appellant's possession was illegal and the first respondent was entitled to possession of the bungalow. The City Civil Judge confirmed the order of the nominee of the Registrar.

3. Against the order of the City Civil Judge, the appellant preferred an appeal. In the appeal appellant contended that he was entitled to preference over the first respondent. He also submitted that between the other allottees viz. respondents 3, 4, 5, 7, 8, 9 and 10, he must be preferred and should be given one of the bungalows. The High Court while setting out the five contentions, did not go into the actual point for determination. It confirmed the finding of the City Civil Court that the first respondent is entitled to priority over the appellant but the question as to whether the appellant would be entitled to a bungalow in preference to the other respondents was not considered. The question has to be decided by the High Court. The matter is remitted to the High Court. The High Court will see that all the respondents to whom the houses were allotted are parties in the proceedings before it, if they are not the High Court will implead them and decide the question as to whether the appellant is entitled to preference over the other respondents. So far as the order of the High Court relating to the first respondent is concerned, it is confirmed.

4. The appellant is granted six months' time to give vacant possession to the first respondent. In view of the short time given for vacating the bungalow, the High Court will expedite the matter.

5. The appellant will file an affidavit in this Court within six weeks from today undertaking not to induct any other person in the bungalow or in any way hamper the first respondent taking possession thereof at the expiry of six months' time granted.

6. The appeal is allowed to the extent indicated above, with no order as to costs.

(1980) 4 Supreme Court Cases 556

(BEFORE D. A. DESAI AND R. S. PATHAK, JJ.)

SMT. RUKMANIBAI GUPTA .. Appellant;

Versus

COLLECTOR, JABALPUR AND OTHERS .. Respondents.

Civil Appeal No. 195 of 1970, decided on October 22, 1980

Arbitration Act, 1940 (10 of 1940) — Sections 2(a) & (b), 32 and 33 — Clause in government contract providing for reference of any doubt, difference or dispute to the lessor-State for final decision, held, amounts to arbitration clause — Hence, award given by the lessor in this connection is open to challenge under Arbitration Act only and writ jurisdiction under Article 226 is barred — Moreover, writ jurisdiction cannot be invoked to avoid contractual obligation voluntarily incurred — Constitution of India, Article 226

Contract to grant quarry lease to the appellant under the relevant Minor Mineral Rules was executed by the lessor-State and the appellant in accordance with Article 299. Clause 15 of the indenture of the lease provided:

Whenever any doubt, difference or dispute shall hereafter arise touching the construction of these presents or anything herein contained or any matter or things connected with the said lands or the working or non-working thereof or the amount or payment of any rent or royalty reserved or made payable hereunder in the matter in difference shall be decided by the lessor whose decision shall be final.

Dispute arose between the appellant and the State in respect of assessment of royalty in respect of limestone quarried by the appellant and therefore, the appellant made a representation as contemplated by Clause 15. The State after complying with the principles of natural justice passed the impugned order assessing the royalty payable by the appellant. Pursuant to this order a demand notice was issued which was challenged by the appellant by a writ petition filed under Article 226. The High Court dismissed the petition on the ground that Clause 15 spelt out an arbitration agreement and the decision given by the lessor in the matter being an award could not be questioned under Article 226. Dismissing the appeal the Supreme Court

Held :

Arbitration agreement is not required to be in any particular form. What is required to be ascertained is whether the parties have agreed that if disputes arise between them in respect of the subject-matter of contract such dispute shall be referred to arbitration, then such an arrangement would spell out an arbitration agreement. (Para 6)

The lease in this case had been executed in accordance with Article 299. Therefore, the lessor was the Governor. Clause 15 read as a whole provided for referring future disputes to the arbitration of the Governor, whose decision was declared final. Thus on a true construction the clause spelt out an arbitration agreement. Here there was no question of the clause providing for a departmental appellate forum by the terms of the lease. The decision of the Governor was an award. (Paras 6 and 7)

S. N. Sunderson & Co. v. *Collector of Jabalpur,* Misc. Petition No. 509 of 1965, decided on August 4, 1969, *approved*

Chief Conservator of Forests v. *Rattan Singh,* 1966 Supp SCR 158 : AIR 1967 SC 166, *relied on*

