Bhagwan Dass

Vs

State of U. P. and Others

Civil Appeal No. 1044 of 1975

(Y.V. Chandrachud, V.R. Krishna Iyer, N.L. Untwalia JJ)

24.03.1976

JUDGMENT

CHANDRACHUD, J. -

1. Certain lands situated in Usmanpur and Dariyabad in the district of Allahabad are in the possession of the appellant, some as bhumidhar, some as a sirdar and some as a hereditary tenant. The lands abut on the Jamuna river and are submerged by the river water when the river is in flood. When the flood recedes large quantities of sand, gravel, boulders and bajris are deposited on the surface of the lands. The appellant lays claim to the deposits left behind by the fluvial action of the river contending that since he is the owner of the lands or is otherwise entitled to an unrestricted user of the lands, he would be entitled to appropriate the deposits to the exclusion of all others.

2. The Mines and Minerals Department, Government of Uttar Pradesh, took steps in about 1970 to sell by auction the right to remove the sand, gravel and bajris deposited on the appellant's lands. On October 13, 1970 the appellant made an application to the Officer-in-charge, Mines, Allahabad, objecting to the proposed auction on the ground that the Government had no right to deal with his property in a manner detrimental to his title. On February 18, 1971 the Department of Mines passed an order directing the disposal of the deposits by an action-sale.

3. In October, 1971 the appellant filed a writ petition under Article 226 of the Constitution in the Allahabad High Court asking that the aforesaid order of the State Government be quashed and that the Stated Government be restrained from bringing the fluvial deposits to sale by auction or otherwise. On behalf of the respondents, the Naib Tehsildar (Mines) Allahabad, filed a counter-affidavit stating that the appellant had no right of any kind to utilise the deposits left by the flood waters on his lands, that the State Government had sold the deposits by auction from 1965 to 1969 to which the appellant had raised no objection, that the deposits of sand, gravel, bajris etc. were 'minor minerals' to which the title vested in the State Government and that the only right of the appellant was to receive damages which the State Government always awarded under Rule 67 of the Uttar Pradesh Minor Minerals (Concession) Rules, 1963.

4. The writ petition came for hearing before a learned Single Judge who dismissed it by his judgment dated April 2, 1974, following a previous decision of the Allahabad High Court in Sultan v. State of U. P. (Civil Misc. Writ No. 8268 of 1971 decided on September 28, 1973 (All)) The appellant filed an appeal before a Division Bench of the High Court which was dismissed on September 20, 1974. The Division Bench merely followed the decision in Sultan's case which had taken the view that sand, gravel, boulders, bajris etc. deposited on lands abutting on rivers, as a result of fluvial action of a river vest in the State Government. The High Court has, however,

granted a certificate of fitness to the appellant to appeal to this Court.

5. Under Section 4 of the U.P. Zamindari Abolition and Land Reforms Act, 1 of 1961, all estates situated in U.P. vested in the State Government free from all encumbrances, with effect from the date specified by the Government in a notification issued for that purposes. Section 6 of the Act of 1951 deals with the consequences of such vesting and provides that on the publication of a notification under Section 4, all rights, title and interest of all the intermediaries shall cease and be vested in the State of U.P., free from all encumbrances. Clause (a) of Section 6 which brings about this result consists of two sub-clauses : (i) and (ii). Under Section 6(a)(i), "all rights, title and interest of all the intermediaries in every estate" ceased and became vested in the State of U.P., while under Section 6(a)(ii), "all rights, title and interest of all intermediaries in all subsoil in such estates including rights, if any, in mines and minerals : ceased and became vested in the State of U. P. These provision of the 1951 Act leave no doubt that whatever rights, inclusive of the rights to mines and minerals, which the erstwhile zamindars possessed, stood extinguished and became vested in the State Government.

