

# ALLAHABAD HIGH COURT

Sharma & Co

Vs.

State of U. P

Civil Misc. Writ No. 6368 of 1971

(Yashoda Nandan, J.)

16.04.1975

## ORDER

### **Yashoda Nandan, J.**

1. This is a petition by 72 brick-kiln owners of Kanpur praying for a writ, order or direction in the nature of *certiorari* to quash the notification dated 31st August, 1970 (published in the U. P. Gazette dated 12th September, 1970) issued by the State Government purporting to be in pursuance of the provisions of sub-rule (4) of Rule 1 of Uttar Pradesh Minor Minerals (Concession) Rules, 1963 - hereinafter referred to as the Rules - by means of which the said Rules, with effect from the date of the publication of the notification in the gazette, were made applicable to 'brick-earth' found anywhere in the State. The further prayer is for the issue of a writ, order or direction in the nature of mandamus directing the respondents not to implement the aforesaid notification dated 31st August, 1970. Apart from making some prayers of a general character, the petitioners also pray for issue of a writ, order or direction in the nature of mandamus directing the respondents not to collect, demand or realize any Royalty from them for using earth of their own land for manufacture of bricks under the impugned notice.

2. Admittedly the petitioners manufacture bricks by excavating earth from out of their own 'Bhumidhari' plots. One of the petitioners was served with a notice sometime in July, 1971, informing him that with effect from the 12th September, 1970, the State Government had declared that brick-earth was a 'minor mineral' and had fixed Royalty payable thereon at the rate of Rs. 1.50 per thousand of the bricks manufactured. The notice went on to state that the Kar Nirdharan Adhikari, Kanpur, had come to learn through reliable sources that

from the 12th September, 1970, till the 31st March, 1971 the addressee of the notice had excavated brick-earth for the manufacture of 35,00,000/- bricks and was liable to pay Royalty to the extent of Rupees 5,250.00. The notice stated further that if the addressee had any objection to the Royalty determined, he could file an objection within 15 days of the receipt of the notice before the Kar Nirdharan Adhikari. The notice went on to disclose that if no objection was filed within the time fixed, the Royalty payable shall be determined at Rs. 5,250.00. It appears that similar notices tentatively determining different amounts as Royalty payable by various petitioners were served on them.

3. There is no dispute with regard to the basis or material facts on the basis of which the writ petition is founded.

4. Three submissions have been made by the learned counsel for the petitioners in support of this petition. It was firstly contended that brick-earth is not a 'mineral' and consequently the petitioners could not be made liable to pay Royalty for excavating earth and manufacturing bricks there from. It was contended that the Mines and Minerals (Regulation and Development) Act, 1957 and the Rules are applicable only to minerals' and the popular meaning as understood in common parlance of the word 'mineral' is 'any organic substance which is found in the earth and may be obtained by mining or other process for bringing it to the surface for manufacturing or mercantile purpose for profit'. Since brick-earth is nothing but ordinary earth, it was urged, it was not of organic origin solely and consequently could not be regarded either as a 'mineral' or 'minor mineral'. To appreciate this contention, reference may usefully be made to the relevant provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and the Rules and notifications issued there under.

5. The Central Government enacted a law known as Mines and Minerals (Regulation and Development) Act, 1957 - hereinafter referred to as the Act. Section 3 (a) of the Act defines 'minerals' as 'including all minerals except mineral oils'. Section 3 (d) provides that 'mining operations' means 'any operations undertaken for the purpose of winning any mineral'. 'Minor minerals', according to Section 3 (e), 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'. Section 17 of the Act, to the extent relevant for our purposes, is in the following terms :-

"Power of State Government to make rules in respect of minor minerals.

(1) The State Government may, by notification in the Official Gazette, make Rules for regulating the grant of prospecting licences and 'mining leases in respect of minor minerals and for purposes connected therewith.

(2) ....."

6. By Notification No. G. S. R. 436, dated 1st June, 1958, published in Gazette of India 1958 Extraordinary Part II, Section 3 (i), page 229, the Central Government declared brick-earth to be a 'minor mineral'. In exercise of powers under Section 15 of the Act, the State Government framed Rules to which a reference has been made earlier. Rule 2 (7) of the Rules provides that,

" 'Minor minerals' means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government has declared from time to time or may declare, by notification in the Official Gazette, to be a minor mineral, under clause (e) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957)."

