RAJASTHAN HIGH COURT

Brimco Bricks, Bharatpur

Vs.

State of Rajasthan

Civil Writ Petn. No. 511 of 1969
(V.P. Tyagi, J.)

22.11.1971

ORDER

V.P. Tyagi, J.

1. Messrs. Brimco Bricks, Bharatpur, has filed this writ petition under Article 226 of the Constitution. The main business of this firm is to manufacture bricks from brick earth. It is said that the petitioner firm has agricultural lands in its Khatedari bearing Khasra Nos.891, 892, 893 and 907 to 916 in the town of Bharatpur. Since 1958 this firm is manufacturing bricks and the brick earth is taken out from its agricultural fields. According to the petitioners contention, the Government of Rajasthan in the beginning used to collect royalty on the brick manufactured by the petitioner firm through one Hardwarilal Thekedar, but this practice was given up by the Mining Department after 1965 and thereafter the Department itself started raising demands for the payment of royalty from the petitioner. From the correspondence exchanged between the petitioner firm and the department, it transpires that the petitioner firm was prepared to pay the royalty but it objected to the quantum of the demands raised by the department. Since the amount of royalty could not be settled between the parties, the petitioner has challenged the authority of the department to realize the royalty from the petitioner, inter alia, on the grounds (1) that the petitioner firm is not holding any lease from the department and. therefore, the department is not entitled under the Rajasthan Minor Mineral Concession Rules, 1959, to realize royalty from it; (2) that the rates of royalty as fixed by the Rajasthan Minor Mineral Concession Rules, 1959, cannot be applied to the petitioner firm as the State Government was not competent to prescribe the rate of royalty under Section 15 of the Mines and Minerals

(Regulation and Development) Act, 1957 (hereinafter called the Act) under which the said Rules were framed; and (3) that brick-earth is not a mineral as is clear from the 1959 Rules issued by the State Government. According to the petitioner, it is murrum brick-earth which is described as a mineral and not brick earth simpliciter and since the petitioner is using only brick earth for the manufacture of the bricks the department cannot demand any royalty under the provisions of Minor Mineral Concession Rules.

2. It is, therefore, prayed that the Rajasthan Minor Mineral Concession Rules, 1959, in so far as they relate to the grant of leases for the manufacture of brick-earth and imposition of royalty thereon be declared ultra virus Section 15 of the Act and are invalid. It is also prayed that by issuing a writ of prohibition the respondents may be restrained from making any demand for the payment of royalty on the manufacture of bricks by the petitioner.

3. The department, while filing a reply to this petition, has denied the Khatedari rights of the firm in the lands from where it takes brick-earth for the manufacture of bricks. This ground of the petitioner also has been vehemently challenged by the department that the petitioner has no obligation under the Rajasthan Minor Mineral Concession Rules to pay royalty to the department for the use of the brick-earth which is undoubtedly a mineral under the definition given both by the Mineral Concession Rules, 1949 and the Rajasthan Minor Mineral Concession Rules, 1959. It is also contended that Section 15 of the Act empowers the State Governments to regulate the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith by issuing notification and it is under this power that the Rajasthan Government has framed the Rajasthan Minor Mineral Concession Rules, 1959, regulating the grant of prospecting licences and mining leases and the payment of royalty is intimately connected with regulating the grant of licences and leases.

4. This is a common ground that the petitioner has been regularly manufacturing bricks without obtaining a valid license under the Rules of 1959 and it used to pay royalty to the State through Hardwarilal who was appointed by the Mining Department to realize royalty from the manufacturers of the bricks. It is contended by the respondents that it is not open to the petitioner now to challenge the demand raised by the department for the payment of the royalty nor should the petitioner be allowed to invoke the extraordinary jurisdiction as its conduct is most unfair because it is manufacturing bricks without petting license from the competent authority and when

royalty is demanded it refuses to pay the same on one or the other flimsy ground.