The Arbitration Act, 1940 is a self-contained and exhaustive code. Relief sought by the appellant by involving extraordinary jurisdiction of the High Court under Article 226 could have been obtained by proceeding in accordance with the relevant provisions of the Arbitration Act. Further the indenture of lease constitutes a contract between the parties. Right to excavate limestone from leased area and obligation to pay royalty under the relevant Minor Mineral Rules arise from the contract. The contract provided for resolution of dispute arising out of the carrying out of contract. The writ jurisdiction of the High Court under Article 226 of the Constitution is not intended to facilitate avoidance of obligation voluntarily incurred. Therefore, the High Court was justified in declining to entertain the writ petition. (Paras 10 and 11)

Har Shankar v. *Dy. Excise & Taxation Commr.,* (1975) 1 SCC 737 : (1975) 3 SCR 254 : 1975 Tax LR 1569, *referred to*

The Judgment of the Court was delivered by

Desai, J.—This appeal by certificate under Article 133(1)(*b*) and (*c*) of the Constitution arises from a writ petition filed by the appellant in the High Court in which her motion for a writ of certiorari to quash an order No. K/MM/65 dated November 4, 1965, issued by the Mining Officer, Jabalpur, respondent 6, for and on behalf of Collector, Jabalpur, respondent 1, and a prayer for a writ of mandamus seeking to restrain the State of Madhya Pradesh and its officers and servants from recovering the amount involved in the writ petition, were negatived.

2. A brief resume of facts would help in focusing attention on the dispute involved in this appeal. Appellant applied for and obtained a quarry lease for excavating limestone in an area covering 25·32 acres in Jabalpur District, under the relevant Minor Mineral Rules then in force. The lease was executed by the appellant and the State of Madhya Pradesh on June 26, 1961. Madhya Pradesh Minor Mineral Rules, 1961 ('1961 Rules' for short), came into force with effect from August 11, 1961. By virtue of Rule 24 of 1961 Rules the royalty in respect of quarry leases was regulated as set out in the schedule annexed to the Rules. In respect of limestone for which appellant had obtained a lease, the provision in the First Schedule with regard to rate of royalty was, 10 per cent of the sale value at the pit's mouth subject to a minimum of 50 naye paise per ton for limestone, 75 naye paise per ton for slaked lime and Re. 1 per ton for unslaked lime. As per Clause 3 of the indenture of lease royalty at the aforementioned rate was payable half-yearly, i.e. on March 15 and September 15 in each year. Clause 5 made it obligatory for the lessee to keep correct and intelligible books of accounts showing accurately the quantity of mineral extracted, the weight and value of minerals sold and exported together with name of purchasers or consignees and there was a further obligation to submit certain statements to the Deputy Commissioner at Jabalpur on dates prescribed therein. Appellant was served with a memo bearing No. 2/MA/62 dated September 20/21, 1962, assessing the royalty in respect of limestone quarried by the appellant and demanding a sum of Rs. 35,313·58 p. as arrears of royalty. On receipt of this memo appellant made a representation as contemplated by Clause 15 of the indenture of lease. As this clause spells out an arbitration agreement between the parties it may be reproduced in extenso :

> 15. Whenever any doubt, difference or dispute shall hereafter arise touching the construction of these presents or anything herein contained or any matter or things connected with the said lands or the working or non-working thereof or the amount or payment of any rent or royalty reserved or made payable hereunder in the matter in difference shall be decided by the lessor whose decision shall be final.

A hearing was given by Secretary to Government, Department of Natural Resources, Bhopal, respondent 4, where appellant appeared with her advocate Shri P. V. Lele. Respondent 4 by his minutes dated July 5, 1965, held that the appellant had no objection to the assessment of royalty for the period from January 1, 1958 to June 30, 1961, and the only objection raised was against the assessment for the period July 1, 1961 to December 31, 1961. After setting out the objections raised by learned Advocate of the appellant, respondent 4 directed the Mining Officer to recheck the sales for this period and report by the next day. After report of the Mining Officer was received, the appellant was again heard by respondent 4 and he passed the impugned order assessing the royalty payable by the appellant. Pursuant

to this order respondent 6 for and on behalf of Collector, Jabalpur issued a demand notice dated November 4, 1965. Appellant thereupon filed the writ petition questioning the legality and validity of the impugned demand notice.

