(1977) 07 SHI CK 0012

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 16 of 1969

The Pathankot bajri and Stone Co. APPELLANT

Vs

The State of Punjab and Another RESPONDENT

Date of Decision : 14-07-1977

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 15, 15(1), 9
Punjab Land Revenue Act, 1887 — Section 41, 42, 42(1), 42(2), 42(3)
Punjab Minor Minerals Concession Rules, 1964 — Rule 20

Citation : (1977) 6 ILR HP 446

Hon'ble Judges : C.R. Thakur, J

Bench : Single Bench

Advocate : Chhabil Dass, for the Appellant; D.P. Sood, for the Respondent

Judgement

Chet Ram Thakur, J.—The Petitioner is a partnership firm carrying on the business of bajri and quarrying stones. It had taken land on long leases from Mahant Lal Dass, Dewan Chand Lambardar, Jaishi Ram, Smt. Rukmani Devi and Rasila Choudhri of Damtal, Tehsil Nurpur, District Kangra for bajri and quarrying stones. There is an Act known as the Mines and Minerals (Regulations and Development) Act No. 67 of 1957 and u/s 9 of that Act it is provided that the holder of a mining lease granted before the commencement of this Act shall notwithstanding anything contained in the instrument of lease or in any law in force at such commencement pay royalty in respect of any mineral removed by him from the leased area after such commencement at the rate for the time being specified in the second schedule. Section 13 of the Act confers power on the Central Government to make rules in respect of minerals and for regulating the grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith. Section 15 empowers the State Government to make rules in respect of minor minerals and Sub-section (1) provides that the State Government may by notification in the Official Gazette, make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals, and for purposes connected therewith. The State Government framed rules on 25-4-1964 which are known as the Punjab Minor Minerals Concession Rules, 1964. Rule 20 thereof provides for payment of royalty in respect of mining leases. Chapter 3 of these rules provides for grant of mineral concession in respect of land in which minor mineral vest in a person other than the Government.

2. The Petitioner received Memo No. 3063 dated 24th February 1965 from Respondent 2, i.e. The District Industries Officer, Kangra, requiring them to obtain permit for carrying on the business of collection/extraction of stones, bajri, etc. On 6th March 1965, the Petitioner sent a reply denying their liability to pay any royalty. Thereafter Respondent 2 served a notice No. 3576 dated 12th March, 1965, requiring the Petitioner to stop extraction/collection of minor mineral forthwith and also threatened to take legal proceedings vide Annexure B attached to the petition.

3. The Petitioner had challenged the vires of the rules but he did not argue the same which means that he has given up this challenge to the vires of the rules. He confined his arguments only to the challenge to the two notices, dated 24th February, 1965 and 12th March, 1965, Annexures A and B respectively, contending that the notices were illegal and that the Respondents had no right to levy royalty as the quarries belong to the owners of the land.

4. This petition, in fact, was filed in the year 1965 before the Punjab High Court and was transferred to this Court by order of that Court dated 25th October, 1968, because the area in which these lands were the minor minerals are situate is now a part of Himachal Pradesh due to the re-organisation of the erstwhile State of Punjab on the 1st of November, 1966.

5. By Annexure A, the District Industries Officer has directed the Pathankot Bajri Co. i.e. the Petitioner to stop the illegal collection/extraction of the minor minerals forthwith and put in an application in the prescribed proforma after depositing the necessary fee royalty in the Government treasury under proper head. They were further told that in case of default they would be liable to punishment with imprisonment which may extend to six months.

6. By Annexure B, dated 12th March, 1965, the District Industries Officer, again directed the Petitioner to stop the extraction and collection of minor minerals forth with as the same was illegal, unless they obtained a permit and paid the necessary royalty fee. It is these two annexures which have been attached by the learned Counsel for the Petitioner on the ground that they are illegal, inasmuch as the State has got no right to collect the royalty because the minor minerals are located in the land belonging to the private owners, whose names have been mentioned in para 2. The Petitioner is a lessee for quarrying of sand, stone and bajri. But, this contention of the Petitioner is denied by the Respondents, who contend that it is the State Government who has got the right to the minerals on the land of a private owner. Further in defending its action the

Respondents took aid of Section 42 of the Punjab Land Revenue Act, 1887 read with the entries contained in the Wajab-ul-arj, copy of which is Annexure R. 2. According to the Respondents, the Petitioner are liable to pay royalty under the Wajab-ul-arj. The copy of letter No. 2153 (R)(S) dated 20-9-1935 from the Junior Secretary to the Financial Commissioner, Punjab, does not indicate if the State Government had ever surrendered Government''s minor mineral rights nor was the Financial Commissioner competent to surrender these rights.

