

(1975) 12 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 13 of 1971

Ram Dutt and Others

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 05-12-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1
Constitution of India, 1950 — Article 226
Himachal Pradesh Minor Minerals (Concession) Rules, 1966 — Rule 3, 54
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 15(1), 4
Punjab Land Revenue Act, 1887 — Section 42, 42(2)

Citation : (1976) 5 ILR HP 16

Hon'ble Judges : R.S. Pathak, C.J.;Chet Ram Thakur, J

Bench : Division Bench

Advocate : H.S. Doabia and B.B. Vaid, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

Chet Ram Thakur, J.—The Petitioners who are eleven in number are either joint owners or exclusive owners of the lands mentioned in paras 1 to 11. Some of the Petitioners are extracting sand personally from these lands and some have leased out their lands to other persons for various periods for extraction of sand and lime-stone. The Petitioners were served with notices by the District Industries Officer, Respondent No. 3, asking them to obtain permits, as required under Rule 54 of the Himachal Pradesh Minor Mineral (Concession) Rules, 1966 (hereinafter called the rules). It was stated in those notices that the extraction of sand or lime-stone was not authorised by law and each of the Petitioners was threatened with legal proceedings unless they obtained the permits within 10 days from the date of the issue of the notices. The Petitioners have, therefore, challenged the notice, Annexure A, dated 14-7-1970, by this writ petition and prayed for the issue of a writ of certiorari, prohibition and mandamus or such other writ or direction as may be deemed appropriate for quashing the notices.

The contention of the Petitioners is that the Mining Department and Respondent No. 3 have absolutely no right whatsoever to give such notices to the Petitioners who are the sole owners of their lands and the sand and lime-stone extracted from the same. The Respondents had no right to interfere with the rights of the Petitioners and cannot restrain them from extracting sand, etc., owned by them and which can be dealt with by them in any way they like. The Respondents cannot impose and recover any royalty from them without establishing their rights of ownership, if any, in the sand and lime-stone etc., in dispute. Section 4 of the Mines and Minerals Regulations and Development Act, 1957 (shortly called the Act) has got no application to Minor Minerals, unless the Respondents prove title in a competent court of law.

2. The Respondents in their reply raised two preliminary objections. Firstly, that the petition was bad for mis-joinder of parties and causes of action. Secondly, there exists a disputed question of title in respect of the ownership of the rights of Minor Minerals and as such the Petitioners cannot invoke the extraordinary jurisdiction of this Court.

3. On merits, it was, however, admitted that the Petitioners were either the owners or the lessees of the land. It was denied that the Minor Minerals from such land belong to such owners. It was alleged that the same belonged to the Government. The Petitioners are not entitled to the extraction of the same without complying with the rules and regulations of 1966, now Himachal Pradesh Minor Minerals (Concession) Revised Rules, 1971 (shortly called the Rules of 1971). It was averred that under the Punjab Land Revenue Act as also the Himachal Pradesh Land Revenue Act all the Minor Minerals vest in the Government and since the power to regulate Minor Minerals has been delegated to the State by the Parliament and it has been authorised to frame the necessary rules, as such the restrictions imposed upon the Petitioners and the action taken against them for noncompliance of the rules and regulations framed u/s 15(1) of the Act was legal, valid and constitutional. The notices on Petitioners were served on account of non-compliance of the provisions of the Act as also the rules.

4. The first objection taken by the Respondents is with regard to the mis-joinder of parties and causes of action. In this behalf reference may be made to Order 1, Rule 1 of the CPC which says that all persons may be joined in one suit as Plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative; where, if such persons brought separate suits, any common question of law or fact would arise. In the instant case, the Petitioners, as already stated, are the owners. They want to extract either sand or stone from the lands owned by them. All these persons who wanted to extract sand or stone have been restrained by the Respondent from so doing as according to the Respondents the Minor Minerals, namely sand and lime-stone belong to the Government. They have been restrained by the same and similar orders of the same date. Therefore, in these circumstances, in my opinion, all these persons

can be joined in one petition as Petitioners because the right to relief in respect of or arising out of the same act or transaction or series of acts or transactions exists clearly in the Petitioners. The present petition satisfies the conditions of Order 1, Rule 1 CPC inasmuch as the interest of these Petitioners is identical and not antagonistic and they can petition jointly even if they may have separate interests in the subject-matter of the petition. Therefore, in my opinion this objection raised by the Respondents has no force.

