State of Andhra Pradesh

Vs

Duvvuru Balarami Reddy

Civil Appeal No. 252 and 253 of 1958

(CJI B. P. Sinha, T. L. Venkatarama Ayyar, P. B. Gajendragadkar, K. N. Wanchoo, N. Rajgopala Ayyangar JJ)

02.04.1962

JUDGMENT

WANCHOO, J. -

These are two connected appeals arising out of the same judgment of the Andhra Pradesh High Court. The main appeal No. 252 is by the State of Andhra Pradesh while the other appeal No. 253 is by Duvvuru Balarami Reddy and others. We shall dispose of them by this common judgment and will hereinafter refer to the State of Andhra Pradesh as the appellant and Duvvuru Balarami Reddy and others at the respondents. The brief facts necessary for present are these. The respondents had filed a writ petition for the issue of writ petition for the issue of a writ in the nature of mendamus or any other appropriate writ directing the appellant to give permission to the respondents to carry on mica mining operations in survey No. 49/1 in the village of Ananthamadugu in Rapur Taluk of Nellore district subject to the respondents executing as agreement in the manner provided under the Mineral Concession Rules, 1949 (hereinafter referred to as the rules) and conforming to the conditions mentioned therein. The case of the respondents was that they had obtained leases for mica mining purposes from various co-owners in the shrotriem village of Ananthamadugu on March 24, 1952. Thereafter on May 27, 1953, this village was notified under the Madras Estates (Abolition and Conversion into Ryotwari) Act, No. XXVI of 1948, (hereinafter referred to as the Act) and the interests of the shrotriem owners was taken over by the appellant. The leases granted to the respondents were for a period of one year and one of the terms provided that the lessors were bound to extend and renew the period of lease for such period as may be desired by the lessess subject to the Rules. After the estate was taken over, the question arose whether the leases were enforceable against the Government under section 20(1) of the Act. In November 1953, the Manager of Estates, appointed on behalf of the Government, held that the leases were enforceable against the Government. This order was confirmed by the Collector of Nellore. Thereupon there was a revision petition by one of the co-owners of the shrotriem who was not a party to the leases before the Board of Revenue. The respondents also applied to the Government for permission to work the mines. The Government however did not grant such permission. The respondents contended that the Government had no right to withheld permission to work the mines. Therefore, the writ petition was filed asking for the issue of a writ in the nature of mandamus or any other appropriate writ directing the appellant to give permission to the respondents to carry on mica mining in accordance with the leases.

The petition was opposed on behalf of the appellant and the main contention on its behalf was that the village in question being a shrotriem inam village there was no presumption that the inam grant included the grant of sub-soil rights also to the shrotriemdars. Therefore, the respondents could not

claim any rights higher than these of their lessors. In effect, the appellant had contended that the lessors had no rights to the minerals and therefore the leases even if not void within the meaning of section 20 of the Act would not confer any rights on the respondents to claim as a matter of right the grant of permission to work the mines from the appellant and that it was entirely within the discretion of the State whether to grant a mining lease or not in accordance with the Rules. It was also stated in that the revision filed before the Board of Revenue had been stayed as the points raised before the Board were covered by the questions involved in the writ petition.

On these pleadings the main question that arose for decision was whether the shrotriemdars had any rights in the minerals at all and were entitled to grant lease thereof. If the shrotriemdars had no right in the minerals the grant of lease by them would be of no value and would not entitle the respondents to claim a mining lease under the Rules from the appellant as a matter of right.

The learned Single Judge who heard the writ petition came to the conclusion that there was nothing to show that the inam grant in the present case covered the right to minerals. In consequences, it was held that the respondents did not get any rights under the said leases to the minerals. The learned Judge then considered the other points raised in the petition with which we are however not concerned and eventually dismissed it.

The respondents went in appeal to a Division Bench of the High Court, and the appeal court seems to have held on a review of the various standing orders of the Board of Revenue of the composite State of Madras that the State was only entitled to impose a royalty on minerals taken out by the shrotriem inamdar. It was pointed out that this seemed to be in accordance with commonsense as the "grantee is entitled to the surface rights and the grantor to the sub-soil rights and as the latter rights can only be exercised by entering upon the surface, it is only natural and just that they should share what is produced by working the mine, since one cannot enter upon the land, as he has no right to do so and the other cannot work the mine, as he has no right to the land". This would seem to suggest that the appeal court held that the sub-soil rights belonged to the State and not to the inamdars; but because of the difficulty that arose on account of the surface rights being in the inamdar and sub-soil rights being in the State, it apparently held that the inamdar and the Government should share what is produced by working the mine. Finally, however, the appeal court dismissed the appeal on the ground that the period of one year for which the leases had been granted had expired and the period of renewal which the respondents could get under the Rules also had expired before the decision of the appeal court. It relied in this connection on the decision of this Court in K. N. Guruswamy v. The State of Mysore ([1955] 1 S.C.R. 305) : but as the respondents had failed on account of the expiry of time they were allowed their costs.

