

(2011) 02 P&H CK 0435

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3300 of 1987

State of Punjab and Others

APPELLANT

Vs

M/s. Ved Parkash and Co.

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Punjab Land Revenue Act, 1887 — Section 158, 25, 3, 41(4), 54
Punjab Minor Minerals Concession Rules, 1964 — Rule 53
Specific Relief Act, 1963 — Section 41, 41(4)

Citation : AIR 2011 P&H 113

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The defendants are in second appeal against the judgment and decree of the Courts below by which suit filed by the plaintiff for permanent injunction to restrain the defendants from recovering a sum of `21, 332/- as royalty on brick-earth and the notice dated 07.03.1986 demanding the impugned amount is illegal, null and void, has been decreed.

2. In brief, the plaintiff filed the suit for permanent injunction that it is running a brick-kiln in the name of M/s. Ved Parkash & Co. after taking the land on lease from a private landowner at village Sivian and as per entries in Sharait Wajib-ul-arz, the brick earth (a minor mineral) does not belong to the Government, therefore, no provision of the Mines and Minerals (Development and Regulation) Act, 1957 [for short "the Act"] or the Punjab Minor Mineral Concession Rules, 1964 [for short "the Rules"] empowers the Government to levy royalty on the use of such brick earth. It was also alleged that the plaintiff has not charged any royalty from the consumers, so he cannot be subjected to pay the same to the defendants. In the written statement, preliminary objection was raised with regard to the jurisdiction of the Civil Court in terms of Section 158 of the Punjab Land Revenue Act, 1887 [for short "the Act of 1887"] and it was claimed that as

per Section 25 of the Act and Rule 53 of the Rules, the amount can be recovered as arrears of land revenue. It was also alleged that u/s 41(4) of the Specific Relief Act, 1963 [for short "the Act of 1963"], injunction cannot be granted if there is an equal efficacious remedy available which is provided u/s 78 of the Act of 1887, therefore, the amount of royalty was to be deposited by the plaintiff before filing of the suit. Besides other preliminary objections, it was alleged that the plaintiff is liable to pay the royalty for extracting brick earth which is a minor mineral and vests in the Government. On the pleadings of the parties, following issues were framed by the learned Trial Court:

1. Whether the plaintiff is duly registered firm and Shri Ved Parkash is its registered partner, competent to file the suit? OPP.
2. Whether the assessment made by the defendants is void, illegal for reasons alleged in the plaint?OPP.
3. Whether the Civil Court Jurisdiction to try the present suit is barred u/s 158 of the Punjab Land Revenue Act?OPD.
4. Whether the suit is barred u/s 41(4) of the Specific Relief Act?OPD.
5. Whether this Court has no jurisdiction to entertain this suit u/s 54(f) of the Miner Mineral Concession Rules?OPD.
6. Relief.

3. Both the parties led their respective evidence. Issue Nos. 1 and 2 were decided in favour of the plaintiff and issue Nos. 3, 4 and 5 were against the defendants and the suit was decreed while deciding issue No. 6. The first appeal filed by the defendants was also dismissed in which findings on issue Nos. 1, 4 and 5 were not assailed and findings on issue Nos. 2 and 3 were upheld after lengthy discussion. It was categorically recorded by the First Appellate Court that as per Sharait Wajib-ul-arz (Ex.P2) of village Sivian as per Bandobasat 1958-59, brick earth does not vest in the Government, therefore, the pre-: sumption was that it vests in the land owners which was not rebutted by the defendants/appellants by leading any cogent evidence. The learned First Appellate Court relied upon a decision of this Court in the case of Subash Chander Vs. State of Punjab and Others, to hold that the brick-kiln in the land of the landowners does not belong to the Government for which the brick-kiln owner is liable to pay royalty.

4. In this appeal, learned counsel for the appellants has submitted that the brick earth has been duly notified as a minor mineral in terms of Clause (e) of Section 3 of the Act by virtue of a notification of the Central Government dated 01.06.1958 on the basis of which royalty has been charged. On the other hand, learned counsel for the respondent has submitted that the question as to whether royalty on the brick earth can be charged if it belongs to the private land owners and not the State, has already been decided by the Supreme Court and the said question is no more res integra. In this regard, he has relied upon a

judgment of the Supreme Court in the case of State of Punjab v. M/s. Vishkarma and Co., 1993 (2) RRR 38 : (AIR 1993 SCW 824) and two decisions of this Court in the case of M/s. Om Parkash Brick Kiln owner v. State of Punjab and others, 2008 (1) RCR (Civil) 447 : (AIR 2008 (NOC) 784 (P&H) and State of Punjab and another v. Mohan Lal, 2009(4) RCR (Civil) 841.

