
(2003) 03 AP CK 0040

In the Andhra Pradesh High Court

Case No : Writ Petition No. 31924 of 1997

Enterprising Enterprises Private Limited

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 18-03-2003

Acts Referred:

Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 10, 12, 17
Mines and Minerals (Development and Regulation) Act, 1957 — Section 9A

Citation : (2003) 4 ALD 510 : (2003) 3 ALT 18

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : T. Rajendra Prasad, for the Appellant; Adv.-General, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—This writ petition is filed seeking a writ of mandamus declaring that the respondents have no power or authority to demand and collect dead rent and also cess with regard to patta lands, either at the time of granting mining lease or thereafter and for a consequential declaration that the demand of dead rent is arbitrary and unconstitutional and also for a consequential declaration that the proceedings of the 4th respondent dated 1.4.1997, whereby an amount of Rs. 2,29,590/- was demanded as due towards dead rent and also towards advance dead rent, as illegal and arbitrary.

2. Brief facts of the case are that the petitioner is the owner of an extent of 2.48 hectares in Chittagudem Muttagudem village, Khammam District. He applied for lease to extract granite under the A.P. Minor Mineral (Concession) Rules, 1966 (for short "the Rules"). The lease was granted for 15 years and a work order was also executed in Form "G". As per the terms and conditions of the lease agreement, an amount of Rs. 25,000/- by way of dead rent together with 1/4th cess thereon and a seigniorage fee as prescribed has to be paid. The contention as regards the payment of seigniorage fee is not in controversy. The 4th

respondent through proceedings dated 1.4.1997, demanded the petitioner to pay the dead rent from the year of lease till the date of issuance of the impugned proceedings. Hence, the writ petition.

3. Two important questions have been raised by the learned Counsel for the petitioner viz., (1) no dead rent can be collected in the case of mining lease in favour of a person who owns land if there is no mining operation and (2) the present impugned demand through proceedings dated 1.4.1997, has been raised belatedly. Since the rules empowered the Government to pass orders lapsing the mining lease and also since that procedure has not been followed by the Government, it is not open for the Government to demand any payments under the dead rent through the impugned proceedings.

4. Learned Counsel for the petitioner elaborates his contentions stating that since the petitioner is the owner of the land, he has all surface rights in that capacity. Mineral being the property of the Government and governed by statute i.e., Mines and Minerals (Development and Regulation) Act, 1957 (for short "the Act") read with Rules, the petitioner had applied for lease to extract the mineral from his patta land. Upon his application, the lease was granted in his favour after fulfilling the formalities like entering into the lease agreement, payment of initially fixed dead rent etc. When once such licence was granted, it is for the petitioner either to operate or not to operate the mining activity. He further contends that since the date of entering into the lease agreement, till the date of issuance of the impugned proceedings, dated 1.4.1997, or even thereafter, no mining activity had been taken up and hence the petitioner is not under an obligation to pay the dead rent every year. In other words, his contention is that since for obtaining the lease, the prescribed conditions has to be complied, he made the payment of dead rent of Rs. 25,000/- and further inasmuch as no mining operations were taken up for all these years till today, the Government is not entitled to collect any dead rent from the petitioner and also inasmuch as the petitioner is the owner of the land and all the surface rights are vested with him only.

5. In order to substantiate his contention, he relied on a decision of the Madras High Court in *Kumaresan v. State of Tamil Nadu* ILR 1994 Mad. 41.

6. Though some other decisions of the Madras High Court were relied on by the learned Counsel for the petitioner, those decisions are not relevant inasmuch as they were already referred to in *Kumaresan's* case (*supra*).

7. Regarding the second issue, the learned Counsel for the petitioner submitted that though the lease was granted in his favour in the year 1993, no mining operation was taken up. Only for the first time after about five years, the impugned proceedings were issued demanding payment of arrears towards dead rent. Hence, such a proceeding issued at a belated stage is not tenable.

8. He further contends that the rules provide for cancellation of the lease in the event of non-excavation of mineral. In this context, he drew the attention of this

Court to Rules 10, 12(5)(h)(vi)(a) and (b) and 17 of the Rules.

