

(1952) 11 MAD CK 0022

In the Madras High Court

Case No : Appeal No's. 792 and 793 of 1948

V. Peddarangaswami Shreshti

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 10-11-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35, 35A, 9

Citation : AIR 1953 Mad 583 : (1953) ILR (Mad) 722 : (1953) 66 LW 208

Hon'ble Judges : Rajamannar, C.J.;Venkatarama Aiyar, J

Bench : Division Bench

Advocate : V.N. Shama Rao, for the Appellant; Govt. Pleader, C.V. Mannadiar and B.V. Ramanarasu, for the Respondent

Judgement

Rajamannar, C.J.—These two appeals arise out of two suite tried together along with another suit (which, however, has not come up in

appeal) and disposed of by a common judgment by the learned District Judge of Bellary. The appellant is the plaintiff in both the suits. For a

determination of the questions which arise in these appeals it is necessary to relate the events which led up to the suits. It is sufficient to commence

the narration with the grant of a prospecting licence to the appellant on 28-5-1941 (Ex. A. 1) which conferred on him the sole right, subject to the

conditions contained in the licence, to mine, bore, dig and search for iron and work and carry away red oxide of iron within an area of 76 acres

being a portion of S.No. 326 of Janikunta village in Bellary district. The licence was for a term of one year commencing from 28-5-1941. The

contesting respondent in the appeals, one Vishnu Nimbkar, obtained a similar prospecting licence for red oxide on 11-6-1941 (Ex. B. 1) in

respect of S. No. 3 in the village of Thumti in the same district measuring 288

acres. This survey number was adjacent to the area in respect of which the appellant had been granted a licence. Nimbkar also obtained a regular mining lease for a term of the ten years commencing from 5-1-

1942 of two Other portions of Section 326 comprising about 304 acres (Ex. B. 26. a).

It is common ground that the appellant did not do any prospecting during the period covered by the licence in his favour. It is also clear from the

evidence that Nimbkar who was represented by his agent, C. Srinivasa Rao was engaged regularly in working and extracting ore in considerable

quantities. On 19-2-1942 the appellant wrote to the District Collector, Bellary, complaining, that Srinivasa Rao, the agent of Nimbkar, had

removed about 50 tons of red oxide from the area covered by his prospecting licence. This communication was forwarded by the Collector for

inspection and report. On 23-4-1942 the appellant requested the Collector of Bellary to grant him a prospecting licence for one more year as he

had not been able to do any prospecting owing to "unavoidable circumstances." The Collector granted this request and directed a renewal of the

prospecting licence for a period of one year from 28-5-1942 (Ex. B. 6). Apparently no fresh licence was executed, because the office took the

view that a fresh licence was not necessary for a renewal, as the conditions were the same and it was sufficient for the Collector to issue

proceedings to the effect that the licence had been renewed (vide Ex. B. 6).

On 20-10-1942, Srinivasa Rao on behalf of Nimbkar applied for the grant of a mining lease for the same area for which the appellant had

obtained a prospecting licence (Ex. B. 2). The appellant raised objections as to the genuineness and validity of this application which were also

pressed before us. But in our opinion there is no substance in these objections. The application was produced from proper custody and its

genuineness is conclusively established by the challan (Ex. B. 2. a) obtained on 21-10-1942 for the deposit of a sum of Rs. 500 as the prescribed

security which should accompany an application for a mining lease. Whether this application was duly stamped or not, it is difficult to be certain.

But the absence of a stamp is a matter only for the consideration of the Government authorities, and the appellant cannot rely upon any defect,

even assuming there was one. The appellant also presented an application for

the grant of a mining lease for the same area on 6-11-1942 (Ex. B.

3). But this was not accompanied by the deposit of any security. It must, however, be mentioned that the appellant had deposited a sum of Rs.

100 in connection with the grant of the prospecting licence to him and under the rules this deposit could be carried over to his credit in connection

with the application for the mining lease. On 26-11-1942 the appellant sent in another similar application.

2. Meanwhile the appellant filed a suit against Nimbkar in the Court of the District Munsif of Bellary, O.S. No. 487 of 1942 on 21-9-1942 for the

recovery of 65 tons of red oxide alleged to have been removed by him from the area covered by the prospecting licence in favour of the appellant

or their value, Rs. 585 and for the issue of an injunction restraining Nimbkar from entering on the said area or removing any minerals therefrom.

Nimbkar "inter alia" pleaded that the ore was not dug from the area granted to the appellant. This suit was dismissed by the District Munsif on 5-

2-1943 on the ground that it was not maintainable because there was no valid prospecting licence in plaintiff's favour, the renewal of the licence

not having been registered. On 18-3-1943 the Collector passed an order directing that neither party, i.e., neither the appellant nor Nimbkar,

should work in the disputed area for a period of one month. Nimbkar's agent protested against this order, but apparently with no effect.

