

**(2008) 05 MP CK 0021**  
**In the Madhya Pradesh High Court**

Shyam Bihari Singh and Others

APPELLANT

Vs

The State of M.P. and Others

RESPONDENT

**Date of Decision :** 02-05-2008

**Acts Referred:**

Constitution of India, 1950 — Article 246, 300A  
Transfer of Property Act, 1882 — Section 105

**Citation :** (2008) ILR (MP) 2820 : (2008) 4 MPHT 151 : (2008) 4 MPLJ 255

**Hon'ble Judges :** A.K. Patnaik, C.J.; Sanjay Yadav, J

**Bench :** Division Bench

## Judgement

A.K. Patnaik, C.J.

By a common order dated 2-12-2006 passed in the writ petitions, a learned Single Judge of this Court has referred the following two questions for opinion of the Division Bench:

(i) Whether u/s 247 of the M.P. Land Revenue Code, 1959 for assignment of the right by the Government to any person in respect of land of which surface right vests in third person, the consent of land owner (Bhumiswami) is necessary? Any grant by the Government without any consent of such Bhumiswami is sustainable under the law?

(ii) Whether the Division Bench in Premchand (supra), has rightly held that for assignment of rights in respect of any minerals, mines and quarries by the Government to a third person u/s 247 of the Code, an opportunity of hearing or consent of the Bhumiswami is not required?

Mr. Vivek Tankha, learned Senior Counsel appeared for the petitioner in W.P. No. 3548 of 2008 and Mr. A.P. Singh, learned Counsel appeared for the petitioners in W.P. Nos. 7745 of 2006, 8873 of 2006, 8874 of 2006, 8876 of 2006, 10706 of 2006, 10707 of 2006 and 1308 of 2008. Mr. Tankha leading the arguments on behalf of all the petitioners submitted that under Entry 54 of List-I of the Seventh Schedule read with Article 246 of the Constitution, Parliament has power

to make law on regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. He submitted that the State Legislature also has power under Entry 23 of List-II read with Article 246 of the Constitution to make a law on regulation of mines and minerals but such power of the State Legislature is subject to the power of Parliament under Entry 54 of List-I of the Seventh Schedule to the Constitution. He submitted that after Parliament enacted the Mines and Minerals (Development and Regulation) Act, 1957 (for short "the 1957 Act") covering almost the entire field of regulations and development of mines and minerals, Section 247 of the M.P. Land Revenue Code, 1959 (for short "the Code") stood over ridden by the provisions of the 1957 Act. In support of his submission, he cited the decision of the Supreme Court in *Bajinath Kadio Vs. State of Bihar and Others*, . He submitted that the Division Bench of this Court in *Premchand v. State* 1965 J.L.J. 413 had not considered the provisions of the 1957 Act and had taken a view that Section 247 of the Code conferred on State Government unfettered power to exercise its powers over mines and quarries even though the right on surface of the land owned by a third person was attracted. He submitted that in a later decision in *Ramchandra Badri Prasad Gour and Ors. v. Associated Cement Co. Ltd. and Ors.* 1989 MPLJ 265, a Division Bench of this Court has clarified the decision in *Premchand* (supra) and has held that grant of lease creates interest in the lessee providing a right to carry on a mining operation as right to enjoy immovable property and such a mining lease has the characteristics of a lease contemplated u/s 105 of the Transfer of Property Act and that the provisions of Section 247 of the Code are only subsidiary provisions having little to do with assignment of right in minerals, mines and quarries.

Mr. Tankha submitted that Section 10 (1) of the 1957 Act states that an application for inter-alia mining lease in respect of any land in which minerals vests in the Government shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee. He submitted that Section 10 (3) of the 1957 Act further provides that on receipt of an application for mining lease, the State Government may, having regard to the provisions of the 1957 Act and the rules made thereunder, grant or refuse to grant the permit, licence or lease and therefore relevant rules have to be read along with Section 10 of the 1957 Act. He submitted that Rule 22 of the Mineral Concession Rules, 1960 (for short "the 1960 Rules") made under the 1957 Act is titled "Applications for grant of mining leases" and Sub-rule (3)(1)(h) of Rule 22 of the 1960 Rules provides that every application for grant of mining lease shall be accompanied by a statement in writing that the applicant has, where the land is not owned by him, obtained surface rights over the area or has obtained the consent of the owner for starting mining operations. He submitted that Section 10 of the 1957 Act read with Rule 22 of the 1960 Rules thus makes it clear that an application for grant of mining lease has to be accompanied by consent of the owner of a private land where lease is to be granted in respect of minerals

located on private land. He submitted that these provisions in Section 10 of the 1957 Act read with Rule 22 of the 1960 Rules have to be read along with the Constitutional right to property guaranteed to every person under Article 300A of the Constitution.

