

(1972) 11 PAT CK 0019

In the Patna High Court

Case No : C.W.J.C. No's. 1068 and 1070 of 1972

Sardar Kulwant Singh and Ishwar Lal

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 30-11-1972

Acts Referred:

Mines Act, 1952 — Section 2(jj)

Mines and Minerals (Development and Regulation) Act, 1957 — Section 3, 6

Citation : (1973) 6 PLJR 16

Hon'ble Judges : N.L. Untwalia, C.J.; S. Sarwar Ali, J

Bench : Division Bench

Advocate : J.C. Sinha and B.B. Sen, for the Appellant; Birendra Prasad Sinha, Govt. Pleader II and Dilip Kumar Sinha, Junior Counsel to Govt. Pleader II, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Untwalia, C.J.—Both these writ applications have been heard together as their facts are similar and the points involved in them are identical and they are being disposed of by this common judgment.

C. W. J. C. 1068/72

The facts of this case are these. The petitioner is employed as a manufacturer of bricks near the town of Bhagalpur. He is an owner of a piece of land, out of which he takes earth and then moulds it into proper shape, puts the kutchabricks into a kiln and after burning the kiln takes out the burnt bricks for sale in the market. It is admitted in paragraph 3 of the writ petition that the petitioner pays cess for the land out of which he takes earth. He also pays royalty under the Bihar Minor Mineral Concession Rules, 1964. The petitioner was served with a notice u/s 72 of the Bengal Cess Act, 1880, hereinafter called the Act, to file a return for charging cess on the brick kiln in which the kutchabricks are burnt by the petitioner. The petitioner's case is that on receipt of the notice he filed a show cause petition on 22.6.69 (Annexure 1) stating therein that he is not liable to pay

cess on the brick kiln and, therefore, the proceeding should be dropped. No step was taken against the petitioner for determination of his liability in respect of the cess alleged to be payable on the brick kiln. He, however, received a second notice on 29.5.72 to file a return by 16.6.72, a copy of which is Annexure 2. The petitioner filed a fresh objection (Annexure 3) dated 15.6.72 to the second notice on the lines of the first objection. By an order dated 1.7.72. contained in Annexure 4 the petitioner was intimated that under the orders of the State Government he was liable to pay cess and file a return. A copy of the State Government's communication dated 7. 4. 71 is Annexure 5. The petitioner's case is that the Additional Collector did not apply his mind as to the petitioner's liability to pay cess but proceeded to take action as advised by the State Government. The petitioner challenges the initiation of the proceeding against him for payment of cess on the bricks as being ultra vires and unwarranted by the provisions of the Act.

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2. The facts of this case are almost identical. Here also the first show cause petition is dated 22.6.69 (Annexure 1) the second notice is dated 29.7.72 (Annexure 2) and copy of the State Government's communication dated 7.4.71 is Annexure 3. The stand taken by the petitioner of this case is also the same as the one taken by the petitioner of the C. W. J. C. 1968 of 1972.

3. The question for our determination is whether the petitioner is liable to pay cess over and above the cess which he pays on his land and the royalty which he pays on the earth taken out by him for the purpose of manufacture of bricks; if so, what will be the basis and quantum of cess payable by the petitioner?

4. The expressions "immovable property" and "land" are defined as follows in Section 4 of the Act--

" "immovable property" includes lands and all benefits to arise out of land and things attached to the earth, or permanently fastened to anything which is attached to the earth, but does not include crops of any kind, or houses, shops or other buildings :"".

" "land" means land which is cultivated, uncultivated or covered with water, and does not include houses or buildings;".

The charging Section 5 says--

"From and after the commencement of this Act in any district or part of a district, all immovable property situate therein except as otherwise in Section 2 provided, shall be liable to the payment of a local cess."

Section 6 prescribes the method of assessing cess and runs as follows--

"The local cess shall be assessed on the annual value of lands and, until provision to the contrary is made by the Parliament, on the annual net profits from mines, and quarries, other than notified mines, and from tramways, railways and other

immovable property ascertained respectively as in this Act prescribed;

And the rate at which the local cess shall be levied for each year shall--

(a) in the case of such annual net profits, be one anna on each rupee of such profits; and

(b) in the case of the annual value of lands, be such rate as shall be determined for such year in the manner in this Act prescribed;

Provided that the rate at which the local cess shall be levied for any one year on the annual value of lands shall not be less than the rate of one anna and six pies or more than the rate of two annas on each rupee of such annual value."