This was followed by an application by the State for a certificate which was granted, and that in how the State's appeal has come up before us. As for the appeal by special leave by the respondents, they contend that the decision being in their favour on the merits, the High Court should have ordered the State to grant them a lease even though the period fixed in the original leases and the period of renewal permissible under the Rules had expired.

The main question therefore that fails for decision in these appeals is whether shrotriemdars can be said to have rights in the minerals. This matter has been the subject of consideration by the Madras High Court on a number of occasions and eventually the controversy was set at rest by the decision of the Judicial Committee in Secretary of State for India in Council v. Srinivasa Chariar ((1920) L.R. 48 I.A. 56.). That case came on appeal to the Judicial Committee from the decision of the Madras High Court in the Secretary of State for India in Council v. Sreenivasa Chariar ((1917)

I.L.R. 40 Mad. 268.). The controversy before the Madras High Court was with respect to a shrotriem inam which was granted by the Nawab of Carnatic in 1750 and had been enfranchised by the British Government in 1862. The inamdar started quarrying stones in the land granted to him and the Government claimed that it had a right to levy royalty or seigniorage fee on stones quarried by the inamdar. The inamdar contended on the other hand that an enfranchised inam was exactly in the same position as a Zamindari estate under the permanent settlement and that he was entitled to the entire sub-soil rights and the Government was not entitled to levy royalty or seigniorage fee on stones quarried by him. The High Court held that under the terms of the grant, the grantor conveyed all that the grantor had in the soil including sub-soil rights and therefore it was not open to the Government to levy any royalty or seigniorage fee on stones quarried by the inamdar. In effect, the decision of the High Court negatived the claim of the Government to sub-soil rights, for the Government could only levy royalty or seigniorage fee if it had sub-soil rights and the inamdar had no such rights.

This decision was taken in appeal to the Judicial Committee as already indicated above, and the controversy between the parties was that the inamdar claimed a decree establishing his full rights to the said village to the rocks and hills within its boundaries. The State on the other hand while admitting that there had been a inam grant of the village to the inamdar contended that there was no conveyance of the rights to minerals in the village. The Judicial Committee held that the grant of a village in inam might be no more that an assignment of revenue, and even where there was included a grant of land, what interest in the land passed must depend on the language of the instrument and the circumstances of each case. The Judicial Committee also considered the standing orders of the Board of Revenue of 1890 and 1907 which have been referred to by the appeal court in the judgment under appeal. This decision thus establishes that the mere fact that a person is the holder of an inam grant would not by itself be enough to establish that the inam grant included the grant of sub-soil rights in addition to the surface rights and that the grant of sub-soil rights would depend upon the language used in the grant. If there are no words in the grant from which the grant of sub-soil rights can be properly inferred the inam grant would only convey the surface rights to the grantee, and the inam grant could not by itself be equated to a complete transfer for value of all that was in the grantor. In particular, the Judicial Committee stressed the use of the words "the produce of the seasons each year" used in the grant show that only the surface rights were granted in that case.

It is not disputed that eversince the decision of the Judicial Committee in Srinivasa Chariar's case ((1920) L.R. 48 I.A. 56.) that has been the law with respect to sub-soil rights of inamdars as distinct from Zamindars under the permanent settlement. The Boards standing orders of 1890 and 1907 to which the appeal court has referred in its judgment were also considered by the Judicial Committee and it is now too late in the day to use them to find out the rights of the inamdars and the Government in the minerals under the soil. As the decision of the Judicial Committee shows, the standing orders of the Boards of Revenue themselves show how the views of the Government changed from time to time on this question. The older view seems to have been that the sub-soil rights were in the inamdars but from 1907 at any rate the Government has taken the view that sub-soil rights are in the Government unless there is anything in the grant to the contrary. It is this later view which was upheld by the Judicial Committee in Srinivasa Chariar's case ((1920) L.R. 48 I.A. 56.) and this view has ever since prevailed as to the rights of the Government in the minerals under the soil in the case of inams. We are unable to see how this decision as the rights of the Government to the minerals under the soil can be distinguished on the ground that the decision dealt only with the question of royalty. It is obvious that the Government could charge royalty only if it had the right to the minerals under the soil and not the inamdars. What therefore we have to see is whether

on the terms of the grant in this case the shrotriemdars can be said to have been granted the sub-soil rights also.