7. The only question, therefore, that is involved is whether the State Government has got any right to levy any royalty in respect of the minor minerals within the lands of private owners so as to uphold the notices Annexures A and B to be legal and valid.

8. Before I refer to Section 42 of the Punjab Land Revenue Act to which the learned Counsel for the parties have invited my attention, it would be proper to refer to Section 41 of the same Act which provides as under:

All mines of metal and coal, and all earth-oil and gold washings, shall be deemed to be the property of the (Government) for the purpose of the State and the State Government shall have all powers necessary for the proper enjoyment of the Government''s rights thereto.

Therefore, it follows that under the provisions of this section all kinds of metal and coal and all earth-oil and gold washings belong to the Government. This section does not provide for

the quarries and other rights. They are covered u/s 42 which is to the following effect:

42. Presumption as to ownership of forests, quarries and waste land.--(1) When in any record of rights completed before the eighteenth day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied, deserted or waste land, spontaneous produce or other accessory interest in land belongs to the landowners, it shall be presumed to belong to the Government.

(2) When in any record-of-rights completed after that date it is not expressly provided that any forest or quarry or any such land or interest belongs to the Government it shall be presumed to belong to the landowners.

(3) The presumption created by Sub-section (1) may be rebutted by showing-

(a) from the record or report made by the assessing officer at the time of assessment, or

(b) if the record or report is silent, then from a

comparison between the assessment of villages in which there existed, and the assessment of villages of similar character in which there did not exist, any forest or quarry, or any such land or interest, that the forest, quarry, land or interest was taken into account in the assessment of the land revenue.

(4) Until the presumption is so rebutted, the forest, quarry, land or interest, shall be held to belong to the Government.

Therefore under Sub-section (2) of Section 42 it is clearly provided that when in any record-of-rights completed after that date (i.e. after the 18th of November 1871) it is not expressly provided that any forest or quarry or any such land or interest belongs to the (Government) it shall be presumed to belong to the landowners. Now for this purpose we have to look to the record-of-rights and the same has been filed by the Respondents in this case along with a copy of letter, Memo. No. 514/R., dated 27th April, 1936, from Rai Bahadur Pandit Janki Nath Atal, Deputy Commissioner, Kangra, to the Deputy Commissioner, Gurdaspur, with regard to the levy of royalty on stone and bajri in Gurdaspur district the Wajab-ul-arj states that lime, kankar and black-stone which may be found in or on the land or there may be remnant of old buildings belong to the Government. Now the question is whether the extraction of stones, bajri and sand for which the leases were taken by the Petitioner from the landowners is covered by this ''Wajab-ul-arj or not. To me it appears that it is outside the scope of the entries in the Wajab-ul-arj. It refers only to lime, kankar and black-stone and slates and also the remnant of the old buildings. Sand, stone and bajri definitely do not fall within any of these categories of minerals mentioned in the Wajab-ul-arj. In a similar case decided by this Court reported as Gram Panchayat and Anr. v. State and Ors. ILR 1972 HS 325 it had been held that kankar has been used as a mineral distinguished from building stones, gravel or sand. The inference is that kankar belongs to a separate category of mineral and according to this definition kankar is ordinarily used in kilns for manufacture of lime used as building material. Hence from the bare reading of this Wajab-ul-arj coupled with the aforesaid authority it is abundantly clear that stone, other than the black stone, and bajri, have been excluded from the definition of kankar and it also, therefore, follows that the presumption u/s 42(2) is that the ownership vests in the landowner. This Wajab-ul-raj is prepared after the 18th November, 1871, and this presumption from the reading of Sub-section (3) of Section 42 is quite conclusive. It is only the presumption in respect of matter arising under Sub-section (1) of Section 42 which is rebuttable. Hence there is no escape from the conclusion that the owners of the land in whose lands these minor minerals, i.e. sand, bajri and stones are found and extracted, the Government has got no right to levy any royalty from the persons to whom the same is leased out by the owners. This is the only point which has been argued and it is found that the notices. A and B issued by the District Industries Officer, Kangra, i.e. Respondent 2 are unwarranted, inasmuch as the minor minerals of the kind for which the Petitioner have taken the lease belong to the owners of the land and the Government has got no right to levy any royalty on the same. Hence the petition succeeds and is decided accordingly holding that Annexures A and B which require the Petitioner to obtain a permit and pay royalty are quashed. The parties are left to bear their own costs.