9. The learned Advocate-General while repelling the contentions raised by the Counsel for the petitioner contends that the dead rent is not the surface rent. It has nothing to do with the ownership of the land. The aspects of dead rent, seigniorage fees etc., have been elaborately discussed by the Apex Court in *D.K. Trivedi & Sons v. State of Gujarat* AIR 1986 SC 1323 and Their Lordships after considering various legal precedents, held that dead rent is only minimum rent which is payable whether the land is subjected to mining operations or not. Hence he contends that the lease has nothing to do with the ownership of the land. In order to further substantiate his contention, he placed heavy reliance on Section 9-A of the Act. He further contends that no distinction is made between the land owned by the lessee and the land owned by the State and that the State is the sole owner of the minerals. Finally he contended that the argument that the dead rent is not payable in case of patta land owned by the lessee, is not tenable and is opposed to Section 9-A of the Act. He further contends that Rule 10 of the Rules shall be read in conjunction with Section 9-A of the Act and in case of any divergence, Section 9-A of the Act alone will prevail.

10. While meeting the second contention of the Counsel for the petitioner, the learned Advocate General contends that there are no enabling provisions which confer the power on the authorities to declare that the mining lease or quarry lease, as lapsed. There is no provision either under the Rules or under the Act, suggesting that the lapsing is automatic or it would entail wiping out of the liability to pay the dead rent or seigniorage fee. Finally he submitted that having secured the advantage of lease and having entered into an agreement with specific conditions and in accordance with the Rules and the Act, the petitioner is estopped from going back from the commitment. With these submissions, he sought for dismissal of the writ petition.

11. In the light of the above contentions, it is relevant to have a look at the provisions referred to by both the parties.

12. Rule 10 of the Rules deals with seigniorage fee or dead rent. The said provision, to the extent relevant, is extracted as under:--

1. When a quarry lease is granted under these rules, the seigniorage fee or dead rent whichever is higher, shall be charged on all minor minerals despatched or consumed from the land at the rate specified in Schedule I and Schedule II as the case may be.

2. When quarry lease is granted, the assessment on the land together with the seigniorage fee or dead rent, which ever is higher, shall also be charged.

3.

13. A conjoint reading of Sub-rules (1) and (2) of Rule 10 postulates that after the assessment of the land, when quarry lease is granted under the rules, seigniorage fee or dead rent, whichever is higher is permissible to be charged on

all minor minerals, as specified in Schedules I and II. The other sub-rule of Rule 10, which deals with the procedure, is "not relevant for the present purpose.

14. Rule 12 deals with the grant of lease and Sub-rule (5) deals with the grant of lease for granite useful for cutting and polishing and Clause (h) (vii) (a) and (b) of Sub-rule (5) of Rule 12 deals with lapsing of licence or lease. Sub-clauses (a) and (b) of Clause (h)(vii) of Sub-rule (5) of Rule 12 are extracted as under for ready reference:

(a) Where the licensee shall not commence prospecting operations within a period of six months from the date of execution of licence or is discontinued for continuous period of six months after commencement of such prospecting operations, the Director shall by an order declare the P.L. as lapsed and communicate the declaration to the licensee.

(b) Whether the minimum operations are not conducted within a period of two years from the date of execution of the lease or is discontinued for a continuous period of two years, after commencement of such mining operation, the Director shall by an order declare the lease as lapsed and communicate the declaration to the lessee:

Provided that where the licensee or lessee submits an application to the Director within a period of one month from the date of receipt of such order and on being satisfied about the adequacy and genuineness of the reasons for the non-commencement of prospecting or quarrying operations or discontinuance thereof, the Director may recommend to the Government for revival of the licence or lease.

15. A combined reading of above Sub-clauses (a) and (b) would make it clear that where the licensee or lessee does not commence prospecting operations within the prescribed period from the date of execution of licence or lease, or in case of discontinuation of the execution of the lease for a prescribed period, the prospecting licence can be declared as lapsed and further in a situation where the mining operations were not at all conducted within the prescribed period of two years or in case of discontinuation for a prescribed period, again the competent authority is empowered to declare such lease, as lapsed. However, upon a satisfactory application made by the lessee within the prescribed time, recommendations for revival of the lease can be made to the Government.

16. Rule 17 deals with lapsing of the leases. It also deals with cancellation of mining leases other than granite, by necessary implication, inasmuch as no specific distinction is explicitly made in the said provision. It can be inferred so, for the reason that the mineral for which the competent authority can declare the mining lease as lapsed under Rule 17, is different from the competent authority mentioned under Rule 12(5)(h)(vii)(a) and (b).