So far as this matter is concerned, there does not seem to have been a serious controversy in the High Court and it does not appear that the respondents contended that under the terms of the grant to the shrotriemdars the latter were entitled to sub-soil rights. We have already referred to that part of the judgment of the appeal court which suggests that even the appeal court was of the view that the sub-soil rights were in the Government in this case and the surface rights were in the shrotriemdars. The original grant is not available and all that we have is the inam fair register of 1861 and all that is stated in that register is that the grant is for the personal advantage of the holder. There is nothing therefore in the inam fair register to show that the grant included the grant of sub-soil rights.

It is however urged on behalf of the respondents that the grant included Poramboke, and from the fact that Poramboke was also included it should be inferred that mere surface rights were not the subject-matter of the grant. Reliance in this connection has been placed on the decision of the Judicial Committee in Secretary of State v. Krishna Rao. ((1945) L.R. 72 I.A. 211.). The dispute in that case related to levy of water cess under the Madras Irrigation Cess Act, (No. 7 of 1865). The Judicial Committee pointed out that the inam grant is that case included not only dry, wet and garden land but also poramboke i.e. unculturable land. This was held to indicate that full proprietary rights were granted and therefore the Government could not charge any water cess. It is urged for the respondents that this case shows that where Poramboke is also granted, the grantee gets all the rights including the sub-soil rights in full proprietorship. It should however be remembered that the dispute in that case was whether the inamdar was entitled to free irrigation from water sources lying in the shrotiem village by virtue of the grant of whether the grantor could levy a cess under the Madras Irrigation Cess Act. There was no dispute as to the sub-soil rights in that case, the dispute being confined to surface rights relating to water. The Government contended in that case that the grant to the inamdar was only of the melvaram or the right of the revenue from the lands, while the respondent's contention was that the grant carried not only melvaram but also the proprietary interest in the land itself and therefore the Government had no right to levy the irrigation cess. It was in that connection that the Judicial Committee held that the grant of poramboke i.e. unculturable land, was one of the factors that indicated that it was not a mere grant of melvaram but full proprietary right. It is remarkable however that though the Judicial Committee came to the conclusion in that case that full proprietary right had been granted, it referred to the earlier decision in Srinivasa Chariar's case during the course of the judgment. This later decision therefore in our opinion cannot be read in such a way as to lay down that wherever poramboke is included in the inam grant, a presumption must be drawn that the inam grant included sub-soil rights also; all that may be possible to infer by the inclusion of poramboke on the basis of this decision is that all the surface rights were granted and not merely the melvaram as was contended in that case. The face therefore that in the inam fair register in this case the grant includes poramboke would not by itself establish that sub-soil rights were also included in the grant. So far as sub-soil rights are concerned, they can only pass to the grantee if they are conferred as such by the grant or if it can be inferred from the grant that sub-soil rights were also included therein. We have already remarked that the original grant in this case is not available and we have only the inam fair register to go by. There can be no doubt therefore on the facts of this case that the learned Single Judge was right in holding that the grant of sub-soil rights to shrotriemdars is not established. The appeal court also does not appear to differ from this view of the learned Single Judge.

Once the conclusion is reached that sub-soil rights were not granted to the shrotriemdars it seems to

us that the inference is plain that it was not open to the shrotriemdars to grant any lease of minerals lying under the soil to any one. Therefore, the leases granted by the shrotriemdars to the respondents in this case would be of no legal effect in conveying any right to them in the minerals under the soil. In the circumstances the respondents cannot put forward the leases in their favour to claim a mining leases under the Rules. With respect, we have not been able to understand how the difficulty which may arise in practice, on account of the sub-soil rights being in the Government and the surface rights being in the shrotriemdars, in the working of the mines would make the shrotriemdars shares in the sub-soil rights and therefore entitled to grant a lease of the sub-soil rights. Whatever may have been the practice in the past and howsoever the Government may have been getting over the practical difficulty in the past would not confer any right to the minerals upon the shrotriemdar so as to enable him to grant a mining least to any one. It follows therefore that the mining leases granted in this case were granted by person who had no right to the minerals and therefore confer no rights on the respondents to claim as of right from the Government that they should granted a mining lease under the Rules.

In view of the above decision appeal No. 252 must be allowed and appeal No. 253 must fail.

We therefore allow appeal No. 252 and setting aside the order of the appeal court dismiss the writ petition with costs to the State throughout. Appeal No. 253 is hereby dismissed but in the circumstances parties will bear their own costs.

C.A. No. 252 of 1958 allowed.

C.A. No. 253 of 1958 dismissed.

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