**(1992) 07 CAL CK 0044**

**In the Calcutta High Court**

**Case No :** C.R. No. 1127 (W) of 1978

Ram Narayan Misra APPELLANT

Vs

State of West Bengal and others RESPONDENT

**Date of Decision :** 02-07-1992

**Acts Referred:**

Mines and Minerals (Development and Regulation) Act, 1957 — Section 3
West Bengal Minor Minerals Rules, 1973 — Rule 24, 3

**Citation :** AIR 1993 Cal 57 : 96 CWN 1100

**Hon'ble Judges :** Ajoy Nath Ray, J

**Bench :** Single Bench

**Advocate :** Bidyut Kumar Banerjee, for the Appellant;

## Judgement

1. The writ petitioner claims in this petition to have quashed an order dated 21-1-78/2-1-78 whereby the Additional District Magistrate sought to impose a levy of Rs. 60816 upon the petitioner for making of bricks. The imposition was made for alleged unauthorised use by the petitioner of minor minerals and as such the Rules in that regard made in West Bengal were referred to and specific reference was made to Rule 24 thereof.

2. The impugned imposition is preceded by a notice dated 14th November, 1977 whereby the writ petitioner was asked to attend the brick field for the purpose of assessment. It is quite clear that the authorities did not give the writ petitioner any opportunity to make out a case that the Rules were inapplicable to the writ petitioner or that for some other reasons no imposition of royalty was to be made upon the writ petitioner at all.

3. In case the writ petitioner''s stand was that such royalty was payable, then and in that event, a visit to the brick field for the purpose of assessment of such royalty would sufficiently serve the needs of natural justice. If however the writ petitioner''s case is that no royalty is at all payable for some reason or the other then and in that event the authorities'' were bound to give a hearing in that regard and it would not be proper from the point of view of the Rules of natural

justice to proceed straightway for assessment of royalty with a closed mind that royalty is payable by the writ petitioner.

4. In fact the writ petitioner''s grievance in the petition is that no royalty is payable by him. It is stated in paragraphs 3 and 4 of the writ petition that like all other owners of the lands situated immediately after the foreshore of river Hooghly the writ petitioner''s land also obtained a regular deposit of silt from the river water. Such silt is received by the land by operation of the nearby dams. The writ petitioner states that such silt is not a minor mineral at all and that therefore the writ petitioner would not be liable to pay any royalty. Under sub-rule (f) of Rule 3 of the West Bengal Minor Minerals Rules mineral has been defined as being identical to the definition in clause (e) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957. The definition in subsection (e) defines minor minerals as meaning building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any others of which the Central Government may make a notification.

5. Mr. B.K. Banerjee, learned advocate appearing for the writ petitioner has relied upon the case of Mandal & Mazumdar reported in (1976) 80 CWN 991 : (AIR 1977 NOC 127 ). Mr. Banerjee correctly submitted on the basis of the said decision that silt is not a minor mineral and that no royalty is payable therefore apart from any privity of contract between the State and the person using such silt.

6. It is not the stand of the respondent in the orders that royalty is payable by reason of the writ petitioner being a lessee under the State. The writ petitioner was asked to file a petition in form G instead. This would be applicable in the case of minor minerals which would not cover silt.

7. There is neither any opposition on behalf of the respondents in the shape of an affidavit nor any appearance before me on their behalf. Moreover in view of the points of natural justice and of the jurisdictional fact of silt being outside the purview of levy of minor mineral royalty I have no hesitation in allowing this writ. The two notices dated 14th November, 1977 and 2-1-78/21-1-78 copies of which are annexed to the writ petition shall stand quashed by way of writ absolute in the nature of certiorari. The respondents and all of them and their officers and employees shall be restrained by a permanent order of injunction from making any claim upon the writ petitioner in regard to the unauthorised levy of Rs. 60816 or any part thereof.

8. Petition allowed.

 