(1955) 11 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Application No. 50 of 1955

Bhoor Chand APPELLANT

Vs

The State of Rajasthan and Others RESPONDENT

Date of Decision : 04-11-1955

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2, 6
Marwar Land Revenue Act, 1949 — Section 231

Citation : AIR 1957 Raj 213 : (1956) RLW 513

Hon'ble Judges : K.N. Wanchoo, C.J;I.N. Modi, J

Bench : Division Bench

Advocate : Hastimal, for the Appellant; Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Modi, J.—This is a petition by Bhoorchand under Article 226 of the Constitution and arises under the following circumstances.

2. The petitioner''s case is that he had obtained the lease of some 2400 bighas of land from the jagirdar of Sanwarla, Tehsil Siwana, by a deed dated the 3rd December, 1951, and that he had been carrying on the work of manufacture of salt over 1 1/2 acre out of the area mentioned above for the last four years and invested round about Rs 10,000/- over such manufacture. He also states to have applied but without success so far, for a licence, to the General Manager, Central Excise and Salt Government of India, for the purpose of manufacturing salt over a larger area but contends that so far as the existing area, to which he has confined the manufacturing operations is concerned, namely, the one and half acre, he is perfectly within his legal rights as such manufacture is covered by a press-note dated the 23rd April, 1948. issued by the Government of India u/s 6 of the Central Excise and Salt Act (No I) of 1944.

The effect of this press-note briefly put, is that the Government in their desire to set up the production of indigenous salt and to attain self-sufficiency in this vital commodity permitted free production of salt (without the necessity of obtaining any licence) by individuals or groups, on land to which they have lawful access for this purpose, and to carry on the manufacture by any process they desire, i.e., by construction of pans and solar evaporation or boiling of brine or excavation of saline earth or any other process; provided that the total area of land covered by the salt works, set up by any individual or group, is not more than 10 acres.

Government, however, reserved their right to take suitable preventive measures against the sale of unwholesome salt for human consumption, in the interest of national health. The position was later reviewed in 1955. and by another press-note dated the 11th May, 1955, the Government of India laid down inter alia that after March 1, 1955, individuals or groups may freely produce salt in any land to which they have lawful access for this purpose provided that the total area of the land covered by the salt works does not exceed 2 1/2 acres.

The case of the petitioner is that he was well within his rights in manufacturing salt over 1 1/2 acre out of the total area obtained on lease by him from the jagirdar but that he had been wrongfully restrained from such manufacture by the Collector of Banner within whose district the land in question is situate and that thereby the Collector had infringed his fundamental right to carry on his trade or business within the meaning of Article 19 of the Constitution.

The petitioner consequently prays that this Court do issue a writ of mandamus or prohibition or an order in the nature thereof against the Rajasthan State and the Collector Barmer and Tehsildar Siwana who have been respectively arrayed as opposite parties Nos. 1 to 3 in this petition. Before proceeding further, it may be mentioned that according to the petitioner he was carrying on the manufacture of salt by the method of construction of pans and solar evaporation only.

3. The petition has been opposed by the State, which is the principal contesting party, mainly on two grounds. - The first contention is that in the former State of Marwar, the State was the owner of all minerals including salt, irrespective of the consideration whether the land whereon salt was produced was held in Khalsa (that is, territory directly governed by the State) or in jagir, and reliance is placed in support of this contention on Section 231 of the Marwar Land Revenue Act No. 10 of 1949, and it is submitted that after the formation of the present State of Rajasthan that right devolved on and became vested in the present State.

The second contention is that the petitioner was. in terms of his lease in occupation of 2400 bighas or 960 acres of land for the purpose of manufacturing salt and, therefore, he was not in any case, protected by ''the press-notes of the Government of India and the policy adumbrated therein. At the outset, two things require to be noticed in connection with the reply of the State by way of clearing the ground. In the first place, the position as indicated by the press-notes has not been denied on behalf of the State and, therefore, we accept it as correct.

