(1955) 08 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 13 of 1955

Duvvuru Balaramireddy and others APPELLANT

Vs

Andhra State and others RESPONDENT

Date of Decision : 05-08-1955

Acts Referred:
Constitution of India, 1950 — Article 19(1)(f), 226

Citation : AIR 1956 AP 81

Hon'ble Judges : Subba Rao, C.J;Bhimasankaram, J

Bench : Division Bench

Advocate : V. Vedantachari for Messrs Ram Rao and Reddy, for the Appellant; K. Jayachandra Reddy for No. 2 and P. Babulu Reddy for No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Bhimasankaram, J.—This appeal is against the decision of our learned brother Satyanarayana Raju J. in Writ petition No. 264 of 1954. That petition filed under Art. 226 of the Constitution was for the issue of a writ of Mandamus or any other appropriate Writ directing the Andhra State represented by the Collector of the District of Nellore to accord permission to the petitioners to carry on mica mining operations in S. No. 49/1 in the village of Ananthamadugu of Rapur Taluk of that District, subject to the petitioners executing an agreement as provided under the Mining Rules and conforming to the conditions mentioned therein.

The case for the petitioners is that in the Shrotrium village of Ananthamadugu which was notified under the Madras Estates Abolition Act 26 of 1948 with effect from 27-5-1953, they obtained sixteen leases from the holders of 47/48th shares in the shrotrium prior to the notification of the estate. All the leases are for a period of one year and were executed after 1-7-1945. The petitioners claim that u/s. 20, Estates Abolition Act, the rights so created in their favour by way of leases by the Shrotriumdars are protected.

They further contend that by virtue of either Rule 40 or Rule 47 of the Mineral

Concession Rules, 1949, they are entitled to a renewal of these leases for another period of one year after the termination of the period of one year provided in the leases. The petitioners allege that they applied to the Manager of the Estate appointed under the Estates Abolition Act for permission to exercise their lease-hold rights and the Manager despite the opposition by some interested parties held that the petitioners had rights enforceable against the Government under S, 20.

It is further stated that the District Collector of Nellore in his order dated 30-1-1954 confirmed the view of the Manager. The petitioners state that though the Manager and the Collector as aforesaid held that the leases were binding and enforceable against the Government, the Government did not accord permission to the petitioners to work the mines despite the petitioners'' expression of their readiness and willingness to execute such agreements as were required under the rules and to pay royalty as provided by the rules and regulations in force.

The petitioners state that the withholding of such permission is an infringement of their fundamental right to hold and enjoy property under Art. 19(1)(f) of the Constitution. The Writ petition was filed on 9-4-1954. By that time a considerable portion of the period during which they were entitled to carry on mining operations has already lapsed.

They averred that they had already suffered serious loss and injury, that any further withholding of permission by the Government would cause them irreparable and more serious loss and that, therefore, a Writ should issue in their favour of the nature of a Writ of Mandamus directing the Andhra State to do its duty by way of granting the necessary licenses, etc,

2. Our learned brother held that though S. 20 might avail the petitioners to enforce the leases against the Government, the Shrotriumdars themselves had no right in the sub-soil which they could convey under the leases in question that such a right resided only in the State Government and that in any event the petitioners are not entitled to renewals for another year under the Mineral Concession Rules. He, therefore, dismissed the petition.

3. Mr. Vedantachari, the learned Advocate appearing for the appellants, contended before us that the learned Judge''s findings were wrong in so far as they were against him. He urges in the first instance that in the case of a Shrotrium grant, the Government had no absolute right to the minerals, but had only a right to a share therein. He referred us to the Manual of the Administration of the Madras Presidency published in the year 1885. At page 307 of the 1st Volume under the Mineral Rules appears the following statement:

The position taken up with regard to the rights of Government varies with the tenures of the land containing the mineral resources. In lands sold under the waste land rules prior to 1879, the rights of the state are held to have lapsed. Neither does the Government assert any right to minerals in permanently settled estates or enfranchised inam lands.

In lands in the occupation of Government ryots or peasant proprietors, no exclusive right to minerals is claimed on behalf of the State, but only a right to share in the produce. In the case of inams held on service tenure, i.e., as wages for public service, the holders are considered to have no right in minerals. Persons desirous of working minerals in ryotwari or proprietary lands must make their own arrangements for obtaining the lands from the proprietors.