Rule 3 (1) of the Rules provides that,

"No person shall undertake any mining operations in any area within the State of any minor mineral to which these rules are applicable except under and in accordance with the terms and conditions of a mining lease or mining permit granted under these rules :

Provided that nothing shall affect any mining operations undertaken in accordance with the terms and conditions of a mining lease or permit duly granted before the commencement of these rules." By means of the notification dated 12th September, 1970, which has been impugned in these proceedings, the State Government ordered that the Rules shall apply to 'brick-earth' found anywhere in Uttar Pradesh. The stand taken by the respondents is that on the application of the Rules to 'brick-earth' with effect from the 12th September, 1970, the petitioners cannot

undertake any mining operations of 'brick-earth' except under and in accordance with the terms and conditions of mining lease and mining permits granted under the aforesaid Rules.

7. The contention that 'brick-earth' is not a 'minor mineral' and consequently the Central Government had no power to declare it as such was raised before and repelled by a Full Bench of the Punjab and Haryana High Court in *M/s. Amar Singh Modi Lal v. State of Haryana*,<sup>1</sup> In his able and well-reasoned judgment, S. S. Sandhawalia, J., with whom P. C. Pandit, J., concurred, held, after a review of a large number of English and American decisions as well as decisions of courts in our own country that,

"In view of the above authorities, it is apparent that there is no warrant in the judicial precedent for confining the word 'mineral' to a narrow scientific definition and indeed the unanimous weight of precedent is to the contrary."

He went on to hold that,

"Judicial precedent has held brick-earth and brick clays to be within the ambit of the word 'mineral' is again indisputable."

The judgment of S. S. Sandhawalia, J., in the above reported case is convincing and well-reasoned and cannot be improved upon. I respectfully concur with the opinion and consider it futile to attempt to give any further reasons. A Division Bench of the Patna High Court earlier in *Laddu Mal v. State of Bihar*,<sup>2</sup> had taken a similar view and was followed with approval by the Punjab and Haryana High Court in AIR 1972 Punjab and Haryana 356 (FB) (Supra).

8. Learned Counsel for the petitioners in support of his contention placed reliance on a Division Bench decision of the Calcutta High Court in *State of West Bengal v. Jagadamba Prasad Singh*,<sup>3</sup> This case is clearly distinguishable as was held in *M/s. Amar Singh Modi Lal v. State*, AIR 1972 Punjab and Haryana 356 (FB) (Supra). The only question that was considered by the Calcutta High Court in the abovementioned decision was as to whether Rule 17 (1) (i) of the West Bengal Minor Minerals Rules, 1959, read with the relevant Entry of

Schedule I thereof was *ultra vires* or not. The question as to whether brick-earth could be declared to be a 'minor mineral' by the Central Government in exercise of powers under Section 3 (e) of the Act was neither canvassed nor decided. The judgment as reported discloses that no reference at all was made to Notification No. G. S. R. 436 dated 1st June, 1958, published in the Gazette of India, 1958, by means of which brick-earth was declared to be 'minor mineral' by the Central Government. The first submission made by the learned counsel for the petitioners consequently fails.

9. It was next contended that a Division Bench of this Court consisting of S. N. Dwivedi, J. and H. C. P. Tripathi, J., have held in *Mahant Ashok Prapan Sharma v. State of Uttar Pradesh*,<sup>4</sup> that the Rules apply only to 'minerals' owned by the Government and not to 'minerals' belonging to private parties themselves. It was urged that since the petitioners utilised brick-earth excavated from their own Bhumidhari plots, they cannot be made liable to pay Royalty for the same under the Rules. For the contention that the petitioners have a right to use the earth excavated from their own Bhumidhari plots, reliance was placed on Section 142 of the U. P. Zamindari Abolition and Land Reforms Act, 1951 which provides that 'a Bhumidhar shall, subject to the provisions of the Act, have the right to the exclusive possession of all land in respect of which he is a bhumidhar and to use it for any purposes whatsoever. It is contended that if the petitioners have a statutory right to use their Bhumidhari land for any purposes whatsoever, this statutory right cannot be curtailed by means of any Rules. The submission, to my mind, has no substance and must be rejected. It is true as held by this Court in *Mahant Ashok Prapan Sharma v. State of Uttar Pradesh*, *Spl. App. No. 967 of 1969, D/- 9-7-1969 (Cal)* (supra) that the Rules apply only to 'minerals' which vest in the State and not to 'minerals' which are owned by private individuals or other persons. The question, however, still remains to be considered as to whether 'minerals' existing on Bhumidhari land vest in the Bhumidhars and they have a right to utilize it without any interference by the State.