5. I have heard both learned counsel for the parties and perused the available record with their able assistance.

6. In the case of State of Punjab v. M/s. Vishkarma and Co., (1993 AIR SCW 824) (supra), it was held that if the brick earth (a minor mineral) is found in the land of the private owner and the land owner is allowing removal of the brick earth by brick manufacturers, the brick manufacturers are not required to pay royalty to the State. The relevant observations made in the judgment in this regard are as under:

7. Brick-earth with which we are concerned in the present appeals, is a minor mineral was not disputed, although it is not any of the mines or minerals corned by Section 41 of the Revenue Act as would make it become the property/of the State. If the owner of such brick-earth is the State of Punjab, liability to pay royalty for removal of such brick-earth and to obtain permit or licence for such removal necessarily arises because of the operation of the Act and the Rules. But the courts below have concurrently found that the present appeals have amen was in lands which formed the estates of the private owners and as such the same belonged to such land-owners. It is so found on their reading of the entriesin Wajib-ul-arz pending to the concerned estates. Wajib-ul-arz is a document included in the record of rights cannot be disputed since it contains the statements on matters envisaged under clauses (a) and (b) of sub-section (2) of section 31 of the Act. According to the courts below Wajib-ul-arz document being record of rights of estates completed after 18th day of November, 1871 and there being nothing expressly stated in them that the forest or quarry or land or interest in the estates belong to the Government, the lands in such estates including brick-earth in them shall be presumed to belong to the concerned landowners as is declared in sub-section (2) of Section 42 of the Revenue Act.

7. In the case of M/s. Om Parkash Brick Kiln owner, (AIR 2008 (NOC) 784) (supra), it Was held by this Court that declaration of brick earth as minor mineral by way of notification in itself will not vest any right in the State Government to claim royalty because ownership of the same will still continue to be vested in the landowners if there was no entry in the Sharait Wajib-ul-arz vesting the right to brick earth as minor mineral in the State. The relevant observations made in the judgment in this regard are as under:

15. On consideration of the matter, I find no force in the contentions raised by the learned counsel for the State. The Hon''ble Full Bench of this Court while deciding the case of Subash Chander Vs. State of Punjab and Others, has been pleased to lay down as under:

Having held as above, it seems to be plain that in this set of writ petitions, a tangled dispute on facts is sought to be raised on behalf of the respondents. The claim to lead evidence to rebut the presumption, if any, u/s 42 has not only been raised, but strenuously pressed. I am unable to deny this right to the respondents and even otherwise find it inapt to enter the thicket of" controversial facts and the evidence that may have to be led by the parties. Respectfully following the settled line of precedent in this Court in Khushal Singh and others" case and Dr. Shanti Saroop Sharma and another"s case and M/s. Amar Singh Modi Lal"s case (supra) I would dismiss the writ petitions and relegate the petitioners to the remedy of establishing their claims in appropriate proceedings in a revenue or civil Court as they may be advised.

Thus, it would be seen that the Full Bench of this Court did not hold that by way of mere declaration of brick earth as a minor mineral, any right vests in the State Government. The evidence brought on record in the present case clearly showed that the brick earth did not vest in the State Government though it was declared to be a minor mineral. Therefore, the same vested in the ownership of landowners which did not give any right to the State Government to claim royalty. Thus, in view of the authoritative pronouncements by the Division Bench of this Court in Subash Chander Vs. State of Punjab and Others, and the Hon"ble Supreme Court in M/s. Vishkarma and Co."s case, (AIR 1993 SCW 824) (supra), the substantial questions of law are answered in favour of the appellant. The entries in Sharait Wazib-ul-arz being entries on record, the brick earth though declared to be a minor mineral would vest in the owner of the land.

16. As the State Government is not held to be owner of the brick earth, it cannot claim any royalty from the plaintiff-appellant. In view of the findings recorded above, the said question is also answered in favour of the appellant and it is held that the findings recorded by the learned Courts below on issue No. 4 are outcome of misreading of the provisions of the Act and the documents brought on record. Therefore, the same cannot be sustained.

8. In the case of State of Punjab and another v. Mohan Lal, it was held that where in any record of rights completed after 18.11.1971, it was not expressly provided that any forest, quarry or any land or interest belongs to the Government, it shall be presumed to be belonging to the land owners who are not liable to pay royalty for removal of brick earth. The relevant observations made in the judgment in this regard are as under:

6. Thus, as per the said provision, wherein any record-of-rights completed after 18.11.71, it was not expressly provided that any forest, quarry or any land or interest belongs to the Government, it shall be presumed to be belonging to the land owners. Both the Courts below, after appreciating the entries in the Wajib-Ul-Arz Ex.P-4, have given a finding of fact that the same did not provide that the brick earth belonged to the Government.

9. Thus, if there is any notification of the Central Government dated 01.06.1958

and a subsequent notification of the State Government dated 28.03.2008 declaring the brick earth to be a minor mineral, it would not empower the State to recover royalty from the brick-kiln owners for the use of brick earth which is extracted from the land of the private land owner.

10. In view thereof, I do not find any substantial question of law involved in this appeal as envisaged u/s 100 of the Code of Civil Procedure, 1908 as the question which has been raised by learned counsel for the appellants has already been decided by this Court and the Apex Court.

11. In view of the above discussion, I do not find any merit in the present appeal and as such the same is hereby dismissed.