

(1980) 08 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 933, 951 to 954, 955, 956 to 958, 973 and 989 of 1980

Atma Ram Bilochi and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 08-08-1980

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 15(1), 15(3)
Rajasthan Minor Mineral Concession Rules, 1977 — Rule 17, 18, 18(3), 3

Citation : AIR 1981 Raj 197 : (1980) RLW 588

Hon'ble Judges : K.S. Sidhu, J

Bench : Single Bench

Advocate : M.I. Khan, for the Appellant; G.G. Sharma, Additional Government Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

K.S. Sidhu, J.—This judgment will deal with S. B. Civil Writ Petition No. 955 of 1980 and the companion petitions listed above. The respective IN petitioners are all holders of different mining leases under the Mines and Minerals (Regulation and Development) Act, 1957, which will hereinafter be called the Act and the Rules made thereunder. Two common questions of law arise in these petitions and the same may be stated as under:--

i. Whether the Government of Rajasthan is authorised by law to levy and collect dead rent?

ii. If so, whether the increase in the yearly dead rent, made by the Government while sanctioning renewal of the leases in question exceeds the maximum limit prescribed by law, and is therefore, invalid?

2. It is not necessary to recapitulate here the pleadings of the parties in all the petitions. Such recapitulation may be made only in respect of the pleadings in S.

B. Civil Writ Petition No. 955 of 1980 as typical of all the petitions. Atma Ram Bilochi is the petitioner in that case. By an instrument of lease, executed on April 7, 1975, he was granted a mining lease for excavating marble from an area measuring 7200 square meters for a term of five years. The rate of dead rent fixed under the then extant rules was Rs. 2.75 per 10 square metres. Thus, the total dead rent, payable by the petitioner in respect of the entire area of 7200 square metres, calculated at the rate of Rs. 2.75 per 10 square meters, worked out to Rs. 1980/- only.

3. The petitioner applied for renewal of the said lease in accordance with the provisions of Rule 17, Rajasthan Minor Mineral Concession Rules, 1977 (hereinafter called the Rules). The Rajasthan Government sanctioned renewal of the lease for a period of five years on the condition, inter alia, that the petitioner shall pay yearly dead rent of Rs. 15960/- instead of Rs. 1980/-. In terms of Rule 19 of the Rules, the Government notified the petitioner, vide the letter of sanction itself, that if he did not execute the formal lease within three months of the date of receipt of the sanction, the lease shall be deemed to have been revoked.

4. On enquiry by the petitioner as to the rationale of this abnormal increase in the yearly dead rent from Rs. 1980/- to Rs. 15,960/-, he discovered that the same had been done on the authority of a letter, dated, November 5, 1979, from the Deputy Secretary, Government of Rajasthan in the Mines (Group IV) Department to the Superintending Engineer, Mines and Geology Department, Udaipur. The impugned letter which is reproduced in the petition reads:

"The formula of renewal of dead rent will have to be what has recently been decided in the case of Associated Stone Industries, Kota. This in other words, means on renewals, the dead rents will be calculated at plus 40% of the existing dead rent and the maximum excess royalty paid in any of the preceding years. The original dead rent shall be reckoned @ Rs. 5,50 per 10 sq. meters".

4A. The petitioner filed this writ petition under Article 226 of the Constitution of India challenging the increase of yearly dead rent in the manner as stated above. The grounds on which the increase is challenged and which were the only ones pressed at the time of arguments have already been stated in the form of two legal issues in the opening paragraph of this judgment.

5. In its return, filed in answer to this petition, the State of Rajasthan pleaded that under the Rules, framed by it in exercise of the powers conferred by Section 15 of the Act, it has the legal authority to levy and collect dead rent, and that the dead rent can be legally levied and collected at a rate higher than the rate prescribed in Second Schedule of the Rules.

6. As already stated, the first question which falls for determinations whether the Government of Rajasthan is authorised by law to levy and collect dead rent, "Before going into the relevant provisions of law bearing on this question, it will be helpful to understand as to what is meant by dead rent in a general sense.

Earl Jowitt in his Dictionary of English Law (second edition), page 555, says that dead rent is "a term sometimes used in mining leases, in contradistinction to a royalty, to denote a fixed rent to be paid whether the mine is productive or not". Rent in law is a periodical payment due from a tenant for the use of land, building or other property. Royalty is a kind of rent which the lessor of a mine, quarry, brick works or similar property charges from the lessee, the charge varying with the quantity of minerals etc. produced during each year. Dead rent is thus a kind of mineral 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.

