

M/S. Banarsi Dass Chadha and Brothers

Vs

Lt. Governor, Delhi Administration and Others

Civil Appeal No. 1278 of 1978

(V. R. Krishna Iyer, D. A. Desai, O. Chinnappa Reddy JJ)

21.08.1978

JUDGMENT

CHINNAPPA REDDY, J. -

1. We granted special leave and heard arguments on the limited question whether 'brick-earth' is a 'minor mineral' within the meaning of the expression as defined in Section 3(e) of the Mines and Minerals (Regulation and Development) Act, 1957.

2. The definition is as follows :

'Minor mineral' means 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.

In exercise of the power conferred by Section 3(e) of the Act, the Central Government declared the following minerals to be minor minerals :

Boulder, Shingle, Chalcedony pebbles used for ball mill purposes only, limeshell kankar and limestone used for lime-burning, murrum, brick-earth, fuller's earth, bentonite road metal, reh-matti, slate and shale when used for building material.

3. The submission of the learned Counsel for the appellant was that a substance had to be a mineral before it could be notified as a mineral pursuant to the power under Section 3(e) of the Mines and Minerals (Regulation and Development) Act, 1957. He urged that brick-earth was not a mineral and, therefore, it could not be notified a minor mineral.

4. We agree with the learned Counsel that a substance must first be a mineral before it can be notified as a minor mineral pursuant to the power vested in the Central Government under Section 3(e) of the Act. The question, therefore, is whether brick-earth is a mineral. The expression "minor mineral" as defined in Section 3(e) includes 'ordinary clay' and 'ordinary sand'. If the expression "minor mineral" as defined in Section 3(e) of the Act includes 'ordinary clay' and 'ordinary sand', there is no reason why earth used for the purpose of making bricks should not be comprehended within the meaning of the word "any other mineral" which may be declared as a "minor mineral" by the Government. The word "mineral" is not a term of art. It is a word of common parlance, capable of a multiplicity of meanings depending upon the context. For example the word is occasionally used in a very wide sense to denote any substance that is neither animal nor vegetable. Sometimes it

is used in a narrow sense to mean no more than precious metals like gold and silver. Again, the word "minerals" is often used to indicate substances obtained from underneath the surface of the earth by digging or quarrying. But this is not always so as pointed out by Chandrachud, J. (as he then was) in *Bhagwan Dass v. State of U.P.* ((1976) 3 SCR 869 : (1976) 3 SCC 784), where the learned Judge said : (at p. 874) (SCC p. 789, para 13) :

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 sub-soil 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 operation 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 indicate 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.

5. We may also refer to *Northern Pacific Railway Company v. John A Sodrberg* (47 L Ed 575), where the Supreme Court of United States observed as follows (at page 581) :

The word 'mineral' is used in so many senses, dependent upon the context, that the ordinary definitions of the dictionary throw but little light upon its signification in a given case. Thus, the scientific division of all matter into the animal, vegetable, or mineral kingdom would be absurd as applied to a grant of lands, since all lands belong to the mineral kingdom, and therefore, could not be excepted from the grant without being destructive of it. Upon the other hand, a definition which would confine it to the precious metals - gold and silver - would so limit its application as to destroy at once half the value of the exception. Equally subversive of the grant would be the definition of minerals found in the *Century Dictionary* : as "any constituent of the earth's crust"; and that of *Bainbridge on Mines* : "All the substances that now form, or which once formed, a part of the solid body of the earth". Nor do we approximate much more closely to the meaning of the word by treating minerals a substances which are "mined" as distinguished from those are "quarried", since many valuable deposits of gold, copper, iron, and coal lie upon or near the surface of the earth, and some of the most valuable building stone, such for instance, as the Caen stone in France, is excavated from mines running far beneath the surface. This distinction between underground mines and open workings was expressly repudiated in *Midland R. C. v. Haunchwood Brick & Tile Co.* (LR 20 Ch Div 552) and in *Hext v. Gill* [(1872) LR 7 Ch 699].

6. The Supreme Court of United States also referred to several English cases where stone for road making or paving was held to be 'mineral', as also granite, sandstone, flint stone, gravel, marble, fire clay, brick-clay, and the like. It is clear that the word 'mineral' has no fixed but a contextual connotation.

7. The learned Counsel for the appellant invited our attention to the decision of the Court of Appeal in *Todd Birston and Co. v. The North Eastern Railway Co.* ((1903) 1 KB 603), and to *Stroud's Judicial Dictionary* to urge that clay, brick-earth and the like have sometimes been held not to be minerals by English Courts. As we said earlier the word mineral is an elastic word whose meaning

depends upon the setting in which it is used. For instance, in the case cited, the question was whether clay forming the surface or subsoil, and constituting the 'land' compulsorily taken for the purposes of a railway, was not a mineral within the meaning of Section 77, 78 or 79 of the Railway Clauses Consolidation Act. The answer was that 'clay' was not a mineral for the purposes of the Railway Clauses Consolidation Act. Any other conclusion, in the context of the Act, would have led to the absurd result that the original owner whose land had been taken would be entitled to dig and take away the clay from the land on which the Railway was constructed, thus defeating the very object of the compulsory taking. On the other hand, as noticed by the Supreme Court of the United States, in several English cases clay, gravel, sandstone etc. had been held to be minerals. That is why we say the word mineral has no definite meaning but has a variety of meanings, depending on the context of its use. In the context of the Mines and Minerals (Regulation & Development) Act, we have no doubt that the word 'mineral' is of sufficient amplitude to include 'brick-earth'. As already observed by us, if the expression 'minor mineral' as defined in the Act includes 'ordinary clay' and 'ordinary sand', there is no earthly reason why 'brick-earth' should not be held to be 'any other mineral' which may be declared as a 'minor mineral'. We do not think it necessary to pursue the matter further except to say that this was the view taken in *Laddu Mal v. State of Bihar* (AIR 1965 Pat 491), *Amar Singh Modilal v. State of Haryana* (AIR 1977 Punj & Har 356) and *Sharma & Co. v. State of U.P.* (AIR 1975 All 386) We do not agree with the view of the Calcutta High Court in *State of West Bengal v. Jagdamba Prasad* (AIR 1969 Cal 281), that because nobody speaks of 'ordinary earth' as a mineral it is not a minor mineral as defined in the Mines and Minerals (Regulation & Development) Act. The appeal is accordingly dismissed with costs.

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