no need for prospecting when a mine has been worked. Admittedly, sub-s. (1) of s. 4 does not specifically say that it applies to unworked land. All the same, according to Mr. Das, it must be so construed as to apply to unworked land only; for, there would be no need for the Government to undertake prospecting for coal in worked land on which there is a colliery.

We cannot accept the argument of Mr. Das. The bulk of the coal in a mine is underground and even though the existence of some seams may have been proved in particular areas it is impossible to say that the information obtained when it was prospected once or when it was being worked, as to the quality and quantity of coal or the dimensions of the seams is complete. The seams are not necessarily horizontal and more often are inclined and sometimes even folded. Then again there may be faulting in the strata of coal as a result of which an impression may be created that a seam has disappeared at a particular place though further borings or drilling may show that even beyond that point but at greater depths the same seam reappears. So where a mine was worked in the past but mining operations therein were stopped either because the coal therein was thought to have been exhausted or because it was not thought to be of a sufficiently good quality such as to make the working of the mine economic, further prospecting may well reveal the existence of additional coal bearing strata or of a better type of coal than that found

earlier. On the plain language of sub-s. (1) of s. 4 the Central Government has been empowered to issue a notification with reference to its intention of prospecting any land in a locality and not only such land as is virgin in the sense in which Mr. Das uses that expression.

Then Mr. Das referred to sub-s. (3) of s. 4 and said that the whole of the country has been subjected to a geological survey of a very detailed kind and all known coal fields are mentioned in one report or the other of the department of Geological Survey of India. Collieries which have been worked at some time in the past must have been mentioned in one of these reports and, therefore, it would be wholly unnecessary for the legislature to confer upon the Government the power as is done by cl. (a) of sub-s. (3) of s. 4 to enter upon and survey any land in the locality in which such colliery is situate. The very fact that power has been given to the Central Government to enter upon and survey land for the purpose of ascertaining whether there is any coal in that land shows that the legislature had in mind only that land which has not been mentioned as coal bearing in any of the reports of the Geological Survey of India. Here again we may point out that the object of survey of land is to enable the Government to satisfy itself not merely about the fact that any coal exists in that land but also about the quality and quantity of coal therein and whether it would be an economical proposition to work t he mines already existing on that land.

Indeed a perusal of the provisions of sub-s. (4) of s. 4 would show that the Act is not restricted to unworked lands only but applies equally to those lands on which there are existing mines but those mines are not being worked. That sub-section reads as follows:

> "In issuing a notification under this section the Central Government shall exclude therefrom that portion of any land in which coal mining operations are actually being carried on in conformity with the provisions of any enactment, rule or order for the time being in force or any premises on which any process ancillary to the getting, dressing or

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preparation for sale of coal obtained as a result of such operations is being carried on are situate".

Under this provision the Central Government is required to exclude that portion of any land in which coal mining operations are being carried on "in conformity with any enactment, rule or order". This would indicate that the language of sub-s. (1) of s. 4 was understood as applying also to that land in which coal mining operations were actually being carried on. Unless we hold so, the whole of sub-s. (4) would be rendered otiose. Mr. Das, however, says that sub-s. (4) enacts a "rule of exclusion" and that it had been enacted by way of abundant caution. We cannot accede to this argument for the simple reason that if the language of sub-s. (1) of s. 4 is capable of being interpreted as applying to any land in which coal mining operations are actually being carried on, then there is all the greater reason why that provision should be held also to apply to land in which coal mining operations were carried on in the past, though they are not being carried on at present. If Parliament was cautious enough to exclude land in which coal mining operations are actually being carried on why did it stop there and not exercise the same caution with respect to land in which coal mining operations were once being carried on but have now ceased? For, on the plain meaning of the word "unworked" such lands would more readily fall within the terms of sub-s. (1) of s. 4 than land in which coal mining operations were actually being carried on, that is to say, "worked lands".

Then Mr. Das referred to cl. (b) of s. 5 which runs thus:

> "any mining lease in so far as it authorises the lessee or any person claiming through him to undertake any operation in the land, shall cease to have effect for so long as the notification under that subsection is in force".