5. The second preliminary objection is that there exists a complicated and disputed question of title in respect of the ownership of rights and as such the Petitioners cannot invoke the extraordinary jurisdiction of this Court. The learned Counsel for the Petitioners, has not filed any rejoinder but has contended on the basis of Prem Chand and Another Vs. The State of Haryana and Another, that when the parties rely on the Sharat Wajib-ul-arj then in that situation there could not be said to be any dispute or complicated question of fact which would necessitate that the Petitioners should be driven to a separate suit. The Punjab and Haryana High Court, in fact, relied on an observation made by their Lordships of the Supreme Court in State of Haryana v. Om Parkash in which their Lordships had held:

In this Court the State has filed an affidavit in reply; it does not prima facie appear that there were any such complicated questions of fact which would necessitate that the Appellant should be driven to a separate suit. It may also be pointed out that in a similar dispute also relating to the grant of the right to win saltpetre by a village Panchayat decided by a Single Judge of the High Court in C.W. No. 1924 of 1969 relief was granted to the Applicant. In our view the High Court was in error in summarily rejecting the petition filed by the Appellant.

One Om Parkash had filed a writ petition in the Punjab and Haryana High Court against the State of Punjab. The State Government wanted to work out saltpetre from the land of the Petitioner on the assumption that the saltpetre which was a Minor Mineral belonged to the State. The High Court dismissed the petition in limine on 30th September, 1969. The judgment proceeded on the ground that the High Court would not, in deciding a petition under Article 226 of the Constitution, enter upon disputed questions of fact. The High Court had not called upon the State to file an affidavit, nor did it consider whether the facts raised were complicated or for any other reason it would be inappropriate to try the dispute in the writ petition. The State filed an appeal in the Supreme Court and it was in these circumstances that the aforesaid observation was made by their Lordships of the Supreme Court and the case was remanded. Thereafter the Punjab and Haryana High Court decided this case along with several other petitions and it was held that the question whether the right to a particular mineral vests in the State Government or in the owner of the land the matter is to be decided in terms of the Sharat Wajib-ul-arj read with Section 42 of the Punjab Land Revenue Act. So, on the basis of this authority of the Punjab and Haryana High Court which is based on the ratio laid down by their Lordships of

the Supreme Court in a case taken in appeal, I hold that when the parties base their claim on the Sharat Wajib-ul-arj there does not appear to be any disputed question of complicated nature which may require the Petitioners to go to the civil court to seek redress. Hence this point also fails.

6. Now it is a question purely of interpretation of the Wajib-ul-arj on which the parties base their respective claims. The lands from where the Minor Minerals, viz. sand and limestone are being extracted are in Deothi, Shattal, Sheel and Nahu. Annexure R-I/A is the copy of Wajib-ul-arj of Mauza Shattal and it reads:

Provision. Right of the Government regarding ownership. Forest unclaimed, unoccupied, deserted or waste land, stone quarries, or ruins of old buildings (Kadimi) spontaneous produce or other accessory interest in land relating to this Mahal, Statement of cultivators (Zimindarans). No unclaimed, unoccupied, deserted, waste land or spontaneous produce of other accessory interest in lands exists in our "Bhoj". Stone quarries are found and consequently worked out and are in existence on account of the fact that this is a hilly area which are admitted to be in the ownership of the Government (Sarkar). However, we are entitled to extract and consequently bring such quantity of the stone which is needed for our (Zamindarans) personal use and we bring the same without the payment of royalty but, we have no right to sell the same and in future, if any mine is found, that would be considered to be in the ownership of the Govt. and such area in which the mine is found in future, within the limits of the area under consideration shall be subject to the levy of royalty and we shall also possess right therein subject to the said condition. In the State Forest we possess the rights in accordance with the tenancy rules imposed by the State and in future we agree to abide ourselves in accordance with the rules which may be imposed by the State. Besides, we shall not be entitled to felling of the "Cheel" trees of 10 ft. height standing in the cultivated area in dispute, "Ghasni" and grazing area without the permission of the State. In case of the sale of the same, we shall be bound to deposit in the State Treasury an amount at the rate of 2 annas per rupee computed at the total sale price. There exists a custom regarding the cutting of the trees i.e. "Tun", "Kikar" and "Kiyen" from the aforesaid land with the consent of the owner thereof in case of the needs of the State.

