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**(1974) 02 P&H CK 0009**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ No. 2927 of 1973**

Nihal Singh Bhajan Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

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**Date of Decision :** 12-02-1974

**Acts Referred:**

Mines and Minerals (Development and Regulation) Act, 1957 — Section 21(5)

**Citation :** AIR 1975 P&H 48

**Hon'ble Judges :** Bal Raj Tuli, J

**Bench :** Single Bench

**Advocate :** Bhal Singh Malik, for the Appellant; J.S. Wasu, General and S.K. Sayal, for the Respondent

**Final Decision :** Allowed

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## Judgement

Bal Raj Tuli, J.—This order will dispose of C. W. Nos. 2850 to 2859. 2927 to 2934 and 2936 to 2972, as common Questions of law and fact are involved in these petitions.

2. The facts of C. W. 2927 of 1973, M/s. Nihal Singh Bhaian Singh v. State of Punjab may be referred to for the decision of the common points of law. The petitioner is a firm carrying on the business of manufacture and sale of bricks at the brick-kiln situate in village Chahlan, district Ludhiana. The petitioner-firm is the owner of the land out of which brick-earth is extracted for the manufacture of bricks. Brick-earth was declared as a minor mineral by the Central Government by Notification No. M-II-159 (18)-54-A-II, dated June 1, 1958, which notification was issued in exercise of the powers conferred by clause (e) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the Act). Section 15 of the Act gives power to the State Governments to make rules in respect of minor minerals and in exercise of that power, the Punjab Government promulgated the Punjab Minor Minerals Concession Rules, 1964 (hereinafter referred to as the Rules). The District Industries Officers of various districts issued demand notices to the brick-kiln

owners calling upon them to pay royalty, the amount of which was determined on the basis of the bricks manufactured by each brick-kiln owner.

The law of that royalty was challenged in numerous petitions filed in this Court which were decided by a Full Bench and the judgment is reported as *Amar Singh Modi Lal Vs. State of Haryana and Others*, . In this judgment, it was held by majority that Section 3(e) of the Act and the notification issued thereunder declaring brickearth as "minor mineral" did not suffer from any vice of excessive delegation and that brick-earth is to be deemed to be a minor mineral. The rules with regard to minor minerals are to be framed by the State Government and that obviously includes the law of royalty in respect of the prospecting licences and mining leases granted for exploitation. It was, however, held that as the petitioners did not hold a Prospecting licence nor were they mining licensees or holders of a short term permit for the purposes of exploiting minor minerals, they were not liable to the law of any royalty. Under R. 20 of the Rules, the royalty can be levied only in connection with a mining lease and for that purpose, unless there is a subsisting contract between the petitioners and the State Government, no question of levying royalty under the Rules can arise. Reliance was placed on Rules 28, 37 and 44 of the Rules which regulate the grant of contract by auction or tender or provide for the conditions of mining lease and the grant of short term permit. As the petitioners in those cases had not executed any contract or agreement as aforesaid, they were not liable for the payment of any royalty. The legal position that unless there is such a subsisting contract, no royalty can be levied was not controverted on behalf of the State. Consequently, the notices of demand issued to the petitioners in those cases were quashed. Thereafter, the various sections of the Act were amended by the Mines and Minerals (Regulation and Development) Amendment Act (56 of 1972), and Section 21 of the principal Act was amended by substituting Sub-section (1) and adding Sub-sections (3), (4) and (5) after Sub-section (2). After amendment, Section 21 reads as under:--

21. Penalties:-- (1) Whoever contravenes the provisions of Sub-section (1) of Section 4 shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention

(3) Where any person trespasses into any land in contravention of the provisions of

Sub-section (1) of Section 4, such trespasser may be served with an order of

eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, without any lawful authority, any mineral from any land, and, for that purpose, brings on the land any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or other thing shall be liable to be seized by a magistrate specially empowered in this behalf.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority."

This Amending Act came into force on September 13, 1972, and believing that Sub-section (5) of Section 21 applied to unauthorised extraction of brick-earth even during the period prior to September 13, 1972, the District Industries Officers of various districts issued notices to the brick-kiln owners demanding the payment of royalty. The petitioner-firm received a notice to pay Rs. 3,883.72 on account of royalty for the period from 1969 to March 1972. The whole of this period is prior to September 13, 1972 and the petitioner-firm has filed the present petition challenging the levy of the royalty.