10. As a consequence of the notification issued under Section 4 of U. P. Act No. 1 of 1951, all rights, title and interest of all the intermediaries in such estates as had vested in the State including rights in any mines or minerals, whether being worked or not ceased and vested in the State of Uttar Pradesh free from all

encumbrances. As would appear from Section 39, clauses (f) and (g), the mines and minerals existing in the estates which vested in the State were taken into account for the assessment of compensation to the intermediaries concerned. As a consequence of Section 18, Bhumidhari rights were created in favour of the class of persons mentioned therein. Bhumidhars are not owners of the land forming subject-matter of their Bhumidhari and are merely tenure-holders and as disclosed by Section 130 of U. P. Act No. 1 of 1951 have all the rights and are subject to all the liabilities conferred or imposed upon them by or under that Act. By conferment of Bhumidhari rights, the State did not divest itself of rights which had vested in it in mines and minerals by reason of Section 6 of U. P. Act No. 1 of 1951. Section 142 on which reliance has been placed by the learned Counsel for the petitioners merely gives rights to Bhumidhars as tenure-holders to the exclusive possession of all land in respect of which they are Bhumidhars and 'to use it for any purposes whatsoever'. It does not give rights to Bhumidhars to use up (emphasis supplied) the land forming subject-matter of the Bhumidhari. The ownership of the corpus remains with the State and Bhumidhars are only entitled to use it as tenure-holders. If a Bhumidhar desires to use his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandry, the Assistant Collector in charge of the subdivision may suo motu or on an application, after making such enquiry as may be prescribed, make a declaration to that effect under Section 143 (1). As soon as a Bhumidhar decides to start mining operations on his Bhumidhari land, he must obtain a declaration from the Assistant Collector incharge of the subdivision under Section 143 (1) of U. P. Act No. I of 1951. As long as this declaration subsists, the land concerned would not be treated as Bhumidhari land subject to the provisions of U. P. Act No. I of 1951. As soon as the erstwhile Bhumidhari land ceases to be 'land' within the meaning of Section 3 (14) of U. P. Act No. I of 1951 and is brought in use for purposes connected with any industry or mining, its use will be governed by relevant enactments governing such industry or mining. It is thus clear that by mere reason of the fact that the petitioners are Bhumidhars, they acquired no rights to appropriate minerals existing on their Bhumidhari land.

11. The conclusion arrived at by me is further borne out by Chapter VI of U. P. Act No. I of 1951. If an intermediary has acquired Bhumidhari rights in respect of his Sir and Khudkasht land, he cannot continue to work mines subsisting

thereon by mere reason of the fact that he is a Bhumidhar of the land on which the mines exist, as is obvious from Section 107 of U. P. Act No. 1 of 1951. It is unreasonable to hold that a Bhumidhar who was already working a mine on the date of vesting on land which has become his Bhumidhari property can continue to work only on the basis of a lease on terms and conditions thereof but an intermediary who has become a Bhumidhar can start a new mine after the date of vesting as a matter of right on account of his being Bhumidhar thereof.

12. For the reasons given, I am of the opinion that the petitioners have no right to remove brick-earth from their Bhumidhari property for the purpose of manufacturing bricks in disregard of the Rules and notification issued there under

13. It was already urged on behalf of the petitioners that since the petitioners neither held a prospecting license nor are they mining licensees or holder of a short term permit for the purpose of exploiting 'minor minerals', Royalty cannot be recovered from them in pursuance of the impugned notices. There is force in the submission which must be accepted. Rule 21 of the Rules is in the following terms :

"(1) The holder of a mining lease granted on or after the commencement of these rules shall pay royalty in respect of any mineral removed by him from the leased area at the rates for the time being specified in the First Schedule to these rules.

(2) ....."

Rule 21 imposes a liability only on holders of mining lease granted under the Rules to pay Royalty in respect of minerals recovered at the rates for the time being specified in the First Schedule to the Rules. The petitioners have in disregard of the Rules removed minerals but they hold no mining leases. Royalty for a period for which they have removed minerals without mining lease is not payable by them or recoverable from them under Rule 21. For this, they are however liable to be prosecuted under Rule 57.

14. For the reasons given above, this petition is allowed in part. The opposite parties are restrained from recovering Royalties for brick-earth excavated by the

petitioners for the period prior to their having obtained mining leases in accordance with the provisions of the Rules. The other reliefs prayed for are refused. In the circumstances of the case, parties shall bear their own costs. Interim orders, if any, are hereby vacated.

Petition partly allowed.

Cases Referred.

1. AIR 1972 Pun and Har 356 (FB)
2. AIR 1965 Pat 491
3. AIR 1969 Cal 281
4. (Special Appeal No. 967 of 1969, decided on 9-7-1969) (Cal)