
(2007) 09 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2376 of 1984

Om Parkash Brick Kiln owner

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:

Citation : (2009) 1 LLR 312 : (2008) 1 RCR(Civil) 447

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Mr. S.C. Sibal, Sr. Advocate with Mr. V.S. Rana, Advocate. Mr. H.S. Gill, D.A.G., Punjab., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J.—This order will dispose of a bunch of appeals bearing RSA Nos, 2376, 2377, 2378, 2379, 2380, 2381, 2382 and 2383 of 1984 in which common substantial questions of law arise for consideration. For the sake of convenience, facts have been taken from Regular Second Appeal No. 2376 of 1984.

2. The plaintiffappellant filed a suit for permanent injunction restraining the defendants from recovering any amount as royalty from the plaintiff for the earth of land owned by the private owners and used by the plaintifffirm for making bricks at its brick kiln situated in village Jalalabad, Tehsil Zira.

3. The plaintiff, a registered firm, filed a suit on the plea that it had a brick kiln. For making bricks, the plaintiff digs earth from the land owned by the private owners which is taken on lease and price whereof is paid to the landowners. No part of the land vests in the State Government and according to the entries in the Sharait Wajibularz, earth does not belong to the Government and in terms of Section 42(2) of the Land Revenue Act the same vests in the landowners. It was claimed that there was no provision in the Mines and Minerals (Regulations and Development) Act, 1957 (hereinafter referred to as the `Mines and Minerals Regulation Act") or in the Punjab Minor Mineral Concessions Rules, 1964, (hereinafter referred to be as `Mineral Concession Rules") giving powers to the State Government to levy royalty on the use of brick earth. Therefore, it was

claimed that the Government was not entitled to charge any royalty on the brick earth used by the plaintiff for preparing the bricks at the aforesaid brick kiln. It was further claimed that the defendants were assessing royalty and sending notices to the plaintiff-appellant herein for payment. According to the plaintiff-appellant, the said action/claim of the defendants was illegal and void.

4. The suit was contested by raising preliminary objections that before filing the suit, the plaintiff was required to file an appeal in accordance with Rule 54 of the Mineral Concession Rules and as such the Civil Court had no jurisdiction to try the present suit. The maintainability of the suit was also challenged for want of notice under Section 80 of the Code of Civil Procedure. The suit was said to be bad for nonjoinder of necessary parties. The suit was also claimed to be not maintainable for want of description of Khasra Nos. of the land in question.

5. It was further pleaded that plaintiff did not hold any certificate of approval in Form B for the extraction of Minor Mineral. It was also claimed that the rights of all the minerals including brick earth vest in the State as per entries in the Wajibularz of the village and that the amount in question was being recovered as arrears of land revenue.

6. On merits, it was admitted that the plaintiff was running a brick kiln in the village Jalalabad. It was pleaded that the plaintiff was engaged in the illegal extraction of brick earth from the land of the village for the last about 5 years on the basis of lease deed. It was further claimed that according to the Wajibularz of the village, the every mineral including brick earth vests in the State Government as per Section 42(2) of the Land Revenue Act and that even otherwise the plaintiff was bound to pay royalty to the State Government. It was also the case of the defendant respondents that according to Section 15 of the Mines and Mineral Regulations Act, the State Government is empowered to frame rules for making provisions to charge royalty. It was claimed that the action of the Government for charging royalty was in accordance with law. It was also pleaded that the application moved by the plaintiff challenging the demand of royalty was rejected against which the plaintiff did not approach the higher authorities.

7. On the pleadings of the parties, following issues were framed :

"1. Whether the Court has no jurisdiction to try this suit ? OPD

2. Whether the suit in the present form is not maintainable ? OPD

3. Whether the suit is bad for nonjoinder of necessary parties ? OPD

4. Whether the defendants are entitled to recover the amount or any other levy in the form of royalty from the plaintiff ? OPD

5. Relief."

Issue Nos. 1, 2 and 3 were decided in favour of the plaintiff-appellant, whereas issue No. 4 which was treated to be main issue was decided against the plaintiff-appellant and the suit was accordingly dismissed.