17. From the above provisions as pointed out by the learned Counsel for the petitioner, it is clear that the competent authorities prescribed either under Rule

12 or 17, have the power to declare the lease or license as lapsed for the violations of the conditions mentioned therein. Such violations are specifically in relation to not commencing the mining operations at all within the prescribed period or discontinuing the mining operations within the prescribed time.

18. Here it is necessary to peruse the judgment of the Apex Court in Trivedi's case (supra), which has been consistently followed by various High Courts. Their Lordships in the said judgment dealt with the definition of royalty, dead rent, seigniorage fee etc. It is not in dispute that the amount to be paid under royalty and seigniorage are of the same nature. The only difference is the nature of the mineral. If it is a major mineral, royalty will be levied and if it is a minor mineral, seigniorage will be levied. After referring to various laws of England and also Section 105 of the Transfer of Property Act, with regard to the definition of lease, lessor, lessee, premium and rent, Their Lordships observed at paragraph No. 39 of the judgment as under:--

"In a minimum lease the consideration usually moving from the lessee to the lessor is the rent for the area leased (often called surface rent), dead rent and royalty. Since the minimum lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called "royalty". It may, however, be that the mine is not worked properly so as not to yield enough return to the lessor in the shape of royalty. In order to ensure for the lessor a regular income, whether the mine is worked or not, a fixed amount is provided to be paid to him by the lessee. This is called dead rent".

"Dead Rent" is calculated on the basis of the area leased while royalty is calculated on the quantity of minerals extracted or removed. Thus, while dead rent is a fixed return to the lessor, royalty is a return, which varies with the quantity of minerals extracted or removed. Since dead rent and royalty are both a return to the lessor in respect of the area leased looked at from one point of view dead rent can be described as the minimum guaranteed amount of royalty payable to the lessor but calculated on the basis of the area leased and not on the quantity of minerals extracted or removed. In fact, Clause (ix) of Rule 3 of the Rajasthan Minor Mineral Concession Rules, 1977 defines "dead rent" as meaning "the minimum guaranteed amount of royalty per year payable as per rules or agreement under a mining lease". Stipulations providing for the lessee's liability to pay surface rent, dead rent and royalty to the lessor are the usual covenants to be found in a mining lease."

19. From the above observations it is clear that the lessee has not only right to enjoy, as under an ordinary lease, but also has right to extract the minerals from the land and appropriate them for his own use or benefit, in addition to the usual rent for the area demised, and only in order to ensure the lessor a regular

income, whether or not any mineral is removed, a minimum amount is to be paid by the lessee and such an amount is called "dead rent".

20. It was further observed by the Apex Court that dead rent would be calculated on the basis of the area leased, while royalty is calculated on the quantity of mineral extracted or removed. While observing so, it was specifically pointed out that the dead rent is fixed return to the lessor, royalty is a return, which varies with the quantity of mineral extracted or removed. In other words the "dead rent" is described as minimum guaranteed amount of royalty payable to the lessor.

21. It is to be noted from the emphasized portion of the above extract, that the Apex Court had visualized a situation, where mining work was not properly done and as a result, expected yield may not be available to the lessee. In such a case, as observed by Their Lordships, there must be minimum guarantee to the lessor. Taking cue from the said observations, it could safely be concluded that the minimum guarantee, which is otherwise called "dead rent" shall be assured to the lessor, irrespective of the fact whether the mining operation was done or not by the lessee. In other words even though the lessee or licensee does not execute the mining operations after obtaining the lease, subject to the terms and conditions of the agreement, the lessor, in the present case, the State, shall not be deprived of the minimum guarantee, which is otherwise called "dead rent".

22. To illustrate; in a case where a lessee, who is a pattadar of the land, after obtaining the lease or licence to extract the mineral, does not go for mining operation at all, what should happen?

23. In such a case, as per the contention of the Counsel for the petitioner, since the licensee or lessee is the pattadar i.e., the owner of the land, the State even though the owner of the mineral, is not entitled to the minimum guaranteed amount, which was originally prescribed and agreed to be paid, before obtaining the licence or lease. To avoid this contingency, certain measures have been taken by the Legislature by incorporating certain provisions like Rules 12 and 17 read with Section 9-A of the Act.

24. As already noticed, the State has the power to declare the lease as cancelled, if no mining operations are undertaken after obtaining the lease for a prescribed period, to avoid any future loss by way of deprivation of collecting the minimum guaranteed amount.