6. The appellant's writ petition contains an averment that two out of the four plots of land which were the subject-matter of the writ petition were in his possession under zamindars whose zamindari rights were not yet abolished, as the 1951 Act was not extended to the areas in which those lands were situated. Mr. Goes appearing on behalf of the appellant repeated the same contention and argued that in respect of those lands to which the Act of 1951 did not apply, the zamindar's right to mines and minerals remained unaffected, and therefore the Government had no right to the deposits left of those lands by the waters of the receding river, even on the assumption that the deposits were 'minor minerals'. We cannot accede to this contention for the simple reason that though the writ petition contained an averment in terms of the contention no argument whatsoever was made in the High Court, either before the Single Judge or before the Division Bench, that some of the lands being still zamindari lands the right to mines and minerals which the zamindars originally had did not cease and therefore the Government had no right to the mines and minerals on such lands. Apart from this contention urged by Mr. Goel in regard to a part of the property involved in the writ petition, raises at best a dispute between the zamindar and the Government which the appellant has no right to raise. If the title to the mines and minerals in respect of lands to which the Act of 1951 is not extended vests in the zamindars and not in the Government, the zamindars may, if so advised, take an appropriate proceeding for recognition of their claims as against the Government. The appellant cannot be heard to say in a writ petition filed for the assertion of his own individual rights that the action of the Government is calculated to prejudice somebody else's rights and should therefore be struck down. The appeal must therefore be disposed of on the basis that the rights of the erstwhile zamindars over the lands in dispute stood extinguished under the Act of 1951 and that those rights are vested in the State Government under Section 6 of that Act.

7. We are concerned in this appeal with the interpretation of the relevant provisions of the Mines and Minerals (Regulation and Development) Act, 67 of 1957 and the Uttar Pradesh Minor Minerals (Concession) Rules, 1963. We will refer to them respectively as the Act of 1957 and the Rules of 1963. Selection 3(e) of the Act of 1957 defines 'minor mineral' to mean building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral.

Selection 15 confers power on the State Government make rules for regulating the grant of quarry leases, or other mineral concessions in respect of minor minerals and for purposes connected

therewith.

8. The Government of Uttar Pradesh framed Rules of 1963 in exercise of the power conferred upon it by Section 15 of the Act of 1957. Rule 2(5) defines "mining operations" as meaning any operations undertaken for the purpose of winning any minor mineral. Rule 2(7) defines "minor minerals" substantially in the same terms as Section 3(e) of the Act of 1957. By Rule 3, no person can within the State undertake any mining operation of any minor mineral except under and in accordance with the terms and conditions of a mining lease or mining permit granted under the Rules.

9. These provisions of the Act of 1957 and the Rules of 1963 are clear and explicit, admitting of no doubt or difficulty. If the deposits left by the receding waters of the river are of the description mentioned in Section 3(e) of the Act or Rule 2(7) of the Rules, Rule 3 must come into full play with the result that no mining operation in respect of the deposits can be undertaken except under and in accordance with the terms and conditions of a lease or permit granted by the Government under the Rules of 1963. We are concerned in this appeal with deposits in the nature of ordinary sand other than sand used for prescribed purposes, gravel, building stones and bajris. These fall squarely within the abovequoted provisions of the Act of 1957 and the Rules of 1963 and are therefore minor minerals. Accordingly, the appellant cannot undertake any mining operation, even on the lands now belonging to him for the purpose of winning these minor minerals except under a lease or permit granted by the State Government. The right of the former zamindars to mines and minerals was extinguished by the Act 1951 and became vested in the State Government. So long as the title to the lands was vested in the zamindar he was entitled to mines and minerals. With the abolition of zamindari by the 1951 Act, that right has passed on not to the appellant but to the State Government. The appellant's writ petition filed to restrain the State Government from auctioning the right to undertake mining operations must therefore fail.

10. Evidently, the appellant finds it difficult to reconcile himself with the position that what nature and good fortune have bounteously left on his lands should be permitted to be taken away by the Government which has not a vestige of title to the lands. The answer to this difficulty is twofold. In the first place the deposits, by a definition contained in a competent legislation, are 'minor minerals' and it is of no relevance that the Act of 1957 and the Rules of 1963 bring within their compass even those deposits which are left behind by the fluvial action of rivers. If that is the policy and the intendment of law, it is unprofitable to explore whether the statute could not have been more generous or less grudging to riparian owners. Secondly, and that bears on equity, prior to the point of time when the flood waters of the river carried the sand and gravel to private lands, the title thereto was vested in the State Government. The rivers, the river beds and the sand, bajris and building stones lying in the river water are of State ownership. Nature carries those deposits to lands abutting on rivers and what the Act and the Rules provide for is to enable the Government to reclaim what it lost without any fault of its own. Halsbury's Laws of England (3rd Ed., Vol. 39, p. 559, paragraph 775) says that :