4. From the Board''s standing orders, of the year 1890. Chapter I, order No. 15, it appears that the State laid no claim to minerals in enfranchised inam lands". In the year 1907, however, there was a change in the attitude of the Government and while Board''s standing order 25 (3) declared that

no claim to minerals should be made on behalf of the State in lands held on inam tenure where, apart from the title deed issued by the Inam Commissioner, there has been conveyance of the State''s rights to minerals in the original grant either expressly or by necessary implication"; it declares in the next paragraph that "claims should be made to the State''s share (as determined by the rules below) in all mineral produce in lands held on inam tenure which do not fall under paragraph I (c) (stated above) or 3 (c) (which relates to service Inams)

5. As Spencer J. pointed out in - ''Secretary of State v. Srinivasachariar'', AIR 1918 Mad 956 (A) the "Government appear to have changed their views as to the rights they possessed to minerals in Inam lands and this change seems to have taken place about 1905, but the circumstances which led up to it have not been disclosed".

In that case the Madras High Court held that where the document of grant shows that a perpetual ''Shrotrium'' was granted and that the grantee was to appropriate to his own use the produce of the seasons, there was a conveyance thereunder of all that the grantor had in the soil.

On appeal, however, their Lordships of the Privy Council reversed the judgment of that Court holding that upon the true construction of the grant, the right to the quarries and minerals did not pass to the grantee and that consequently the Government was entitled to impose royalty on stone quarried in the village which was the subject-matter of the grant. As Mr. Vedantachari pointed out the suit out of which the appeal before the Privy Council arose was one brought by the Shrotriumdars of the village "to establish their unfettered rights to quarries in the lands of the village without payment of any royalty in respect thereof".

It is to be noticed that even in the year 1907 when they made the new rule, the Government claimed only a right to a share in the minerals in these Inams. Standing Order 25, sub-section (1) of the Board of Revenue now in force relates to rules regarding mining and quarrying states in section (1) - INTRODUCTORY, runs as follows:

1. The State''s right to minerals varies in different classes of land in accordance with the tenure on which the land is held. For this purpose lands are divided into

three groups, namely:

Group A: Land in which the State claims no right to minerals.

Group B: Lands in which the State claims a share in minerals.

Group C: Lands in which the State claims full rights in minerals.

Under the head of group B, it is stated as follows:

Claims should be made to the State''s share (as determined by the rules below) in all mineral produce in the following classes of land:

(a) In lands occupied, or hereafter assigned for agricultural purposes under ryotwari pattas:

(b) In private Janmam lands in Malabar and the Nilgiris:

(c) In lands held on Inam tenure which do not fall under paragraph 2(c) or 4(c) of these rules.

Rule 2(c) refers to lands on Inam tenure where there was conveyance of the State''s right to minerals. Rule 4(c) relates to Inam lands granted on service tenure i.e., as wages for public service, whether enfranchised or un-enfranchised. Under the rules as they stand, it is perfectly clear that the Government never claimed more than a share in mines in Shrotrium grants such as the one in question.

The case reported in - ''Govinda Krishna v Secretary of State'', AIR 1938 Mad 734 (B) also illustrates the fact that the Government claimed only royalty in such cases. This seems to us also to accord with common sense. Where the grantee is entitled to the surface rights and the grantor to the sub-soil rights and the latter rights can only be exercised by entering upon the surface, it is only natural and just that they should share what is produced by working the mine, since one cannot enter upon the land, as he has no right to do so and the other cannot work the mine, as he has no right to the land.

We, therefore, hold that the Shrotiumdars had rights which they could convey to the petitioners. We agree with the learned Judge as to the effect of S. 20 on the leases. In our view, therefore, the Government was bound under the provisos to sub-s. (1) of S. 20 to allow the petitioners to work the mines, subject of course to rules relating thereto.

6. The next question is whether the petitioners would be entitled to renewals of another year under either Rule 40 or Rule 47 of the Mineral Concession Rules. These rules are made by the Government of India in exercise of the powers conferred on them under S. 5 of the Mines and Minerals (Regulation and Development) Act 1948.

Chapter IV of these rules is entitled "Grant of mining lease in respect of land in which the minerals belong to Government" and Chapter V bears the heading

"Rules relating to the grant of mineral concessions by private persons". Mr. Vedantachari contends that strictly speaking the rules under Chapter V are the rules that apply to the present leases. Rule 44 which is the first rule in this Chapter is as follows;

The provisions of this Chapter shall apply to mineral concessions granted by private persons.

Rule 47(1) is as follows:

Except leases in respect of coal, iron ore and bauxite for the manufacture of aluminium, for which the period of lease shall be 30 years, all other leases shall be for a period not exceeding 20 years. All leases shall be renewable at the option of the lessee for one term not exceeding the duration of the original lease.

Sub-Rule (1) of Rule 40 which comes under Chapter IV is as follows:

The period for which a mining lease may be granted shall be 30 years in the case of (coal) iron-ore and bauxite for manufacture of aluminium, and 20 years in the case of any other minerals, unless the applicant himself asks for a shorter period.

The lease shall be renewable at the option of the lessee, for one or two periods, each not exceeding the duration of the original lease, in the case of iron-ore and bauxite for manufacture of aluminium, and one period not exceeding the duration of the original lease in the case of other minerals.