25. As pointed out by the learned Counsel for the petitioner, Rules 12 and 17 enables the State to declare any lease as lapsed in case of violations. But it is specifically contended that when such a power to declare the lease as cancelled is available to the State and when the petitioner did not undertake the mining operations at all, even after obtaining the lease, the State could and should have declared the lease as cancelled soon after the prescribed period. Therefore, it is contended that when the State had failed to act as provided under the rules, the petitioner cannot be penalized by requiring him to pay the dead rent even after

the prescribed period to declare the lease as cancelled.

26. In this context it is to be noted that either under the Rules or under the Act, no specific procedure has been provided either to verify whether the lessee has been operating the mining work or not and that for how many days or months or years, the work was undertaken and that when the work was actually stopped etc. In the process of evaluating, pointing out the exact level of violations, is very difficult. It is to be noted that undisputedly the State has the power to cancel the lease if there is a violation, as and when it is noticed. Obviously these provisions were incorporated by the Legislature to see that the State exchequer shall not suffer for the violations on the part of the lessee, after obtaining the lease. After all, if the lessee obtains the lease after paying the amount initially and fails in operating the mining activity, the loss that is likely to be suffered by the State would be more than the loss suffered by the lessee. Therefore, it is felt imperative for the State to demand the minimum guaranteed amount, notwithstanding the failure on the part of the lessee in operation of the mining work or extraction of expected quantity of mineral.

27. It is also to be noted that the State would be enriched by collecting the royalty on the quantity of the mineral that is extracted. If no mining operation was undertaken at all, the State would be put to more loss i.e., it would be deprived of royalty, which will be proportionate to the quantity extracted. In order to check this lapse and see that the lessee after obtaining the lease undertakes the mining operation with the expected standards, specific provisions are made and hence notwithstanding the quantity of mineral extracted, lessee is bound to pay the State the "dead rent".

28. This is imperative for the further reason that the lessee cannot be permitted to keep the land taken on lease, idle without mining activity. Had the lease been given to any other enthusiastic entrepreneur, State would be benefited by way of royalty apart from dead rent. Therefore, so long as the lease is subsisting, the lessee is bound to pay the minimum guaranteed amount as "dead rent". In other words unless there is cessation of lessor and lessee relationship, it is incumbent upon the lessee to pay the dead rent or the minimum guaranteed amount and that the State shall not be put to loss for the violations on the part of the lessee by keeping the land taken on lease idle.

29. As regards the second contention that the State is estopped from demanding the payment of dead rent after a lapse of about five years is concerned, it is to be noted that it was pointed out in the foregoing paragraphs that there is no specific provision or law prescribed to evaluate with precision, the violations committed by the lessee. In such a case, the lessee cannot use the situation to his advantage.

30. Further Clause 16 of the terms and conditions of the lease deed provides as under:--

"That this lease may be terminated in respect of the whole or any part of the

premises by six months notice in writing on either side."

31. The above clause provides for termination of the lease with prior notice by either side. In such a case, if the lessee is unable to carryout the mining operations, he was always at liberty to cancel the lease by giving notice within the prescribed time. When the said clause of the agreement which is binding on both the parties, facilities the lessee also to have the lease cancelled, the lessor cannot be blamed for not strictly calculating the period as prescribed under Rule 12 or 17, as the case may be, to declare the lease cancelled. Without availing this contractual facility, if the lessee allows the lease to subsist, at a later date, he cannot be permitted to turn around and say that there was no mining operations and hence he is not liable to pay the dead rent or that the State is estopped from demanding the dead rent after long lapse of time. In other words, in one breath he cannot be permitted to say that the lease is subsisting and on the other, that he need not pay the dead rent. Therefore, the second contention of the learned Counsel for the petitioner that the claim cannot be made belatedly, is also liable to be rejected.

