
(2013) 02 MP CK 0036
In the Madhya Pradesh High Court
Case No : W.A. 729 of 2010

Aparn Gramin Vikas Sanstha Samiti Society	APPELLANT
Vs	
State of M.P.	RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Land Revenue Code, 1959 — Section 247, 57, 57(1)
Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 10

Citation : AIR 2013 MP 72 : (2013) ILR (MP) 762 : (2013) 4 MPHT 459 : (2013) 3 MPJR 177 : (2013) 3 MPLJ 74

Hon'ble Judges : G.D. Saxena, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : N.K. Gupta, for the Appellant; Raghvendra Dixit, Government Advocate, for the Respondent

Judgement

A.K. Shrivastava, J.—This writ appeal u/s 2(1) of the M.P. Uchcha Nyayalaya (Khand Nyayapeeth Ko appeal) Adhiniyam, 2005 has been filed against the order dated 25-11-2010 passed by learned Writ Court in W.P. No. 4281/2010 whereby writ petition of the appellant has been dismissed. The cause to file writ petition under Article 226/227 of the Constitution of India is the order dated 1-6-2010 (Annexure-P/1) and order dated 24-7-2010 (Annexure-P/2) whereby the flag stone quarry lease (in short "quarry lease") of the writ petitioner has been cancelled by the Collector (Mines), District Shivpuri.

2. Certain unfolded facts are as under--:

3. The contention of learned counsel for the appellant is that the consent of the owner of the private land was not at all required to be obtained before the grant of mining lease. In this context, learned counsel has invited our attention of Section 57 of the M.P. Land Revenue Code (in short "Code") and has submitted that the State Government is the owner of all land including the mines, quaries,

minerals, etc. and therefore no consent was required from the Government lessee to whom the surface area of the land was earlier allotted. Learned counsel has also invited our attention to Section 247 of the Code which speaks about Government's title to minerals. By inviting our attention to Section 10 of the Mines and Minerals (Development and Regulation) Act, 1957 (in short "Act of 1957") and also Rule 9 of the M.P. Minor Mineral Rules, 1996 (in short "Rules of 1996"). It has been put-forth by learned counsel that this point has already been put to rest by Division Bench of this Court in Shyam Bihari Singh and Others Vs. The State of M.P. and Others, . Learned counsel then propounded that the entire order of learned Writ Court is in favour of appellant but in para 9 of the impugned order the writ petition has been dismissed solely on the ground that petitioner did not pay any compensation to tribal persons, Patta holder and further that looking to the provisions contained in Clause 17 of Part-4 of Revenue Book Circular, there is no provision to give consent, therefore, in such circumstances, the Collector has rightly cancelled the quarry lease of the petitioner. Hence, it has been prayed that by allowing this appeal, writ petition of the writ petitioner be allowed.

4. On the other hand Shri Raghvendra Dixit, learned Government Advocate argued in support of the impugned order and submitted that there is absolutely no document on record to show as to whether the tribal persons who were Pattedharis gave any consent to operate the quarry lease to the petitioner and even if there was any consent, the same was withdrawn by them and therefore by taking note of all these facts and circumstances and by placing reliance upon Clause 17 Part-4 of the Revenue Book Circular the writ petition has been dismissed and thus the order is not at all erroneous or requires any interference. Hence, it has been prayed that this appeal be dismissed.

5. Having heard learned counsel for the parties we are of the view that this appeal deserves to be allowed.

6. On bare perusal of Section 57 of the Code this Court finds that all lands belong to the State Government and further, the land shall include standing and flowing water, mines, quarries, minerals and forests reserved or not and all rights in the sub-soil of any land are the property of the State Government. Since the quarry lease in question is a quarry in terms of Section 57 of the Code including rights in the sub-soil of any land which would mean the quarry in question also is the property of the State Government, therefore for all practical purposes the State Government is the owner of quarry in question. For ready reference it would be appropriate to quote Section 57(1) including the proviso, which reads thus;

57. State ownership in all lands:-- (1) All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any land are the property of the State Government.

Provided that nothing in this section shall, save as otherwise provided in this

Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property.

7. It is nobody's case that under the proviso to sub-section (1) of Section 57 any right has been saved of the Pattedars (Government lessee). Thus, we are of the firm view that the land in question having quarry lease including right in the sub-soil is the property of the State Government and non-else. At this juncture, this Court would also like to go through Section 247 of the Code, which speaks about Government's title to minerals and for better understanding it would be fruitful to quote Section 247 in its entirety, which reads thus;

247. Government's title to minerals:-- (1) Unless it is otherwise expressly provided by the terms of a grant made by the Government, the rights to all minerals, mines and quarters shall vest in the State Government which shall have all powers necessary for the proper enjoyment of such rights.