He contended that what this provision prohibits is the undertaking of any operation in the land and not carrying on of an operation. Undertaking of an operation, according to him, relates to the initial

working of the mine and not to the resumption of work on the mine after work thereon had stopped nor to carrying on work on a mine the working of which had not been stopped. As a consequence of the issue of a notification under sub-s. (1) or s. 4 what the lessee of a mining lease is prohibited from doing is undertaking any operation on land on which no operations were being carried on. But he is not prohibited from continuing to carry on operations which he was carrying on at the date of the notification. We cannot, however, accede to the contention that the resumption of mining operations on a land is outside the bar created by this provision. The words used in the section are "to undertake any operations in the land" which, according to the Concise Oxford Dictionary mean "to enter upon (work, enterprise, responsibility)". The meaning of the provision, therefore, is that what the lessee is prohibited from doing is something which he was not doing at the date of the notification though he was authorised to do it under his lease. Thus if a colliery was not functioning at the date of the notification then by virtue of the provisions of s. 5(b) he would not be permitted to work it. Undoubtedly the provision has to be interpreted reasonably and it does not mean that if the notification came into force on a Monday and the mine was not worked on Sunday because of a holiday, the lessee was prohibited by the notification from working it. The resumption of working of a mine after a casual closure or a closure in the ordinary course of working a mine would not fall within the bar created by s. 5(b). In this connection we may refer to r. 7 of the Coal Mines Regulations of 1957, which provides that when it is intended to reopen a mine after abandonment for a period exceeding 60 days not less than 30 days notice before resumption of mining operations must be given to certain authorities. The Coal Mines Regulations of 1957 have been framed under s. 57 of the Mines Act of 1952, s. 16 of which provides for the giving of notice before commencement of mining operations. It is in the light of these provisions that we must interpret the provisions of s. 5(b) of the Act. So what must be said to have

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been prohibited would be the undertaking of an operation on land not for the first time only but also the resumption of an operation which had been abandoned or discontinued.

Mr. Das then contended that a mining area is always extensive and it is not possible to work on every bit of it simultaneously and, therefore, if work is carried on at one point in a colliery the whole colliery must be deemed to be working, that is to say, coal mining operations must be deemed to have been carried on over the entire area on which the colliery is situate. In support of his contention he relied upon the decision of the Privy Council in *Nageswar Bux Roy* v. *Bengal Coal Co., Ltd.* (1), and upon a passage in Halsbury's Laws of England (2). Both the decision of the Privy Council as well as the passage in Halsbury deal with the question of possession and state the law to be that a person can be said to be in possession of minerals contained in a well-defined mining area even though his actual physical possession is confined to a small portion, that is, to the mine which is being actually worked. The decision of the Privy Council as well as the passage in Halsbury are thus not in point. Further it is difficult to see how an exemption under s. 4(4) is admissible in the case of the Sudamdih colliery or Sutkidih colliery unless it is shown that they were actually being worked at the date of the notification in conformity with the provisions of "any enactment, rule or order for the time being in force". It is an admitted fact that though a notice was given under s. 16 of the Mines Act, 1952, by the Sutkidih Colliery, the petitioners in W.P. 242 of 1960, it did not actually start working the colliery in view of the impugned notification. As we have already pointed out the Burrakur Coal Co., Ltd. did commence working the Sudamdih Colliery in May, 1960, even though it had not obtained the permission of the appropriate authorities.

We must, therefore, examine here the argument of Mr. Das that every colliery must be held to be exempted under sub-s. (4) of s. 4. We have already referred

(1) (1930) L.R. 58 I.A. 29. (2) 3rd Edn., Vol. 26, p. 630.

to s. 16 of the Mines Act, 1952, and regulation 7 of Mining Regulations, 1957. In addition, there is Regulation 3 of 1957 which requires that the notice contemplated by s. 16 should be submitted in Form I. No doubt the petitioner had given notice as required by these provisions. No doubt also that it was necessary for the authorities concerned to take appropriate action on the notice. But it is difficult to say that the inaction of the authorities can be availed of by the petitioner. We must give effect to the plain language of sub-s. (4) of s. 4. That provision in clear terms makes an exclusion or exemption only with regard to that portion of the land in which coal mining operations are actually being carried on in conformity with the provisions of any enactment, rule or order. Therefore, it is clear that Parliament was exempting only such collieries as were being worked in consonance with the provisions of law. Mr. Das's argument, however, is that the Act prescribes penalties for the breach of its provisions and of those of the regulations and so the petitioner could well be visited with an appropriate penalty but that its right to run the mine could not be affected. We are not here concerned with the question whether the failure of the petitioner to comply with the requirements of the Coal Mines Act or of the Regulations of 1957 precludes the petitioner under that Act or under those regulations from carrying on mining operations. We are concerned here only with one point, and that is whether the petitioner could be said in point of fact to have been carrying on mining operations in accordance with law. That the petitioner was not doing so is not even denied by Mr. Das and in the circumstances it is clear that the petitioner is not entitled to the benefit of sub-s. (4) of s. 4. We should have dealt with this part of Mr. Das's argument elsewhere but in order to avoid repetition we have thought it convenient to deal with it here.