3. A return was filed on behalf of the respondent, contending, inter alia, that since the execution of the indenture of lease both by the appellant and the State of Madhya Pradesh, the 1961 Rules have come into force with the result that by virtue of Rule 24 the rates of royalty in respect of even existing leases would be governed by the rates set out in the Schedule to the Rules. It was also contended that Clause 15 of the lease spells out an arbitration agreement and as the appellant submitted to the arbitration, the decision of respondent 4 is an award and the same cannot be questioned by way of a writ petition. It was further contended that if appellant had any grievance about the award given by respondent 4 it was open to her to take recourse to proceedings under the Arbitration Act, 1940, and a writ petition under Article 226 of the Constitution cannot be entertained by the court and, therefore, the petition is liable to be dismissed.

4. The High Court dismissed the writ petition following its earlier decision in *S. N. Sunderson & Co.* v. *Collector of Jabalpur*[1], wherein an identical clause in a mining lease came for consideration of the High Court and in respect of which the High Court was of the opinion that it spelt out an arbitration agreement and where a representation is made as envisaged by the arbitration agreement it was a submission to the arbitration and any decision given by the person to whom the submission is made would be an award of an arbitrator and such an award cannot be questioned by way of writ petition under Article 226. Hence this appeal.

5. The first question is whether Clause 15 which we have extracted above spells out an arbitration agreement between the parties. A quarry lease is granted under the relevant Minor Mineral Rules by the State Government. The State is thus the lessor and the one who takes the quarry lease is the lessee. As required by Article 299 of the Constitution, all contracts made in exercise of the executive power of the State shall be expressed to be made by the Governor of the State and shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorise. Lease has been accordingly executed. It is thus a contract. This contract incorporates Clause 15 which we have extracted hereinabove.

6. Does Clause 15 spell out an arbitration agreement? Section 2(*a*) of the Arbitration Act, 1940, defines 'arbitration agreement' to mean a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not. Clause 15 provides that any doubt, difference or dispute, arising after the execution of the lease deed touching the construction of the terms of the lease deed or anything therein contained or any matter or things connected with the said lands or the working or non-working thereof or the amount or payment of any rent or royalty reserved or made payable thereunder, the matter in difference shall be decided by the lessor whose decision shall be final. The reference has to be made to the lessor and the lessor is the Governor. His decision is declared final by the terms of the contract. His decision has to be in respect of a dispute

1. Miscellaneous Petition No. 509 of 1965, decided on August 4, 1969 (MP HC)

or difference that may arise either touching the construction of the terms of the lease deed or disputes or differences arising out of the working or non-working of the lease or any dispute about the payment of rent or royalty payable under the lease deed. Therefore, Clause 15 read as a whole provides for referring future disputes to the arbitration of the Governor. Arbitration agreement is not required to be in any particular form. What is required to be ascertained is whether the parties have agreed that if disputes arise between them in respect of the subject-matter of contract such dispute shall be referred to arbitration, then such an arrangement would spell out an arbitration agreement. A passage from RUSSELL ON ARBITRATION, 19th Edn., p. 59, may be referred to with advantage :

> If it appears from the terms of the agreement by which a matter is submitted to a person's decision that the intention of the parties was that he should hold an inquiry in the nature of a judicial inquiry and hear the respective cases of the parties and decide upon evidence laid before him, then the case is one of an arbitration.

In the clause under discussion there is a provision for referring the disputes to the lessor and the decision of the lessor is made final. On its true construction it spells out an arbitration agreement.