Meanwhile the term of the prospecting licence in favour of the appellant which had been renewed was drawing to a close. Therefore on 6-4-1945

he wrote to the Collector requesting him to grant the lease on or before the expiry of the period of the licence and in any event to extend the term

of the licence until the lease was granted. He followed it up with another application for a lease on 27-5-1943 (Ex. B. 71). On the same day he

also prayed that the licence may be extended till the grant of the lease. He repeated his request by his letter dated 17-7-1943. On 21-8-1943 the

Collector passed an order permitting Nimbkar's agent to remove the ore from the disputed area after depositing Rs. 9 a month. The Circle Officer

reported to the Collector on 30-9-1943 that under the orders of the Range Officer the boundary between Janikunta and Thumti had been revised

and the portion under dispute had been included in Janikunta.

3. Against the dismissal of his suit by the District Munsif the appellant filed an

appeal to the District Court (A. S. No. 77 of 1943) but that appeal was dismissed on 24-3-1944. Thereupon he filed a second appeal (S. A. No. 1997 of 1944) which was eventually allowed by Kuppuswami Aiyar J. on 8-8-1945. The suit was remanded to the Court of first instance for trial and disposal. After remand it was transferred to the file of the District Judge where it was numbered as O.S. No. 11 of 1946.

4. On 9-5-1944 the Collector submitted to the Board of Revenue his report on the two applications for the grant of a mining lease made by the appellant and Nimbkar respectively, in which he strongly recommended the grant of the lease to Nimbkar. The following portion of his report fully sets out the reasons for his recommendation:

5. Now both the parties have applied for the entire area of 76 acres on mining lease. Mr. Subbarangiah Chetti has not made any attempt to prospect for ore or even enter upon the land and he cannot, therefore, complain of encroachment. The prospecting licence held by him for the period from 28-5-1942 to 28-5-1943 is an unregistered one and not therefore valid. He has not undertaken any mining operations ever since the licence was granted to him. He appears to be a mere speculator who wants to keep away the other applicant out. His application for the mining lease was also received late on 20-11-1942 and is not accompanied by a security deposit of Rs. 500 as laid down in Rule 36. The application of Sri C. Srinivasa Rao was received much earlier on 20-10-1942 and was followed by the security deposit of Rs. 500 which was credited into the Imperial Bank of India"" in challan No. 263 dated 21-10-1942. He has also enclosed to his application a statement showing the areas held by him in the province under mining concessions. He holds a certificate of approval renewed for 1944 and published at page 158 of Mis. Notifications part II of the F.S. Gazette dated 8-2-1944. He has been carrying on mining operations and it appears he had been supplying the Government of India, Supply Department, with the ore in large quantities and he is not, therefore, a mere speculator. He holds mining concessions in the adjoining lands in the same field and other fields in the vicinity. I, therefore, request that the Board may be pleased to accord sanction for the grant of a mining lease for the entire area of 76 acres In S. No. 326 of Janikunta village for red oxide of iron.

The Board called for certain files relating to the matter and they were duly sent with a covering letter by the Collector (Ex. E. 70). The Board, white calling for the files, also asked the Collector to ascertain from both the applicants whether they were willing to have the lease for a period of five years subject to the condition that it would be liable to termination without compensation if the Government required the land after the War. In pursuance of this direction the Collector, on 14-8-1944, addressed letters to both the applicants (Exs. A. 4 and B. 39). In the letter addressed to Nimbkar's agent, the Collector, as directed by the Board, informed him that lie should stop further mining in the disputed area until final orders were passed by the Board of Revenue. The agents of both the appellant and Nimbkar on their behalf expressed their willingness to accept a lease for a period of five years subject to the condition suggested by the Board (Exs. B. 14 and B. 40). Nimbkar's agent also complained against the order directing him to stop further work in the disputed area. On 7-12-1944 the Board of Revenue passed proceedings with the previous approval of the Government sanctioning the grant of a mining lease for a period of five years to Nimbkar subject to certain special conditions which are not very material. The order directing Nimbkar to stop further work was consequently withdrawn. The Collector intimated to the appellant that his application had been rejected. A temporary lease was executed in favour of Nimbkar on 28-12-1944 (Ex. E. 16) & a pucca lease subsequently. The Government by that time had apparently realised that there had been a muddle as regards the boundaries of the areas granted under the prospecting licences to the appellant and Nimbkar and evidently adopted the solution of granting the lease to Nimbkar of the entire area of 114 acres in S. No. 326. Nimbkar was also granted a lease for S. No. 3 in Thumti village in accordance with the revised boundaries (Ex. B. 43 dated 17-7-1945).