In the second place, no contention has been raised on behalf of the State that the petitioner has been actually manufacturing salt on more than 1 1/2 acre of land as alleged by him. We are, therefore, unable to agree that hie petition can be thrown out on the mere ground that he has obtained a lease for and is in possession of as much as over 900 acres of land in this connection. The possession of an extensive area by the petitioner in itself is, in our opinion, of no real consequence for the purposes of the present case so long as the petitioner restricts his salt-manufacturing operations to the area within the limitations set forth in the press-notes.

4. The principal question for determination therefore boils down to this: whether in the former State of Manvar the State was the owner of all salt regardless of the consideration that it was produced in Khalsa or in jagir area; because, if that is the correct position in law, then the circumstance that by the press-notes referred to above, the Central Government offered certain special facilities to small manufacturers of salt and permitted them freely to manufacture salt, without being under the necessity of obtaining any licence from them, under the Salt Act cannot per se avail the petitioner for the rights of ownership of the State could not possibly be defeated by anything contained in the press-notes.

We are altogether unable to accept that We should interpret the press-notes so as to terminate the rights of ownership, if any, of the erstwhile State" or its successor State, namely, the present State of Rajasthan, with respect to salt where such a right is vested in the one State or the other; nor do We consider that the jagirdar merely by grants ing a lease of the land containing certain deposits of salt could divest the State of its rights of ownership. We are fortified in this opinion by the language of the press-notes referred to above. Turning to the press-note dated the 23rd April, 1948. paragraph (3) thereof says this:

"Henceforth individuals or groups may freely produce salt in any land to which they have lawful access ''for this purpose''....." (The underlining (here into '' '') is ours).

The phrase "for this purpose", to our mind, is of very considerable significance and has a vital bearing on the point for decision before us, and it clearly appears to us that where salt, wherever produced and in whichever manner, is the property of a former State or of the successor State or for that matter of a third party, the mere freedom to manufacture salt without obtaining a licence from the Government of India would not and cannot serve as any justification for interference with such right of ownership. In such a case it cannot be said that the party seeking to manufacture salt has lawful access to the relevant land for the purpose of manufacturing salt.

5. The crux of the matter, therefore, is whether the contention of the State that its predeces-sor-in-interest, namely, the former State of Jodh-pur was the owner of all salt produced in that State is well founded. The relevant provision in this

connection is Section 231 of the Marwar Land Revenue Act the material portion of which reads as follows:

"(1) Unless it is otherwise expressly provided in the records of a settlement or by the terms of a grant made by His Highness, the right to all minerals, mines and quarries shall vest in the Government which shell 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 purposes subsidiary thereto, including the erection of offi-ces-workmen''s dwellings and machinery, the stack-ing of minerals and deposit of refuse, the construction of roads, railways or tram lines, and any other purposes which the Government may declare to be subsidiary to mining and quarrying.

(3) If the Government has assigned to any person its 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-sections (I) and (2) should be exercised, the Deputy Commissioner may, by an order in writing, subject to such conditions and reservations as he may prescribe, 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 affected; and their objections have been heard and considered.

(4) .....

(5) .....

(6) .....

(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 Deputy Commissioner, to pay a penalty not exceeding a sum calculated at the rate of fifty rupees per ton or a fraction thereof, 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 Deputy Commissioner may impose.

Explanation:--In this section, "minerals" include any sand or clay which the Government may declare to have a commercial value or to be required for any public purpose,"

What is the meaning of the word "mineral" In this section? -The contention is raised on behalf of the petitioner that salt is not a mineral. Learned counsel for the petitioner has drawn our attention to the circumstance that the manufacture, distribution and supply of salt by the union agencies as well as regulation and control of the manufacture supply and distribution thereof by other agencies is a union subject and has been provided for in serial No. 58 of the Union List; whereas the regulation of mines and mineral development is separately provided by serials NOS. 54 and 55 of the Union list and serial No. 23 of the States List subject to the provisions of List I or the Union List in that respect.

