(2006) 05 OHC CK 0013

In the Orissa High Court

Case No : O.J.C. No. 5700 of 2002

Nalini Kumar Das APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 19-05-2006

Acts Referred:
Orissa Minor Minerals Concession Rules, 1990 — Rule 14(5), 20, 24, 3

Citation : AIR 2006 Ori 154 : (2006) 2 OLR 64

Hon'ble Judges : M.M. Das, J;L. Mohapatra, J

Bench : Division Bench

Advocate : R.K. Mohanty and C. Pattanayak, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The petitioner calls in question the order dated 19.3.2002 passed in O.M.M.C. No. 19 of 2001-02 by the Tahasildar, Dhenkanal and the order dated 8.5.2002 passed in O.M.M.C. Appeal Case No. 1 of 2002 passed by the Sub-Collector, Dhenkanal.

2. The petitioner being the owner of a piece of land under the jurisdiction of the Tahasildar, Dhenkanal was digging out boulders from his own land for the purpose of utilizing the said land to raise construction thereon. He received a notice from the Tahasildar, Dhenkanal in Misc. Case No. 74 of 2000-2001 in which a demand raised on him to pay Rs. 4,32,000/- towards the royalty for extraction of road metals and boulders without prior permission from the competent authority. It appears that the said demand notice was issued pursuant to the reports submitted by a Special Squad through the Sub-Collector, Dhenkanal dated 16.12.2000. The petitioner filed an objection to the said demand notice and the Tahasildar on considering the said objection passed an order on 19.3.2002 holding that the petitioner liable to pay royalty amount demanded along with Rs. 1,000/- towards penalty for illegal extraction of the road metals and boulders from plot No. 43 of village Jatannagar. The petitioner

filed the above O.M.M.C. Appeal Case No. 1 of 2002 against the order of the Tahasildarand the appellate authority by order dated 8.5.2002 dismissed the appeal as not maintainable under the Orissa Minor Minerals Concessions Rules, 1990 (for short ''the Rules'').

3. Mr. R. K. Mohanty, learned Counsel for the petitioner submitted that the land in question from which the petitioner is alleged to have extracted boulders etc. belongs to him and no mining lease had been granted in favour of the petitioner nor was it necessary to be granted in his favour for extracting the said boulders. He submitted that, as a matter of fact, the petitioner in order to raise construction over the land had to extract portion of the said land for laying the foundation and as the said land consists of metals/boulders on the surface, digging out a portion of such boulders for laying the foundation cannot amount to extraction of minerals as envisaged under the Rules. He further submitted that the opposite parties being the creatures of the said Rules are not vested with any power to impose penalty and direct payment of royalty to the petitioner in the peculiar facts and circumstances of the case. He drew the attention of the Court to Rules 3 and 24 of the Rules in support of his submission. The said Rules 3 and 24 of the Rules are quoted hereunder:

3. No person shall undertake any quarrying operations for the purpose of extraction, collection and/or removal of minor minerals except under and in accordance with the terms and conditions of quarry lease, permit and/or auction sale provided under these rules:

Provided that extraction, collection and/or removal of minor minerals by a person from his own land for normal agricultural operations or other bona fide domestic consumption shall not be construed as quarrying operations.

24. Penalties : (1) Whoever contravenes the provisions of Rule 3, shall be liable to punishment with imprisonment for a term which may extend to six months or with fine which may extend to rupees one thousand only or both and in case of a continuing contravention, with an additional fine which may extend to rupees one hundred only for every day during which such contravention continues after conviction for the first such contravention.

(2) In case of breach of any condition of the lease other than those mentioned in Sub-rule (5) of Rule 14, the Competent Authority may give notice of thirty days to the lessee to rectify the defects within the time specified. If the lessee fails to rectify the defects within the specified time, the Competent Authority may cancel the lease and/or levy a penalty not exceeding rupees one thousand only.

(3) In case of breach of any condition mentioned in Rule20 and other conditions which the Competent Authority or the Controlling Authority might have specified while granting a quarry permit, the Competent Authority may impose a penalty which may extend to rupees one hundred only per day and in the event of continuing contravention, the Competent Authority may cancel the permit. The minerals lying on the land from which they are extracted shall thereafter become

the property of the Government.

(4) If the permit holder quarries or collects or transports any mineral without valid permit, he shall be punishable with imprisonment which may extend up to six months or with fine up to rupees one thousand or both.

4. A bare reading of Rule 3 of the Rules quoted above would go to show that extraction, collection and/or removal of minor minerals by a person from his own land for normal agricultural operation or otther bona fide domestic consumption shall not be construed as quarrying operations. Rule 24 of the Rules prescribes for penalties to be imposed on person whoever contravenes the provisions of Rule 3 of the Rules.

5. We find no provision in the Rules by which liability of a person who extracts minerals from his own land to pay royalty, can be fixed.

6. A counter affidavit has been filed on behalf of the opp. parties stating, inter alia, that the squad constituted for checking illegal extraction of minor minerals found the petitioner to be extracting boulders and, as such, the impugned orders cannot be interfered with, as extraction of minerals will attract the provision for payment of royalty.

7. We are unable to persuade ourselves to agree with the contention raised in the counter affidavit filed on behalf of the opp. parties and we find that the impugned orders passed by the Tahasildar, Dhenkanal as well as the Sub-Collector, Dhenkanal cannot be sustained in law. We accordingly while holding that the Tahasildar had no jurisdiction to demand royalty from the petitioner in the facts of the present case, quash the order dated 19.3.2002 passed by the Tahasildar in O.M.M.C. No. 19 of 2001-02. The amount of Rs. 50,000/- (rupees fifty thousand) and Rs. 20,000/- (rupees twenty thousand) deposited by the petitioner pursuant to the orders passed by this Court on 7.6.2002 and 18.11.2003 shall be refunded to the petitioner forthwith.

8. In the result, the writ petition is allowed but in the circumstances without costs.

L. Mohapatra, J.

9. I agree.