(2) The right to all mines and quarries includes the right of access to land for the purpose of mining and quarrying and the right to occupy such other land as may be necessary for purpose subsidiary thereto, including the erection of offices, workmen's dwellings and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways or tram-lines, and any other purpose which the State Government may declare to be subsidiary to mining and quarrying.

(3) If the Government has assigned to any person the right over any minerals, mines or quarries, and if for the proper enjoyment of such right, it is necessary that all or any of the powers specified in sub-section (1) and (2) should be exercised, the Collector may, by an order in writing, subject to such conditions and reservations as he may specify, delegate such powers to the person to whom the right has been assigned.

Provided that no such delegation shall be made until notice has been duly served on all persons having rights in the land at fee led and their objections have been heard and considered.

(4) If, in the exercise of the right herein referred to over any land, the rights of any person are infringed by the occupation or disturbance of the surface of such land, the Government or the assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall be calculated by the Sub-Divisional Officer or, if his award is not accepted, by the Civil Court, as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1894 (1 of 1894).

(5) No assignee of the Government shall enter on or occupy the surface of any land without the previous sanction of the Collector, and unless the compensation has been determined and tendered to the persons whose rights are infringed.

(6) If an assignee of the Government fails to pay compensation as provided in sub-sectioned), the Collector may recover such compensation from him on behalf

of the persons entitled to it, as if it were an arrears of land revenue.

(7) Any person who without lawful authority extracts or removes minerals from any mine or quarry, the right to which vests in and has not been assigned by, the Government shall, without prejudice to any other action that may be taken against him be liable, on the order in writing of the Collector, to pay penalty not exceeding a sum calculated at double the market value of the minerals so extracted or removed.

Provided that if the sum so calculated is less than one thousand rupees, the penalty may be such larger sum not exceeding one thousand rupees as the Collector may impose.

(8), Without prejudice to the provisions in sub-section (7) the Collector may seize and confiscate any mineral extracted or removed from any mine or quarry the right to which vests in, and has not been assigned by the Government.

On bare perusal of this section as it is borne from the title of this Section that Government is having title to minerals. Sub-section (1) to Section 247 confers right upon the State Government to enjoy all minerals, mines and quarries which shall vest in the State unless otherwise provided by the terms of grant made by the Government. Since as per the case of the respondent/State Government and as it also appears from the impugned orders Annexure-P/1 and P/2 as well as from the order of learned Writ Court that some persons are Pattedars (Government lessee) on the said quarry lease but according to us their right is limited and they have only right to occupy or enjoy on the surface area. Admittedly, beneath the land in question quarry is there and eventually the quarry lease has been granted in favour of appellant under Rule 6 of Rules of 1996. Thus, if any right of Pattadharis is there it is limited to sub-section (4) to Section 247 only and therefore the appellant has to pay compensation for the infringement of their right and the compensation should be calculated in terms of sub-section (4). There is nothing on record whether any such compensation has not been paid although in para 9 learned Writ Court has so held that in the impugned orders, of the Collector Annexure-P/1 and P/2 it, is found that compensation has not been paid. However, after going through the impugned orders of Collector Annexure-P/1 and P/2 we do not find that there is any such finding of Collector in this regard although simply, it has been mentioned in its order that the tribes have submitted that they have not received the compensation and therefore the earner consent is withdrawn by them. Indeed the finding of the Collector in the impugned orders is not that since compensation has not been paid therefore quarry lease is cancelled. On the contrary it has been cancelled because the consent has been withdrawn by the tribals. Thus, only right which vests in the Government lessee/Pattadari is to obtain compensation. At this juncture, on this point we would like to place reliance on the decision of Division Bench of this Court in Shyam Bihari Singh (supra) wherein Hon'ble the Chief Justice Shri A.K. Patnaik (as His Lordship then was) who spoke for the Bench in para 9 held as under:--

9. We will, therefore, have to look into the provisions of 1957 Act to find out whether the consent of the owner of the private land and an opportunity of hearing to the owner of the private land are mandatory before grant of a mining lease. It is not disputed that the right over the minerals in respect of which a mining lease can be granted is vested in the State by virtue of Section 57 read with Section 247 of the Code. Accordingly the State is owner of the minerals lying beneath even on a private land and as the owner of such minerals, the State can grant a lease in favour of a lessee by way of transfer or assignment. Neither section 10 of the 1957 Act nor Rule 22 of the 1960 Rules on which Mr. Tankha has placed great reliance, lays down anywhere that a mining lease in respect of minerals vested in the Government where the surface land belongs to a private person cannot be granted without the prior consent of the owner of such private land. In the absence of such clear statutory provisions, either in the 1957 Act or in the 1960 Rules, the State Government as the owner of the minerals can grant a mining lease in favour of a lessee without the consent of the owner of a private land, even where the minerals are embedded in such private land.

