

(1972) 04 BOM CK 0010

In the Bombay High Court

Case No : Special Civil Application No. 1494 of 1971

Punjaram Mithu Kirad

APPELLANT

Vs

Khandelwal Ferro Alloys Ltd. and Others

RESPONDENT

Date of Decision : 26-04-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Land Revenue Code, 1966 — Section 249(2), 252, 48, 48(3)

Citation : AIR 1972 Bom 339 : (1972) MhLj 667

Hon'ble Judges : Padhye, J;Hajarnavis, J

Bench : Division Bench

Advocate : T.L. Junakar, for the Appellant; C.S. Dharmadhikari, Addl. Govt. Pleader, M.N. Phadke and V.G. Palshikar, for the Respondent

Judgement

Padhye, J.—The petitioner challenges the order dated 30-3-1971 passed by the Sub - Divisional Officer, with powers of the Collector and the order dated 31-7-1971 passed by the Commissioner, Nagpur Division, in an appeal which was treated as a revision by the Commissioner. The petitioner claims to be the owner of Khasras 1 and 5 of Mouza Mahadulla, tahsil Ramtek, district Nagpur on the death of the original owner Mahipat son of Madhao Mahajan and his widow Sarjabai. The State Government granted a mining lease in favour of the respondent No. 1 in respect of this piece of land and the Collector by his letter dated 24th March, 1969 asked the Sub - Divisional Officer, Ramtek to fix the compensation u/s 48 (4) of the Maharashtra Land Revenue Code, 1966 and to arrange to tender the amount to the land owner. The Sub - Divisional Officer by his order dated 30-3-1971 determined the compensation at the rate of Rs. 1,000/- per acre and fixed the price accordingly on consideration of the material before him.

2. Before the revision application was decided by the Commissioner, the Collector had granted a working permission to the respondent No. 1 by his order dated 13-5-1971, but this permission was set aside by the Commissioner by his order

dated 18th August 1971 on the ground that there was no order of delegation in favour of the respondent No. 1 and no notices were given to the aggrieved persons. The orders of the Sub - Divisional Officer dated 30-3-1971 and of the Commissioner dated 31-7-1971 have been challenged by the petitioner by this writ petition.

3. During the pendency of this writ petition, the Collector again granted working permission to the respondent No. 1 on 27-10-1971 and this again was challenged before the Commissioner and the Commissioner by his order dated 14-1-1972 cancelled the working permission granted by the order dated 27-10-1971. Against this order of the Commissioner, the respondent No. 1 filed an appeal to the State Government which is said to be pending before the State Government. In this petition we are not in fact concerned with the grant of the working permission and the appeal therefrom. The matter regarding the working permission is pending before the State Government who is the competent authority to decide the appeal and we are not called upon by this petition to decide that matter which is pending before the State Government. Nothing that may be said in this judgment will prejudice the appeal which is pending before the State Government..

4. The challenge to the orders dated 30-3-1971 of the Sub - Divisional Officer and 31-7-1971 of the Commissioner is on the ground that before the compensation could be fixed there must be a delegation of power by the State Government in favour of the assignee and such a delegation cannot be made unless notice is given to the person concerned, namely, the land owner, whose rights are affected. In fact, there has been no delegation made at all in the case and, therefore, the Sub - Divisional Officer has no authority or power to fix the compensation in the present case and the order passed by the Sub - Divisional Officer, is, therefore, non est.

5. A preliminary objection was raised on behalf of the respondent No. 1 that the writ petition should not be entertained as there was an alternative and adequate remedy of appeal to the State Government challenging the order of the Commissioner and since this step has not been taken by the petitioner, the writ petition is liable to be thrown out on this ground alone. The learned Counsel for the respondent No. 1 relies upon the provisions of Section 248 of the Maharashtra Land Revenue Code which provides for the appeal to the State Government. Section 248 makes the order passed by a Commissioner in an appeal against an order of the officer subordinate to him appealable to the State Government, but Section 252 of the Code specifically prohibits an appeal from an order rejecting an application for revision. In matters of revision, the only exception is to be found in Section 249 (2), that where an order passed in revision varies or reverses any order, it shall be appealable as if it was an order passed by the revisional authority in appeal. In view of the provisions of Section 249 (2) and Section 252 (b) of the Code no appeal could lie to the State Government against the order of the Commissioner dated 31-7-1971. It is,

however, contended on behalf of the respondent No. 1 that the petitioner had initially filed the appeal before the Commissioner challenging the order of the Sub - Divisional Officer dated 30-3-1971 and the conversion of that appeal into revision by the Commissioner will not deprive the petitioner of his right of appeal to the State Government. We are not able to accept this contention. It is the ultimate order that has to be looked to and the order dated 31-7-71 is passed in a proceeding which was treated as a revision proceeding by the Commissioner. We do not, therefore, think that the petitioner could have availed himself of the remedy of appeal to the State Government as contended on behalf of the respondent No. 1.

