

State of Karnataka and others

Vs

Subhash Rukmayya Guttedar and others

Civil Appeals Nos. 590-629, 630-646, 647-648, 649, 650-654, 655-690, 691-700, 701-702, 703-705, 706, 707-734, 735-743, 744-759 and 760 of 1992

(K. Ramaswamy, G. N. Ray JJ)

06.02.1992

JUDGMENT

1. Leave granted.

2. All the appeals raise common question of law and the High Court also disposed of the matters by a common judgment. These appeals arise from judgment of the Karnataka High Court in Writ Appeals. The respondents contractors entered into contracts with the Government to execute work as per the schedule of the contract provided in the form. They have to excavate the minor minerals either from the Government quarry or from private quarry and use them for the execution of the work. It is one of the requirements in the contract under Clause 35 of the Schedule that they are liable to pay royalty on the material so removed from Government quarry for the execution of the work. The Government have demanded payment of the royalty. Calling in question of the entitlement of the Government under Rule 19 of the Karnataka Minor Minerals Concessions Rules 1969 for short 'the Rules' the respondent filed a bunch of writ petitions and disclaimed their liability to pay the same. The High Court by a learned single Judge and the Division Bench on appeal accepted their contentions and issued a mandamus not to collect the royalty from the respondents. The question whether they are liable to pay royalty on the value of minerals removed from the Government land under' any other law was left open. Thus, the State filed these appeals by special leave under Art. 136.

3. Admittedly, the appellants had granted right to the contractors to extract minor minerals from the quarries owned by the State. Clause 2 of the Schedule 'D' to the contract provides the liability to pay royalty of mining: -

"The unit rates quoted by the contractor are to be considered as inclusive of royalty in respect of various materials viz. granite/- trap/shahabad stone boulders metal mand, marum etc. supplied by the contract for execution of the several items of work irrespective of source whether Government quarry or private quarry from where the materials are obtained by him. The Government shall deduct. from the bills payable to the contractor, such royalty from the bills payable to the contractor, such royalty payable by him at the rates prescribed in the Government Order No. PC/22/BAP/69 dated 7-10-84 and latest amendments thereto or instructions thereon. The rates shall also be inclusive of all other taxes that may exist leviable and payable by him to any authority."

Rule 19 of the Rules provides the rates of royalty as under; -

"Rate of Royalty- Royalty shall be leviable on minor minerals quarried from the leased area at the rates specified in the Schedule. After the expiry of a period of four years from the commencement of these rules the Government may, by Notification in the Official Gazette, amend the schedule so as to enhance the rate at which royalty shall be payable in respect of any minor mineral, provided that the rates in respect of any minor mineral shall not be enhanced before the expiry of a period of four years from the date with effect from which the rate in respect of that minor mineral may have been last altered. Provided that the Government may, by notification in the Official Gazette, reduce or exempt the royalty payable by a co-operative society as defined in clause (c) of Section 2 of the Karnataka Co-operative Societies Act, 1959 (Karnataka Act. No. 11 / 50), all the members of which

(1) are bonded labourers freed and discharged in accordance with Section 4 of the Bonded Labour System (Abolition) Act 1976 or

(2) belong to Scheduled Castes or Scheduled Tribes as defined in the Constitution of India.

Clause 35 of the schedule to the Contract provides: -

"All quarry fees, royalties, octroi dues and ground rent for stocking materials, if any, should be paid by the contractor, who will however, be entitled to a refund of such of the charge as are permissible under the rules on obtaining a certificate from the Executive Engineer or other competent authority that the materials were required for use on Government work.

All quarry fees, royalties, octroi duties and ground rent for stocking materials, if any, should be paid by the contractors no ground rent is leviable for Government land acquired for this project and made available to the contractor for stocking materials and erection of temporary sheds.

4. A plain reading of these relevant provisions clearly postulates that the contractor is liable to pay royalty for the minor minerals removed or consumed or extracted by a Contractor from leased area as per the rates specified in clause 35 of the Schedule to the contract or as amended thereto or instructions thereon vis-a-vis by Rule 19 of the Rules. In case the contractor used the extracted materials supplied to the contractor for execution of the work of the Government and if the Rules permit for grant of refund on a certificate obtained from a competent authority or Executive Engineer or an officer authorised in that behalf, the Contractor would become eligible to apply for the grant of refund of the royalty so paid. However, under the contract he has independent right to use in the execution of the work the minor minerals obtained either from the Government quarry or from private quarry. If he uses minor minerals obtained from private quarry, he pays for its value to the owner. Repeatedly we asked the counsel whether the contractors are only works contract to supply labour to which the answer is in the negative. The contention of the respondents which was found favour with the High Court is that there is no lease either in terms of the contract or in terms of the Rules and therefore it is only an enabling right to the contractor to remove the minor mineral from the Government quarry. No lease deed in terms of the Rules was executed . It is not a licence for consideration and therefore they are not liable to pay any royalty. The question, therefore, is

