

RAJASTHAN HIGH COURT

Bal Mukand Arora

Vs.

State (Rajasthan)

Civil Writ Petns. Nos. 398-399, 833 to 844, 1243-1244, 314, 842, 864, 328 and 395 of
1980

(Guman Mal Lodha, J.)

30.08.1980

ORDER

Guman Mal Lodha, J.

1. A common question of law is involved in these writ petitions, regarding the validity of charging of dead-rent by the State of Rajasthan and its functionaries under the provisions of the Rajasthan Minor Mineral Concession Rules 1977 (hereinafter called to be as the 'Concession Rules'), and Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter called to be as 'the Act of 1957'). A bunch of 12 writ petitions, in which validity of the charging of dead rent was challenged, came up for consideration before this Court in *Atmaram Bilochi v. State of Rajasthan* ¹ (Per Hon'ble Mr. Justice K.S. Sidhu), on 8th August, 1980, it was held that the Government of Rajasthan was authorised by law to collect and levy, 'dead-rent'. It was then held that the dead-rent is a kind of minimum rent or royalty with this difference that the rent, called royalty, is a varying charge based on the value of the product, and the, rent, called dead rent is a minimum annual payment, which is usually not enforced if the amount payable as annual royalty is more than the amount of dead-rent fixed for the year. Royalty, in a sense, is therefore the genus of which 'dead-rent' is a species.

2. Reliance was placed upon the judgments of this Court in *Bherulal v. State of Rajasthan*, ² and *Commr. of Income-tax v. Ramlal and Sons*, ³ This court held that royalty is inter alia, a charge by the owner of the minerals from those to whom he gives the concession to remove the minerals, and the charge is on production, the rate being fixed according to weight or the value of the produce. According to Rules, 'Royalty' and 'Dead Rent' have been defined in the following terms : (See Rule 3)

"Royalty" means the charge payable to the Government in respect of the ore or

mineral excavated, removed or utilized from any land as prescribed in Schedule I.

"'Dead rent' means the minimum guaranteed amount of royalty per year payable as per rules or agreement under a mining lease."

According to the view of this Court, 'Dead rent' is the minimum guaranteed amount of royalty, per year payable, as per rules or agreement under a mining lease.

3. Section 15(1) of the Act was held to be the source of authority for the State Government to make rules for regulating the grant of mining leases in respect of minor minerals and for purposes connected therewith. Placing reliance upon the judgment of the Supreme Court in *Baijnath v. State of Bihar*,⁴, this Court held that the State Government is fully competent, as a delegate of Parliament, to make rules regulating the grant of mining leases in respect of minor minerals and for purposes connected therewith.

4. Judgment in *Brimco Bricks Bharatpur v. State of Rajasthan*,⁵ was relied upon to introduce the meaning of "for purposes connected therewith" under Section 15(1) of the Act and it was held that the State Government can lawfully frame rules under Section 15(1) prescribing the rate of royalty for the grant of mining lease in respect of minor minerals.

5. The decision of Madhya Pradesh High Court in *Banku Bihari Saha v. State Govt. of Madhya Pradesh*,⁶ was relied upon by this Court. In view of the plain language of Section 15(1) of the Act, as per the finding of this Court, this Court held that the Parliament has delegated to State Government the power to make rules for regulating the grant of, inter alia, mining lease in respect of minor minerals and for purposes connected therewith and that such delegated power included the power to frame rules prescribing the rate of royalty and, for that matter dead-rent for the grant of mining leases in respect of minor minerals.

6. It was then held that sub-section(1) of Section 15 of the Act was the sole repository of the power to make rules in respect of minor minerals. Sub- sec.(3) had to be inserted by Parliament by an amendment in 1972 to provide for the payment of royalty, as distinguished from its fixation, in respect of minor minerals, removed or consumed by the holder of a mining lease, or his agent, manager or employee. Sub-section (1) deals with power of the State Government to make rules in respect of

minor minerals, which includes the power to make rules prescribing the rate of royalty and dead-rent. Sub-section (3) on the other hand, deals with payment of royalty by the lessee on minor minerals removed or consumed by him or his men at the rate prescribed in the rules framed under sub-section (1) of Section 15. 'Royalty' is a generic term which includes dead-rent and on that premises this Court has held that the power conferred on the State Government in relation to royalty also includes, by necessary implication, such a power in relation to dead-rent. In view of the above finding and deduction, this Court held that the power of the State Government to levy and realize 'dead rent' is derived from Section 15 of the Act and all other relevant provisions in that respect and cannot be challenged.

7. The above view of this Court is sought to be challenged by the learned counsel for the petitioner appearing in these cases. According to them, the view of Andhra Pradesh High Court in *M. V. Subba Rao v. State*,⁷ lays down the correct law on this point and the disagreement shown by this Court in the above cases, requires re-consideration. This court while dealing with the view of Andhra Pradesh High Court expressed its disagreement in the following manner:

"16. It becomes at once clear on a plain reading of sub-section (1) and sub-section (3) of Section 15 that the two sub-sections deal with two different facets of the same matter; to wit, sub-section (1) deals with power of the State Government to make rules in respect of minor minerals, which includes the power to make rules prescribing the rate of royalty and dead rent; and sub-section (3) on the other hand, deals with payment of royalty by the lessee on minor minerals removed or consumed by him or his men at the rate prescribed in the rules framed under sub-section (1) of Section 15. The contrary view, expressed by a learned single Judge of the Andhra Pradesh High Court in *M.V. Subba Rao v. State*⁸ is not, it is respectfully submitted, in consonance with the letter and spirit of Section 15 of the Act. It cannot therefore be accepted as a correct view."

