CALCUTTA HIGH COURT

State of W.B

Vs.

Jagadamba Prasad Singh

F.M.A. Nos. 490-93 of 1965 with cross-objections in Appeals Nos. 491-93 of 1965

(D.N. Sinha, C.J. and B.C. Mitra, J.)

30.07.1968

JUDGMENT

Sinha, C.J.

1. These four appeals have been heard together and they relate to a judgment of D. Basu, J., dated the 8th July, 1964, in C. R. Nos. 368 (W) of 1962 and 433, 434 (W) and 436 (W) of 1963 which were heard analogously. F. M. A. 490 relates to C. R. No. 368 (W) of 1962, F. M. A. 491 relates to C. R. No. 433 (W) of 1963, F. M. A. 492 relates to C. R. No. 434 (W) of 1963 and F. M. A. 493 relates to C. R. No. 436 (W) of 1963. All these matters have given rise to a common question of law which is as follows: The Mines and Minerals (Regulations and Development) Act, 1957 (hereinafter referred to as the "said Act") was passed by Parliament in exercise of the power given to it under Entry 54 of List I of the Seventh Schedule of the Constitution which gives the Union Parliament exclusive legislative power with respect to -

> "Regulation of mines and minerals development to the extent of which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

Entry 23 of List II, that is to say the State List, runs as follows :-

> "Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

2. The said Act states in the preamble that it is an Act to provide for the regulation of mines and development of minerals under the control of the Union. Under Section 1, the said Act extends to the whole of India and shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. By a notification of the Central Government, it came

into force on the 1st of June, 1958. Under Section 2, it was declared that - "it was expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided". Section 3 of the said Act is the definition section. Clause (e) is as follows :-

> " '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 may, by notification in the Official Gazette, declare to be a minor mineral;"

A 'mining lease' is defined in clause (c) of Section 3 as –

> "a lease granted for the purpose of undertaking mining operations and includes a sub-lease granted for such purpose."

and, 'mining operations' under clause (d) means 'any operations undertaken for the purpose of winning any mineral'.

3. Section 9 of the said Act provides that the holder of a 'mining lease' must pay, in respect of any mineral removed by him from the lease area, royalty at the rate specified in the Second Schedule of the Act. Section 14, however, says that –

> "The provisions of Sections 4-13 (inclusive) shall not apply to prospecting licences and mining leases in respect of minor minerals."

4. The result of the provisions contained in Section 14 is that the provision as regards royalty, in Section 9, are not applicable to mining leases in respect of 'minor minerals'. For minor minerals, separate provisions have been made. Section 15 (1), for instance says:

> "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."

5. By virtue of the power conferred by Section 15 (1) of the Act, as aforesaid, the State of West Bengal has framed the West Bengal Minor Minerals Rules, 1959 (vide Notification No. 1844 M. P. dated 13-5-59) (hereinafter referred to as 'the said Rules') for –

> "regulating the grant of mining leases in respect of minor minerals and for purposes connected therewith."

Rule 4 (1) of these rules provides that –

> "A mining lease shall be granted by the State Government or by an officer authorised by

the State Government in this behalf."

Rule 17 (1) (i) of the Rules provides as follows :-

"Every mining lease shall include and be subject to the following conditions :-

The lessee shall pay royalty on all minerals despatched from the leased area at such rate as may be fixed by the State Government within the limits given in Schedule I."

6. The relevant portion of Schedule I of the Rules imposes a royalty upon 'Ordinary earth for brick-making' and the minimum rate of that royalty is Re. 1/ for 1000 bricks manufactured.

7. Rule 25, which has been added by an amendment, per notification No. 4808 M. P. of the 18th November, 1959, provides that –

"Any person extracting any minor mineral without a proper lease or licence granted under these rules shall be punishable with imprisonment ....."

8. Rule 26, which was added at the same time, lays down certain exceptions to the requirement of a lease or licence. But this rule is immaterial for the purpose of the cases before us, inasmuch as the petitioners do not claim any exemption under this Rule.

9. The petitioners are all manufacturers of bricks. They have been served with a notice (per Annexure 'A' to the petition in each case) issued by the Junior Land Reforms Officer, purporting to act under the Rules, calling upon the petitioners to produce their account books for the purpose of assessment of royalty, as well as calling upon them to obtain a licence.

