
(2015) 07 CAL CK 0010
In the Calcutta High Court
Case No : Writ Petition No. 366 of 2014

R. Chidambaram	Vs	APPELLANT
The Andaman and Nicobar Administration and Others		RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Atomic Energy Act, 1962 — Section 10[28], 5[27]
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 4, 4[25]

Citation : (2016) AIR (Cal) 14

Hon'ble Judges : Arijit Banerjee, J

Bench : Single Bench

Advocate : Gopala Binu Kumar, for the Appellant; Santosh Kumar Mandal and Satish Chandra Mishra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Arijit Banerjee, J.—The case of the petitioner is that he is a recorded tenant of the land bearing survey No. 255/65 measuring area about 0.20 hectares situated at Bimblitan village, Port Blair Tehsil, South Andaman District.

2. The land is rich in natural resources and fit for mining operation. The petitioner was carrying on business of extraction of quarry in his own land for about last 20 years on the strength of a valid permit issued by the respondent No. 2 which was renewed from time to time.

3. In June 2011, a case was initiated against the petitioner under the Explosive Substances Act, 1908 and the petitioner was remanded to judicial custody. He was subsequently released on bail on 30th September, 2013.

4. In the meantime the respondent No. 4 issued an order dated 25th October, 2011 whereby the quarry permit of the petitioner was kept in abeyance with effect from 9th August 2011 till the disposal of the said criminal case.

5. In 2012, the respondent No. 2 initiated the process of auctioning the quarry operation and in November 2012, 38 quarries were auctioned. All such quarry

operations are being carried out on government land. The petitioner could not participate in the bidding process because he was in judicial custody.

6. Being desirous of resuming the quarry operation on his land, the petitioner made a representation to the respondent No. 2 on 18.03.2013 requesting for renewal of quarry permit. There was no response from the respondent No. 2 to the said representation.

7. The petitioner filed a writ petition in this court being WP No. 202 of 2013 challenging the order dated 25th October, 2011 passed by the respondent No. 2 whereby the petitioner's quarry permit was kept in abeyance and also the failure on the part of the respondents in responding to the petitioner's representation dated 18.03.2013. This court by an order dated 27.11.2013 directed the respondent No. 2 to dispose of the petitioner's representation dated 18.03.2013 by passing a reasoned order and after considering the judgement of the Hon'ble Apex Court in the case of Threesiamma Jacob and Others Vs. Geologist, Dptt. of Mining and Geology and Others, AIR 2013 SC 3251 : (2013) 4 CTC 744 : (2013) 3 EFLT 652 : (2013) 10 JT 470 : (2014) 1 RCR(Civil) 20 : (2013) 9 SCALE 1 : (2013) 9 SCC 725 .

8. Pursuant to this court's order, the Deputy Commissioner, South Andaman District passed an order dated 20.08.2014 rejecting the petitioner's request for renewal of quarry permit. The petitioner has challenged the said order of the Deputy Commissioner in the present writ petition.

9. Appearing on behalf of the petitioner Mr. Kumar learned counsel submitted that the petitioner had been carrying on the operation of extracting quarry from his own land for the last 20 years. He has never violated any conditions of the permit that was granted to him. He is prepared to pay royalty to the government. The natural mineral in his land belongs to him and there cannot be any justification on the part of the respondent authorities in refusing to renew the quarry permit.

10. Mr. Kumar heavily relied on the Supreme Court decision in the case of Thressiamma Jacob and others (supra). In particular he relied on paragraphs 51, 53, 54, 55 and 56 of the said judgement which are set out hereunder:

"51. The other material which prompted the High Court to reach the conclusion that the subsoil/minerals vest in the State is (a) recitals of a patta which is already noted by us earlier (in para 12) which states that if minerals are found in the property covered by the patta and if the pattadar exploits those minerals, the pattadar is liable for a separate tax in addition to the tax shown in the patta and (2) certain standing orders of the Collector of Malabar which provided for collection of seigniorage fee in the event of the mining operation being carried on. We are of the clear opinion that the recitals in the patta or the Collector's standing order that the exploitation of mineral wealth in the patta land would attract additional tax, in our opinion, cannot in any way indicate the ownership of the State in the minerals. The power to tax is a necessary incident of sovereign

authority (imperium) but not an incident of proprietary rights (dominium). Proprietary right is a compendium of rights consisting of various constituent, rights. If a person has only a share in the produce of some property, it can never be said that such property vests in such a person. In the instant case, the State asserted its "right" to demand a share in the "produce of the minerals worked" though the expression employed is right - it is in fact the Sovereign authority which is asserted. From the language of the BSO No. 10 it is clear that such right to demand the share could be exercised only when the pattadar or somebody claiming through the pattadar, extracts/works the minerals - the authority of the State to collect money on the happening of an event - such a demand is more in the nature of an excise duty/a tax. The assertion of authority to collect a duty or tax is in the realm of the sovereign authority, but not a proprietary right.

