(2015) 09 KL CK 0146

In the High Court Of Kerala

Case No : W.A. Nos. 107, 125, 166, 167, 181, 182, 183, 184, 193, 194, 196, 197, 202, 413, 414, 415, 479, 480, 481, 524/2014 and WP(C) No. 10758 of 2015

Pushparaj M.S. APPELLANT

Vs

The Revenue Divisional Officer and Others RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 3, 3(e)

Citation : (2015) 4 KHC 907

Hon'ble Judges : Ashok Bhushan, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : Jobi Jose Kondody, for the Appellant; C.R. Syamkumar, Sr. Govt. Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.M. Shaffique, J—These appeals have been filed by the petitioners in a batch of writ petitions which were disposed by the learned Single Judge holding that weathered rock/weathered sand forms part of ''ordinary earth'' and is a minor mineral as defined under Section 3(e) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred as the ''MMDR Act''). Similar relief has been claimed in WP(C) No. 10758/2015.

2. The short facts involved in the writ petitions would disclose that petitioners who are manufacturers and dealers of weathered sand contended that it is not a ''minor mineral'' as defined under the MMDR Act and therefore, the authorities under the Mining and Geology Department were not justified in refusing grant of valid ''P'' forms for transportation of the above material. It is further contended that the transportation of weathered rock/weathered sand was being intercepted by police and revenue authorities for want of requisite pass from the Mining and Geology Department and hence writ petitions have been filed seeking appropriate directions to the police and revenue authorities from interfering with

the transportation, manufacture and sale of weathered rock/weathered sand and in the alternative to direct the authorities in the Mining and Geology Department to issue necessary ''P'' forms under the Kerala Minor Mineral Concession Rules (hereinafter referred to as the ''KMMC Rules'').

3. The State filed a counter affidavit in W.P.(C) No. 4415/2013, inter alia contending that Weathered Rock/Weathered Sand is a minor mineral and necessary pass is to be obtained for its transportation from the Mining and Geology Department. It is contended that Weathered Rock/Weathered Sand would come under the category of ''ordinary sand as notified by the Central Government as per G.S.R. No. 95(E) dated 3.2.2000.

4. The learned Single Judge after an elaborate consideration of the factual and legal issues involved in the matter opined that weathered rock/weathered sand is a minor mineral as defined under the MMDR Act, as it forms under the category of "ordinary earth", which is notified as a minor mineral.

5. The appellants presently have no dispute regarding the fact that weathered rock/weathered sand is a minor mineral as defined under the MMDR Act and the Rules framed thereunder. Their only dispute is with reference to the finding of the learned Single Judge that it has to be categorized as "ordinary earth" which has been included as a minor mineral by the Central Government as per G.S.R. No. 95(E) dated 3.2.2000, and by virtue of amendment to the KMMC Rules as per Government Order, GO (P) No. 138/12/ID dated 17/11/2012.

6. It is contended by the appellants that the learned Single Judge has gone beyond the case set up by the appellants. The only question that was germane for consideration was whether weathered rock/weathered sand is a minor mineral or not. There was no reason or no contention urged that weathered rock/weathered sand comes under the definition of ordinary earth and there was no reason for any finding regarding the said fact. The appellants placed reliance on the counter affidavit filed by the Union of India, Ministry of Mines wherein they have opined that weathered rock/weathered sand has not been defined as minor mineral under Section 3(e) of the MMDR Act. According to them, they are only examining the scope of notifying weathered rock as a separate minor mineral and to include the same in the schedule to the MMDR Act.

7. Heard the learned counsel appearing for the appellants, learned Government Pleader appearing on behalf of State and its authorities and the learned standing counsel appearing on behalf of the Central Government.

8. Though it is contended by the learned counsel for the appellants that weathered rock/weathered sand is not a minor mineral, during the course of argument, it is submitted that they do not dispute the said fact especially on account of the judgment in Secretary, Kerala Granites and Stone Association Vs. State of Kerala, (2004) 1 ILR (Ker) 538 : (2004) 2 KLT 227 , wherein a Division Bench of this Court, after evaluating definition of ''Building Stones'' in section 3(e) of MMDR Act, held that granite is a minor mineral. Granite is derived from

rock. Weathered rock/weathered sand is formed due to breaking down or dissolving of rocks and minerals on earth''s surface. In common parlance, it is the outer layer of rock which is thereafter crushed through a mechanical process and made in the form of sand. In other words, it is a derivation from the outer layer of granite stones and collected from quarries. It is therefore not disputed that being a part of granite in a different form, it is a minor mineral as defined under the MMDR Act.

9. The only contention now urged is regarding the question whether weathered rock/weathered sand can be categorized as ordinary earth. Learned Single Judge found that since weathered rock/weathered sand can be treated as ordinary earth and since ordinary earth has been included in the notification dated 3/2/2000 issued under Section 3(e) of the MMDR Act and also included in the schedule to the KMMC Rules, it has to be categorized as ordinary earth.

10. The learned counsel for appellants would contend that ordinary earth and weathered rock/weathered sand are two different commodities. Ordinary earth is a commodity which is procured by a simple process of collection from the earth whereas weathered rock/weathered sand undergoes a process and that is derived from rock. Rock cannot be categorized as ordinary earth and therefore, the very concept of bringing weathered rock/weathered sand as ordinary earth is not what was contemplated under the Act or the Rules and therefore, the learned Single Judge was not justified in making such an assumption.