> The soil of the seashore, and of the bed of estuaries and arms of the sea and of tidal rivers, so far as the tide ebbs and flows, is prima facie vested of common right in the Crown, unless it has passed to a subject by grant or possessory title.
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> Paragraph 768 (p. 556) says that the Crown is also "entitled to the mines and minerals under the soil of the seas" within certain limits. The sand and gravel deposited by the receding waters of the river are truly a part of the soil of the river

bed and therefore belong to the State. The fluvial action of the river carries them to riparian lands but such shifting cannot erase the title of the rightful owners.

11. The judgment of Justice Holmes in Norman S. Wear v. State of Kansas (62 Law Ed 214, 219) turned on another point and involved different considerations altogether but the basis of that decision is instructive : The fact that sand in the bed of a river is migratory and liable to be shifted does not change its character so as to entitle the public to remove the sand as against the State, which owns the bed of the stream.

12. In the High Court, reliance appears to have been placed by the appellant on a passage in Halsbury's Laws of England, 3rd Ed., Vol. 39, paragraph 801 (p. 568) where it is stated that gravel, stones and sand, even when washed up by the seas on the foreshore are part of the freehold and belong to the owner of the foreshore who may deal with them as he pleases. This passage is based upon the decision in Blewett v. Tregonning ((1835) 3 Adolphus and Ellis' Reports 554), where the defendant was a rank trespasser who pleaded a custom entitling him to take the sand blown by the wind on to a land situated on the foreshore. The Court negatived the plea of custom both on the ground that it was not established and on the ground that if the custom were to receive a legal recognition it would place the whole soil at the mercy of any person claiming under the so-called custom. Besides, there is no parallel between that case and our case because here, the 'minor minerals' while under the river water belonged to the State and the statute answers the question whether the natural action of the flooding river destroys the title of the State. Secondly, the 1951 Act has vested the zamindar's right to mines and minerals in the State Government rendering it of secondary relevance whether prior to flood-caused migration, the ownership of the minerals was vested in the State.

13. Only one more argument made on behalf of the appellant requires to be noticed. It was urged that the sand and gravel are deposited on the surface of the land and not under the surface of the soil and therefore they cannot be called minerals and equally so, any operation by which they are collected or gathered cannot properly be called a mining operation. It is in the first place wrong to assume that mines and minerals must always be subsoil and that there can be no minerals on the surface of the earth. Such an assumption is contrary to informed experience. In any case, the definition of mining operations and minor minerals in Section 3(d) and (e) of the Act of 1957 and Rule 2(5) and (7) of the Rules of 1963 shows that minerals need not be subterranean and that mining operations cover every operations undertaken for the purpose of "winning" any minor mineral. "Winning" does not imply a hazardous or perilous activity. The word simply means "extracting a mineral" and is used generally to indicated any activity by which a mineral is secured. "Extracting", in turn means, drawing out or obtaining. A tooth is 'extracted' as much as is fruit juice and as much as a mineral. Only, that the effort varies from tooth to tooth, from fruit to fruit and from mineral to mineral.

14. We would like before closing to invite especial attention to Rule 67 of the Rules of 1963 under which a "person having a right in any capacity in the land covered by a mining lease or mining permit shall be entitled to get compensation" from the holder of a mining lease or mining permit of such land for the use of the surface, which may be agreed upon between the parties. In case of any dispute, the amount of compensation has to be determined by the District Officer whose order assumes finality. The counter-affidavit filed by the State Government in the High Court concedes expressly, as it ought, that considering the fact that the person entitled to the use of a land may be prevented from using it by reason of a mining lease or permit, Rule 67 provides for the payment of compensation to him for such deprivation. When the right to conduct a mining operation is

auctioned by the Government the person who is otherwise entitled to the user of the land, say for agricultural purposes, is deprived of its user and the object of Rule 67 is to ensure that he should be compensated adequately for the deprivation of such user. We have no doubt that in cases where it becomes necessary for the District Officer to fix the compensation under Rule 67, he would be having due regard to all relevant factors, particularly the length of deprivation entailed by the conduct of mining operations.

15. For these reasons, we confirm the judgment of the High Court and dismiss the appeal with costs.

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