53. The only other submission which we are required to deal with before we part with this matter is the argument of the learned counsel for the State that in view of the scheme of the Mines and Minerals (Development and Regulation) Act, 1957 which prohibits under Section 4[25] the carrying on of any mining activity in this country except in accordance with the permit, licence or mining lease as the case may be, granted under the Act, the appellants cannot claim any proprietary right in the sub-soil. In our view, this argument is only stated to be rejected.

54. Mines and Minerals Act is an enactment made by the Parliament to regulate the mining activities in this country. The said Act does not in any way purport to declare the proprietary rights of the State in the mineral wealth nor does it contain any provision divesting any owner of a mine of his proprietary rights. On the other hand, various enactments made by the Parliament such as Coking Coal Mines (Nationalisation) Act, 1972 and Coal Bearing Areas (Acquisition and Development) Act, 1957 make express declarations under Section 4 and 7 respectively[26] providing for acquisition of the mines and rights in or over the land from which coal is obtainable. If the understanding of the State of Kerala that in view of the provisions of the Mines and Minerals Development (Regulation) Act, 1957, the proprietary rights in mines stand transferred and vest in the State, it would be wholly an unnecessary exercise on the part of the Parliament to make laws such as the ones mentioned above dealing with the nationalisation of mines.

55. Even with regard to the minerals which are greatly important and highly sensitive in the context of the national security and also the security of humanity like uranium - the Atomic Energy Act, 1962 only provides under Section 5[27] for prohibition or regulation of mining activity in such mineral. Under Section 10[28] of the Act, it is provided that the Government of India may provide for compulsory vesting in the Central Government of exclusive rights to work those minerals. The said Act does not in any way declare the proprietary right of the State.

56. Similarly, the Oilfields (Regulation and Development) Act, 1948 deals with

the oilfields containing crude oil, petroleum etc. which are the most important minerals in the modern world. The Act does not anywhere declare the proprietary right of the State."

11. Relying on the aforesaid judgement, Mr. Kumar submitted that ownership of the minerals in the land vests with the petitioner and there can be no legitimate reason for denying the petitioner the right to exploit such property. The petitioner is the proprietor of the minerals in his land and proper permit should be granted to him to extract quarry products from his land after paying necessary revenue to the respondent authorities.

12. Mr. Kumar prayed for a writ in the nature of mandamus directing the respondents to withdraw, rescind and/or recall the impugned order dated 28th August, 2014 and to renew the quarry permit of the petitioner to enable him to carry on quarry operation in his own land.

13. Appearing for the respondents Mr. S.K. Mandal learned senior counsel strongly opposed the petitioner's prayers. He submitted that prior to coming into force of the Andaman and Nicobar Islands Minor Minerals Rules 2012, quarry permits were granted to interested parties as per the provisions of section 201 of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966. Sub-sections (1), (2) and (2)(a) of section 201 of the said Regulations provide as follows:

"201.(1) The Government reserves the right in respect of ever land to and over the foreshore, quarries, mines, stone, slate, chalk, clay, precious stones, gold washing, coal and other minerals and minerals oils, and also to all stream water courses and public though fares within or traversing the said lands or any part thereof, unless any or all of them are expressly specified for alienation in any instrument made by the Government.

(2) 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 purpose subsidiary thereto, including the erection of offices, workmen's dwellings, machinery, the stacking of minerals and deposit of refuses, the constructions of roads or tram lines and any other purposes which the government may declare to be subsidiary to mining and quarrying.

(2)(a) The Government may assign to any person, its right over any minerals, mines or quarries and the Chief Commissioner may with the previous approval of the government assign to any person the right of the government over minor minerals."

14. After coming into force of the 2012 Rules, the provisions thereof govern the allotment of quarries to interested parties. Rule 7 of the said Rules provides that all areas identified for quarrying shall be allotted to the successful bidder by open auction. He submitted that after coming into force of the 2012 rules, there is no scope for allotting any quarry to the petitioner on an individual or preferential

basis. Under the past regime quarries were allotted to the applicants under section 201(1) and (2)(a) of Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966. However, the 2012 Rules have introduced a completely new regime. These Rules which have the force of statute impose a mandate on the Administration to allot the quarries only by public auction and there is no scope for allotting quarry on private basis. He submitted that auction was held in the year 2012 after publishing notice thereof in the news paper and 38 quarries were allotted to the successful bidders. The petitioner admittedly did not participate in the auction process. Not having participated in the auction process, the petitioner has no locus standi to maintain this present writ application. He further submitted that after allotment of 38 quarries no other quarries are available for allotment.