whether the grant of the right to extract the minor mineral from Government quarry is a lease or a licence and whether the contractor is liable to pay the royalty in respect of minor mineral extracted from the Government quarry. Section 105 of the Transfer of Property Act defines lease as a transfer of a right to enjoy such property made for a certain time, express or implied or in perpetuity in consideration of a price paid or promised or share crop or service or any other thing of value to be rendered or on specific occasions to the transferor by the transferee who accepts the transfer on such terms. The normal connotation of the term lease is the preservation of the demised estate to be in occupation and enjoyment thereof for a specified period or in perpetuities for consideration; the corpus by user thereof does not disappear and at the expiry of the term or on termination the same is handed over to the lessor subject to the terms of the contract express or implied. A right to carry on mining operations in the land on surface or sub soil is to extract the specified quantity or the minerals found therein; to remove and appropriate that mineral. S. 9 of the Mines and Minerals (Regulation and Development) Act, 1957 affords the guidance in this behalf. It says that the holder of a mining lease or agent, etc. is entitled to remove or consume the mineral. It would mean destruction of the estate leases out and appropriation thereof on payment of consideration i.e. royalty. Therefore, it is a right to enjoy immovable property within the meaning of Section 105 more so when, as in the instant case, it is coupled with a right to be in occupation or entry into possession for a specified period. Section 3(d) of the Act defines "mining operations" to mean any operation undertaken for the purpose of winning any minerals. It is true that no right, title or interest has been created in the contractor over the mining area. But he has been permitted to remove and use the minor minerals in the execution of the works as its right to enjoy immovable property spoken of in Section 105 which means the right to enjoy the property in the manner in which that property can be enjoyed. In *Nageshwar Bux Roy v. Bengal Coal Co.*, 1930 Law Reports 58 Ind App 29 : (AIR 1931 PC 186) Lord Macmillan speaking for the Board held that:

"In considering the character and effect of acts of possession in the case of a mineral field, it is necessary to bear in mind the nature of the subject and the possession of which it is susceptible. Owing to the inaccessibility of minerals in the earth, it is not possible to take actual physical possession at once of a whole mineral field; it can be occupied only by extracting the minerals and until the whole minerals are exhausted the physical occupation must necessarily be partial."

Para 899 of Vol. 26 of Halsbury's Laws of England, 3rd Edn. reads as under: -

"A lease may be granted of land or any part thereof, and since minerals are a part of the land it follows that a lease can be granted to the surface of the land and the minerals below, or of the surface alone, or of the minerals alone. It has been said that a contract for the working and getting of minerals alone though for convenience called a mining lease, is not in reality a lease at all in the sense in which one speaks of an agricultural lease and that such a contract, properly considered, is really a sale of a portion of the land at the price payable by instalments, that is, by way of rent or royalty, spread over a number of years."

5. This Court in *Tarkeshwar Sio Thakur v. Bar Dass Dey and Co.*, (1979) 3 SCR 18: (AIR 1979 SC 1669) was to consider the question whether the mining lease is a lease within the meaning of Section 105 of the Transfer of Property Act. Considering the terms and conditions of the lease this court concluded that a mining lease may not meticulously and strictly satisfy in all the cases if all the characteristics of a lease as defined in the Transfer of Property Act. The right to carry on mining operation in land to extract a specified mineral and to remove and appropriate that mineral is a right

to enjoy immovable property within the meaning of S. 105 of the Transfer of Property Act. It was held to be a lease. The subject matter in that case was sand mine and held that sand mine can be enjoyed and occupied by working it as indicated in S. 108 of the Transfer of Property Act which regulates the rights and liabilities of the lessor and lessee of immovable property.

6. The appellants undoubtedly had been given permission to the contractors to remove and appropriate the minor minerals from quarries of the State Govt. under the contract. The contractors entered into contracts with the Govt. The Govt. handed over the quarry to extract minor minerals and to use the same in the works to be executed by the contractor, though the work belong to the Government. It is not the case of the respondents that they are only works contractors to supply the labour and that the Government has to supply the material to execute the works. As per the contract the price per unit quoted by them is inclusive of the royalty payable to minor minerals excavated from Govt. or private quarry. On the other hand in terms of the contract they are liable to pay royalty. Under those circumstances the contractors having had from the Government permission to enter upon the Govt. Quarries to extract the minor minerals to remove them and to enjoy the same in execution of the contract, they became liable to pay royalty. Their liability to pay royalty arose from the contract. The question whether royalty is a part of the cast component is not the ground raised in the High Court not argued. We are not concerned therefore, with this question in these appeals. The learned single Judge of the High Court proceeded on the footing that the rules provided the mode and mechanism to enter into mining lease and since the mining leases were not executed in terms thereof they are not leases under the rules. Therefore, he found that the liability to pay the royalty did not arise. The Division Bench proceeded on the ground that the lease does not attract Section 105 of the Transfer of Property Act. We are unable to agree with the High Court on either ground. It is undoubtedly true that the Rules specify the procedure to enter into a mining lease for winning over the minor minerals and in terms to be complied with. But the question of liability to pay the royalty for the minerals removed and consumed by a contractor is to be considered in terms of the contract. In the light of the above extracted Rules, terms of the contract and the legal position, we are of the opinion that the respondents-contractors are liable to pay royalty in terms of the contract. It is next contended that the respondents are entitled to refund for the minerals used for the Government work as contained in the contract. This question was also not raised before the High Court. Therefore, we do not propose to go into and the matter is left open. The appeals are accordingly allowed. The writ petitions stand dismissed. The parties will bear their own costs.

Petition dismissed.

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