

# ANDHRA PRADESH HIGH COURT

M.V. Subba Rao

Vs.

State, (A.P)

Writ Petn. No. 3355 of 1977

(Lakshmaiah, J.)

25.08.1978

## ORDER

### **Lakshmaiah, J.**

1. This is an application filed under Article 226 of the Constitution of India for the issuance of an appropriate writ seeking a declaration that Rule 10 of the Andhra Pradesh Minor Minerals Concession Rules, 1966 to the extent of imposing " Dead Rent"and the levy of " Cess" is *ultra vires* Mines and Minerals (Regulation and Development) Act, 1957 and as well *ultra vires* of Articles 14, 19 (1) (f), 19 (1) (g), 31 and 265 of the Constitution of India and for the issuance of a consequential direction restraining the respondents from levy and collection of dead rent and cess.

2. The petitioner is a lessee for the minor mineral of black granite. Under Section 15 (3) of the Mines and Minerals (Regulation and Development) Act, 1957 (referred to hereinafter merely as the Act') the State Government has been given the power to prescribe the Royalty in relation to the minor minerals removed or consumed. But it was disabled from enhancing the royalty except once in four years. Under Section 15 (3) of the Act, the State Government fixed Seigniorage Fee (Royalty) for various minor minerals under Rule 10 of the Andhra Pradesh Minor Minerals Concession Rules 1966. Under items 1 and 2 of Schedule 1 of Rule 10, the Seigniorage Fee payable for 100 cft. is Rs. 2-00 ps. and for sized stone it is Rs. 2-50 ps. per 10 cft. By G. O. Ms. No. 824 Industries and Commerce Department dated 23-8-1975, the rates of seigniorage fee were revised under which for rough stone and sized stones Rs. 3/- per 100 cft. is payable.

3. By G. O. Ms. No. 226 Industries and Commerce dated 25-3-1977 Rule 10 of Andhra Pradesh Minor Mineral Concession Rules was amended providing for imposition of seigniorage fee or dead rent making the lessees liable to pay either of it whichever is higher. Under Schedule 2 to Rule 10 the rates of dead rent are prescribed. So far as the mineral of black granite quarried by the petitioner, the dead rent is fixed at Rs. 1,000/- per hectare. The dead rent was an innovation made for the first time for the minor minerals in March 1977. According to the petitioner, it was so fixed as to make it always higher than the prescribed seigniorage fee and if he were to pay the seigniorage fee at the prescribed rate, it will be approximately Rs. 2,000/- and if he were to pay

dead rent, it will be Rs. 15,000/-. The burden thus by the new levy is increased seven-fold.

4. Assailing the validity of the levy of the dead rent, the petitioner invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

5. Sri G. Vedantha Rao, learned counsel appearing for the petitioner contended that the levy of dead rent is contrary to the provisions of the Act. It is wholly arbitrary and confiscatory in nature and as such it is *ultra vires* and void.

6. The Assistant Secretary to Government, in his counter affidavit stated *inter alia* that the levy of both dead rent as well as cess are valid in law. The dead rent rendered payable in this State is less than what was rendered payable in the State of Karnataka.

7. The principal point therefore that arises for consideration is whether Rule 10 of the Andhra Pradesh Minor Mineral Concession Rules, 1966 as amended as per G. O. Ms No. 226 Industries and Commerce (Mines-1) dated March 25, 1977 is *ultra vires* the Mines and Minerals (Regulation and Development) Act, 1957.

8. Whether or not the levy is *ultra vires* is a question depending upon the interpretation of the Act in question. The first question therefore that has to be considered is whether the framers of the enactment intended that the State Government should have power to levy dead rent through the exercise of the rule-making power conferred upon it. The source of power for levy of dead rent is claimed as one inhering in Section 15 (1) of the Act, as per the counter- affidavit. It is specifically stated in the counter-affidavit that sub-section (3) of Section 15 cannot be construed as giving rise to such a power. Section 15 (1) deals with the subject-matter of the power of the State Government to make rules in respect of minor minerals and reads thus :

" The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith."

9. We shall read sub-section (3) also of the aforesaid section :

" The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals. Provided that the State Government shall not enhance the rate of royalty in respect of any minor mineral for more than once during any period of four years."