10. In the Court below, several points were canvassed and it seems that the learned Judge dealt with more points than one. Before us, it is conceded by both parties, that it would be necessary to deal with one point only, which will be sufficient to dispose of all the cases. Parties are agreed that if this point succeeds upon the vires of Rule 17 (1) (i) of the West Bengal Minor Minerals Rules, 1959 (hereinafter referred to as the "said Rules") read with the following Entry in Schedule I, then the other points need not be decided and may be kept open. The Entry is as follows :-

"SCHEDULE I

As stated above, the respondents are all brick makers, that is to say manufacturers of bricks. They dig the land and take out earth, from which they manufacture bricks. It is not disputed that the State Government would have no right to make any rules or claim any fees from the respondents unless, what was involved was "minor minerals" within the meaning of Section 3 (e) of the said Act. The only possible heading under which it may come is "ordinary clay". It is

conceded that unless it is a case of ordinary clay, in the form of minor minerals, there would be no power to make rules under Section 15 of the said Act of the description which has been done in this case. A further point has been taken before us in the appeal Court namely that the said Act and the Rules, in so far as they enable the State Government to make rules with regard to minor minerals is hit by the principle of excessive delegation of legislative power. The learned Judge has gone into a number of questions in the Court below, namely, as to whether 'ordinary earth' was 'ordinary clay'. Whether there was any mining operation etc. etc. We regret that we do not agree with the findings made by him. However, as stated above, we are, by agreement of parties called upon to deal with one point only, namely as to whether Rule 17 (1) (i) read with the relevant entry in Schedule I is ultra vires or not. If his point succeeds this appeal will succeed; but all other points will be kept open. We now proceed to deal with this point. Section 15 of the said Act gives power to the State Government to make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals. As stated above, the only circumstance under which the brick-making operation carried on by the respondents could be brought under the scope of the rules, would be if they were using "ordinary clay" for making bricks. In other words, the State Government would have the power of making rules and Government could insist on the taking out of mining leases subject to payment of royalty as specified in Schedule I, if, it was a case of mining "ordinary clay". Coming to the relevant entry in Schedule I which has been set out above, the rate specified is royalty for mining of "ordinary earth for brick making". But, "ordinary earth" is not "ordinary clay" and therefore, cannot be called a minor mineral. The word "clay" is not identical with "earth". Some kind of earth may be clay. For example, earth mixed with water, or silt may be called clay. But while the definition of minor minerals includes a particular kind of clay namely "ordinary clay", under Schedule I the royalty is payable on "ordinary earth". Thus, even if the word "earth" is wide enough to include "clay" it cannot be said that "ordinary earth" is identical with "ordinary clay". In this case, we are not concerned with "clay" in general, but only "ordinary clay". If 'clay' is a special kind of "earth", then it would be excluded from the expression "ordinary earth". Nobody ever speaks of "ordinary earth" as a mineral. In other words, the expression "clay" may be included within the expression "earth", but "ordinary earth" cannot be equated with "ordinary clay". We are unable to agree with the learned Judge in the court below that 'earth' and 'clay' are interchangeable expressions or that ordinary earth is a minor mineral or that the digging up of ordinary earth is necessarily a mining operation.

11. The result is that we hold that the State Government had no right to make rules under the said Act in respect of "ordinary earth" and had no right to insist upon the respondents taking out permits for the use of "ordinary earth", for the manufacture of bricks and pay royalty therefor and the demands made in that behalf are all contrary to law and must be struck down. We hold that the provision in Schedule I relating to the taking out of a licence and paying royalty for digging up ordinary earth for brick making is ultra vires the rule making power contained in Section 15 (1) of the said Act and Rule 17 (1) (i) of the said Rules. We make it clear that the provisions of Section 15 (1) or Rule 17 (1) (i) are not by themselves defective, but that the entry in Schedule I relating to the item "ordinary earth for brick making" is not covered by the rule making power

contained in them. Thus, although we do not agree with some of the reasonings of the learned Judge in the Court below, we agree with the conclusion that the rules should be made absolute and that writs should be issued restraining Government from demanding that the respondents should take out licences for their brick making operations.

12. We are, however, unable to agree with the findings of the learned Judge of the Court below that the State Government may legitimately call upon the petitioners in each of these matters to apply for mining leases. This is the subject-matter of Cross-Appeal in Appeals Nos. 491 to 493 of 1965.

13. In the result, for the reasons mentioned above, the appeals are dismissed, the Cross-Appeals succeed and writs must accordingly issue restraining the appellants from giving effect to the order or orders complained of in the respective petitions or from taking any action or steps for realisation of royalty according to the rates in Schedule I of the West Bengal Minor Minerals Rules, 1959. They are also restrained from proceeding with or taking any further steps in the criminal cases pending before the respondent, Sub-Divisional Magistrate, referred to in the petitions. That part of the order which directs that Government may call upon the respondents to apply for mining leases is struck down. It is made clear that this order is made only on the ground mentioned in our judgment, but all other grounds are, by consent, kept open.

14. There will be no order as to costs throughout.

B. C. Mitra, J.

15. I agree.

Rules made absolute.