(2003) 03 MP CK 0092

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7039 of 2002

G.D. Singh APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 247
Madhya Pradesh Minor Minerals Rules, 1961 — Rule 24, 5

Citation : (2004) 1 CTLJ 237 : (2003) 4 MPLJ 221

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : A.K. Choubey, for the Appellant; B.N. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Petitioner in this writ petition prays for the relief to quash Order P/6 dated 14.05.2002 as being void illegal and arbitrary and for refund of sum of Rs. 2,50,000 collected from the petitioner as royalty for excavating clay with interest at the rate of 15% per annum.

Petitioner submits that petitioner is a registered contractor and is engaged in business of Government Contracts. In the year 1983, the petitioner undertook a work for the railways for scattering of clay for maintenance of railway siding near Itarsi ; the earth was excavated from adjacent lands belonging to private individuals on consideration agreed to with them. Petitioner applied for quarry lease for ordinary clay under the provisions of M.P. Minor Mineral Rules, 1961. The application was submitted on 23rd January, 1984 for excavation of clay for railway work from lands situated in village Mehragaon. On 01.02.1984 Collector, Hoshangabad sanctioned the application of the petitioner for grant of quarry lease for an area of 6.10 acres for a period of one year. As per the conditions, the petitioner will be liable to pay royalty/dead-rent/surface rent as per the Minor

Mineral Rules, 1961. Petitioner agreed to the conditions put forth by the respondent No. 2 and executed an agreement that he was liable to pay royalty to the State Government for the amount of clay extracted. The period of the quarry lease was from 16.02.1984 to 15.02,1985, royalty was payable on the quantity excavated. Royalty was quantified at Rs. 4,37,317.93 paisa and petitioner paid a sum of Rs. 2,50,000, remaining was balance due against the name of the petitioner. After paying some part of the royalty, petitioner came to know that he was not liable to pay the royalty at all in view of the circulars P/1, P/2 and P/3 dated 12.121975, 08.08.1977 and 11.10.1983 respectively. Petitioner relies on the opinion P/4 of the Law Secretary of Law Department dated 26.09.1983. Petitioner prayed for refund of the amount of Rs. 2,50,000 paid as royalty. Petitioner earlier preferred a writ petition No. 3885/1987, same was disposed of, Order P/5 was passed on 13.07.1999 to approach the Collector. Petitioner approached the Collector, Collector has passed an Order P/6 on 14.05.2002. Collector has held that petitioner is bound by the terms of the agreement and is liable to make the payment of the royalty.

Petitioner submits that Collector has erred in law in holding that petitioner is bound by the terms of the agreement. The agreement is null and void. The mineral "clay" is not notified under the provisions of Mines and Minerals (Regulation and Development) Act, 1957, hence no royalty could be imposed on the clay excavated by the petitioner. Petitioner cannot be forced to pay the royalty on the basis of agreement.

Shri A.K. Choubey, learned counsel appearing for petitioner has submitted that in view of the circulars P/1, P/2 and P/3 and opinion P/4, it was not open to the State Government to demand the royalty from the petitioner. He has further submitted that royalty is not payable under the M.P. Minor Mineral Rules. Hence, the agreement is illegal and void and not enforceable.

Shri B.N. Mishra, learned Government Advocate appearing for respondents has submitted that it was for the commercial purpose that petitioner entered into an agreement, the clay was having the commercial value and petitioner has earned profit from the railways, once he has entered into an agreement and it worked out, it is not open for the petitioner to wriggle out of the same. He has further contended that "clay" is covered u/s 247 of M.P. Land Revenue Code as "mineral" and it was having commercial value as such the claim made by the respondents is proper and order passed by the Collector calls for no interference.

Section 247 of M.P. Land Revenue Code deals with Government''s title to minerals. Explanation to Section 247 of MPLRC makes it clear that "minerals" include any Sand or clay which the State Government may declare to have a commercial value or to be required for any public purpose. Thus, it is clear that "clay" is a "mineral" and title vests in the Government. In Schedule I of M.P. Minor Mineral Rules, 1961 the mineral "clay" was included at Item No. 4. Thus, clay being mineral included in First Schedule, it was legal for the State Government to enter into Contract and collect royalty. Petitioner has entered into an agreement for commercial purpose and has earned profits from the railways, once having entered into a contract and having worked out the same, the contractor is bound to pay the outstanding amount of the royalty and cannot ask for refund of part of the royalty which has already been paid. Petitioner has filed this writ petition only when petitioner was required to pay remaining amount of royalty. Once having entered into a Contract with the State Government fully understanding his rights, it is not open for the petitioner to wriggle out of the contractual obligation more so when "clay" is a "mineral" both under M.P. Minor Mineral Rules; 1961 which prevailed at the relevant time and MPLRC, 1959.

Reliance is placed on a circular P/1 dated 12.12.1975, the circular specifies that if "clay" is used for construction of roads and paths royalty is not required to be paid. This is not the case here.

Circular P-2 has also been relied upon, same is also not applicable is case of petitioner. A decision was taken by the State Government with respect to Housing Board and Town Improvement Trusts when "clay" is used for levelling purpose royalty should not be levied as provided in circular P/2. It was decided that since such "clay" was not having any commercial value, royalty cannot be levied. It does not provide that if "clay" is used for "commercial" purpose, the royalty cannot be levied.

Circulars P/3 dated 11.10.1983 deals with the payment of royalty on "clay" used for construction of roads. In that context it was clarified that royalty is not payable on such "clay".

The opinion of the Law Secretary P/4 does not also advance the cause of the petitioner as it does not appear that Section 247 of MPLRC was considered and opinion was given while the land taken from the Bhumiswamis has been put to use other than agricultural purpose and has been damaged by the contractor while excavating "clay". In any view of the matter, as petitioner entered into a contract and has worked out agreement for commercial purpose and agreement is valid under M.P. Minor Mineral Rules, 1961 which prevailed in 1984-85 when agreement was entered into, in my opinion, petitioner cannot wriggle out of his contractual obligation to pay remaining royalty and cannot ask for refund of royalty paid by him.

Resultantly, I find no merit in instant writ petition, the same is dismissed. No order as to costs.

