
(2002) 08 MP CK 0014
In the Madhya Pradesh High Court
Case No : M.P. No. 880 of 1990

Onama Glass Works Ltd., Jabalpur

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 247(7)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 3

Citation : (2003) 3 MPLJ 573

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

Bench : Single Bench

Advocate : N.C. Beohar, for the Appellant; Ashok Agrawal, Panel Lawyer for State, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.—Petitioner is assailing the orders passed by the Additional Collector, Commissioner and Board of Revenue contained in Annexure D, E and I imposing royalty of Rs. 24,000/- and penalty of Rs. 25,000/- on the Managing Director, Onama Glass Works Ltd.

2. It is not in dispute that lease was granted to the petitioner for extraction of "fire clay". The case of the petitioner is that he did not extract any mineral in illegal manner. A show cause notice dated 19-09-1980 was issued to the petitioner and also upon Shri Tarunmal Sethi and Company, alleging that petitioner has illegally extracted mineral "Mitti (Malma)" measuring 4,00,000 Cubic Feet worth Rs. 73,6800.0 from the area leased out to the petitioner comprising in Survey No. 501, 502 and 503 Mouza Garha, Jabalpur. Petitioner was called upon to show why proceedings u/s 247(7) of Madhya Pradesh Land Revenue Code be not initiated for illegal extraction of mineral "Mitti" and fine be not imposed. Petitioner submitted a reply (Annexure-B) on 27-10-1980 pointing out that petitioner was an authorised lease holder over the area under question and over the period of time with regard to which the alleged extraction is

imputed against him. Petitioner had paid all the necessary surface compensation to the lessor and acquired full rights to extract the mineral "fire clay". Petitioner had permitted its mines manager to allow the persons to transship free of cost the waste material known as "Malma". The area surface did not contain any clay which could be of any intrinsic value at the site. Thus, the show cause notice be dropped.

3. Petitioner submits that chemical examination was not done in order to ascertain its commercial value. The Additional Collector examined the witnesses. However, the petitioner was not given opportunity to enter into the witness box. The Additional Collector passed detailed order and found that mineral "Muram" was extracted by the petitioner in an illegal manner from the quarry. Quantity of 4,80,000 Cubic Feet, "Mitti" of the market value of Rs. 73,680/- was illegally extracted by the petitioner. The royalty payment of Rs. 24,000/- and fine of Rs. 25,000/- was imposed on the petitioner. Shri Takhatmal Sethi was proceeded ex-parte.

4. Petitioner preferred an appeal before the Additional Commissioner. The appeal has been dismissed. Petitioner preferred another appeal before the learned Board of Revenue. This appeal has also been dismissed. Hence, present writ petition has been filed. Petitioner submits that it cannot be a case of illegal extraction as the area was leased out, the provisions of section 247(7) of the Madhya Pradesh Land Revenue Code is not applicable. The order is violative of principles of natural justice. Petitioner ought to have been given an opportunity to enter into the witness box.

5. A return has been filed by the respondent. The stand taken is that illegal extraction has been admitted in para 4 of the reply to the show cause notice. Petitioner had admitted the fact of removal of "Malma". In the writ petition also averment has been made that the petitioner has allowed the removal of "Mitti" which amounts to illegal removal of mineral which was unauthorised under the conditions of the lease. Petitioner was authorised only to remove "fire clay". Thus, section 247(7) is clearly attracted. The mineral which has been removed could not be removed without prior permission of the Government. Rule 27(a) and (b) of Mineral Concession Rules, 1960 are relevant which provides that in the leased area any mineral is found, which is not specified in the lease, it has to be reported to the State Government. Mineral cannot be removed by lease holder until and unless he obtains permission therefore. As per section 3, mineral is defined includes all minerals except mineral oils. The material removed was not mineral oils. As such it was a mineral within purview of section 3 of Mines and Mineral (Regulation and Development) Act, 1957 which could not be extracted without permission.

6. Shri N.C. Beohar, learned Counsel appearing for the petitioner, submits that orders passed by the Additional Collector, Commissioner and Board of Revenue are bad in law and it is not the case of illegal mining even if Malma which is of no commercial value has been removed. It cannot be said to be the case attracting

section 247(7) of the Code. Imposition of penalty is bad in law in the facts and circumstances of the case. No proper enquiry has been held, as such the orders are bad in law.

7. Shri Ashok Agrawal, learned Counsel appearing for the respondent, contends that orders are proper and no interference is called for. It has been found as a matter of fact that petitioner has sold the Malma "Mitti" for commercial gain. Removal is not disputed in the reply to the show cause notice. Thus, petitioner is not entitled for any relief in the instant writ petition.

8. First it be examined whether the order passed by the Additional Collector, Commissioner and Board of Revenue are proper. Reply to the show cause notice submitted by the petitioner indicates that petitioner had allowed removal of "Malma" assumably on the basis that it is a waste material. Finding of fact has been recorded that it was used for commercial gain by the petitioner. Fact remains that removal has not been disputed. It is not a mineral oil as per definition of mineral in section 3 of Act which was allowed to be removed. It amounts to removal of mineral without due permission. As per Rule 27, petitioner had not obtained any permission for removal of "Malma (Mitti)". Within the municipal area, such "Malma/Mitti" is having commercial value. Notification in that regard has been issued on 30th May, 1963. Finding has been recorded that it was supplied to the Railways for doubling of the Railway lines. Thus, in my opinion, the orders passed holding that though the area was leased for extraction of "fire clay", some other mineral was removed which was not allowed to be removed amounts to illegal mining within the purview of section 247(7) of the Code, are unassailable.

9. Coming to the submission that proper enquiry was not held, the petitioner was not allowed to enter in the witness box. True it is that petitioner should have been allowed to examine himself. Whether the petitioner has allowed removal for gain or free of charge allowed others to remove it, need not be gone into as factum of removal is not in dispute. Thus, no prejudice has been caused to petitioner if not allowed to examine himself.

10. Coming to last submission of learned Counsel for the petitioner as to whether imposition of the penalty is bad in law. It is not in dispute that area was leased out to the petitioner for extraction of "fire clay" and petitioner right from beginning has taken bonafide stand that "Malma" is waste material, thus, he allowed the removal free of cost. Thus, in the circumstances, when royalty has been realised of Rs. 24,000/- on the mineral which as a matter of fact was payable for removal of such material would meet ends of justice. The imposition of penalty in respect to the petitioner is set aside.

11. Resultantly, the writ petition is partly allowed. The part of order imposing penalty Rs. 25,000/- is set aside. The order imposing royalty of Rs. 24,000/- is affirmed and that has to be paid by the petitioner. Security, if deposited, be refunded to the petitioner. In the facts and circumstances of the case, costs on

parties.