Adverting to s. 6(1) of the Act which deals with compensation for any necessary damage done under s. 4 of the Act, learned counsel contended that Parliament plainly intended the Act to apply to virgin land.

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If the section was intended to apply to worked mines there would have been provision, according to learned counsel, for payment of compensation to the owner or lessee of the mine, for being deprived of his right to work the mine consequent upon the issue of the notification. It is sufficient to point out that s. 4 does not contemplate entering upon any land which is actually being worked and there will thus be no deprivation in fact of the owner's or lessee's right of working the mine. The Act applies only to "unworked lands". This expression would include not only virgin lands but also lands on which mines may have been opened and worked sometime in the past but working on those mines was either discontinued or abandoned. Of course, it is possible to say that the action of the Government would interfere with the potential right of the owner or the lessee to work the mines and this would interfere with his right to hold property and carry on his business. When we deal with the other part of Mr. Das's argument we shall deal with this question.

It was next contended that s. 7 which deals with the power of the Central Government to acquire land or rights in or over land notified under s. 4 also indicates the limited operation of the Act. Sub-section (1) of s. 7 runs thus:

> "If the Central Government is satisfied that coal is obtainable in the whole or any part of the land notified under sub-section (1) of section 4, it may, within a period of two years from the date of the said notification or within such further period not exceeding one year in the aggregate as the Central Government may specify in this behalf, by notification in the official Gazette, give notice of its intention to acquire the whole or any part of the land or of any rights in or over such land, as the case may be".

The argument was that in respect of mines which have already been worked at some time in the past all the relevant material would be at the disposal of the Government even previous to the issuing of a notification under sub-s. (1) of s. 4 and, therefore, there

could be no necessity for the Government to enter on and prospect the land for being satisfied that coal is obtainable therefrom. Therefore, the argument proceeds, the provision could not have been intended to apply to land other than virgin land. This is really a repetition of the argument which was addressed to us in connection with sub-s. (1) of s. 4 and what we have said with regard to that sub-section would equally apply here.

Sub-section (1) of s. 7 provides for a period of two years within which a notice of acquistion could be given by the Central Government. It is argued that this period is too long for keeping out an owner or lessee of land, the mines on which had been worked in the past and that Parliament could not have intended this effect. Therefore, the argument proceeds, this provision also points to the conclusion that the word "land" wherever it occurs in the Act should be read as virgin land. Prospecting operations are necessarily prolonged because what lies under the surface of land cannot be easily ascertained except by undertaking drilling or other appropriate operations at a number of places. Such operations are bound to be prolonged. Parliament apparently thought that it would be reasonable to allow a period of two years to the Government for carrying on the necessary operations and for making up its mind. The mere length of the period so allowed to the Government cannot be regarded as indicative of the intention of Parliament to give to the word 'land' the meaning 'virgin land'.

Reliance was placed on the explanation to sub-s. (1) of s. 8. That sub-section and the explanation are as follows:

> "Any person interested in any land in respect of which a notification under section 7 has been issued may, within thirty days of the issue of the notification, object to the acquisition of the whole or any part of the land or of any rights in or over such land.
>
> Explanation.—It shall not be an objection within the meaning of this section for any person to say

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that he himself desires to undertake mining operations in the land for the production of coal and that such operations should not be undertaken by the Central Government or by any other person".

It was argued that in the explanation the words used are "to undertake mining operations" and not "to carry on mining operations" and therefore the Act could not be intended to apply to worked mines. Here again the argument is similar to that advanced on the basis of cl. (b) of s. 5 and what we have said regarding it would equally apply here.