Mr. Tankha cited the observations of the Supreme Court in the recent case of Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others, that the right to property is not only a constitutional right but also a human right. He referred to the words of President John Adams, quoted in Para 57 of the Judgment of the Supreme Court in the aforesaid case that "property is surely a right of mankind as real as liberty". He submitted that in the aforesaid case, the Supreme Court also observed that Courts must make an endeavour to strike a balance between public interest, on the one hand, and protection of a constitutional right to hold property, on the other. He vehemently argued that if mining leases are given for minerals located in land owned by private persons without their consent and without hearing them, the most valuable right to property will be affected by the Government granting mining leases in respect of minerals located on private land in favour of influential lessees without realizing the serious consequences of such leases on the right to property of such private owners. According to Mr. Tankha, therefore, no mining lease in respect of minerals located on private land can be granted without the consent of the owner of the private land or without hearing him.

Mr. Tankha submitted that it is for this reason that the Supreme Court in Pallava Granites Industries India (P) Ltd. Vs. Government of Andhra Pradesh and others, has held that the right to excavate the mines from the land of private owner is based on agreement and unless the lessor gives his consent, no lessee has a right to enter upon his land and carry on mining operations and that the right to grant mining lease to excavate the mines beneath the surface is subject to the agreement with the land owner. He submitted that the law laid down by the Supreme Court in Pallava Granites Industrial India (P) Ltd. (supra) is the correct law and accordingly we should answer question No. 1 referred to by learned Single Judge by saying that the consent of the land owner (Bhumiswami) is necessary for grant of a mining lease by the Government and any grant of mining lease without the consent of the Bhumiswami is not sustainable. He submitted that we should also answer question No. 2 by saying that the Division Bench in Premchand (supra) did not lay the correct law when it said that assignment of right in respect of minerals by the Government to the third person was u/s 247 of the Code and that consent of the Bhumiswami and an opportunity of hearing to a Bhumiswami are not required before such grant.

Mr. R.N. Singh, learned Advocate General appearing for the State and Mr. S.P. Upadhyaya, learned Counsel appearing for respondent No. 4 in all the Writ Petitions, on the other hand, submitted that u/s 247 read with Section 57 of the Code, the right to all minerals, mines and quarries vests in the State Government and the State Government has all necessary powers for proper enjoyment of

such rights. They submitted that the Division Bench in Premchand (supra) has laid down the correct law that if the right of mine is vested in the State, such right must include the right to access to land for the purpose of mining and the right to occupy such land as may be necessary for the purpose subsidiary thereto even though the surface of the land affected may be owned by a third person, and accordingly along with the right to minerals, mines and quarries, the right to access to the land for purposes of mining and right to occupy such land may be assigned in favour of the lessee. They submitted that independently of Section 247 of the Code, Section 24-A(1) of the 1957 Act conferred on the lessee of a mining lease the statutory right to enter into the land over which such lease has been granted at all times during the currency of the lease and to carry out mining operations subject to payment of compensation to the owner for any damage or loss suffered by the owner when the surface rights are owned by a private person. They submitted that Rules 22 and 26 of the 1960 Rules also show that consent of the owner of a private land in respect of which an applicant has submitted the application for mining lease is not mandatory but directory and that there is no requirement of affording an opportunity of hearing to the owner of the private land.

Mr. Singh and Mr. Upadhyaya cited the decision in State of Tamil Nadu Vs. M.P.P. Kavery Chetty, in which the Supreme Court has held after taking note of Section 24-A of the 1957 Act that consent of the occupier of a private land is not required before grant of mining lease. They submitted that in Pallava Granites Industrial India (P) Ltd. (supra), the Supreme Court has not taken note of Section 24-A of the 1957 Act that it was a case where the agreement of lease in respect of granite located on a private land was under the Rules as applicable to the State of Andhra Pradesh.