8. The learned trial Court decided issue No. 4 against the appellant primarily on the ground that brick earth was declared to be minor mineral in terms of Section 3(e) of the Mines and Minerals Regulations Act and the validity of the said notification has been upheld by the Full Bench of this Court in the case of Subhash Chander v. State of Punjab, 1982 RLR 315. The learned trial Court, therefore, held that the minor minerals vest in the State Government by relying on Section 42(1) of the Land Revenue Act which lays down that when any record of rights completed before 18th day of November, 1871, it was not expressly provided that any forest, quarry, unclaimed, unoccupied, deserted or waste land and spontaneous produce or other accessories, interest land belongs to the landowners, therefore, it shall be presumed to belong to the Government. It was further held that in the case where the record of rights were completed after November 18, 1871 then if it is not expressly provided that any forest or quarry or interest belong to the Government, it shall be presumed to belong to the landowners. The learned trial Court also held that, as the plaintiffappellant had failed to bring on record any evidence to prove any such express provisions in the relevant recordofrights, to show that the minor minerals vest in the private persons, then presumption has to be drawn that the minor minerals so declared by the State Government belong to the Government. The learned trial Court also held that Wajibularz prepared on the record shows that there was no kan and kankar in the village and that if discovered, the same would belong to the Government and the landowners shall be entitled to compensation or the damages suffered by them on that account. The learned trial Court, therefore, recorded a finding that as the brick earth was not mentioned in the Wajibularz to be belonging to the State Government, no presumption could be raised in favour of the plaintiffappellant, rather the same would be presumed to be belonging to the State Government and, therefore, the State Government would be entitled to claim royalty and accordingly dismissed the suit.

9. In appeal, the learned lower Appellate Court affirmed the findings of the learned trial Court on issue No. 4 by observing as under :

"The plaintiff as well as the defendants have produced the Wajibularz copies of which are Ex. P1 and Ex. D9 is the Wajibularz of the village of the year 191112 and Ex. P1 is of the year 196263. Both these Wajibularz clearly mention that the recovery of minormineral would be vesting in the State and the Govt. will pay the compensation to the landowners. The learned counsel for the appellant has argued that the earth work is not mentioned in both these Wajibularz so the Govt. cannot charge the royalty as the land belongs to the landowners. Even the Wajibularz produced by the plaintiff goes against him. Mere this fact that the brick earth is not mentioned in the Wajibularz cannot advance the case of the plaintiff. It is mentioned in the Wajibularz that there is no kan and kanker in the village and that if discovered the same would belong to the Govt. By virtue of the statutory provisions, contained in Section 42(2) of the Punjab Land Revenue Act, the presumption raises in favour of the defendants that the brick earth which has been validly declared to be minor mineral belongs to the Govt. Section 42

subsection (3) of the Punjab Land Revenue Act raises a presumption in favour of the State. Mere this fact that the brick earth is not specifically mentioned in the Wajibularz cannot advance the case of the plaintiff because at that time the same was not being treated as mineral. The learned counsel for the appellant has relied upon two unreported judgments, RSA No. 581 of 1983 M/s. Chand Ghasi Ram v. State of Punjab, decided on 3.11.1983 and RSA No. 902 of 1973 Punjab State v. M/s. Vishkarma and Co., decided on 16.9.1982. Both these judgments are on different facts and in these cases the record of rights was prepared after November, 1871.

From the above discussion, I would hold that the brick kiln earth is a minor mineral and the same vests with the State Government."

Consequently, the appeal filed by the plaintiff-appellant was dismissed.

10. Mr. S.C. Sibal, Senior Counsel appearing on behalf of the appellant submitted that the following substantial questions of law arise for consideration :

"1. Whether the brick earth in view of the entries in Shariat Wajibularz would vest in the State or the landowner ?

2. Whether in view of the entries in the Shariat Wajibularz not showing the vesting of brick earth as minor mineral, the State could claim royalty for the use of said minor mineral which belongs to the landowners ?

3. Whether the findings of learned Courts below on issue No. 4 are based on misinterpretation of the provisions of the Act and are outcome of misreading of the evidence brought on record ?"

11. In support of the substantial questions of law as raised above, the learned Senior Counsel appearing on behalf of the appellant contended that it was an admitted case that entries in Wajibularz were produced on record by the plaintiff as well as the respondents. No mention of earth was made therein. The only entry was that minor minerals would be vesting in the State and the State would pay compensation to the landowners. The contention of the learned counsel for the appellant was once the land belongs to the landowners though it was declared to be minor mineral, the same could not vest in the State Government by drawing presumption under the provisions of Section 42 of the Land Revenue Act. In support of this contention, learned counsel for the appellant placed reliance on the Division Bench judgment of this Court in RSA No. 214 of 1972 titled as State of Punjab v. Shadi Lal and another, decided on March 11, 1983, wherein this Court was pleased to lay down as under :

"Shri S.K. Sayal, appearing for the State has argued that brick earth is included in the word `stone' and since stone of `Kankar' vests in the State, therefore, the State was entitled to claim royalty and ask the plaintiff to obtain permit and deposit security. This argument cannot be sustained. Brick earth is a separate minor mineral and cannot be included in the words `Stone or Kankar'. They are entirely different marketable commodity as compared to brick earth. The

Wazibularz of 1984 was repeated from time to time, right upto 196061, with regard to one village and upto 196869 with regard to other two villages, and in all these, there was no mention of brick earth which was to belong to the State Government. By 196061 or 196869, the brick earth was well known and by no stretch of imagination, it could be included in the terms 'Stone or Kankar'. Therefore, the Court below was perfectly justified in raising the presumption that brick earth, although a minor mineral did not vest in the State by virtue of Section 42(2) of the Act and presumption was rightly raised that it belonged to the landowners.

