

(1984) 11 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 1609 of 1976

Punjab State

APPELLANT

Vs

Om Parkash and another

RESPONDENT

Date of Decision : 20-11-1984

Acts Referred:

Citation : (1984) 11 P&H CK 0010

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : R.P. Bhatia, for A.G. Pb, for the Appellant; H.L. Sarin , with Sh. R.L. Sarin and Sh. Sukhdev Singh, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This is defendant's second appeal against whom the suit for permanent injunction restraining the State of Punjab from recovering any royalty from the plaintiff, has been decreed by both the Courts below.

2. Plaintiff Om Parkash is engaged in the business of manufacturing bricks. He has been excavating brick earth from the lands situated in village Kainthan for the manufacturing of his bricks. He has been called upon to apply for permits after depositing security for excavating brick earth from the land by the Industries Department, Hoshiarpur. He was also called upon to pay royalty on excavation of brick earth on the aforesaid land for the manufacturing purposes at his brick kiln. The plaintiff deposited royalty to the tune of Rs. 4484.09 for the period from 22nd April, 1965 to 31st December, 1968. Thereafter the plaintiff was again called upon to pay royalty for the period December, 1969 onwards. This time the plaintiff filed the present suit for permanent injunction challenging the imposition of royalty inter-alia pleading that the Industries Department has no right to demand the deposit of the amount of royalty as brick earth was not a minor mineral as the same does not vest in the Punjab State.

3. The suit was contested by the State of Punjab inter-alia pleading that the brick

earth being a minor mineral vested in the Punjab State and the State could demand royalty from the plaintiff. The trial Court found that the brick earth was a minor mineral and that the brick earth did not vest in the Punjab State. Ultimately, it was held that the plaintiff was entitled to the grant of relief of injunction. Consequently, the plaintiff's suit was decreed.

4. In appeal, the learned District Judge affirmed the said findings of the trial Court and thus maintained the decree in favour of the plaintiff. Dissatisfied with the same the State of Punjab has filed this appeal in this Court.

5. In view of the concurrent findings of the two Courts below that the minor mineral of brick earth does not vest in the State Government, it could not be disputed that the State Government could not impose the royalty. Moreover, the matter stands covered by the judgment of this Court reported as Punjab State through the Collector Hoshiarpur v. Jagdish Chander and another (1983) 85 P. L. R. 695, It was held therein that the question whether right to a particular mineral vests in the State Government or in the owner of the land has to be decided in terms of the Wazaib Ul-Arz of the village in which the brick kilns are situated. In the present case in the Sharat-Wazib-Ul-Arz, it is mentioned that in future any such minor minerals such as Kankar, black-stone or other kind of stones are found above or below the soil shall belong to the Government. With respect to brick earth, which has been included within the definition of a minor mineral cannot be said to have been found after the aforesaid Sharat-Wazib Ul-Arz were completed. Thus the brick earth all alongwith remained on the earth. It was, therefore, held by the Courts below that the earth which is not included in the definition of the minor mineral vested in the owners and not in the State Government.

6. In this view of the matter, the appeal fails and is dismissed with no order as to costs.