It is, therefore, argued that salt is not a mi neral at all. We are willing to accept that salt has been provided for as a separate item from minerals in the legislative lists for the purposes of the Constitution. Be that as it may, we are not prepared to agree that it would be correct to in terpret the word "mineral" in the Marwar Land Revenue Act with reference to the provisions of and its use in the Constitution of India which had not even come into being at the time when the Marwar Act came to be passed.

We must, therefore, seek the interpretation of the word "mineral" in Section 231 of the Marwar Act elsewhere. In the first place, it is to be observed that the section has used the expression "mines and minerals" in juxtaposition and, therefore, we feel persuaded to consider that in ao saying the Legislature obviously Intended to attach some distinct and, most probably, a larger import to the word "mineral" apart from the word "mines" , It is true that the word "mineral" primarily means something which grows in or is dug out of a mine; and a mine is a pit or excavation in the earth from where something of commercial value is excavated.

It has been argued before us that the salt which used to be produced and which the petitioner seeks to produce in the present csse was not being and would not be dug out of the bowels of the earth but was or would be prepared in pans by solar evaporation and is, therefore, not a mi-neral at all. although it is conceded on behalf of the petitioner that rock salt is and would be a mineral for that has to he dug out of the bowels of the earth; but it is strenuously contended that the salt manufactured in the mode adopted by the petitioner cannot be legitimately termed a mineral.

The argument may be plausible but on a deeper consideration we are of opinion that it cannot be accepted in the context of the conditions which obtained in the erstwhile State of Marwar. We have reasons to believe that at all relevant times the manufacture of salt was possible in Marwar only by the State or by its lawful assignee, whoever it was and by no other, and it is important to remember in this connection that that State had under certain agreements (see the agreements dated the 27th January and the 18th April, 1870 and the 18th January. 1879 published (by autho-rity) in the Administration Report of the Marwar State for 1883-84 at pages 224 to 245) given the monopoly to manufacture salt to the Government of British India, as it then was, in the case of many of its important salt producing areas such as Sambhar. Pachpadra, Didwana, etc.

The position cannot, therefore, be successfully assailed that a land-holder in the former State of Marwar or for that matter anybody else was utterly incompetent to manufacture salt without the permission of the State and the State was the sole owner of all salt in Marwar howsoever produced. Thus Major Erskine in his Gazetteer of the Jodnpur State states as follows at p. 114:

"Salt, marble and sandstone excepted very few minerals of value have so far been met with." In the next paragraph on page 115, the author says:

"Salt chiefly in the form of Sodium Chloride associated with sodium sulphate and sodium carbonate Is found in great abundance at several places such as lakes at Didwana, Pachpadra and Sambhar the depressions at Phalodi and Pokaran, the Jhils at Kuchaman and Sargot and along the Luni river under the treaties of 1870 and the agreement of 1879 the manufacture of salt is practically a monopoly of the Government of India."

It must further be remembered in this connection that the State took over ownership of salt from all other persons or agencies and put a complete stop to the manufacture of salt by them and also granted compensation to them in lieu thereof. It is in this context that the word "mineral" appears to us to have been used and has to be interpreted in Section 231 of the Marwar Land Revenue Act and we are of opinion that it embraces all salt irrespective of the area and the manner in. which it was produced.

Now. used in this extensive sense, the word "mineral" Includes salt no matter that in certain cases it is not produced out of mines, but by, let us say, natural processes or surface workings. We desire to take the opportunity of- pointing out in this connection that the word "mineral" is variously employed in different contexts and cannot necessarily be restricted to something which is dug out of a mine or pit or from inside the bowels of the earth. Thus Ramnath Iyer''s Law Lexicon of British India has the following to say in this connection:

"A mineral is a natural body destitute of organisation or life. The word is evidently derived from mine as being that which is usually obtained from a mine but mineral bodies occur in three physical conditions of solid, liquid and gas, and although the term is more frequently applied to substances containing metals, in its proper sense it includes all fossil bodies or matters dug out of mines and is not confined to metals only, but primarily means all substances other than the agri-cultural surface of the ground which may be got for manufacturing or merchantile purposes such as stone or clay whether got from a mine as the word would seem to imply or by open working and whether containing metallic substances or substances entirely non-metallic.