5. I may take up first of all the objection of the petitioner whether brick-earth is a mineral under the Minor Mineral Concession Rules or not.

6. The expression "minor minerals" has been defined by the Parliament in Section 3(e) of the Act which lays down that

> "minor minerals" mean 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.

7. The contention of the petitioner is that this definition does not describe brick-earth as a minor mineral and since the Central Government has not declared brick-earth by issuing a notification as a minor mineral, it cannot be treated as a minor mineral for realizing the royalty from the petitioner under the Rajasthan Minor Mineral Concession Rules.

8. It may be mentioned here that before the 1957 Act was enacted by Parliament, the Mines and Minerals (Regulation and Development) Act, 1948, was in force and under Section 5 of that Act the Central Government had framed certain rules which were known as the Mineral Concession Rules, 1949. Those Rules contained a definition clause No.3 and in that definition clause there was definition of the expression "minor mineral." The Central Government had defined "minor mineral" in those Rules as follows:

> " 'minor mineral' means building stone, boulder, shingle, gravel, limestone, lime-shell and kankar used for lime burning, murrum, brick-earth, ordinary clay, ordinary sand, and road metal."

9. These Rules were duly notified in the Official Gazette. Learned Deputy Government Advocate submits that it was notified by the Central Government by issuing these Rules in the Official Gazette that brick-earth shall be treated as a minor mineral and, therefore, brick-earth shall under the Act be a mineral. He also relied on the provisions of sub-section (2) of Section 15 of the Act which lays down that until

rules are made under sub-section (1), any rules made by a State Government regulating the grant of prospecting licenses and mining leases in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force. Under sub-section (2) of Section 15 the Mineral Concession Rules, 1949, remained in force even after the Act of 1917 was enacted by the Parliament till the new Rules were framed under the said provision. It may be mentioned here that under Rule 4 of the Mineral Concession Rules of 1949, the Rajasthan Government had framed Minor Mineral Concession Rules of 1955, but after the Act came into force, the Government of Rajasthan again framed the Minor Mineral Concession Rules which are known as Rajasthan Minor Mineral Concession Rules, 1959. These Rules also contain the definition of "minor mineral" which reads as follows:

> "3(v). 'Minor Mineral' means building stone as defined in these rules, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes. boulder, shingle, chalcedony pebbles used for ball mill purpose only, limeshell, kankar and limestone used for lime burning, morrum brick-earth, fuller's earth, bentonite, road metal, rah matti and such other mineral which the Central Government may by notification in Official Gazette declare to be a minor mineral under Section 3(e) of the Act."

10. The definition of 'minor mineral' as published in the book written by S.K. Jindel and Mr. B.M. Jindel does not have a comma between morrum and brick-earth and it is on this basis of the printing error that this argument seems to have been built by learned counsel for the petitioner that "morrum brick earth" is one mineral and brick earth simpliciter cannot be treated as a separate mineral and, therefore, no royalty can be charged if brick earth alone is used by the petitioner for the manufacture of bricks. Learned Deputy Government Advocate brought to my notice Government publication and also the Gazette in which these Rules were published. From a careful scrutiny of these publications, it appears that the publishers wanted to put a comma between the words "morrum" and "brick earth" but the impression of comma has not been correctly reproduced in these prints. However, this riddle can be solved if we see the Mineral Concession Rules, 1949, published by the Central Government declaring certain minerals as "minor minerals" while defining the expression "minor minerals" in these Rules. In this definition, as given in Rule 3(ii) "morrum" and "brick earth" have been shown as different minerals. The Government of India publication while including "morrum" and "brick earth" as minor minerals has used semi-colon between these two

minerals showing that they are two different minerals and both of them shall be treated as minor minerals. The common experience also tells us that there is no such mineral as "morrum brick earth". Brick earth is quite different from morrum and, therefore, this argument of learned counsel for the petitioner, which is based on the misprint of the definition of minor mineral in the book published by Jindel and Jindel, cannot be accepted. The different publications when minutely scrutinised, make it abundantly clear that "morrum" and "brick earth" are two separate minerals and both of them have been declared by the Central Government by issuing the Mineral Concession Rules, 1949, as minor minerals.