In para 13 of the said decision further it has been held as under:--

13. A reading of Rule 22(3)(i)(h), quoted above, would show that where the land is owned by some private owner, the statement in writing has to be made by the applicant that the consent of such owner for starting mining operations has been obtained. The language of Clause (h) is clear that consent of the owner is required "for starting mining operations" and not for grant of mining lease. Similarly, the second Proviso to Clause (h) states that consent of the owner "for starting mining operations" in the area or part thereof may be furnished "after the execution of the lease-deed" but "before entry into the area". The expression "after execution of the lease-deed" again would show that no consent is required for execution of the lease-deed. The expression "before entry into the area" confirms that consent is required not for execution of lease deed but for entering into the lease area. Rule 22(3)(i)(ii) therefore does not indicate that consent of the owner of the land is a pre-condition for a mining lease in favour of the lessee. All that it indicates is that such consent is required before entering into the lease area.

8. Admittedly earlier to the passing of impugned orders Annexure-P/1 and P/2 by respondent No. 2 the appellant was carrying on the quarry lease operation for one year. In this regard, the order of respondent No. 2 dated 22-2-2009 may be seen by which the quarry lease was granted to him for 10 years.

9. The only ground upon which the quarry lease which was earlier granted to the petitioner has been cancelled is that Government lessee/Pattedars have withdrawn their consent, but, neither there is any provision in the Act of 1957 nor in the Code and so also in the Rules of 1996 that any prior consent is required to be obtained. Although Rule 9 (k) speaks about filing of an affidavit and we would like to quote Rule 9(k) which reads thus:--

9. Application for quarry lease:-- An application for the grant or renewal of a quarry lease shall be made in Form I in triplicate for the minerals specified in Schedule I and II. The application shall be affixed with a Court fee stamp of the value of five rupees and shall contain the following particulars together with documents in support of the statements made therein:--

(a) to (j) xxx xx xx

(k) An affidavit to the effect that the applicant has, where the land is not owned by him, obtained surface rights over the area or has obtained the consent of the owner/owners for conducting mining/quarrying operations;

Provided that no such affidavit shall be necessary where the land-rights vest with the State Government.

From the impugned orders of respondent No. 2 Annexure-P/1 and P/2 it is clear like a noon day that earlier the consent of the owner (Pattedar) was obtained to permit the appellant to enter upon the surface area of the quarry lease. Put, because they have withdrawn their consent, therefore, the impugned orders Annexure-P/1 and P/2 have been issued by the Collector. According to us, once permission has been granted by the Pattedar/ Government lessee to petitioner to carry out the quarry lease upon the surface area and to enter upon it which they were enjoying there is no provision in the law that subsequently it can be withdrawn. Learned Government has also not pointed-out any such provision either under the Code or under the Act of 1957 or even under the Rules of 1996. According to us, there cannot be any such statutory provision for the simple reason that if there would have been any such provision, the quarry lease holder like petitioner would depend and would live upon the mercy of those persons who may at any point of time may change their mind and may withdraw such consent which was earlier given and therefore according to us since there is no statutory provision to withdraw the consent to use the surface area, which was earlier given, therefore, the impugned orders of the Collector Annexure-P/I and P/2 stand nowhere.

10. Learned Writ Court has treated those persons to be Pattadaris (Government lessee) and thus has placed reliance upon Clause 17 (Part-4) of the Revenue Book Circular. We have already held hereinabove that Pattadaris are having limited right to the extent of subsection (4) of Section 247. From the impugned orders of Collector, it is revealed that the consent to obtain surface area for the quarry lease was already obtained by the appellant from Pattadaris and therefore according to us the provisions of Revenue Book Circular have no applicability which speaks about that Pattadari has no power and right to sell and transfer the land in favour of any person. According to us, in the present case, the grant of quarry lease cannot be said to be a sale or transfer in terms of Clause 17 Part-4 of Revenue Book Circular and thus such provision has no applicability in the present case. For the reasons stated hereinabove this appeal is allowed and the order dated 25-11-2010 of learned Writ Court is set aside and the orders of

Collector dated 1-6-2010 (An-nexure-P/1) and 24-7-2010 (Annexure-P/2) are also set aside. However, on being submitted by the Pattadaris of the Government land who are tribal necessary compensation etc. may be directed to be paid according to the law if already not paid and in this regard the Collector shall be free to initiate proceedings and may decide it in accordance with law after providing opportunity of hearing to the Pattadaris (Government lessee) as well as to writ petitioner. Let this exercise be done within a period of 6 months from the date of this order. However, it is made clear that assessment of the compensation etc. will not come in way of operating the quarry lease by the appellant because from the impugned orders of Collector (Annexure-P/1 and P/2) there is no adjudication that compensation has not been paid to the Pattadaris however it will be obligatory on the part of writ petitioner to pay compensation as fixed by the Collector subject to statutory remedy of appeal etc. available to both the parties. No costs.