So it includes all metallic ores, slate and cor-rolities, calk, and calcspar, coal and salt. In the broadest sense as belonging to one of the three great divisions of matter--animal, vegetable and mineral--sand of course is a mineral, and in the more restricted scientific sense it may or may not be a mineral according to what it is composed of. So where parties do not appear to have intended a different meaning, oil or petroleum, gas and water are embraced in the term; and it is said of water and oil and still more strongly of gas that they may be classed by themselves if the analogy be not too fanciful, as minerals ferae naturae."

Again, in its legal sense the word mineral has been held to include prima facie every substance which can be got from underneath the surface whether by underground working or by open quarrying provided that such substance is part of the natural soil and is of ?commercial value or at least has a use and value independent of the rest of the soil.

6. The conclusion at which we have, therefore, arrived is that the term. "mineral" is not as inflexible in its meaning as one might at first sight suppose and is not necessarily connected with a mine, although it ordinarily is and its precise meaning in a given case will have to be fixed with reference to the particular context, and in relation to the surrounding circumstances of the particular case. In the context of things which we are called upon to consider in this case, we may sum up certain features which stand out and require to be kept in view in order to fix the meaning of the word "mineral" as used in Section 231 of the Marwar Land Revenue Act.

1. Practically . all important salt producing areas in the former State of Jodhpur or Marwar were leased out to the Government of India by the State.

2. No one could manufacture salt in the former State of Marwar except with the permission of the State in Khalsa or jagir areas.

3. Apart from the areas leased out to the Government of India, the production of salt by every other agency everywhere else in that State was effectually stopped by that State and wherever necessary compensation was paid to the jagirdara or other parties concerned.

4. The irresistible conclusion from the considerations stated above, to our mind, is that the former State of Jodhpur established its ownership beyond question, over all salt producing areas and of all salt deposits whether in Khasla or Jahir areas. In this context we have no hesitation in coming to the conclusion that the word "mineral" in the Marwar Land Revenue Act embraces salt as much as other minerals ordinarily so understood such as metals, etc.. and the legal position in the case of salt deposits or areas where salt is manufactured must be the same as in the case of mines or other minerals, that is, the right of ownership in either case vests in the State and even the present petitioner has nothing to Contend against the ownership of the State so far as the latter are concerned.

We are further of opinion that if the above conclusion is correct, as we think it is, then the mere circumstance that salt in this case is produced not by excavation from the bowels of the earth but by more or less surface working cannot have any material effect as to the conclusion arrived at by us, because in our opinion, the salt so produced" is as much a mineral under the Mar-war Land Revenue Act as the other kind of salt such as rock salt which would be without question a mineral.

7. We feel greatly reinforced in the conclusion to which we have come by the case of Waring v. Poden, (1932) 1 Ch 276 (A), which clearly establishes the principle that mines and minerals are pot definite terms, and that they are susceptible of limitation or expansion according to the intention with which they are used and that such intention whether in the case of a statute or a private grant must be determined in the light of its own conditions and circumstances.

8. In the result we hold that the expression "mines or minerals" as used in the Marwar Land Revenue Act embraces salt within the meaning thereof, and it follows as a necessary corollary that the right to exploit or manufacture salt irrespective of the manner of its production whether in Khalsa or Jagir, in the territory of the former State of Marwar, vested in the Government of that State or its assignee, and no Jagirdar as such could have claimed such a right, and after the Integration of that State in the present State of Rajasthan, the same right became vested in the new State, and as the lessor Jagirdar himself possessed no right of ownership with respect to any salt deposits in his Jagir, the lease obtained by the present petitioner from the Jagirdar is of no avail whatsoever so far as the manufacture of salt is concerned.

We are further of opinion that the concessions granted by the Government of India for stepping up the production of salt, referred to above, do not and cannot possess the effect of adversely affecting the rights of ownership in this connection vested in the former State of Marwar and now the successor State of Rajasthan so far as the territory of the former State of Marwar is concerned.

9. In view of the conclusions at which we have arrived above, this petition fails and is here- by dismissed with one set of costs to the State.