11. It is next urged by Mr. G.M. Lodha that the State Government while framing rules for the grant of the prospecting licences and mining leases for minor minerals cannot prescribe the rate of royalty. The fixing of the rate of royalty in Schedule I annexed to the Rajasthan Minor Mineral Concession Rules, 1959, is beyond the competence of the State Government and, therefore, no royalty can be charged from the petitioner for the use of brick-earth unless the royalty has been fixed by a competent authority, that is, by the legislature.

12. Rajasthan Minor Mineral Concession Rules of 1959 have been framed by the Government of Rajasthan under Section 15 of the 1957 Act. Section 15 reads as follows:-

> "S.15. Power of State Governments 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 licenses and mining leases in respect of minor minerals and for purposes connected therewith."

13. Learned Deputy Government Advocate has laid stress on the word "regulating" used in this section by the Central Legislature which, according to him, covers the prescription of the rate of royalty for the grant of mining leases and prospecting licenses in respect of minor minerals. According to Mr. Tewari, the rate of royalty is a matter which is intimately connected with the regulation of the grant of licenses or leases of minor minerals and, therefore, Schedule I could be enacted by the State Government while issuing the Minor Mineral Concession Rules, 1959.

14. This question as to what is the true import of the word "regulation" came up for

consideration before the Supreme Court in *Indu Bhusan Bose v. Rama Sundari Debi* [1] Entry 3 in List I of the Constitution, which empowered the Parliament to enact laws in respect of regulating the house accommodation in the cantonment areas, was questioned by one of the parties in that case that it did not include the power to enact laws in respect of those accommodations which were not required for military purposes or which must have been acquired before the law was enacted by the Parliament. It was in that connection that their Lordships of the Supreme Court considered the true scope of the expression "regulation of house accommodation." The argument advanced before the Supreme Court was that the expression "regulation of house accommodation could not be interpreted as giving Parliament the power to legislate for eviction of tenants who may have occupied the houses under private arrangements with the owners. The argument further went to suggest that this expression must be confined to legislation for the purpose of obtaining possession and allotment of such accommodation to military authorities or military officers. Their Lordships, while considering these arguments, observed as follows;

> "We cannot accept that the word 'regulation' can be so narrowly interpreted as to be confined to allotment only and not to other incidents, such as termination of existing tenancies and eviction of persons in possession of the house accommodation.
>
> The dictionary meaning of the word 'regulation' in the Shorter Oxford Dictionary is 'the act of regulating' and the word 'regulate' is given the meaning 'to control, govern or direct by rule or regulation'. This entry, thus, gives the power to Parliament to pass legislation for the purpose of directing or controlling all house accommodation in cantonment areas. Clearly, this power to direct or control will include within it all aspects as to who is to make the constructions, under what conditions the constructions can be altered, who is to occupy the accommodation and for how long, on what terms it is to be occupied, when and under what circumstances the occupant is to cease to occupy it, and the manner in which the accommodation is to be utilized. All these are ingredients of regulation of house accommodation and we see no reason to hold that this word 'regulation' has not been used in this wide sense in this entry."

15. These observations of the learned Judges of the Supreme Court give a true scope to the word 'regulate' which, according to them, confers power on the authority to control and govern by rules or regulations. Section 15(1) of the Act is couched in a