5. The appellant filed a petition to the Government of Madras protesting against the grant of the licence to Nimbkar and the rejection of his application, but the petition was rejected (Ex. A. 5). He appears to have filed another petition to His Excellency the Governor. But that petition also was rejected (Ex. A. 5. a, dated 29-5-1945). On 3-12-1945 he issued a notice to the Government u/s 80, Civil P. C. and filed a suit in the

District Court on 7-2-1946 (O.S. No. 7 of 1945) praying that the Government may be directed to specifically perform the agreement to lease by

executing and registering a mining lease for at least a period of five years from 14-8-1944 in respect of the area covered by the prospecting licence

in his favour. He also claimed from the Government and Nimbkar or either of them a sum of Rs. 20,000 or such other sum as the Court may

determine, by way of damages and mesne profits and also future profits from the date of plaint till the date of delivery of possession.

6. In the plaint the appellant based his claim on two grounds. One was that under the provision contained in para. 4 of the prospecting licence in

his favour he was entitled as of right to a mining lease. The other was that the communication from the Collector enquiring whether the appellant

was willing to accept a lease for a period of five years and his reply constituted an offer and acceptance and, therefore, there was a completed

contract. The learned District Judge held that the suit was not maintainable by the appellant who was a mere licensee and that there was no

contract between him and the Government for the grant of a mining lease for five years. He, therefore, dismissed the suit. A. S. No. 792 of 1943 is

the appeal from this suit.

7. Mr. Shama Rao, learned counsel for the appellant, did not seriously press before us the second, of the two grounds on which the plaint was

based, and we think, very rightly. In no sense was there an offer by the Government to grant a lease. The Government were only enquiring from

both the applicants whether they would be willing to have a lease for a shorter period than what they had asked for. Pressed to its logical

conclusion the result of accepting the appellants contention would be that there would be two concluded contracts between the Government on the

one hand and the appellant and Nimbkar respectively on the other in respect of the same area.

8. The main question which falls to be decided in this appeal is whether the appellant is entitled to any right enforceable to a Court of law under any

of the provisions of the prospecting licence in his favour. The licence contains covenants by the licensee, the powers of the Government and the

rights of the licensee. Appellant relies on para. 4 (1) and (2) which runs as follows:

1. During the subsistence of this licence the licensee shall have the right subject to compliance with the said rules to a mining lease in accordance

with the said rule in respect of Red Oxide of iron over so much Of the said land as the licensee may desire and the Governor shall think fit to grant

and to the first offer such mining lease in respect of precious stones within the said lands as the Governor may think fit to grant.

2. If during the term hereby granted the licensee shall apply in accordance with the said rules a mining lease of the said lands or any part thereof

this licence shall upon the expiration by efflux of time of the term hereby granted if the licensee shall by notice in writing to the Collector so require

be extended for a further term to end either on the date on which such lease shall be granted or on such other date as the Collector shall in his

discretion prescribe"".

The appellant's contention is that under para. 4 (1) he has a right to obtain a mining lease as he has complied with the relevant mining rules; he is

also entitled, till the grant of a regular licence, to the extension of the term of his prospecting licence under para. 4 (2),

9. The contention on behalf of the Government and Nimbkar is two-fold. They plead firstly that the appellant has not complied with some of the

relevant rules and secondly that even if the appellant is aggrieved as regards any of his alleged rights under the licence, his only remedy is to refer

the question to the Governor whose decision is final and binding on the parties, as provided by para. 5 of the licence. That paragraph in so far as it

is material for this case is as follows: ""If and whenever any dispute or question shall arise regarding the construction, meaning or effect of these

presents or the rights, powers, liabilities or duties of the licensee hereunder or as to the amount of payment of any royalty or other money payable

by virtue hereof or otherwise however in relation to these presents such dispute or question shall be referred to the Governor whose decision

thereon shall be final and binding on the parties hereto"". The defaults on the part of the appellant alleged by the respondents are (1) the failure to

deposit a security of Rs. 500 along with his application for a mining lease, and (2) his failure to do any prospecting work during the period of the

prospecting licences in his favour. Rule 36 provides that with the application for the grant of a mining lease the applicant shall deposit as security in

respect of the preliminary expenses such sum not exceeding Rs. 500 as the Collector may determine, or with the Collector's permission give

security to the like amount to the satisfaction of the Collector. If the application relates to an area for which the applicant holds a prospecting

licence, any amount held in deposit in respect of such prospecting licence will be carried to his account. The appellant did hold a prospecting

licence and had deposited a sum of Rs. 100 in respect of it. That would be carried to his account under this rule. We think that the appellant would

be under an obligation to deposit further amounts only if the Collector determined a sum to be deposited in excess of Rs. 100 already held in

deposit on appellant's account. There is no substance in this objection.