10. As has already been seen, it is stated in the counter-affidavit that the power to levy dead rent is not traceable to sub-section (3) of Section 15 of the Act. Through that sub-section, the framers of the Act provided directly by the Act for the levy of royalty in respect of minor minerals removed or consumed by a lessee, with a clarification that the State Government shall not enhance the rate of royalty in respect of any minor mineral for more than once during any period of four years. When the framers of the enactment thus took special care for providing for the levy

of royalty specifically through sub-section (3) of Section 15 of the Act, and when it is stated in the counter- affidavit that the power to levy dead rent is not traceable to sub-section (3) we have to fall back upon sub-section (1) of Section 15 alone on which reliance was placed by the respondent for justifying the levy of dead rent.

11. Sub-section (f) of Section 15 merely empowers the State Government to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. If the power to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals, is to be construed as including within its ambit the power to levy royalty also, the framers of the enactment could have provided for that without the need to provide the same specifically and separately through sub-section (3) of the said section. But they thought it otherwise and provided for the levy of royalty by the Act itself through Sub-section (3). Any financial impost to be levied must be found to have been provided for by the provisions of the Act itself. The Rule-making authority or a delegated authority cannot be said to be clothed with such a power to provide for the levy of such an impost as the dead rent. The intention of the framers of the Act was not that the rule-making authority should be given independently of the Act any such power. That was the reason why they have provided for the levy of royalty through sub-section (3) of Section 15 and there is correspondent omission so far as sub section (I) of Section 15 is concerned for the levy of dead rent. Therefore, on a reading of the language employed under Section 15 of the Act, particularly sub-section (1) thereof, I am satisfied that Section 15 (1) cannot be construed as providing for the levy of dead rent.

12. There is yet another clue forthcoming from the amendment of the Act by the Parliament in the year 1972 when the Act was amended by the Mines and Minerals (Regulation and Development) (Amendment) Act, 1972. By that Amending Act, Section 15 of the Principal Act was amended. By that same amendment, the framers of the enactment inserted, through Section 5 of the said Amendment Act, Section 9-A into the Principal Act which deals with the subject-matter of 'dead rent' to be paid by the lessee. That section read thus :

" 9-A. Dead rent to be paid by the lessee.

(1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972 shall, notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, pay to the State Government every year, dead rent at such rate as may be specified, for the time being, in the Third Schedule, for all the areas included in the instrument of lease :

Provided that where the holder of such mining lease becomes liable, under Section 9 to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee for the leased area, he shall be liable to pay either such royalty or the dead rent in respect of that area, whichever is greater.

(2) The Central Government may, by notification in the Official Gazette, amend the Third Schedule so as to enhance or reduce the rate at which the dead rent shall be payable in respect of any area covered by a mining lease and such enhancement or reduction shall take effect from such date as may be specified in the notification :

Provided that the Central Government shall not enhance the rate of the dead rent in respect of any such area more than once during any period of four years."

The framers of the Act thought about the desirability of providing for the levy of dead rent for the first time in the year 1972 through the insertion of Section 9-A which deals with the dead rent. The expression 'dead rent' is not defined in the Act. As per Section 9-A, the holder of a mining lease, whether granted before or after the commencement of the Amendment Act, 1972 is obliged, notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, to pay to the State Government, every year, dead rent at such rate as may be specified for the time being in the Third Schedule for all the areas included in the instrument of lease. The third schedule deals with dead rent and reads thus :

"The Third Schedule

See Section 9-A

Dead rent.

Period of the mining lease	Rate of dead rent per Hectare.
1. 1st year	nil.
2. 2nd year to 5th year.	Rs. 12-50
3. 6th year to 10th year.	Rs. 25-00
4. 11th year onwards.	Rs. 37-50."

The Act therefore provided, both for the levy of dead rent as well as the rates of levy as specified in the Third Schedule as not to leave anything to the Rule-making authority to provide for either the levy or, for that matter, rates of levy.