7. It will be presently seen that the Rules define "royalty" and "dead rent" on the lines of the general meaning of these expressions as explained above. Before we notice the definitions, it is noteworthy that this Court consistently held the view, even before the promulgation of the Rules and the definitions contained therein, that royalty is, inter alia, a charge by the owner¹ 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, (see, for example, *Bherulal Vs. State of Rajasthan and Another*, and *The Commissioner of Income Tax Vs. Ramlal and Sons, Barmer*,

8. A Division Bench of the Punjab and Haryana High Court expressed a similar view in *Shanthi Saroop Sharma and Another Vs. State of Punjab and Others*, that royalty is more akin to rent and that it cannot be classed as tax or fee. The contrary view expressed by the Patna High Court in *Laddu Mal and Others Vs. The State of Bihar and Others*, that the royalty is a tax was expressly dissented from by the Punjab & Haryana High Court in *Shanti Saroop Sharma's case* (*Ibid*), and if I may say so with respect, for obviously good reasons. Royalty has a basis in the contract between the lessor and the holder of a mining lease and, therefore, it is not a compulsory charge in the nature of a tax or impost. The compulsion regarding minimum and maximum rate of dead rent or royalty etc. works as respects the public servant who grants the lease on behalf of the State, and not as respect the grantee, for the grantee is at liberty not to accept the lease if the rate of dead rent or royalty as prescribed by the regulatory law is not acceptable to him.

9. The Rules (see Rule 3) define "royalty" and "dead rent" as under:

"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.

Schedule I of the Rules which deals with rates of royalty on different minor

minerals prescribes such rates per tonne of the mineral excavated. Schedule II deals with rate of dead rent on minor minerals. The rates can be fixed within the limits of a minimum and maximum rate as prescribed therein.

10. These definitions, considered in the light of the general meanings of "royalty" and "dead rent" as explained above leave no manner of doubt that royalty is a kind of rent which the lessor of a mine charges from the lessee, varying with the quantity of the minerals produced. Dead rent is the minimum guaranteed amount of royalty per year payable as per rules or agreement under a mining lease.;

11. It is common ground between the parties that all the mining leases involved in these writ petitions are in respect of minor minerals. After analysing the main provisions of the Act, the Supreme Court pointed out in *Bajinath Kadio Vs. State of Bihar and Others*, that the Act takes over the control of regulation of mines and development of minerals to the Union, and that it deals with minor minerals separately from the other minerals. The Act provides in Section 14 that Sections 4 to 13 (both inclusive) do not apply to mining leases in respect of minor minerals. Section 15(1) of the Act enacts that "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". Their Lordships further held in the cited case that regulation of the grant of mining leases in respect of minor minerals and for purposes connected therewith "must be by rules made by the State Government".

12. It will thus be seen 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. So far as this Court is concerned, it is settled on the basis of *Brimco Bricks, Bharatpur Vs. State of Rajasthan and Another*, that fixation of royalty, for extracting minor minerals, for grant of a mining lease, undoubtedly comes within the expression "for purposes connected therewith" occurring in Section 15(1) of the Act, and that therefore the State Government can lawfully frame rules u/s 15(1) prescribing the rate of royalty for the grant of mining lease in respect of minor minerals.

13. This view finds support from a Division Bench ruling of the Madhya Pradesh High Court reported in AIR 1969 210 (M.P.) Head-note (A) in the report may be usefully quoted here:

"Section 15(1) of the Act empowers the State Government to make rules "for regulating the grant of mining leases in respect of minor minerals and for purposes connected therewith". Royalty is a payment to the lessor proportionate to the amount of the mineral worked: it is paid in addition to dead rent and surface rent and is a normal feature of mining leases. Royalty being a necessary concomitant of mining leases, power to make rules for regulating the grant of

mining leases of minor minerals and for purposes connected therewith will necessarily include the power to make rules fixing the rates of royalty in respect of minor minerals."

14. It can therefore be safely concluded on the basis of the plain language of Section 15(1) of the Act and the rulings mentioned above that by Section 15(1) of the Act, Parliament has delegated to State Government the power to make rules for regulating the grant of, inter alia, mining leases in respect of minor minerals and for purposes connected therewith and that such delegated power includes 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.

15. Before parting with discussion on this question, reference may be made to the argument, raised on behalf of the petitioners, that since Parliament has, by its declaration made in Section 2 of the Act, taken over the control of regulation of mines and the development of minerals to the Union, and that since Parliament has not expressly delegated to the State Government the power to make rules fixing the yearly dead rent, the State Government has no legal authority to make rules fixing such dead rent. While advancing this argument, counsel frankly conceded that power to make rules prescribing the rate of royalty has been conferred by Parliament on the State Government. He however vehemently contended that power to fix dead rent has not been conferred by Parliament on the State Government and therefore the State Government is not competent, under law, to make rules fixing the yearly dead rent. Counsel referred in this connection to Sub-section (3) of Section 15 of the Act which reads as under:--

"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 of sub-lease at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals."