6. Considering the merits of the petition, the petitioner relies upon the provisions of Section 48 of the Maharashtra Land Revenue Code, and more particularly of sub - section (3) thereof, Section 48 (1) defines the rights of the State Government to all minerals at whatever place found, whether on surface or underground, including all derelict or working mines and quarries, old dumps, pits, field, bandhas, nallas, creeks, river - beds and such other places and it declares that the rights to all these are expressly reserved and shall vest in the State Government. It also provides that the State Government shall have all powers necessary for the proper enjoyment of such rights. It is also further provided under sub - section (1) that nothing in this Code shall be deemed to affect any subsisting rights of any person in respect of such mines or minerals in his land. Sub - section (2) then gives further rights which are ancillary to the rights to the minerals and it provides that the right to all mines and quarries includes the right of access to land for the purpose of mining and quarrying and the right to occupy such other land as may be necessary for purposes subsidiary thereto including the erection of offices, workmen's dwellings and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways, or tram - line and any other purposes which the State Government may declare to be subsidiary to mining and quarrying. These are the rights which are declared by statute to be the rights of the Government u/s 48 (1) and (2) of the Code. The State Government has not only the right to all the minerals at whatever place found, but the right to all the mines and quarries which includes also the right to occupy such other land as may be necessary for purposes subsidiary thereto as has been stated in sub - section (2) of S. 48. These rights can be exercised by the State Government itself or these rights can be assigned by the State Government to any other person. Whenever such rights over any minerals, mines or quarries are assigned to any person and if for the proper enjoyment of such right, it is necessary that all or any of the powers specified in sub - sections (1) and (2) should be exercised, then the collector is authorized to delegate such powers to the person to whom the right has been assigned and while making this delegation the Collector has to serve notices on all persons having rights in the land affected, hear them and consider their objections.

7. The learned counsel for the petitioner contends that the rights given to the State Government under sub - section (2) of S. 48 covers also the right to

disturb the area wherein minerals are found and for mining and quarrying that area. It is urged on behalf of the petitioner that unless the Collector delegates the powers to the person to whom the right has been assigned, which are specified in sub - sections (1) and (2), the assignee does not get any right whatsoever and such delegation cannot be made by the Collector except upon a notice to the person having rights in the land affected and without hearing and considering their objections, if any. Sub - section (2) of S. 48 in our view relates to those other land besides the land containing the minerals over which a right to access to the land under minerals for the purposes of mining and quarrying is necessary and also relates to such other land not being the land to be mined or quarried, the occupation of which may become necessary for the purposes subsidiary to the mining and quarrying operations such as erection of offices, workmen's dwellings and machinery, roads, railways, trams etc. These rights which are conferred on the Government under sub - section (2) of S. 48 are rights over the lands other than the land in which the mining and quarrying has to be done. It is these powers over other lands that are required to be delegated by the Collector under sub - section (3) of S. 48 for which purpose the proviso to sub - section (3) has to be complied with.

8. We then come to sub - s. (4) of S. 48 which provides for fixation of compensation with respect to the land of which the surface is to be disturbed for the purposes of mining or quarrying. It provides that if, in the exercise of the right herein referred to over any land the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the State Government or its assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall , in the absence of agreements, be determined by the Collector or if his award is not accepted by the Civil Court in accordance with the provisions of the Land Acquisition Act. This refers not only to the lands which contain the minerals and require mining and quarrying operations and which are required to be occupied or disturbed, but also to the lands which are required for the purposes subsidiary to the above operations. In either case the State Government or its assignee has to pay compensation to the person concerned for such infringement while exercising the rights u/s 48 (1) and (2). Before, however, the assignee of the State Government can enter or occupy the surface of the land from which minerals are to be extracted, one of the two conditions given in sub - section (5) of S. 48 of the Code has to be fulfilled. Under sub - section (5) the assignee of the State Government can enter or occupy the surface of any land from which minerals are to be extracted only or getting prior sanction of the Collector or a compensation being determined and tendered to the person whose rights are infringed. If compensation is determined and tendered, then the assignee can straightway enter or occupy the surface of the land even without the previous sanction of the Collector. No question of any delegation of powers in such cases arises. The delegation in powers arises only in a case where as in sub - section (2) lands of any other persons besides the lands where there are minerals are affected for the proper enjoyment of the rights

which are assigned by the State Government in favour of the assignee. So far as the State Government is concerned, even those powers are vested in the State Government and those affected persons have only a right of compensation without there being any obstruction to the State Government to sue such other lands necessary for the purposes of mining and quarrying.