We have considered the submissions of learned Counsel for parties and we agree with Mr. Tankha that after the enactment of 1957 Act by Parliament, the question whether consent of the owner of private land is or is not required has to be decided in accordance with the provisions of the 1957 Act and the 1960 Rules made thereunder and not in accordance with the provisions of Section 247 of the Code. This is because under Entry 54 of List-I of the Seventh Schedule read with Article 246 of the Constitution, regulation of mines and mineral development to the extent to which such regulation and development under the control of Union is declared by Parliament by law to be expedient in public interest, is a field within the exclusive legislative powers of Parliament and in exercise of such exclusive legislative powers, Parliament has made the 1957 Act. Section 2 of the 1957 Act states : "It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and development of minerals to the extent herein after provided." Accordingly, in all matters in respect of which provisions have been made in the 1957 Act, the provisions of the 1957 Act will apply and the powers of the State Legislature under Entry 23 of List-II read with Article 246 of the Constitution will stand excluded. This is what has been held by the Supreme Court in Baijnath Kedia v.

State of Bihar (supra) cited by Mr. Tankha.

We will, therefore, have to look into the provisions of 1957 Act to find out whether the consent of the owner of the private land and an opportunity of hearing to the owner of the private land are mandatory before grant of a mining lease. It is not disputed that the right over the minerals in respect of which a mining lease can be granted is vested in the State by virtue of Section 57 read with Section 247 of the Code. Accordingly the State is owner of the minerals lying beneath even on a private land and as the owner of such minerals, the State can grant a lease in favour of a lessee by way of transfer or assignment. Neither Section 10 of the 1957 Act nor Rule 22 of the 1960 Rules on which Mr. Tankha has placed great reliance, lays down anywhere that a mining lease in respect of minerals vested in the Government where the surface land belongs to a private person cannot be granted without the prior consent of the owner of such private land. In the absence of such clear statutory provisions, either in the 1957 Act or in the 1960 Rules, the State Government as the owner of the minerals can grant a mining lease in favour of a lessee without the consent of the owner of a private land, even where the minerals are embedded in such private land.

A person owning a private land, however, has a constitutional right to property as guaranteed under Article 300A of the Constitution, which provides that no person shall be deprived of his property save by authority of law. Hence, the right of a private person over his land can only be affected by authority of law. Unless, therefore, there are clear provisions in the 1957 Act conferring any right on a lessee of a mining lease to enter upon a private land and carry out mining operations, he cannot enter upon such private land to carry out the mining operations without the consent of the owner of the land. Section 24-A of the 1957 Act which contain such provisions is quoted herein below:

24-A. Rights and liabilities of a holder of prospecting licence or mining lease:

(1) On the issue of a (reconnaissance permit, prospecting licence or mining lease) under this Act and the rules made thereunder, it shall be lawful for the (holder of such permit, licence or lease), his agents or his servants or workmen to enter the lands over which (such permit, lease or licence had been granted) at all times during its currency and carry out all such (reconnaissance, prospecting or mining operations) as may be prescribed:

Provided that no person shall enter into any building or upon an enclosed court or garden attached to a dwelling-house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

(2) The holder of a (reconnaissance permit, prospecting licence or mining lease) referred to in Sub-section (1) shall be liable to pay compensation in such manner as may be prescribed to the occupier of the surface of the land granted under (such permit, licence or lease) for any loss or damage which is likely to arise or

has arisen from or in consequence of the (reconnaissance, mining or prospecting operations).

(3) The amount of compensation payable under Sub-section (2) shall be determined by the State Government in the manner prescribed.

It will be clear from the language of Sub-section (1) of Section 24-A of the 1957 Act, quoted above, that on a issue of a mining lease under the 1957 Act and the 1960 Rules made thereunder, it shall be lawful for the holder of mining lease, his agents or his servants or workmen to enter the land over which lease has been granted at all times during the currency and carry out all such mining operations as may be prescribed. Thus, there is a clear authorization in law for a lessee of a mining lease to enter the land in respect of which mining-lease is granted during the currency of the lease and to carry out mining operations in accordance with the 1960 Rules. Sub-section (2) of Section 24-A of the 1957 Act, however, provides that holder of a mining lease shall be liable to pay compensation in such manner as may be prescribed to the occupier of the surface of the land for any loss or damage likely to arise or has arisen from or in consequence of the mining operations. The right of the owner of surface of the land to compensation for the damage or loss that he suffers on account of entry and mining operations carried out in the mining lease is thus provided for in subsection (2) of Section 24-A of the 1957 Act. Sub-section (3) of Section 24-A of the 1957 Act provides that the amount of such compensation shall be determined by the State Government in the manner prescribed.

