(1987) 03 KAR CK 0004

In the Karnataka High Court

Case No : Writ Appeal No''s. 2528 to 2647 and etc. etc. of 1986

State of Karnataka and — APPELLANT

Vs

K.M. Madhusudhan and etc. etc. — RESPONDENT

Date of Decision : 27-03-1987

Acts Referred:

Karnataka Minor Minerals Concession Rules, 1969 — Rule 20 (1) (2)
Mines and Mineral (Development and Regulation) Act, 1957 — Section 15, 15 (1), 150

Citation : AIR 1988 Kar 34 : (1987) ILR (Kar) 1412

Hon'ble Judges : Prem Chand Jain, C.J;S.A. Hakeem, J

Bench : Division Bench

Advocate : N. Santosh Hegde, General, for the Appellant; R.N. Narasimha Murthy, U.L Narayana Rao, D.L.N. Rao, S.S. Joshi, K. Appa Rao, S.B. Shapur, Udaya Holla, Channaraya Reddy, K.S. Desai, V.S. Ugrappa, S.K. Kulkarni, Hegde, B.S. Raikote, G. Gangi Reddy, B.M. Krishna Bliat, K. Ramasubbaiah, M.M. Jagirdar, Janardhana, K.B. Shivakumara, G.S. Visveswara, N.Y. Hanumanthappa, Shivaraj Patil, M. Ramanjaneya Gowda, T.P. Rangaraju, G.B. Shastry and F.L.F. Alwares, for the Respondent

Judgement

Prem Chand Jain, C.J.—This group of Writ Appeals raises question relating to the power conferred on the State Government under S. 15, Mines and Minerals (Regulation and Development) Act, (in short the Act) to levy dead rent in respect of minor minerals and in the event of existence of such Power can the Rules framed affect existing leases in which the rate of dead rent payable by the concerned- lessees had been specified; the validity of R. 20(l)(2), Karnataka Minor Mineral Concession Rules, 1969, (in short ''the Rules'') and the validity of Notification No. CI 194 MMN 83, dated 11-8-1993.

2. It is unnecessary in order to decide these appeals, to relate the facts of each case, it will suffice if we state broadly how these appeals have come to be filed.

The respondents entere4 into agreements with the State Government for extraction of various types of minor minerals in the areas specified in the respective lease deeds. The different types of minor minerals extraction of which constitutes the subject matter are :

(i) Ornamental stone.

ii) Building stone.

iii)Limestone and Kankar.

The relevant clauses in the agreement regarding payment of dead rent and royalty read thus:-

"1. To pay dead rent or royalty whichever is greater. - The lessee/lessees shall pay for every year except the first year of the lease yearly dead rent as specified in Clause 2 of this Part in respect of each mineral:

Provided, that the lessee/lessees shall be liable to pay the dead rent or royalty in respect of each mineral whichever is higher in amount but not both.

2. Rate and mode of payment of dead rent.- Subject to the provision of Cl. I of this Part, as from the date of. ......19......during the subsistence of this lease, the lessee/lessees shall pay to the State Government annual dead rent at the following rates per hectare of the lands described in Part I of the Schedule.

3. Rate and mode of payment 0 f royalty Subject to the provisions of CL 1 of this part, the lessee/lessees shall, during the subsistence of this lease, pay to at such times and in such manner as the Government may prescribe royalty in respect of any minor minerals removed by him/them from the leased area at the rates for the time being in force under Schedule I to the Mysore Minor Mineral Rules, 1969.

4. Payment of surface rent. - The lessee shall. pay rent to the State Government for all parts of the surface area leased to him for the purpose of quarrying, surface rent at the rate proscribed by Government."

1) For specified minor minerals.

2) For other building stones.

3) For other min4r minerals.

There is no dispute that under the Act and the Rules, every lessee is liable to pay dead rent or royalty to the Government annually,_ whichever is high. Dead rent is in the nature of invariable ground-rent, whereas royalty is payable ad valorem on the quantity. of minerals extracted at the proscribed rote, It is also an admitted position that all the lease deeds were executed some time prior to 11-81981, on which date the impugned notification fixing higher rate of dead rent was sought to be brought into force. The rate of dead rent fixed in the lese deeds is as follows:

(i) Ornamental Stone Rs. 500/- per acre per annum.

ii) Building, Stone Rs..400/- per acre per annum.

iii) Lime Stone and all other minor minerals Rs. 50/- per acre per annurn.

These rates were fixed by -means of a Notification issued m'' accordance with subcl. (1) of R. 20 of the Rules.

3. A notification dated 11-8-1983 was published in the Official Gazette dated 4th May, 1984 by which the rates of dead rent were enhanced. The notification reads:

"NOTIFICATION No. Cl. 194 MMN 83, Bangalore, dated 11 th August, 1983.

In exercise of the power conferred under sub-r. (1) of R. 20, Karnataka Minor Mineral Concession Rules, 1969, and in supersession of the Government Order No. CI 151 EMO ,69, dated 15-11-1969, the Government of Karnataka hereby fixes the dead rent payable under the said rules as follows :

Rs. 5000 per acro p er annum; ,

Rs. 2500 per acre per, annum, and

Rs. 500/- per acre per annum.

This shall come into, force at once. By order and in the name of the Governor of Karnataka.

I specified.

3) In any event the rates of dead rent fixed in the impugned notification are to be regarded as having. come into force on 4-51984 on which date the notification was published in the Official Gazette and not with effect from 11-8-1983 on which date it is stated to have been issued.

4) Rule 20

(1)(2) of the Rules is invalid for the reason that while provisions of S. 15(1) require the fixation of dead rent under the rule itself, -by that rule the power to fix the rent b delegated to the State Government.

5) The rate of dead rent fixed in the impugned notification is not only discriminatory but also arbitrary as the rate is exorbitant and confiscatory in character and therefore violative of Art. 14 of the Co, nstitution.

4. On consideration of the entire matter in the light of the provisions of the Act, the Rules and the judicial pronouncements, the learned Single Judge came to the following conclusions:

(i) Section 150) which confers power on the concerned State Governments, to make rules for regulating the grant of annual leases