language which confers a wide power on the State Government to include in the rules framed there under all those matters which are necessary for the grant of prospecting licenses and mining leases of the minor minerals. The Legislature has made it very clear that the rules shall be framed for all such "purposes connected therewith." The fixation of royalty for extracting minor mineral for the grant of prospecting licenses and mining leases undoubtedly come within the expression "purposes connected therewith". Sections 4 to 13 of the Act, both inclusive, do not apply to the grant of prospecting licenses and mining Teases in respect of minor minerals. The rate of royalty in respect of certain minerals as contained in the Second Schedule to the Act have, therefore, nothing to do with the royalty to be realized for the minor mineral. It was, therefore, necessary for the legislature to empower some authority to fix the rate of royalty for the grant of prospecting licenses and mining leases in respect of minor minerals. That authority under Section 15(1) of the Act is the State Government which can lawfully prescribe the rate of royalty for the grant of prospecting licenses and mining leases in respect of minor minerals. In this view of the matter, I feel that there is no life in the argument advanced by Mr. Lodha.

16. It was next contended that without the grant of mining lease to the petitioner the State Government is not authorized to realize royalty from the petitioner. In support of this proposition, learned counsel placed reliance on the judgment of this Court in *M/s. Standard Construction Co. v. The State of Rajasthan,* [2] In that case, a P.W.D. contractor, who had taken the contract to construct the border roads, had used certain minerals in completing his contract. The Mining Department raised certain demands against the contractor to pay the royalty and that demand was challenged by that contractor. This Court, after examining the entire scheme of the Rajasthan Minor Mineral Concession Rules, 1959, came to the conclusion that the petitioner was a trespasser and should have been dealt with in accordance with Rule 47 of the Minor Mineral Concession Rules. The Rules, however, do not empower the department to realize the royalty from such trespassers and it was on that consideration that the writ petition was allowed and a direction was issued to the department not to realize royalty from the contractor. In the present case, the facts stand differently. Petitioner is a regular manufacturer of bricks and for one reason or the other he did not obtain the mining lease before using the mineral for the manufacture of bricks. There is a prohibition in the Act as well as in the Rules that no person can use a mineral, which is undoubtedly the property of the State, without obtaining license or lease under the Rules and if he does so then he will be treated as a trespasser. In the present case, I

find from the averments made by the parties that the petitioner was prepared to pay the royalty for the use of the mineral, but there appears to be some difference regarding the quantum of the royalty which the petitioner wants to pay and the department wants to realize from him. A person who does not obey the law and takes advantage of using a mineral without the permission of the State Government cannot be permitted to invoke the extraordinary jurisdiction, the purpose whereof is to do justice expeditiously to a person whose legal rights are in jeopardy. Here, the petitioner has conducted himself in a manner which disentitles him to invoke the extraordinary jurisdiction of this Court. He has not used the mineral casually. He has been using the mineral right from 1958 and had been paying the royalty to the department regularly upto 1965. Thereafter, when the system of royalty collection contract was abolished by the State Government, the petitioner did not pay the royalty to the department in accordance with the provisions of the law and raised various frivolous objections to the demands made by the department for the payment of royalty. Learned Deputy Government Advocate has brought certain material on the record to show that the petitioner had filed returns for the assessment of his royalty but those returns were not correct. The demands when raised by the Department are being challenged by the petitioner. It is not a case when the petitioner in reality challenges the right of the department to demand royalty from the petitioner for the use of the mineral for the manufacture of bricks, but this dispute has arisen on account of certain differences in the amount of royalty which, according to the State, should have been paid by the petitioner. In any case, it is not expected of the petitioner to have used the mineral without obtaining proper lease from the department and since the petitioner has been doing it knowingly, he has placed himself in the category of rank trespasser as far as the use of the mineral is concerned. It may also be noted here that this fact has not been admitted by the respondent that the land belongs to the petitioner firm. I do not want to go into this matter of controversy. It would suffice to say that one who does not want to obey the law cannot seek remedy under Article 226 of the Constitution and it is on this ground that this Court refuses to grant any relief to the petitioner.

17. For the reasons mentioned above, the writ petition fails and it is hereby dismissed with costs.

Petition dismissed.

Cases Referred.

1. AIR 1970 SC 228

2. Civil Writ Petn. No.118 of 1967, D/-25-11-1969 (Raj)