The relevant provisions of Rule 22 and Rule 26 of the 1960 Rules on which learned Counsel for the parties relied upon are quoted herein below:

22. Applications for grant of mining leases.:

(1) XX XX XX

(3) (i) Every application for the grant of renewal of a mining lease shall be accompanied by:

(a) xx xx xx

(d) xx xx xx

(f) xx xx xx

(g) xx xx xx

(h) a statement in writing that the applicant has, where the land is not owned by him, obtained surface rights over the area or has obtained consent of the owner for starting mining operations:

Provided that no such statement shall be necessary where the land is owned by the Government:

Provided further that such consent of the owner for starting mining operations in

the area or part thereof may be furnished after execution of the lease deed but before entry into the said area:

Provided also that no further consent would be required in the case of renewal where consent has already been obtained during grant of the lease.

The State Government may, for reasons to be recorded in writing, relax the provisions of Sub-clause (d) of clause (i).

Refusal of application for grant and renewal of mining lease.:

(1) The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.

(2) An application for the grant of renewal of a mining lease made under Rule 22 or Rule 24A, as the case may be, shall not be refused by the State Government only on the ground that Form I or Form J, as the case may be, is not referred to in Sub-clauses (d), (e), (f), (g) and (h) of Clause (i) of Sub-rule (22).

(3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the documents, without delay and in any case not later than thirty days from the date of receipt of the said notice by the applicant.

A reading of Rule 22(3)(i)(h), quoted above, would show that where the land is owned by some private owner, the statement in writing has to be made by the applicant that the consent of such owner for starting mining operations has been obtained. The language of Clause (h) is clear that consent of the owner is required "for starting mining operations" and not for grant of mining lease. Similarly, the second Proviso to Clause (h) states that consent of the owner "for starting mining operations" in the area or part thereof may be furnished "after the execution of the lease-deed" but "before entry into the area". The expression "after execution of the lease deed" again would show that no consent is required for execution of the lease-deed. The expression "before entry into the area" confirms that consent is required not for execution of lease-deed but for entering into the lease area. Rule 22(3)(i)(h) therefore does not indicate that consent of the owner of the land is a pre-condition for a mining lease in favour of the lessee. All that it indicates is that such consent is required before entering into the lease area.

The next question is what happens if an owner of a private land in respect of which an application is made for a mining lease withholds his consent. The answer to this question is in Form K which provides the terms and conditions of the mining lease as prescribed under Rule 31 of the 1960 Rules. Part-VII of Form K is titled "The covenants of the lessee/lessees" and Clause (4) of Part VII reads thus:

To indemnify Government against all claims:

(4) The lessee/lessees shall make and pay such reasonable satisfaction and compensation as may be assessed by lawful authority in accordance with the law in force on the subject for all damage, injury or disturbance which may be done by him/them in exercise of the powers granted by this lease and shall indemnify and keep indemnified fully and completely the State Government against all claims which may be made by any person or persons in respect of any such damage, injury or disturbance and all costs and expenses in connection therewith.

This clause thus provides that the lessee of a mining lease has to indemnify and keep indemnified fully and completely the State Government against all claims which may be made by any person or persons in respect of any damage and all costs and expenses in connection with the mining lease. Part VIII of Form K is titled "The Covenants of the State Government" and Clause (2) of Part-VIII of Form K reads as follows:

Acquisition of land of third parties and compensation thereof:

(2) If in accordance with the provisions of Clause (4) of Part-VII of this Schedule, the lessee/lessees shall offer to pay to an occupier of the surface of any part of the said lands compensation for any damage or injury which may arise from the proposed operations of the lessee/lessees and the said occupier shall refuse his consent to the exercise of the right and powers reserved to the State Government and demised to the lessee/lessees by these presents and the lessee/lessees shall report the matter to the State Government and shall deposit with it the amount offered as compensation and if the Central/State Government is satisfied that the amount of compensation offered is fair and reasonable or if it is not so satisfied and the lessee/lessees shall have deposited with it such further amount as the State and Central Government shall consider fair and reasonable the State Government shall order the occupier to allow the lessee/lessees to enter the land and to carry out such operations as may be necessary for the purpose of this lease. In assessing the amount of such compensation the State Government shall be guided by the principles of the Land Acquisition Act.