10. There is, however, more substance in the other objection, namely, that the appellant failed to do any prospecting work. This is a matter of

admission on the part of the appellant. Under Rule 38-A the Collector, on receipt of an application for the grant of a mining lease is bound to

initiate enquiries to satisfy himself (a) that the applicant is a suitable person to hold a mining concession, (b) that he intends to undertake operations

immediately and (c) that he is not a mere speculator who wants to keep the other applicants out. The Collector in his report, already referred to

earlier in this judgment, in unequivocal terms expressed his satisfaction that the appellant was a speculator who wanted to keep the other applicant

put and who had no real intention of undertaking operations. It may, therefore, be said that the appellant was not on this account entitled as of right

to a mining lease.

11. There is also considerable force in the contention on behalf of the respondents that para. 5 precludes the appellant from resorting to any

remedy except that provided therein. As the only right which the appellant claims is a right under para. 4 (1) of the licence, it may be said that the

question which has arisen is regarding the construction, meaning and effect of the licence and the rights of the licences thereunder. Mr. Shama Rao,

learned counsel for the appellant tried to escape from the mischief of this provision by contending that the provision was in the nature of an

arbitration clause, and the respondents, if they wanted to rely upon it as such, had to follow the proper procedure, namely, they should have

applied for a stay of the suit and made a reference to arbitration. He also

contended that the clause should be held to be null and void as it virtually made one of the parties to a dispute the sole arbiter of the dispute. No one can be a judge in his own cause, he urged. We do not think that the clause relied upon by the respondents is in the nature of an arbitration clause, though the provision contained in the proviso to that paragraph is certainly in the nature of an arbitration clause. As for the other objection, the reply is that such rights as the appellant seeks to enforce are rights which he claims under the licence which he has accepted & he must be bound by the provisions of that licence. Actually we find that the appellant has resorted to the remedy provided in paragraph V of the licence. He has filed a petition to the Governor and that has been rejected. He cannot have any further remedy under the licence.

12. Apart from these objections there is one more formidable objection to the maintainability of the suit. The grant of prospecting licences and mining leases is regulated by rules made by the Government of India. These rules are really in the nature of administrative instructions for the guidance of revenue authorities who are entrusted with the grant of the licences and the leases. These rules do not confer rights enforceable in a Court of law, nor can the infringement of any of the rules give rise to a cause of action on which) an action can be founded. It is true that once a grant has been made either of a licence or of a lease validly and in accordance with the rules by the competent authority, i.e. either by the Government or by such authority to whom the Government may delegate their powers, then such a grant may be binding on the Government and confer rights on the grantee. But no one has an absolute right to obtain a licence or a lease which can be enforced against the Government in a civil Court.

13. These rules are similar in their scope and application to the Darkhast rules. Both relate to the grant of rights and privileges as regards lands in which the state has full rights of ownership & power of disposal. It has been consistently held that the Darkhast rules do not by themselves confer any rights on any one to claim and obtain a grant of land on Darkhast. As early as 1876 Holloway J. expressed the opinion that these rules do not constitute rights enforceable in a Court of law -- "Fakir Muhammad v. Thirumalachariar", 1 Mad. 205 (A). The decision in --"Subbaraya v. Sub

Collector, Chingleput", 6 Mad. 303 (B) takes the same view. In that case though certain mirasidars of a village were entitled to claim the benefit of

a preference under the Darkhast rules, it was held a civil Court could not compel the revenue authorities to grant a patta to the mirasidars in

preference to strangers. They had a preferential claim under the Darkhast rules, but the revenue authorities had an uncontrolled discretion.

Bhashyam Aiyangar J. in -- "Secy. of State v. Kasturi Reddi", 26 Mad. 268 (C), drew a distinction between the enforcement by a private person

of a claim based on an actual grant by an officer on behalf of the Crown and the enforcement of a claim to obtain a grant from the State based on

rules relating to Darkhast. The learned Judge observed:

It may be that no one can advance in a civil Court any claim against the Crown or any one claiming under it, to the grant to him, under the

darkhast rules, of land for which he has applied to the Revenue authorities under those rules -- ("Subbaraya v. Sub Collector, Chingleput", 6 Mad.