3. Various objections have been raised in the petition but it is not necessary to deal with all of them. It was held by the Full Bench in *Amar Singh Modi Lal Vs. State of Haryana and Others*, , that no royalty in respect of minor minerals could be levied unless the party held a prospecting licence or a mining lease or was holder of a short term permit for the purposes of exploiting minor minerals. It is admitted by the State that the petitioner-firm does not answer any of those categories but it is submitted that the petitioner-firm is covered u/s 21(5) of the Act as amended and, therefore, the State Government can recover the royalty in respect of the brick-earth extracted even prior to September 13, 1972. as the amendment has retrospective effect. I am unable to agree. Sub-section (5) on its language does not indicate at all that its operation is retrospective. It is wholly prospective and will cover the cases of persons who raise, without any lawful authority, any mineral from any land after the coming into force of the Amending Act. The verb "raises" does not refer to the mineral raised from any land prior to the coming into force of the Act. It is an established principle of interpretation that statutory provisions creating or taking away any substantive rights or imposing any sort of liability will always be interpreted as prospective in operation unless the Legislature expressly or by necessary intendment makes it retrospective. The second principle of interpretation is that if the language is ambiguous or admits of any doubt, the doubt has to be resolved in favour of the subject and not the Government, and the third rule of interpretation with regard to taxing statutes is that a tax can be levied only if under the provisions of the

taxing statute it is leviable. The verb "raises", as I have said above, does not include the minerals already raised. It means the mineral which may be raised after the coming into force of the amendment. If the Legislature intended it to be retrospective, it could have used a different language by saying "if any person has at any time raised, either before or after the coming into force of this sub-section", instead of saying "whenever any person raises" or to say that "the following sub-section shall be inserted and shall be deemed always to have been inserted." as has been done while amending Section 15 of the Act by the same Amending Act. It is thus apparent that the language to be used for making a provision retrospective was known to the Legislature and if that language was not adopted, the intention is clear that it was not meant to be retrospective and was meant only to be prospective.

4. The learned Advocate General has, however, relied on a judgment of the Privy Council in *Municipal Council of Sydney v. Margaret Alexandra Troy* AIR 1928 PC 128. which is clearly distinguishable. In that case, on June 6, 1924, a piece of land was acquired by and became vested in the Municipal Council of Sydney. On that date, the rate of interest payable on compensation money was 4 per cent, which was increased to 6 per cent on September 17, 1924, and the question arose whether the new rate of 6 per cent, applied to the compensation money in respect of the acquisition already made on June 6, 1924. It was held that as the compensation had not yet been paid, the rate of 6 per cent, would apply. The material provision in that behalf was contained in Section 17 of the Sydney Corporation Act, 1924, and was in these terms:--

"Notwithstanding the provisions of any other Act the rate of interest payable upon compensation for land acquired by the Council by resumption or by the re-alignment method or by any compulsory purchase, shall be 6 per centum per annum."

The verb used was "acquired" and in the context in which it was used clearly meant the land already acquired or to be acquired in respect of which compensation had not been paid before the amendment. On the basis of that judgment, it cannot be said that Sub-section (5) of Section 21 covers the unauthorised extraction of brick-earth made by the petitioner-firm even prior to September 13, 1972. The demand for royalty made from the petitioner-firm relates to the period prior to that date and cannot be recovered.

5. It has been pleaded by the respondents in para. 5 of the return that the petitioner-firm has been collecting royalty on behalf of the Government from the customers along with the price of bricks sold and is liable to pay the same to the Government and that the proceedings taken by the Government against the petitioner-firm for the recovery of the royalty amount collected by it from the customers are justified under Clause (5) of Sub-section (2) of Section 21 read with Section 25 of the Act as amended by Act 56 of 1972. I do not find any substance in this plea. I have already held that Clause (5) of Sub-section (2) of Section 21 is not retrospective in operation and cannot apply to the period prior

to September 13, 1972. The collection of the royalty amount by the petitioner-firm from its customers is also of no consequence. The amount of royalty was included in the price of the bricks sold and the customers were not concerned how it was made up. Lawrence. J., observed in *Paprika Ltd. v. Board of Trade*. (1944) 1 All ER 372 that--

"Whenever a sale attracts purchase tax, that tax presumably affects the price which the seller, who is liable to pay the tax, demands but it does not cease to be the price which the buyer has to pay even if the price is expressed as X plus purchase tax."