7. In this case one piece of land included in Khasra No. 165 owned jointly by Ram Dutt with others is taken by Ram Dutt exclusively on lease for extracting sand from it from the other co-owners on payment of Rs. 10,000/- and the other piece of land included in Khasra No. 209 owned jointly by Ram Dutt and others, has been given on lease to one Anokhi Ram of village Nagali for extracting sand for two years. However, Petitioner No. 2 is extracting sand from the land in village Shattal for his personal use. Respondents 3 and 4 i.e., Mani Ram and Ishwari Dutt are themselves extracting sand from their land. Mani Ram, Petitioner No 5 resident of village Deothi and Petitioner No. 6 Mandir Thakur Dwara and Smt. Thaunu, Petitioner No. 7 resident of village Shattal have given leases for extracting sand. Durga Datt Petitioner No. 8 of village Shattal is also

extracting sand personally, whereas Mansa Ram and Lekh Ram, Petitioners Nos. 9 and 10 of village Nahu are also extracting lime-stone themselves. Durga Dutt, Petitioner No. 11 resident of village Deothi is also extracting sand himself, whereas Mani Ram although styled as Petitioner No. 12 but has not been shown in the array of the Petitioners, is also stated to have given lease of his land in village Deothi to one Lila Dutt of Nagali for extraction of sand on payment of Rs. 2,000/-. The Petitioners have not placed any material on the record to show whether the Minor Minerals existing in the land or which may subsequently be found to exist on the land belong to the owners of the land. Section 42 of the Punjab Land Revenue Act which is applicable to the case in hand says that when in any record-of-rights completed before the eighteenth day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied desert or waste land, spontaneous produce or other necessary interest in land belongs to the landowners, it shall be presumed to belong to the Government. In Sub-section (2) of this section, it is provided that when in any record-of-rights completed after that date it is not expressly provided that any forest or quarry or any such land or interest belongs to the Government it shall be presumed to belong to the landowners. The Respondents have placed the copy of Wajib-ul-arj, Annexures RI/A and RII/A. In Annexure RI/A of village Shattal, it has been specifically provided that the zamindars can extract the stones, etc. for their personal use but they have no right to sell the same and in future if any mine is found, that would be considered to be in the ownership of the Government and such area in which the mine is found in future within the limits of the area under consideration shall be subject to the levy of royalty. It is not known from this document whether the same was prepared before the eighteenth day of November, 1871 or afterwards. But whether it was prepared before or after, it states clearly that the right to the minerals vests in the Government. No satisfactory material has been placed before us to rebut that presumption. In respect of village Sheel, the document is Annexure RII/A, and this also says that the stone quarries in the illegal vest in the State and the zamindars can extract such quantity of stone without the payment of royalty which is in fact needed for their personal requirements. It also declares that in future if any kind of mines or quarries are found in the cultivated areas they shall be considered to be in the ownership of the State. Therefore, from this also it would follow that the Petitioners have got no right to extract the same without a permit or payment of royalty. There is, however, no mention about extraction of the sand but it may be stated that sand is also included in the min or minerals and, therefore, the zamindars or for the matter of that all the Petitioners have got no right to lease the stone quarries or to extract sand for sale or to create any lease unless they obtain a permit from the Government and pay royalty to the Government for the material so extracted. As regards other villages, the parties have not produced any copy of the Wajib-ul-arj. In fact, it was the duty of the Petitioners to establish their right by production of the copies of the Wajib-ul-arj.

8. This case also, in my opinion, appears to be fully covered by the ratio laid

down in C.W.P. 199 of 1971 *Beli Ram v. State of Himachal Pradesh* decided on July 31, 1975, wherein it was held that Section 15 specifically empowers the State Government to make rules regarding the mining of minor minerals. Pursuant to that power, the Himachal Pradesh Minor Minerals (Concession) Rules, 1966 were framed, and Rule 3 thereof specifically prohibits the mining of a mineral without obtaining a mining lease. Section 15 empowers the Government to frame rules requiring payment of royalty in respect of minor mineral excavated and removed by a lessee under a mining lease.

9. In these circumstances when the Petitioners have failed to establish their right and the Government has framed rules u/s 15 of the Act, and the Petitioners have failed to comply with the requirements of the rules, they cannot challenge the action of the Respondents. The result is that the petition fails and is hereby dismissed with costs, assessed at Rs. 200/-.

R.S. Pathak, G.J.

10. I agree.