
(1970) 12 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 3247 of 1970 and C Miscellaneous 6541 of 1970

Chuni Lal

APPELLANT

Vs

The state of Haryana

RESPONDENT

Date of Decision : 15-12-1970

Acts Referred:

Punjab Land Revenue Act, 1887 — Section 42

Citation : (1970) 12 P&H CK 0013

Hon'ble Judges : D.K. Mahajan, J; Balraj Tuli, J

Bench : Division Bench

Advocate : S.K. Jain, for the Appellant; G.C. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Mahajan and B.R. Tuli, JJ.—This writ petition is directed against the notification dated 3rd of September, 1970, issued by the Government of Haryana and published in the Haryana Gazette. The notification has been issued by the Department of Industries whereby they have notified that the saltpeter bearing areas in village Chiri will be sold by public auction.

2. Chuni Lal petitioner is a lessee from the Gram Panchayat of Chiri. By this lease he was given a right to extract saltpetre. Initially, the lease was for three years starting from the year 1967. For the first two years, the petitioner extracted the saltpeter without any let or hindrance in the third year, the Government stepped in with the result that the petitioner could not extract the saltpeter. As a consequence of that the petitioner filed a suit against the Gram Panchayat for compensation for the breach of contract. That suit was compromised and as a result thereof the petitioner was granted a lease for one year in lieu of that. This lease is from 30th July, 1970 to 30th July, 1971.

3. The Government claims the right to saltpeter under the Mines and Minerals (Development and Regulation) Act, 1957, whereas the Gram Panchayat claims title to the Saltpeter under the Punjab Village Common Lands (Regulation) Act,

1961 read with its Rules and Section 42 of the Punjab Land Revenue Act, 1887, and the Wajib-ul-Arz.

4. After hearing the learned counsel for the petitioner and the State, we are of the view that the petitioner's contention is sound. The saltpeter does not vest in the Government. It vests in the Gram Panchayat. The view we have taken of the matter finds support primarily from Section 42 of the Land Revenue Act which is as under:

42(1) When in any record-of-rights completed before the eighteenth day of November, 1871, it is not expressly provided that any forest quarry, unclaimed, unoccupied, deserted or waste-land, spontaneous produce or other accessory interest in land belongs to the land-owners, it shall be presumed to belong to the Government.

(2) When in any record-of-rights completed after that date it is not expressly provided that any forest or quarry or any such land or interest belongs to the Government it shall be presumed to belong to the landowners.

(3)...

(4)...

5. It is now common ground that Sub-section (1) does not apply because no record-of-rights was prepared before 1871, The only record-of-right available in this case is of the year 1963-64, that is. the Wajib-ul-Ara. Annexure "B" to the petition. It is clear from the plain reading of the Wajib-ul-Arz that the right of extract saltpeter does not vest in the Government. In fact, any right in land which is not specified in the revenue record prepared after 1871 as belonging to Government does not belong to Government but vests in the owner of the land. This is clear from the language of Section 42(2). This also explains why under the Punjab Village Common Lands (Regulation) Rules, 1964, framed under the Punjab Village Common Lands (Regulation) Act, 1961 Government laid no claim to the saltpeter and in fact it was clearly stated in the Rules that the right to lease out saltpeter or extract saltpeter vests in the Gram Panchayat. Reference in this connection may be made to Rule 3(2)(x) and Rule 6(5) of the Rules which are to this effect:

3(2) The panchayat may make use of the land in shamilat deh vested in it under the Act, either itself or through another, for any one or more of the following purposes:

(x) Brick Kilns, extraction of shot a. sand, stones, kankar, bajri or other minerals defined in the Punjab Minor Minerals Rules.

6. (5) The leases of the land in shamilal deh for extraction of shora, sand, stone, kankar, bajri and other minor minerals (as defined in the Punjab minor Minerals Rules) and grass, kahi and similar other products shall be auctioned at a time to be determined by the Panchayat where it may be considered to be of maximum

advantage for the inhabitants of all village.

These Rules were framed in 1964, after the Wajib-ul-Arz had been prepared, and also after the saltpeter had been notified as a minor mineral. It may also be mentioned that in Douie's Settlement Manual, paragraph 193, the question arose whether saltpeter belonged to Government ? In the undivided Punjab it was settled that it did not. In fact, it was decided that saltpeter was not even a minor mineral. In this view of the matter, the only conclusion possible is that the saltpeter as a mineral does not vest in the State Government. It vests in the owner to the land. As the shamilat land is vested in the panchayat, the panchayat, is the rightful owner of the saltpetre and is, therefore, entitled to lease it out

6. Mr. Gokal Chand Mittal, who appears on behalf of the State, has contended on the basis of Section 14-A of the Punjab Village Common Lands (Regulation) Act, 1961, that the right to saltpeter must be deemed to have remained with the Government because it was a minor mineral. This contention is wholly without force it loses sight of the fact that only those minor minerals vest in the State which are covered by Section 42 of the Punjab Land Revenue Act. Saltpeter is not so covered, and that being so, the enabling provision of Section 14-A is of no consequence.

7. For the reasons recorded above, we allow this petition and quash the notification, Annexure "A". The petitioner will be entitled to costs which are assessed at Rs. 100/-.

8. Civil Miscellaneous Application No. 6541 of 1970 consequently fails and is dismissed.