Adverting to s. 13 of the Act which deals with compensation for prospecting licences ceasing to have effect and rights under mining leases being acquired, it was contended that as there is no provision for compensation in respect of the minerals lying underground, Parliament could not be deemed to have enacted this law for the purpose of acquiring mines which have been worked in the past. According to Mr. Das if we have understood him right, when a person has acquired land either as an owner or as a lessee carrying with it the rights to win minerals and has opened in that land mines which he worked for sometime, there takes place a severance between the right to the surface and right to the minerals and that consequently such person will thereafter be holding the minerals as separate tenement, that is, something apart from the land demised and this separate tenement cannot be acquired under the terms of the present Act or, if it can be so acquired, it has to be specifically compensated for. Reference to the several provisions of the Act and in particular to those of s. 13 indicates, according to learned counsel, the limited scope of the Act. It is difficult to appreciate the contention that merely because the owner or the lessee of a land had opened mines on that land, a severance is effected between the surface and the underground minerals. It may be that a trespasser by adverse possession for the statutory period can acquire rights to underground minerals. It may also be that if that happens the surface rights would become severed from the mineral rights as a result of which the

minerals underground would form a separate tenement. It is, however, difficult to see how the owner or the lessee of land who has right to win minerals can effect such a severance between the mineral rights and surface rights by opening and operating the mines of that land. For, even while he is carrying on mining operations he continues to enjoy the surface rights also. We cannot, therefore, accept the contention that there was any severance of the mineral rights and surface rights in either of these two cases.

It is no doubt true that s. 13 does not make any specific provision for compensation in respect of minerals, but on the other hand it provides in the explanation to cl. (a) of sub-s. (5) that the value of minerals lying in the land shall not be taken into consideration in assessing compensation. Whether the absence of a provision for compensation would make the Act *ultra vires* in so far as it contemplates acquisition of land will be considered presently. We may, however, point out that the Act does not make provision for compensation for minerals in respect of even virgin land and the argument of Mr. Das would equally apply to such land. Therefore, no point can be made from the absence of a provision for compensation for minerals that the Act was applicable only to virgin lands. For all these reasons it is clear that the notification is not *ultra vires* the Act because, in our view the Act applies not only to virgin lands but also to dormant collieries or unworked lands.

To sum up, in our view, the preamble of this Act need not be resorted to for construing its provisions and in particular for understanding the meaning of the word "land" used in the Act; that even if the preamble is taken into consideration the expression "unworked land" occurring in the preamble should be given its ordinary meaning, that is to say, land which was not being worked at the time of the notification issued under the Act, which would include dormant mines; that the provisions of the Act and in particular those of sub-s. (4) of s. 4 and s. 5(b) clearly militate against the contention that the Act was intended to apply only to virgin lands, to the exclusion of land on

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which there are dormant mines, and that the absence of a provision in s. 13 of the Act providing for compensation for mineral rights cannot by itself justify the conclusion that the Act was intended to apply to virgin land only.

Now we come to the second part of the argument. It is contended that ss. 4, 5 and 6 invade the fundamental rights of the petitioner under Art. 19(1)(g) of the Constitution because under s. 5, a mining lease ceases to have effect for two years and possibly for three years. Mr. Das concedes that reasonable restrictions can be placed by the State upon the rights enumerated in this article in the interests of the general public but he contends that the period of two to three years is too long and, therefore, the restrictions cannot be regarded as reasonable. We have already indicated that prospecting operations, in their very nature, must take a long time to complete and presumably Parliament had fixed this period after bearing in mind this factor and also on the basis of expert advice. Of course, there are no pleadings to that effect in the affidavit of the State. But in our opinion the petitioner cannot be permitted to complain of the absence of pleadings because it has not itself stated in the petition what would be reasonable time for conducting prospecting operations. We are, therefore, unable to accede to the argument.

The next attack, and that is a more formidable one, is based upon the ground that the Act does not contain any provision for compensation for the deprivation of the petitioner's right to carry on its business for two to three years and that consequently one of its fundamental rights is infringed. It is no doubt true that in s. 13(4) which deals with the question of compensation there is no provision for payment of compensation for the deprivation of the right of a mine owner or a lessee to carry on his business for a period of two or three years, but the petitioner cannot complain about it. In Art. 31A, cl. (1), sub-cl. (e), of the Constitution, which was inserted by the Constitution First Amendment Act, 1951, it is provided that "notwithstanding anything contained in Art. 13, no

law providing for.....the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Art. 14, Art. 19 or Art 31." Then follows a proviso with which we are not concerned. The effect of a notification under s. 4(1) of the Act read with s. 5(b) is to prevent an owner or lessee of a mine from working his mine for a certain period of time. His rights are thus modified by the notification. According to Mr. Das, however, the effect of the notification is to suspend the rights of a mine-owner or lessee of the mine for a certain period and that such suspension is not modification. In this connection he relied upon the observations of Mahajan, J., (as he then was), in *Thakur Raghbir Singh* v. *Court of Wards, Ajmer* (1). That was a case where, in connection with a notification issued under the Court of Wards Act, the learned Judge observed that the word "modification" used in the aforesaid provision of the Constitution does not include suspension of a right. The observations made in that case fell for consideration by this Court in *Sri Ram Ram Narain Medhi* v. *The State of Bombay* (2) and *Atma Ram* v. *The State of Punjab and Ors.* (3). Explaining them this Court observed in the latter case:

> "Those observations must be strictly limited to the facts of the case, and cannot possibly be extended to the provisions of Acts wholly dissimilar to those of the Ajmer Tenancy and Land Records Act, XLII of 1950, which was the subject-matter of the challenge in the case then before this Court. This Court held, on a construction of the provision of that Act, that they only suspended the right of management but did not amount to any extinquishment or modification of any proprietary rights

(1) [1953] S.C.R. 1049, 1053. (2) [1959] Supp. 1 S.C.R. 489, 519
(3) [1959] Supp. 1 S.C.R. 748, 767.

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in an estate. The provisions of the Act then under consideration of this Court, have absolutely no resemblance to those of the Act now before us, and it is impossible to put a similar interpretation on these provisions. In the recent decision of this Court (not yet reported) this Court had been invited to apply the observations of this Court referred to above, to the provisions of the Bombay Act. It was pointed out in that case that those observations of Mahajan, J., (as he then was), must be read as limited to an Act which only brings about a suspension of the right of management of an estate, and could not be extended to the provisions of an Act which either extinguishes or modifies certain rights of a proprietor in an estate or a portion thereof".

This Court did not intend to lay down as law in *Thakur Raghbir Singh* v. *Court of Wards, Ajmer* (1) that Art. 31A(i)(e) is inapplicable to a case where the property rights of a person are kept in abeyance for a certain period. The meaning of the word "modify" fell to be considered, *in re The Delhi Laws Act, 1912* (2). As pointed out in the opinion of Kania, C. J., the word "modify" means, according to Oxford Dictionary, "to limit, restrain, to assuage, to make less severe, rigorous, or decisive; to tone down". It also means "to make partial changes in; to alter without radical transformation". In Rowland Burrows' "Words and Phrases", the word "modify" has, however, been defined as meaning "vary, extend or enlarge, limit or restrict". According to the learned Chief Justice "It has been held that modification implies an alteration. It may narrow or enlarge the provisions of the former Act".

Bearing in mind the principle that a constitutional enactment must be construed liberally we would be right in according the dictionary meaning to the word "modification" occurring in the aforesaid provision. Mr. Das, however, contends that for a thing to amount to a modification of a right it must be of a permanent character and not of a temporary duration. We see no ground whatsoever for holding that for a

(1) [1953] S.C.R. 1049, 1053. (2) [1951] S.C.R. 793-4.

thing to be a modification it must be of a permanent duration. A right may well be modified for all time or for a limited duration and in either case the right must be regarded as having been modified. For these reasons we hold that the provisions of Art. 31A, cl. (1)(e), debar the petitioners from challenging the validity of ss. 4 and 5 of the Act on the ground that they infringe the provisions of Art. 31(2) of the Constitution.

What remains to be considered is whether the provisions permitting acquisition of land are *ultra vires* the Constitution because they offend Art. 31(2) of the Constitution. According to the learned Attorney-General the petitioners have no present grievance on that score because the notification in question empowers the State only to prospect for coal in the petitioner's land and not to acquire it. We cannot accept this contention. The whole object of Parliament in enacting the law was to empower the State to acquire coal bearing lands. Prospecting on a piece of land for coal is merely a stage preceding the actual acquisition of that land. If, therefore, those provisions of the law which deal with the question of acquisition are unconstitutional the whole Act will be rendered unconstitutional.

Article 31(2) of the Constitution, as amended by the Fourth Amendment Act, 1955, runs thus:

> "No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate".