The State could rebut the presumption raised under Section 42(2) of the Act, but they led no evidence in this behalf. Therefore, the presumption, which has been raised under Section 42(2) of the Act, remained unrebutted. Similar view has been taken by C.S. Tiwana, J. in Punjab State v. M/s. Vishkarma and Co. Kiln Contractor and another, 1993(2) R.R.R. 38, RSA No. 902 of 1973, decided on 16.9.1982."

12. Learned Senior Counsel for the appellant further placed reliance on the judgment of the Hon'ble Supreme Court in the case of The State of Punjab v. M/s. Vishkarma and Co. etc., 1993(2) RRR 38 : JT 1993(1) SC 448 wherein the judgment passed by this Court was upheld and the appeal filed by the State against the judgment of this Court in RSA No. 902 of 1973 was dismissed. The Hon'ble Supreme Court in affirming the findings of this Court was pleased to hold as under :

"9. In our view, when all the courts below have concurrently recorded findings to the effect that the ownership of the brickearth belong to landowners and not the State on a correct appreciation of all evidence adduced in the case and on a proper application of the law governing the same, there could be no justification to interfere with such findings in these appeals. We are also not shown any valid reason as to why we should set aside the lower Courts judgments and decrees and send the matters to the Courts of first instance with a direction to permit the State to adduce rebuttal evidence as regards entries in recordofrights."

13. Mr. H.S. Gill, Deputy Advocate General, Punjab, appearing on behalf of the State, however, supported the judgments and decrees passed by the learned Courts below primarily on the plea that the State Government by way of Notification issued under Section 3(e) of the Mines and Minerals Regulations Act had declared the brick earth to be a minor mineral and the said notification was upheld by the Full Bench of this Court in Subhash Chander's case (supra).

14. The contention of the learned counsel for the respondents was that once the notification was upheld and the brick earth is held to be a minor mineral the findings recorded by the learned Courts below on issue No. 4 cannot be faulted with.

15. On consideration of the matter, I find no force in the contentions raised by the learned counsel for the State. The Hon'ble Full Bench of this Court while

deciding the case of Subhash Chander (supra) has been pleased to lay down as under:

"Having held as above, it seems to be plain that in this set of writ petitions, a tangled dispute on facts is sought to be raised on behalf of the respondents. The claim to lead evidence to rebut the presumption, if any, under Section 42 has not only been raised, but strenuously pressed. I am unable to deny this right to the respondents and even otherwise find it inapt to enter the thicket of controverted facts and the evidence that may have to be led by the parties. Respectfully following the settled line of precedent in this Court in Khushal Singh and others" case and Dr. Shanti Saroop Sharma and another"s case and M/s. Amar Singh Modi Lal"s case (supra) I would dismiss the writ petitions and relegate the petitioners to the remedy of establishing their claims in appropriate proceedings in a revenue or civil Court as they may be advised."

Thus, it would be seen that the Full Bench of this Court did not hold that by way of mere declaration of brick earth as a minor mineral, any right vests in the State Government. The evidence brought on record in the present case clearly showed that the brick earth did not vest in the State Government though it was declared to be a minor mineral. Therefore, the same vested in the ownership of landowners which did not give any right to the State Government to claim royalty. Thus, in view of the authoritative pronouncements by the Division Bench of this Court in Subhash Chander"s case and the Hon"ble Supreme Court in M/s. Vishkarma and Co."s case (supra), the substantial questions of law are answered in favour of the appellant. The entries in Sharait Wazibularz being entries on record, the brick earth though declared to be a minor mineral would vest in the owner of the land.

16. As the State Government is not held to be owner of the brick earth, it cannot claim any royalty from the plaintiffappellant. In view of the findings recorded above, the said question is also answered in favour of the appellant and it is held that the findings recorded by the learned courts below on issue No. 4 are outcome of misreading of the provisions of the Act and the documents brought on record. Therefore, the same cannot be sustained.

Consequently, all the appeals are allowed, judgments and decrees passed by the learned Courts are set aside and the suit filed by the plaintiffappellant is ordered to be decreed with no order as to costs.

Appeals allowed.