9. So far as the assignee is concerned, this latter right or power of the State to enter on other lands has to be delegated by the Collector by an order in writing in favour of the assignee and before making such delegation a notice has to be duly served on all those persons whose rights in those lands stands affected, they are heard and their objections considered. But this delegation of power is only for the purposes of exercising the powers which are necessary to be exercised for the purposes subsidiary to mining and quarrying. This has nothing to do with the fixation of compensation for the land which is occupied or disturbed by the assignee in exercise of the right over any land.

10. Here, we are not concerned with the infringement of rights of any third persons whose rights in the lands are affected for the proper enjoyment of the right to the minerals. here the petitioner claims to be the owner of the land where the mining and quarrying operations are to be carried on. So far as this land is concerned, the delegation of the powers relates only to lands other than the lands from which the minerals are to be extracted. Sub - section (4) of Section 48 only places an obligation on the State Government and its assignee to pay compensation for the infringement of the rights of the owners of the land by the occupation or disturbance of the surface of such land and this compensation can be fixed up by agreement between the parties and in its absence, to be determined by the Collector. If the delegation so far as the other land is concerned is not made by the Collector, then the assignee may not have powers to occupy or disturb such land. That does not, however, apply to the lands containing the minerals themselves. In fact so far as the land from which the minerals are to be extracted is concerned, sub - section (6) of S. 48 makes it quite clear that even without the payment of compensation provided previous sanction of the Collector is obtained under sub - section (5), the assignee can enter and occupy that land and the Collector empowered to recover the compensation from the assignee as if it were an areas of land revenue. This would show that the fixation of the compensation or the payment thereof has nothing to do with the delegation of the powers as contemplated by sub - section (3) of Section 48. Such a delegation need not precede the fixation of any compensation whatsoever so far as the land from which the minerals are to be extracted. If the contention on behalf of the petitioner were to be accepted, then sub - section (5) of S. 48 will have no meaning and unless there is a delegation of powers even in respect of the land from which the minerals are to be extracted, the assignee would not be able to enter or occupy the surface of that land even on the payment of compensation or even with the previous sanction of the Collector. We must given effect to all that provisions of the Code and reading these provisions together we find that for entering the land where the minerals

are situated, the only condition that is required to be fulfilled is either determination of the compensation and tender thereof to the persons whose rights are infringed or a previous sanction of the Collector. We do not, therefore, think on the reading of those provisions together that for the purpose of fixing the compensation itself in respect of the rights in the land, surface of which is to be occupied or disturbed for the purposes of extracting minerals from that land any delegation as contemplated by sub - section (3) of S. 48 of the Code is necessary. If no such delegation is necessary then no question of any notice to the persons having rights in such land such as the petitioner is, necessary. Whether, therefore, there is any delegation or not, the fixation of the compensation by the Sub - Divisional Officer with the powers of the Collector, of the land said to be belonged to the petitioner from which the minerals are to be extracted, cannot be said to be without jurisdiction. If the owner of the land is aggrieved by the fixation of the amount of compensation, then he has his remedy to approach the Civil Court which will determine the proper compensation in accordance with the provisions of the Land Acquisition Act. We are unable to agree with the learned counsel for the petitioner that the delegation of powers, as contended, is a pre - condition to the determination of the compensation of the land of the petitioner, the land from which the minerals themselves are to be extracted.

11. We are, therefore, of the opinion that the view taken by the Commissioner, Nagpur Division, Nagpur by his order dated 31-7-1971 cannot be said to be incorrect. We also do not see how the order of the Sub - Divisional Officer can be said to be without jurisdiction. We are not here concerned with the other matter regarding the working permission which is already pending before the State Government. We do not see any reason to interfere with the order passed by the Sub - Divisional Officer dated 30-3-1971 and by the Commissioner dated 31-7-1971. The petition accordingly fails and is dismissed with costs.

12. Petition dismissed.