7. A feeble attempt was made to contend that Clause 15 provides a departmental appeal but does not provide for resolution of dispute by arbitration. There was no question of providing for an appellate forum by the terms of the lease. On the contrary, the language of Clause 15 leaves no room for doubt that it spells out an arbitration agreement. In this connection reference may be made to *Chief Conservator of Forests* v. *Rattan Singh*[2], where an identical clause in a forest contract entered into between the forest contractor and the Governor of Madhya Pradesh came in for consideration. Relevant clause was as under :

> 9. In the event of any doubt or dispute arising between the parties as to the interpretation of any of the conditions of this contract or as to the performance or breach thereof, the matter shall be referred to the Chief Conservator of Forests, Madhya Pradesh, Nagpur, whose decision shall be final and binding on the parties hereto.

This Court, interpreting this clause, held that it spells out an arbitration agreement and it confers authority on the Chief Conservator of Forests to adjudicate upon disputes, inter alia, as to the performance or breach of the contract. Apart from this, appellant herself has unreservedly accepted Clause 15 spelling out an arbitration agreement. In para 10 of her submission to respondent 4 it was stated as under :

> 10. That as laid down in Clause 15 of lease deed read with Rule 50(XVI) of the Mining Manual substantial dispute and difference arise touching the construction of these presents of lease deed on the question of payment of royalty. The matter in dispute is, therefore, being referred to State Government for decision.

We, therefore, need not dilate on this aspect any more and hold in agreement with the High Court that Clause 15 spells out an arbitration agreement.

8. There is no dispute between the parties that adequate hearing was

2. 1966 Supp SCR 158 : AIR 1967 SC 166

given to the appellant. Appellant was represented before respondent 4, the arbitrator, by her Advocate Shri P. V. Lele and her agent Shri L. P. Choubey. After noting the admission and objection raised on behalf of the appellant by her advocate and agent, fresh calculations were called for by respondent 4 from respondent 6 the officer in charge of royalty accounts. In fact, the dispute was considerably narrowed down because appellant through her advocate in terms admitted that there was no dispute about the calculations of royalty for the period from January 1, 1958 to June 30, 1961, and the dispute was only with regard to the calculations from July 1, 1961 to December 31, 1961. Some attempt was made by the appellant to go back upon the admission recorded in the order made by respondent 4, but the High Court discouraged the attempt. And with regard to the difference in the calculations of royalty for a period of six months not only fresh calculations were called for from the Mining Officer but thereafter a further hearing was given to the appellant and an award was made. Therefore, the arbitrator has acted in accordance with the principles of natural justice.

9. If respondent 4 was an arbitrator and his decision an award, the next question is whether such an award can be questioned by way of a writ petition in the High Court.

10. Arbitration Act, 1940, is a self-contained and exhaustive code. It provides for filing arbitration agreement to the jurisdiction of court, appointment and removal of arbitrator by court, making award a rule of court, remitting or setting aside an award, etc. Where the arbitrator has made an award it can be questioned under Section 33. Section 32 bars a suit on any ground whatsoever for contesting an award and further provides that no award shall be enforced, set aside, amended, modified or in any way affected otherwise than as provided in the Arbitration Act itself. Thus, Arbitration Act, 1940, is a self-contained exhaustive code. Relief sought by the appellant by involving extraordinary jurisdiction of the High Court under Article 226 could have been obtained by proceeding in accordance with the relevant provisions of the Arbitration Act. In this situation, if the High Court declined to entertain the writ petition, no exception can be taken to it. Further the indenture of lease constitutes a contract between the parties. Right to excavate limestone from leased area and obligation to pay royalty under the relevant Minor Mineral Rules arise from the contract. The contract provided for resolution of dispute arising out of the carrying out of contract. The writ jurisdiction of the High Court under Article 226 of the Constitution is not intended to facilitate avoidance of obligation voluntarily incurred. (see *Har Shankar* v. *Dy. Excise & Taxation Commissioner*[3])

11. The High Court, in our opinion, therefore, rightly declined to entertain the writ petition. This appeal must accordingly be dismissed but in the circumstances of the case, with no order as to costs.

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3. (1975) 3 SCR 254 : (1975) 1 SCC 737 : 1975 Tax LR 1569