6. A similar observation was made by Goddard. L. J. in *Love v. Norman Wright (Builders) Ltd.* 1944 1 All ER 618 (C.A.), as under:--

"Where an article is taxed, whether by purchase tax, customs duty or excise duty, the tax becomes part of the price which ordinarily the buyer will have to pay. The price of an ounce of tobacco is what it is because of the rate of tax, but on a sale there is only one consideration, though made up of cost plus profit plus tax. So, if a seller offers goods for sale, it is for him to quote a price which includes the tax if he desires to pass it on to the buyer; if the buyer agrees to the price, it is not for him to consider how it is made up, or whether the seller has included tax or not."

There is no provision in the Act that the manufacturer of bricks is to collect the royalty on behalf of the Government and as its agent and, therefore, whatever he collects, he must pay over to the Government. The primary liability to pay the royalty is of the person who extracts the brick-earth. He may reimburse himself by passing it on to the customer Or may not. The buyer of bricks is under no liability to pay royalty in addition to the agreed sale price and he therefore, pays nothing specifically for the Government which the manufacturer or seller of bricks cannot retain himself and must pass on to the State Treasury. The extractor of brick-earth is not relieved of his liability to pay the royalty because he has not charged or collected it from his customer. In paragraph 11 of the report in *Ashoka Marketing Ltd. Vs. State of Bihar and Another*, the Supreme Court observed -.

"In either case the liability to pay tax under the Act (Bihar Sales Tax Act) lies upon the dealer; he does not collect any tax for and on behalf of the Government. The dealer may recover from the purchaser the tax payable by him as part of the price, but on that account the purchaser is not the person liable to pay tax on the sale to the State."

A question arose before the Supreme Court in *Delhi Cloth and General Mills Co. Ltd., etc. Vs. The Commissioner of Sales Tax, Indore*, as to whether the sales tax realised by a dealer was a part of the price of goods sold by him. The Supreme Court made the following observation on the point in para. 8 of the report:

"Under Section 4 the liability to pay tax is that of the dealer. The purchaser has no liability to pay tax. There is no provision in the Act from which it can be gathered that the Act imposes any liability on the purchaser to pay the tax imposed on the dealer. If the dealer passes on his tax burden to his purchasers he can only do it by adding the tax in question to the price of the goods sold. In that event the price fixed for the goods including the tax payable becomes the valuable consideration given by the purchaser for the goods purchased by him. If that be so, the tax collected by the dealer from his purchasers becomes a part of the sale price fixed, as defined in Section 2(O)."

Whatever has been said in these judgments with regard to sales tax also applies *mutatis mutandis* to royalty on brick-earth which is under consideration in these cases. This plea is, therefore, rejected.

7. For the reasons given above, I accept this writ petition and quash the notice of demand. In all other cases, which are being disposed of by this judgment, also the demand for royalty has been raised for the period prior to September 13, 1972, and, therefore, those petitions are also accepted and the notices of demand impugned therein are quashed. The parties are, however, left to bear their own costs.

8. Before parting with this case, I wish to point out that the orders passed by the District Industries Officers are not in accordance with law. The proceedings for the levy of royalty are quasi-judicial in nature but in the Act or the Rules no procedure has been prescribed for passing an order of assessment or levy. In my opinion, the person from whom royalty is to be demanded must be given a notice and an opportunity of hearing to show cause why royalty should not be recovered from him. If he appears or does not appear, the District Industries Officer shall record a finding that the minor mineral in respect of which royalty is proposed to be levied belongs to the Government on the basis of the entries in the *wajib-ul-arz* and/or any other evidence and then find out the quantity of the brick-earth or other minor mineral on which royalty is to be levied. In short, the order must be a speaking one imposing royalty and in pursuance of that order the demand notice should be issued. It is also advisable for the Government to frame rules on the subject and provide at least one appeal to a higher authority. As the Act and the Rules stand at present, the order of the District Industries Officer is final and the assessees have to file writ petitions under Article 226 of the Constitution to set rid of the notices of demand.