Hence Clause (2) is titled "Acquisition of land of third parties and compensation thereof and provides that the lessee shall offer to pay to an occupier of a surface of any part of the land compensation for any loss or injury which may arise from the proposed operations by the lessee and if the occupier refuses his consent to the exercise of the right and powers reserved to the State Government and demised to the lessee by the mining lease, the lessee shall report the matter to the State Government and shall deposit with the State Government the amount offered as compensation and if the Central/State Government is satisfied that the amount of compensation offered is fair and reasonable, the Central/State Government shall order the occupier to allow the lessee to enter the land and carry out such operations as may be necessary for the purpose of mining lease.

It will, thus, be clear that the consequence of refusal by the owner of the private land is not that a mining lease cannot be granted by the Government.

Sections 10 and 24-A of the 1957 Act and Rules 22 and 26 of the 1960 Rules on which learned Counsel for the parties have relied upon also do not provide that before a mining lease is granted by the State Government in respect of a private land, the owner of the private land will have to be afforded an opportunity of hearing by the State Government. Rule 26 (1) of the 1960 Rules only provides for affording an opportunity of hearing to the applicant for a mining lease or for a renewal of the mining lease before the State Government refuses to grant or renew a mining lease over the whole or part of the area. Thus, it appears that Parliament or the rule making authority have not intended to afford an opportunity of hearing to the owner of a private land in respect of which mining lease is proposed to be granted before grant of renewal of a mining lease.

Coming now to the argument of Mr. Tankha that if grant of mining lease in respect of minerals located in the private land can be made by the Government without the consent of the owner of the private land, then the valuable right to property which is not only a constitutional right but also human right will be seriously affected, we may say that as and when a challenge to the provisions of the 1957 Act and the 1960 Rules is made on this ground, the same can be considered by the Court, but so long as the language of Section 24-A of the 1957 Act and of the 1960 Rules, discussed above, is clear, we have no option but to hold that consent of the owner of the private land in respect of which mining lease is sought to be given by the Government is not mandatory. We are supported by Para 14 of the Judgment of a three Judge Bench of the Supreme Court in *State of Tamilnadu v. M.P.P. Kavery Chetty (supra)*, which is quoted herein below:

14. Learned Counsel for the respondents submitted that under the first Proviso of Rule 19-A a consent of the owner of the land was not made a condition and it was bad in law on that account. The submission does not take note of Section 24-A of the said Act. Thereunder the holder of a mining lease under the said Act or Rules made under it is empowered to enter the land on which the lease has been granted and carry out mining operations. He is obliged to compensate the land owner for any loss or damage that his operations may cause. Consent of the occupier is required only when the holder of the lease desires entry into any building or enclosed court or garden.

The three Judge Bench of the Supreme Court thus clearly held that the consent of the owner of a private land is not a condition precedent for grant of mining lease or for entering upon the land on which mining lease is granted for carrying out mining operations and the lessee is only obliged to pay compensation for any loss or damage to the owner of the private land.

The Judgment in *Pallava Granites Industrial India (P) Ltd. (supra)* has been delivered by a two Judge Bench of the Supreme Court and has not noticed either

Section 24-A of the 1957 Act or the decision of the Three Judge Bench of the Supreme Court in *State of Tamilnadu (supra)*. The decision in *Pallava Granites Industrial India (P) Ltd. (supra)* also is not based on interpretation of Section 10 of the 1957 Act or Rules 22 of the 1960 Rules.

In the result, we answer the questions referred to us as follows:

(i) The Division Bench in *Premchand v. State (supra)* based on Section 247 of the M.P. Land Revenue Code, 1959 is not applicable to grant of mining leases after the enactment of Mines and Minerals (Development and Regulation) Act, 1957 and the rights of the lessee and the owner of the private land in respect of which the mining lease is granted will be governed by the provisions of the 1957 Act and the 1960 Rules made thereunder.

(ii) The consent of the owner of the private land or opportunity of hearing to such owner of the private land is not mandatory for grant of a mining lease under the Mines and Minerals (Development and Regulations) Act, 1957 and the grant of mining lease by Government without such consent or opportunity of hearing is sustainable in law.

The cases will now go back to the learned Single Judge as per roster for hearing and disposal in the week commencing 16th June, 2008.