32. Again coming to the first contention of the Counsel for the petitioner that, no dead rent can be collected in the case of mining lease in favour of a person who owns land, if there is no mining operation, is concerned, heavy reliance is placed on the Division Bench judgment of the Madras High Court in Kumaresan's case (supra). The facts of the said case disclose that a batch of writ petitions were filed aggrieved with regard to demand of local cess and local cess surcharge charge, seigniorage fee and dead rent. The contention in those batch of the writ petitions was that since the lessees therein were the pattadars of the land, they cannot be insisted upon to pay the dead rent. The further contention was that the Rule 8-A(6) providing for such levy of dead rent is said to be inconsistent with the Act. The other ground was that the lessees does not acquire any benefit from the surface of the land and hence in respect of ryotwari lands belonging to the lessee, as pattadar, there can be no charge or demand for the payment of any amount other than kist and royalty. After elaborately discussing all the issues, the Division Bench of the Madras High Court summarized the conclusions at paragraph No. 37 and the same to the extent relevant are extracted, for ready reference as under:

(i) The respondent/State has no legislative competency or power to impose, demand or collect local cess and local cess surcharge upon the seigniorage fee, dead rent, or area assessment in respect of lease of quarries or mines or mineral concession in respect of minor or other minerals, granted by the State to a lessee or registered holder or his lessee;

(ii) The respondent /State is entitled to levy, demand and collect seigniorage fee or dead rent, whichever is more, area assessment or lease amount in respect of Revenue or Government/Poramboke lands, the lease of which has been granted to an individual;

(iii) The respondent/State is entitled to levy, demand and collect the seigniorage fee, and land assessment in respect of mineral concessions granted in favour of a registered land holder or his lessee pertaining to ryotwari or Patta lands held by a registered land holder;

(iv)

(v) The mere fact that a lease or an agreement has been entered into between the State on the one hand and the lessee of a mining lease or a grantee of a mineral concession, does not by itself entitle the respondent/State to demand or legally enforce and collect and sum stipulated in the contract entered into between the parties, except such of those amounts, which are authorized by law. Consideration for the grant of a lease or mining concession is to be confined to contractual payments and cannot be extended to any tax, cess or duty not authorized by law;

33. From a reading of the above said conclusions it is clear that the contention raised by the petitioner does not fall in any of the above conclusions. Further a careful reading of the conclusion No. (iii) appears to run contrary to the contention of the petitioner.

34. It is to be further noticed that Section 9-A of the Act deals with the payment of dead rent by the lessee. The said provision, to the extent relevant, is extracted as under for ready reference:--

(1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, (56 of 1972), shall, notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, pay to the State Government, every year, dead rent at such rate as may be specified for the time being, in the third Schedule, for all the areas included in the instrument of lease:

Provided that where the holder of such mining lease becomes liable, u/s 9, to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty or the dead rent in respect of that area, whichever is greater.

(2).....

35. From a reading of the above section it is clear that no distinction, between the lessee as a pattadar and a lessee of the land belonging to the Government, is discernible. What all Section 9-A provides for is that the dead rent has to be paid by the lessee. Therefore, the pattadar as a lessee, does not have any statutory right to claim exemption from payment of dead rent or other statutory payments, which are obligated to be paid by any other lessee.

36. On principle, my view is fortified by the Full Bench judgment of the Kerala

High Court in Thressiamma Jacob Vs. Geologist, District Office of the Dept. of Mining and Geology, Palghat and Others, , though the issue therein was with regard to payment of royalty.

37. The facts of the said case reveal that the petitioners therein were the owners of the jenom lands in Malbar area of Kerala State. Subsequently, there was ryotwari settlement and by virtue of this settlement, the owners of the jenom lands became pattadars, holding the property of the Government. In the lands held by the petitioners, there was mineral and for excavating the mineral, the petitioners entered into lease agreement with the Government. The petitioners alleged that due to ignorance of law, they entered into lease agreements with the Government and that in fact they have got rights both over the soil and also under the soil. Hence, they sought a declaration that the State is not entitled to collect any royalty for the mineral excavated by them.

38. The Full Bench of the Kerala High Court considered various judgments of different High Courts and also that of Supreme Court. The Full Bench further referred to paragraph No. 9 of the 10th Law Commission. The same is re-extracted as under, for ready reference:--

"The Law Commission in its 10th Report had, while dealing with the rights of the Governments to minerals in Zamindars, Jagirs, major inam and the like, expressed the view that "in the Ryotwari areas, the problem does not arise and could not arise as the right of the Government to the underground rights were never disputed".

39. After referring to the above report of the Law Commission, at paragraph No. 31 it was held as under:--

Hence, we are of the view that so far as the lands in question are concerned, the minerals belong to the Government and royalty has to be paid to the Government for quarrying leases. Reference is answered accordingly.

40. For the foregoing reasons, the writ petition is devoid of merits and the same is accordingly dismissed. No costs.