15. Mr. Mandal further referred to section 38 of Andaman and Nicobar Land Revenue and Land Reforms Regulations, 1966 which provides that all land in the Union territory of the Andaman and Nicobar Islands is vested absolutely in the Government, and, save as otherwise provided by or under the said Regulation, no person shall be deemed to have acquired any property therein or any right to or over the same by occupation, prescription or conveyance or in any other manner what so ever except by a conveyance executed by or under the authority of the Government.

16. Mr. Mandal submitted that in view of the aforesaid provisions of law the petitioner cannot claim to be the owner of the land in question or the natural resources that may be found in the said land. The petitioner has no vested right to renewal of quarry permit.

17. Mr. Mandal further submitted that the issuance of quarry permit for extraction of quarry materials from the land of which the petitioner is in occupation is not possible because due to extraction of quarry materials from the said land for a long period of time the said land has become unfit for further extraction of quarry materials. Due to removal of quarry materials from the said land for a long period of time, the said land has become a ditch and further removal of quarry materials from the said land will cause ecological imbalance.

18. Mr. Mandal relied on the decision of this court (circuit bench at Port Blair) in the case Sri Saran Singh -vs- Union of India and Others delivered in WP No. 350 of 2013. With respect to Mr. Mandal, I do not think that the said decision is relevant for the present case. In the said case the constitutional validity of the 2012 Rules had been challenged. This court upheld the constitutional validity of the said Rules. In the present case the petitioner is not challenging the constitutional validity or the vires of the 2012 Rules.

19. In reply, Mr. Kumar submitted that it is absolutely baseless to allege that by reason of prolonged extraction of quarry materials from the land in question the same has become a ditch or that further extraction there from would lead to ecological imbalances. He further submitted that the process of holding public

auction for allotting quarries would apply to government land only and not to land in occupation of private parties. He reiterated that the respondent authorities have wrongfully, unreasonably and arbitrarily refused to renew the petitioner's quarry permit.

20. I have considered the rival contentions of the parties.

21. As per section 38 of the Andaman and Nicobar Island Land Revenue and Land Reforms Regulations, 1966 every inch of land in the Union Territory of Andaman and Nicobar Islands is vested absolutely in the Government. The petitioner is the recorded tenant of the land bearing survey No. 255/65. He is not the absolute owner of the said land. Hence he cannot claim to have any proprietary right in respect of the natural resources including the minerals that may be found in the said land. In my opinion, it is the Government which is owner of the natural resources found in the said land and the Government is entitled to regulate the utilization thereof. Indeed, such proprietary right of the Government is expressly recognized by section 201(1) of the 1996 Regulation. Section 201(2)(a) of the said Regulation empowers the Government to assign to any person its right over any minerals, or mines or quarries and the Chief Commissioner with the previous approval of the Government could assign to any person the right of the Government over minor minerals.

22. It was under this provision that the old regime of allotting land to applicants for quarrying purpose was done. The initial permit granted to the petitioner was also under this provision. This was done evidently on private negotiation basis. However, the entire scenario changed with the coming into effect of the 2012 Rules. The said Rules introduced a completely new regime. This court is of the opinion that after coming into effect of the 2012 Rules, the hands of the Administration are tied. The Administration is bound to follow the said rules in the matter of allotment of quarry.

23. The decision of the Hon'ble Supreme Court in the case of Thressiamma Jacob and others (supra), in my opinion, does not help the petitioner at all. All that the Hon'ble Apex Court held in that case was that the ownership of subsoil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. In that case the appellants were the owners of the land in question and hence it was held that they were the proprietors of the minerals obtaining in their lands. In the present case the petitioner is not the owner of the land in question and hence, in my view the decision of the apex court helps the respondents rather than the petitioner.

24. I completely agree with the contention of the Administration that with coming into force of the 2012 Rules and consequent to delegation of powers of the State Government under section 15 of the Mines and Mineral (Development and Regulation) Act 1957 to the Hon'ble Lieutenant Governor, the action for allotment/conduct of quarry operation in the territory can be undertaken/quarry

rights can be assigned only after following the procedure/norms prescribed under the said Rules. In other words, under the new regime which is in vogue now, allotment of quarries can be done only by way of public auction and not otherwise. There is no scope for making any allotment on private or individual basis. The writ petitioner not having participated in the public auction that was held in the year 2012 after due publication thereof in the newspapers, he cannot, in my view, complain of non renewal of his quarry permit.

25. The 2012 Rules have statutory force. It is settled law that when a statute prescribes a procedure for doing something that thing can be done only by following the prescribed procedure or not at all. The law in force requires the Administration to conduct open auction for allotment of quarries. The petitioner has no right to insist that the Administration should renew his quarry permit on the basis of his individual application.

26. In my opinion, the petitioner has no legal or vested right to the renewal of his permit which can be enforced by issuing a writ of mandamus. It is needless to say that he will be entitled to participate in the next auction that the Administration holds.

27. In view of the aforesaid, this application fails and is dismissed without, however, any order as to costs.