Notice to file return of profits is given u/s 72 of the Act. The petitioner's land which is land within the meaning of the Act is undoubtedly immovable property as defined in Section 4. The immovable property consists of two parts--one is land and the other is the mine from which earth or clay is taken out for the purpose of manufacture of bricks. Being an immovable property it is liable to the payment of cess u/s 5 of the Act. u/s 6 local cess is to be assessed, if it is a land, on its annual value and if it is a mine or quarry other than a notified mine then on the annual net profits from such mine or quarry. If the immovable property is both-the land and the mine, as a matter of construction of the provision of law contained in Section 6 there is no difficulty in saying that cess is payable on both; in case of land, on its annual value and in case of mine, on the annual net profits. The immovable property owned by the petitioner is both. Merely on payment of cess on the annual value of the land he is not absolved from his liability to pay cess on the annual net profits of the mine. An argument was advanced before us on behalf of the petitioner that earth taken out from the land of the petitioner is not a mineral and therefore, the immovable property owned by the petitioner, although it is land, is not a mine. This argument is sought to be supported by a Bench decision of the Calcutta High Court in (1) State of West Bengal and Others Vs. Jagadamba Prasad Singh and Others, . As against the said decision, a Bench decision of our Court reported in (2) Laddu Mal and Others Vs. The State of Bihar and Others, , which has been followed by a Full Bench of the Punjab and Haryana High Court in (3) Amar Singh Modi Lal Vs. State of Haryana and Others, lays down that brick earth is mineral and its inclusion in definition of minor minerals is not ultra vires the Constitution. In the Full Bench decision of the Punjab and Haryana High Court, there is reference to the evidence of scientists, according to which in the strict, technical and scientific language bricks are made from clays and not earth. The substance which is taken out from the earth may be technically called clay and in the popular sense earth but it is a mineral which is used in the process of manufacture of bricks. I respectfully differ from the view expressed by the Calcutta High Court in the case of (1) State of West Bengal V. Jagadamba Prasad Singh. It is stated in that decision--

"No body even speaks of "ordinary earth" as a mineral. In other words the expression "clay" may be included within the expression "earth" but "ordinary

earth" cannot be equated with "ordinary clay". We are unable to agree with the learned Judge in the court below that "earth "and clay" are inter-changeable expressions or that ordinary earth is a minor mineral or that the digging up of ordinary earth is necessarily a mining operation."

In my opinion, the earth which is taken out contains ordinary clay for manufacture of bricks. In scientific language it may contain something more but that will not affect the position that the substance which is taken out is a mineral. The word "mineral" has been defined in Section 2 (jj) of the Mines Act, 1952 to say--

" "minerals" means all substances which can be obtained from the earth by mining, digging, drilling, drudging, hydraulic, quarrying or by any other operation and includes mineral oils (which in turn include natural gas and petroleum);".

The definition of the expression "minor mineral" given in Clause (e) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 is as follows--

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

Reading the two definitions, it is clear to me that a substance which is mineral can be either mineral or major mineral. A substance which is not mineral cannot be minor mineral. Admittedly according to the petitioner's case he has to pay royalty under the Minor Mineral Concession Rules. He would not have been required to pay royalty had the substance popularly known as earth taken out by him from his land not been a minor mineral. But that apart, I have no doubt in my mind that the substance which he takes out from his land by digging in his land for the purpose of manufacture of bricks is a mineral. And, since it would be unreasonable to call that substance a major mineral, it is plain that it comes within the definition of minor minerals, as held by the Patna High Court in the case referred to above. That being so, the petitioner is an owner and occupier of a mine from which he takes the substance--be it called earth or clay--for the purpose of manufacture of bricks. He is, therefore, liable to pay cess not only on the annual value of his land but also on the annual net profits from the mine.

5. It is, however, to be made clear that there is no liability on the petitioner to pay cess on the annual net profits from his brick kiln qua brick kiln owner. u/s 6 of the Act he is required to pay cess on the annual net profits from his mine in his land out of which he takes the earth or clay for the purpose of manufacture of bricks. This liability of the petitioner is qua the owner or occupier of the mine and not qua the brick kiln owner. How cess is to be assessed on the mineral taken out by the petitioner and utilised by him in the manufacturing process is to be found in two decisions of the Supreme Court in (4) Tata Iron and Steel Co. Ltd. Vs. The State of Bihar, and the The State of West Bengal Vs. The Indian Iron and Steel

Co. Ltd., . It is reiterated that the petitioner is not to be assessed for the payment of cess qua the brick kiln owner on his annual net profits of the brick kiln. In that annual net profit--which has to be disintegrated--is included the annual net profit from his mine, which has to be separately ascertained, and the petitioner can be charged the cess on the annual net profit of the mine only. The impugned notice describing the petitioner as brick kiln owner may be said to be technically not quite accurate, but on interpretation put by me the notice u/s 72 of the Act to the petitioner is in his capacity of an owner or occupier of the mine, as explained above. The petitioner is, therefore to file his return within a time to be fixed afresh by the taxing authority and thereafter cess has got to be assessed upon him in accordance with law in the light of this judgment. Subject to the clarifications made above, both the writ applications fail and are dismissed but in the circumstances there would be no order as to cost.

Sarwar Ali, J.

I agree.