Mr. Das pointed out that s. 13 of the Act, though it deals with the payment of compensation, does not contain any provision for payment of compensation for mineral rights. Not only that, but the explanation to cl. (a) of s. 5 clearly lays down that in computing the

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compensation for the land the value of minerals will not be taken into account. The acquisition of mineral rights would, therefore, according to him, be impermissible under Art. 31(2) without payment of compensation. The learned Attorney-General quite rightly pointed out that s. 13 deals with the whole subject of payment of compensation to the owner or lessee of the mine for his entire interest in the land including the rights to minerals and even though that section specifically says that the value of the minerals cannot be taken into account in determining the amount of compensation, the concluding words of Art. 31(2) preclude the petitioners from challenging the law. Mr. Das pointed out that the only ground on which the Central Government in their affidavit have tried to sustain the validity of the provisions relating to the acquisition of land under the Act is that a challenge to the validity of the law is barred by the provisions of Art. 31A(1)(e) and that it is not now open to the Central Government to say that the law can be sustained on another ground. We cannot accept this contention. Where the validity of a law made by a competent legislature is challenged in a Court of law that Court is bound to presume in favour of its validity. Further, while considering the validity of the law the court will not consider itself restricted to the pleadings of the State and would be free to satisfy itself whether under any provision of the Constitution the law can be sustained. There is no doubt that the entire Act cannot be sustained by resorting only to Art. 31A(1)(e) or to Art. 31(2A) of the Constitution because these provisions do not deal with the question of acquisition and the Attorney-General fairly admitted that it could not be so sustained. The opening words of sub-s. (2) of s. 13 read thus:

> "Where the rights under a mining lease are acquired under this Act, there shall be paid to the person interested compensation, the amount of which shall be a sum made up of the following items, namely,.....".

Then follow the items which have to be added up. Undoubtedly they are items of expenditure and

interest on such expenditure. Sub-section (3) deals with the procedure to be adopted where the rights acquired under s. 9 relate only to part of the land covered by the mining lease. Sub-section (4) deals with the compensation to be paid where the mining lease ceases to have effect for any period under cl. (b) of s. 5. Sub-section (5) provides for payment of compensation for any land acquired under s. 9 and lays down the principles to be followed in computing the compensation. Sub-section (6) provides for payment of compensation for damage done to the surface of any land or any works thereon and in respect whereof no provision for compensation is made elsewhere in the Act. Sub-section (7) deals with the question of compensation for maps, charts and other documents. Section 14 of the Act deals with the method of determining the compensation. It will be clear from these provisions that the Act specifies the principles on which and the manner in which the compensation should be determined and given. This is all that is required of a law relating to the acquisition of property by Art. 31(2) of the Constitution. Where provisions of this kind exist in a law that Article lays down that such law cannot be called in question in any court on the ground that the compensation provided by that law is not adequate. Here compensation is specifically provided for the land which is to be acquired under the Act. The land includes all that lies beneath the surface or, as Mr. Das put it, all that is "locked up" in the land. Parliament has laid down in sub-s. (5) of s. 13 how the value of this land is to be calculated. The contention that the provisions made by Parliament for computing the amount of compensation for the land do not take into account the value of the minerals is in effect a challenge to the adequacy of the compensation payable under the Act. The concluding words of Art. 31(2) preclude such a challenge being made.

But Mr. Das contended that the minerals are separate tenement and have to be separately compensated for. We have already dealt with the contention of Mr. Das that the minerals underlying the surface are a separate tenement and we need not repeat here all

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that we have said before. In our opinion the minerals cannot be regarded as a separate tenement except perhaps in a case of a trespass and, therefore, there is no question of the law providing for a separate compensation for them. Apart from that if minerals have become a separate tenement then the present Act may not apply to such a tenement at all. As we have pointed out the coal contained in the two collieries in question is not held by the respective petitioners as a tenement separate from the surface. In the circumstances the challenge to the validity of the Act on the ground that it offends Art. 31(2) of the Constitution fails, and we dismiss the petition with costs.

We must say a few words about W. P. 242 of 1960. Out of 737 bighas of land held by the petitioner in that writ petition, we are informed that 321 bighas have been worked. The working of this mine was closed in the year 1928 on the ground that the mine was flooded. An application was made by the petitioner for reopening the mine on June 5, 1957. Repeated reminders were sent subsequently but there was no reply to any of them either. In its application the petitioner, it may be stated, did not apply for opening new mines. Since the necessary permission was not received, it did not commence any operations. We are informed that over a million tons of coal was extracted by the petitioner from its colliery in the past. Even so, we do not think that any different considerations could apply to the petitioner's case from those which apply to the case of the Burrakar Coal Co. The petitioner's colliery was also dormant for too long a period and was thus an "unworked mine". The impugned Act and the notification made thereunder both apply to it in the same way as they apply to the Sudamdih colliery belonging to Burrakur Coal Co., Ltd. The writ petition thus fails and is dismissed with costs.

Cost of the hearing be paid half and half by the two petitioners. There will be only one hearing fee, to be divided equally between the two petitioners.

Petitions dismissed.