8. The short question which requires consideration now is whether the view of the Andhra Pradesh High Court, referred to above, is correct and disagreement expressed by this Court in Atma Ram Bilochi's case (supra) requires reconsideration.

9. Mr. Panna Chand Jain, appearing for some of the petitioners, drew my attention to Sections 9 and 13 of the Act of 1957 and pointed out that the Parliament has expressly

mentioned in Section 9A the provisions regarding charging of the dead rent. According to him, Amendment of 1972 has made the whole difference. It was argued that since expressly Section 9 has been made for 'dead rent' and further because Section 13 gives the Central Government powers for rule making, no such powers as inferred from Section 15(1) of the Act by the learned single Judge of this court, is permissible.

10. Both the learned counsel, Mr. Jain and Mr. Chowdhary, placed reliance upon the view of the Andhra Pradesh High Court, referred to above. Mr. Chowdhary has further pointed out that the meaning of 'Royalty' given in *H.R.S. Murthy v. Collector of Chittor's case*⁹ should be taken for guidance. He has contended that he has challenged the validity of sub-rule (9) of Rule 3 of the Concession Rules.

11. In *Atmaram Bilochi's case*, this Court had occasion to consider the view of Andhra Pradesh High Court and it was held that since it is not in consonance with the letter and spirit of Section 15 of the Act, it cannot be accepted as correct law. I have again examined the entire scheme of the Act and the Rules in order to appreciate the submission of Mr. Jain and Mr. Chowdhary and particularly, to decide whether the view expressed by the learned single Judge in *Atma Ram Bilochi's case*, requires reconsideration and reference should be made to the Division Bench or to a larger Bench. However, on a close scrutiny and thoughtful study of the entire matter, I am of the view that the interpretation put by the learned single Judge, in *Atma Ram Bilochi's case*, on Section 15 of the Act, appears to be just and reasonable, and there is nothing in Section 9 or 13 which takes away the powers of the Central Government to delegate the powers under Section 15 of the Act to the State Governments. It is true that Section 9 expressly contains the provision of 'dead-rent' and Section 13 empowers the Central Government to frame the rules but by that alone, it cannot be said that the view taken by this Court that Section 15 of the Act is repository of the powers, which can be delegated to the State Governments, for the purposes of minor minerals, is erroneous.

12. The meaning of 'Royalty' given in *H.R.S. Murthy's case* (supra) by the Supreme Court is not different from the meaning of 'Royalty' given in the Rules. In fact, both the 'royalty' and 'dead rent' have got established meaning in law and there is not much scope for debate or difference of opinion about the meaning to be given to them. Whereas 'dead rent' is charged in the form of fixed rental or minimum amount, for granting lease or licence in respect of minor minerals and mining operation for a

particular area, 'royalty' is charged on the basis of the material or mineral excavated or extracted or taken out from the area concerned of mines. The sole difference between two is that whereas the 'dead rent' is charged irrespective of the user or excavation of the mining, 'royalty' is charged only on the excavation of material or mineral from those mines.

13. Mr. Chowdhary's submission that the definition of the 'dead rent' given in the Concession Rules of 1977 is ultra vires, requires no further consideration because the entire decision of this Court in *Atmaram Bilochi's* case (supra) with which I am inclined to agree, is an adjudication on that specific point.

14. The resultant position is that I am not inclined to make a reference for a larger bench for reconsideration of the judgment in *Atmaram Bilochi's* case, consequently the two points decided in that case regarding the validity of the 'dead rent' and power of the State Government to levy and collect the 'dead rent' and secondly, the increase in the yearly dead rent, stands correctly decided. It is held that the Government or Rajasthan is authorized by law to levy and collect the 'dead rent' and the definition as given under Rule 3(ix) of the Rules, is not ultra vires. It is further held for the reasons mentioned in the judgment of *Atmaram Bilochi's* case, the increase in the yearly dead rent, while sanctioning renewal of the leases in question if it exceeds the maximum limit as prescribed in the second Schedule and enhances the minimum limits as prescribed under the second Schedule, is illegal and invalid.

15. Since on the second point, writ petitions are liable to succeed, all these writ petitions are partially accepted to the extent indicated above. Respondents are restrained from charging the increase in the yearly dead rent, while sanctioning renewal of the leases, by the maximum and limits as prescribed in Second Schedule, unless the Schedule, itself, is amended.

16. Mr. Panna Chand Jain, learned counsel for the petitioners submitted that on account of the stay orders and pendency of these writ petitions, renewals were not done within three months and therefore, the respondents should be directed to extend the period by recasting renewal order on the basis of permissible increase in the dead rent. It is therefore, ordered that in case on account of judgment of this Court, dead rent earlier mentioned in the renewal order is required to be altered, respondents would do the same and serve fresh renewal orders in terms of the judgment of this Court.

17. The net result is that all these writ petitions are partly accepted as indicated above. The parties are left to bear their own costs.
Order accordingly.

Cases Referred.

1. Civil Writ Petn. No. 955 of 1980
2. AIR 1956 Raj 161
3. AIR 1964 Raj 152 (FB)
4. AIR 1970 SC 1436
5. AIR 1972 Raj 145
6. AIR 1969 Mad Prad 210
7. AIR 1978 And Prad 453
8. (AIR 1978 And Prad 453)
9. AIR 1965 SC 177