11. The learned Government Pleader on the other hand submitted that the definition of Minor Minerals in Section 3(e) read with the notification GSR No. 95(E) dated 3/2/2000 with reference to ordinary earth clearly indicates that since weathered sand is used only for the purpose of filling or levelling, it has to be treated in par with ordinary earth. Section 3(e) of the MMDR Act and the 2000 notification referred above are extracted herein:

"3(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;"

Notification G.S.R. No. 95(E) dated 3.2.2000

"In exercise of the powers conferred by clause (e) of Section 3 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the Central Government hereby declares the ''ordinary earth'' used for filling or levelling purpose in construction of embankments, roads, railways, buildings to be a minor mineral in addition to the minerals already declared as minor minerals hereinbefore under the said clause."

Ordinary earth is also defined in KMMC Rules, 2015 which is promulgated in supersession of the KMMC Rules, 1967. Rule 2(xi) defines ordinary earth as under;

"Ordinary earth means ordinary earth used for filling or levelling purposes in construction of embankments, roads, railways and buildings."

12. The definition clause in section 3(e) defines "minor minerals" which starts with the words "means". It is well settled principle of statutory interpretation that when the word ''means'' is given, the definition is exhaustive. When building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other mineral which the Central Government may, by notification in the Official Gazette is described to be a minor mineral, such minerals which does not fall under the aforesaid category cannot be treated as minor mineral. As far as weathered rock/weathered sand is concerned, it is definitely an item which is part of building stones as it is obtained by quarrying rock. However, ordinary earth was not included in the said definition but was later notified as a minor mineral.

13. The learned Government Pleader has placed on record a recent notification issued by the Government of India declaring certain minor minerals in addition to the minerals already declared under section 3(e) of the MMDR Act. The notification is published in Gazette of India dated 10th February, 2015 and among other minor minerals, item (xxvii) is ''Sand (others)''.

14. Having regard to the fact that any other type of ''Sand'' is also treated as minor mineral, the question posed is well answered.

15. In fact, the learned Single Judge considered weathered sand as ordinary earth since it did not fall under any of the categories of minor mineral as stated in section 3(e) read with the notifications. It was held that since ordinary earth is notified as a minor mineral, in the light of the interpretation adopted by the Apex Court in Banarsi Dass Chadha and Brothers Vs. Lt. Governor, Delhi Administration and Others, AIR 1978 SC 1587 : (1978) 37 FLR 249 : (1978) 4 SCC 11 : (1979) 1 SCR 271 : (1978) 10 UJ 744 as explained in Som Datt Builders Ltd. Vs. Union of India (UOI) and Others, (2009) 14 JT 344 : (2009) 13 SCALE 642 : (2010) 1 SCC 311 : (2009) 16 SCR 772 : (2009) 10 UJ 4936 , weathered rock/weathered sand forms part of ordinary earth and therefore is a minor mineral.

16. Having regard to the fact that the notification dated 10th February, 2015 has included any other sand as a minor mineral, we do not think that there is any necessity to venture into treating ''weathered rock or sand'' as ''ordinary earth''. Weathered sand is already covered by the Government notification dated 10/2/2015. Further, when any other ''sand'' and ''ordinary earth'' are separately notified, definitely the Central Government is clear about the difference in the nature of minor minerals. The word "ordinary" has been given the meaning in Black''s Law Dictionary, 8th Edition as "occurring in the regular course of events; normal; usual". In Oxford Advanced Learner''s Dictionary, the meaning given is "not unusual or different in any way". Therefore, ordinary earth can have only a meaning which is attached to Rule 2(xi) of KMMC Rules, 2015 and ''Sand (Others)'' which is notified as a minor mineral under Section 3(e) cannot be

termed as ''ordinary earth''.

17. The argument of the learned Government Pleader is that since the weathered sand is used for filling or levelling purposes in construction of embankments, roads, railways and buildings, it has to be characterized as ordinary earth. The meaning of ordinary earth in the KMMC Rules, 2015 is given as "ordinary earth" itself and the use alone is subsequently stated as for filling or levelling. Therefore, ordinary earth can only mean the earth which is normally available or usually available and is taken from the earth without the material undergoing any other process. Weathered rock is not something which can be termed as ordinary earth. It is a metamorphosis of rock on account of weathering. Weathered sand is the crushed product of weathered rock where it undergoes a process of crushing into particles of certain size. The said mineral cannot be collected from a land, which is the usual process for collecting ordinary earth. Merely for the reason that it might be used for filling or levelling by itself will not categorize ''weathered sand'' as ''ordinary earth''.

18. Though the learned Single Judge had referred to the judgments in Banarsi Dass Chadha and Bros. (supra) and Som Datt Builders (supra), those judgments are not concerned with weathered rock/weathered sand. The judgments of the Supreme Court only indicates that the word ''minerals'' has to be construed in the widest possible amplitude and that it may not be correct to indicate that minerals must always be subsoil and there can be no minerals on the surface of the earth. In Banarsi Dass Chadha and Bros. (supra), the issue involved was whether brick-earth notified as minor mineral was a mineral at all, to be notified as minor mineral. In Som Datt Builders (supra), the question was whether ''ordinary earth'' was a mineral to be notified as a minor mineral. Apparently, the said cases did not deal with weathered rock or sand.

19. Having regard to the aforesaid findings, we are of the view that the learned Single Judge was not justified in treating weathered rock and weathered sand as ordinary earth whereas it is correct to hold that it is a minor mineral.

We, therefore, modify the common judgment of the learned Single Judge and the appeals and the writ petition are disposed as under:

"(i) It is declared that weathered rock/weathered sand is a minor mineral as defined under Section 3(e) of the MMDR Act.

(ii) It is also declared that weathered rock/weathered sand is not ordinary earth as defined under Rule 2(xi) of the Kerala Minor Mineral Concession Rules, 2015, whereas it falls under item (xxvii) coming under ''Sand (Others)'' in the Central Government notification dated 10/2/2015.

(iii) The appellants/petitioners are entitled to transport and deal with weathered rock/weathered sand as if it is a minor mineral."