It seems to us that Rule 40 and other rules coming under Chapter IV have no application to the present case, because it is not pretended that the State Government has given the petitioners any such lease as is referred to in Rule 40. Rule 28 also provides for an application being made to the State Government for the grant of a lease accompanied by a fee of Rs. 200/-. That clearly is not the case here. It seems to us, however, that the leases in question should be treated as mineral concessions granted by private persons. No statute or authority has been cited to us which disables a person in the position of a shrotriumdar from granting any mineral concessions on his own account.

The learned Advocate-General refers to the statement of the law by the Judicial Committee in - ''The Rustomji Dorabji Vs. W.H. Nurse and Parthasarathi Naidu,). He says that the effect of the decision was that the Government was declared entitled to such mines and that, therefore, only the Government could grant a mining lease or concession.

We cannot see, however, how the Government could enable a lessee from them to work the mine on land belonging to a private citizen. The Government will then have to acquire the surface rights in order to do so. That is why the practice must have arisen for the owner either to work the mine himself or grant it to a lessee subject to the payment of royalty to the Government in virtue of their right to the minerals. That is how the rights of the owner of the surface and the rights of the owner of the sub-soil were reconciled by long-established practice.

We, therefore, cannot accept the contention of the learned Advocate General that mines in Shrotrium villages should be treated as mines wherein the Government could grant mining rights in assertion of an exclusive right.

7. That being so, the question is whether Rule 17 enables the lessees in the present case to claim the benefit of a renewal. Whatever may be the position before the Mines and Minerals (Regulation, and Development) Act, 1948 was passed, the Mineral Concession Rules, 1949, made by the Government in exercise of the powers under S. 5 of that Act must be deemed to have statutory force, S. 5 of the Act runs thus:

The Central Government may, by notification in the official gazette, make rules for regulating the grant of mining leases or for prohibiting the grant of such leases in respect of any mineral or in any area.

Section 13 of the Act provides thus:

The provisions of this Act shall be binding on the Government whether in the right of the Dominion or of a State.

The power given to the Central Government to make rules is a statutory power and such rules made in the exercise of such statutory power are clearly enforceable in our opinion, against the State. We are, therefore, of the opinion that the petitioners are entitled to renewals under Rule 47 of the Mineral Concession Rules.

8. The learned Advocate-General, however, objects that the terms of S. 20 of the Madras Estates Abolition Act do not enable the petitioners to claim the benefit of a renewal, but in our opinion, the language is wide enough to cover such a right. The transactions as such are "to be deemed to be valid" under the terms of that section and if the petitioners are entitled to another advantage by virtue of other rules having statutory force arising out of a valid transaction in their favour, we see no reason why they should be denied that advantage.

9. Though, therefore, we accept the contention urged on behalf of the appellants as to their rights, we think, however, we cannot grant them any relief in the circumstances of the case and must only content ourselves with enunciating the law. The leases were executed on several dates between the 27th of April and 13th May 1953, Cl. (1) of the lease deed dated 24th March runs thus:

The lease period for this lease shall be one year and the lease shall come into force from the date of registration of these presents.

It is admitted that a similar term is inserted in all the sixteen leases. Some of them were registered on the 8th of May and the rest on the 13th of the same month. None of them, therefore, would inure beyond 13-5-1954 and even if there was the right of renewal for another year, as we have held they have, even the renewed leases could not extend beyond 13-5-1955 at the most- And now we are in July 1955.

We cannot agree with the contention of Mr. Vedantachari that it is open to us to direct the issue of a Mandamus directing the Government to give his clients leases for similar periods to commence from the date of our order. He urges that the Writ petition was filed on 9-4-1954 before the expiry of the first period of one year and if orders were passed immediately on these petitions in accordance with the views we have now expressed, his clients could have worked the mine for over a year, He relies on the maxim ''actus curiae neminem gravabit''.

It seems to us, however, that this is not a case to which that maxim could apply It is beyond the power of this Court to substitute one kind of contract for another. We cannot order the direct enforcement of the leases according to their terms. We can do no more than what the Supreme Court did in a similar case reported in - K.N. Guruswamy Vs. The State of Mysore and Others, In that case their Lordships of the Supreme Court made the following observations.

We would, therefore, in the ordinary course have given the appellant the writ he seeks. But, owing 10 the time which this matter has taken to reach us (a conclusion for which the appellant is in no way to blame, for he has done all he could to have an early hearing; there is barely a fortnight of the contract left to go. A writ would, therefore, be ineffective and as it is not our practice to issue meaningless Writs we must dismiss this appeal and leave the appellant content with an enunciation of the law.

But as in the case before the Supreme Court, the appellants have in reality won their case and because they are only prevented from reaping the full fruits of their victory on account of circumstances beyond their control, we award the appellants their costs in this Court. The Writ appeal is however, dismissed.