303).... But when a person claims that a grant has been made to him by an officer on behalf of the Crown, the mere fact that the alleged grant

purports to have been made under the darkhast rules does not affect the jurisdiction of civil Courts to determine whether a grant has been made

which would bind the Crown or anyone claiming under it subsequent to such grant. -- "(The Collector of Salem v. Rangappa", 12 Mad. 404.)

See also the observations of Bhashyam Aiyangar J. in -- "Sappani Asari v. Collector Coimbatore", 26 Mad. 742 (D). In -- "Muthuveera Pandyan

v. Secy. of State", 30 Mad 270 (E) it was held that the propriety of a decision of a darkhast authority acting within the scope of its powers cannot

be a subject of investigation by the civil Courts. The question whether a Revenue officer acting within the scope of his authority did or did not

adhere to the prescribed rules cannot be investigated by a civil Court. Milter J. who agreed with Benson J. in that case said: ""The Deputy Collector

was undoubtedly acting within the scope of his authority in hearing and determining the appeals; and in my opinion the civil Courts have no power

to investigate the question whether his decision of the appeal was one which he could or could not have arrived at by strictly following the rules laid

down for the guidance of officers in disposing of applications for waste lands"".

Applying this principle to the facts of the present case, it follows that the Board

of Revenue to whom the power of granting mining leases had been delegated were acting within the scope of their authority in considering the applications of the appellant and Nimbkar. They had the power and Jurisdiction to decide to whom the lease should be granted. Even if their decision may not be strictly according to the mining rules, a civil Court cannot set aside their decision on that ground. The appellant cannot, therefore, maintain the suit, and it was rightly dismissed. The appeal is also dismissed with costs.

14. We cannot, however, support the lower Courts' award of compensatory costs to the Government and Nimbkar separately in addition to the award of ordinary costs, two sets. The award of compensatory costs is now governed by Section 35-A Civil P. C. It is intended to deal with exceptional cases in which the exercise of the ordinary discretion u/s 35 would not afford a sufficient compensation. So, before awarding compensatory costs the Court should satisfy itself that the claim was false or vexatious to the knowledge of the appellant and that the interests of justice require compensatory costs to be awarded. We are unable to agree with the learned Judge that the claim of the appellant can be said to be false or vexatious to his knowledge. The appellant might have thought that the provision in para. 4 (1) of the prospecting licence in his favour conferred a right on him to obtain a mining lease. It may be that this contention of his has been found to be untenable. But, on that ground, it cannot be said to be false or vexatious. We set aside the decree of the Court below in so far as it awards compensatory costs to the Government and Nimbkar. The award of ordinary costs of the suit will, of course, stand.

15. The learned Judge also dismissed the other suit filed by the appellant, from which A. S. No. 793 of 1948 has arisen, to recover from Nimbkar the value of the ore alleged to have been dug and removed by him from the area covered by the prospecting licence in the appellant's favour. He held that the appellant had not proved any trespass on his land or that he has suffered any damage. Now, it is clear that the only substantial question which arises in the suit is whether the pits from which Nimbkar dug the ore in dispute were situated within the area covered by the prospecting licence in favour of the appellant. If that question were to be decided in favour of the appellant, he would certainly be entitled to relief.

Equally, if the finding on that issue was against the appellant, the suit must fail. Learned counsel for the respondent, Nimbkar, was unable to point

to us a considered finding of the learned District Judge on this issue. In paras. 7 and 8 the learned Judge no doubt referred to some of the

documentary evidence relating to this issue. But he did not attempt to solve what he calls the "survey tangle". He referred to the Government

solving the tangle by the grant of a licence of a further 114 acres in S. No. 326 of Janikunta to Nimbkar. But that was subsequent to the period

with which we are concerned in this suit and cannot obviate the necessity of finding whether the pits worked by Nimbkar were situated in the area

covered by the appellant's prospecting licence. As we have decided to remand the suit for fresh and satisfactory disposal, we do not wish to say

anything on the merits. However, we must say in justification of this course that it appears to us that something can be said in favour of the

appellant. There is evidence to show that the officers of the Government, on investigation and enquiry, came to the conclusion that the disputed

area really fell within the ambit of the appellant's licence. No doubt, this opinion of the officers of the Government is not conclusive of the matter.

We have only mentioned it to show that the learned Judge was not warranted in brushing aside the appellant's case without fully discussing the

evidence adduced on the point.

16. We allow Appln. No. 793 of 1948 and set aside the decree of the District Judge dismissing the suit. The suit will be remanded to the District

Court of Bellary to be tried and disposed of in accordance with law. The appellant will be entitled to a refund of the court-fee paid on the

memorandum of appeal. The costs of this appeal will abide the result of the suit.