and contended that since this sub-section deals with payment of royalty alone, the State Government may not make a rule dealing with fixation or payment of dead rent. The argument is, in my opinion, wholly fallacious, for it is based on a false promise that the State Government derives its power to make rules fixing the rate of royalty from Sub-section (3) and not Subsection (1) of Section 15 of the Act. Subsection (1) is in my opinion, the sole repository of the power to make rules in respect of minor minerals and it lays down that "the State Government may, by notification in the Official Gazette, make rules for regulating the grant of mining lease in respect of minor minerals and for purposes connected therewith." "As already mentioned, this Court has clearly held in *Brimco Bricks, Bharatpur Vs. State of Rajasthan* and *Another*, that the words "for purposes connected therewith" occurring in Section 15(1) of the Act are of wide amplitude enabling the State Government to make rules prescribing the rate of royalty and, for that matter dead rent. Sub-section (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. It is significant to note that royalty for the minor minerals removed or consumed by the lessee or his agent, manager or employee is payable, as Sub-section (3) itself lays down, "at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals". Power to make rules prescribing the rate of royalty is conferred by Parliament on the State Government, by virtue of the provisions of Sub-section (1) of Section 15. This means that lessee is liable to pay royalty for the minor minerals removed or consumed by him or his men at the rate prescribed in the rules made by the State Government u/s 15(1) of the Act.

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 facts 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 Vs. State of Andhra Pradesh and Another*, 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.

17. Even otherwise, royalty, as already explained, is a generic term which also includes dead rent, and therefore any power conferred on the State Government in relation to royalty also includes, by necessary implication such a power in relation to dead rent.

18. In view of the foregoing discussion, the argument raised on behalf of the petitioners is wholly devoid of force and must be rejected. I must, therefore, hold that the Government of Rajasthan is authorised by Section 15(1) of the Act to make rules, and it has made such rules, prescribing the rate of royalty and dead rent for the grant of mining leases in respect of minor minerals.

19. Turning now to the second question as to whether, under the Rules, the Government can fix dead rent at a rate exceeding the rate prescribed therein, I may straightway say that my answer to this question is an emphatic "no". This is evident on a plain reading of Rule 18 of the Rules. This rule, is so far as it is material for our present purpose, reads:--

18. Conditions -- The following conditions shall be included in every mining lease and if they are not so included, shall be deemed to have been included therein:--

(1) to (2)

(3) The lessee shall also pay for every year such yearly dead-rent within the limits prescribed in 2nd schedule as may be fixed by the Government in this behalf in quarterly instalments or as fixed by the Government, in advance, and if the lease permits the working of more than one mineral the State Government may charge separate dead rent for each mineral provided that the mining of one mineral shall not obstruct the mining of another mineral:

Provided further that the Government may revise the rate of dead rent after every five years from the date of the grant of the lease and the lessee shall be liable to pay such revised dead rent.

Provided also that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral whichever is higher in amount but not both. Schedule II of the Rules of which mention is made in Sub-rule (3) of Rule 18 reproduced above deals with rates of dead rent on minor minerals. The rates prescribed therein have to be fixed by the authority granting the lease within the minimum and maximum limits specified therein. The maximum rate of dead rent prescribed for minor minerals of the kind we are concerned with in Section B. Civil Writ Petition No. 955 of 1980 is Rupees 6.25 per 10 square metres of the area of the mine. In other words, the authority granting the renewal is not competent to fix dead rent at a rate higher than the maximum rate of Rs. 6.25 per 10 square metres. The words "lessee shall also pay for every year such yearly dead rent within the limits specified in Schedule as may be fixed by the Government in this behalf, occurring in Rule 18 (3) as reproduced above, are as clear and unambiguous as any words can be. These words mean what they say. What they say is simple and the same is that the executive authority of the Government granting the mining lease in respect of minor minerals shall be free to fix the rate of yearly dead rent within the limits specified in Second Schedule. In other words, he may fix the rate in his discretion, but in doing so he cannot fix it lower than the minimum rate and higher than the maximum rate specified in Second Schedule,

20. Mr. Khan, learned Government Advocate referred to the letter, dated November 5, 1979, from the Deputy Secretary to the Government of Rajasthan to the Superintending Engineer, Mines and Geology, Udaipur which has been reproduced in an earlier part of this judgment, as the sanction behind the fixation of dead rent in these cases at a rate higher than the maximum rate prescribed in Second Schedule of the Rules. The said letter, in my opinion carries no more weight in the eye of law than the executive fiat of a superior authority addressed to its subordinate. If the State Govt. feels that the maximum rate of dead rent as per prescribed in Second Schedule is grossly inadequate having regard to the yearly royalty realised in the past and to other economic factors, it is always open to it to amend Second Schedule, and enhance the amount of the minimum and maximum rates in the exercise of powers conferred on it by Section 15(1) of the Act, but in doing so it will have to follow the procedure prescribed for making statutory rules, rather than act on the basis of its own fiat

expressed through one of its departmental secretaries.

21. The answer to the second question therefore is that the increase of the dead rent, while sanctioning the renewal of the lease must abide by the maximum and minimum limits as prescribed in Second Schedule. If the increase ordered exceeds the maximum limit as prescribed in Second Schedule, it is illegal and invalid.

22. The writ petitions are partly allowed to the extent indicated above. Let appropriate directions, orders or writs issue to the respondent in all these cases. The parties are left to bear their own costs.