13. It is not out of place to refer to Section 13 of the Act which deals with the subject-matter of power of Central Government to make Rules in respect of minerals in language comparable to the one employed in Section 15 (1) of the Act. What is therefore discernible from the comparison of both Section 13 as well as Section 15 read with the amendment of the Act in the year 1972 inserting Section 9-A and amending Section 15 of the Act is that the intention of the framers of the Act is that the levy of dead rent is a matter that shall have to be provided for only by the provisions of the Act as is discernible from the language employed in Section 9-A of the Act. When the framers of the enactment thought it fit to provide for the levy of dead rent through Section 9-A, they could not have chosen to provide for such a levy with respect to the dead rent so far as the minor minerals are concerned through the Rules. There is no provision authorising the State Government to provide for the levy and rate of levy of dead rent as provided for under Section 9-A read with third schedule. The intention therefore as discernible from the language employed from Section 9-A and Sections 13 and 15 of the Act is that the framers of the Act thought that the levy and the rate of levy of dead rent is a matter that shall have to be provided

for in the Act and it is not a matter delegable to the Rule-making authority. If such rule-making authority has got power, without the need to insert a provision like Section 9-A, that power could have been executed under Section 13 (1) of the Act which provides for the authority to Central Government to make Rules and that Section 13 (1) of the Act which provides for the authority to Central Government to make Rules corresponds to Section 15 (1) of the Act under which alone the levy of dead rent with respect to minor minerals by the State Government is sought to be justified through the amendment of Rule 10.

14. I am therefore satisfied that having regard to the nature of dead rent, though that expression was not defined, it is to be provided for only through the legislative enactment by direct legislation and should not be provided for through delegated legislation, either by the Rules or by the amendment of the Rules. That was the intention of the framers of the enactment.

15. In this case, Rule 10 of the Andhra Pradesh Minor Minerals Concession Rules, 1966 was made by the Governor of Andhra Pradesh in exercise of the powers conferred by sub-section (1) of Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957. Rule 10 was substituted by the Governor of Andhra Pradesh in exercise of the powers conferred by sub-section (1) of Section 15 of the Act, as per G. O. Ms. No. 226 Industries and Commerce (Mines I) dated March 25, 1977 published in the Andhra Pradesh Gazette dated March 31, 1977. Rule 10 reads thus :

" 10. Seigniorage fee or dead rent.

(1) When quarrying is carried on under Rule 9, the seignior age fee or dead rent whichever is higher, shall be charged on all the minor minerals removed from the land at the rates specified in the under mentioned Schedule I or Schedule II, as the case may be.

Schedule I		
Rates of Seigniorage Fee.		
x x x x x		
Schedule II		
Rates of Dead Rent.		
Sl. No.	Name of the minor mineral	Rates per hectare per annum.
(1)	For minerals specified in Schedule I in S. Nos. (1) to (4), (8), (9), and (20)	Rs. 1,000
(2)	For minerals specified in Schedule I in S.Nos. (6), (7), (13), (14), (15), (16) and (17)	500
(3)	For all other minerals	250

16. As has already been observed, the Parliament is competent to provide for the levy of dead rent and the rates of that dead cent also as is discernible from the insertion of Section 9-A into the Principal Act. The Parliament did not think it fit to relegate that to the realm of rule-making authority by requiring the Central Government to so provide in exercise of the powers conferred upon it under Section 13 (1) of the Act. On the same analogy, I am of the opinion that Section 15 (1) providing for the conferral of the rule-making power on the State Government cannot be construed as empowering the rule-making authority to provide for the levy or rate of levy of dead rent. What the rule-making authority cannot do through rule-making, they cannot do by amending the rule.

17. I am therefore of the opinion that Rule 10 of the Andhra Pradesh Minor Minerals Concession Rules, 1966 as amended through G. O. Ms. No. 226 Industries and Commerce (Mines-I) dated March 25, 1977 in so far as it relates to the levy of dead rent is *ultra vires* and void.

18. The learned counsel appearing for the petitioner questioned the levy of cess also. Section 135 of the Hyderabad District Boards Act (No. 1 of 1956) provides for such local cess and roads thus :

" Notwithstanding anything contained in sub-section (2) of Section 1 the Government shall, subject to the provisions of sub-section (2), levy a local cess of two annas on every rupee of fend revenue payable to Government."

I am satisfied that this section provides for the levy of cess. I do not find any substance in the contention of the petitioner that cess is not leviable statutorily.

19. Sri Vedantha Rao, learned counsel contended further assuming that the rule-making authority has been given such a power, the delegation is invalid in view of the fact that no guidelines were provided either by providing for the rates of levy or by fixing the maximum and minimum so as to canalize the otherwise unbridled power of the State Government. In view of my conclusion on the main question, it is not necessary for me to rest my conclusion on this aspect of matter though I find considerable force in that contention of Sri Vedantha Rao, learned counsel for the petitioner.

20. For the aforesaid reasons, the writ petition is allowed but, in the circumstances, without costs. Advocate's fee Rs. 150/-.  
Petition allowed.