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Kumar Brick Works and Another Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jul-24-2000

Reported in : 2000(4)AWC2853

Judge : Palok Basu and ;R.K. Agrawal, JJ.

Acts : Mines and Minerals (Regulation and Development) Act, 1957 - Sections 4; Uttar Pradesh Minor Minerals (Concession) Rules, 1963 - Rule 3; Aircraft Act, 1934 - Sections 5 (2); Aircraft Rules, 1937 - Rule 81B; Constitution of India - Article 14, 19 (1) and 226

Appeal No. : C.M.W.P. No. 8562 of 1998

Appellant : Kumar Brick Works and Another

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : N.D. Kesari, Adv.

Judgement :

R. K. Agrawal, J.

1. The petitioner, Kumar Brick Works through its partner Sri Laxman Das and Laxman Das himself, have filed this petition for quashing the directions contained

in the letter dated 7.2.1998 issued by the prescribed authority, Mines and Minerals, Barellly, respondent No. 2 (Annexure-11 to the writ petition) and the letter dated 16.2.1998, issued by the Mining Inspector, Office of the Additional District Magistrate (Finance and Revenue) Mining Section, Bareilly, respondent No. 3 (Annexure-12 to the writ petition). The petitioners have further prayed for issuing direction to the respondent Nos. 2 and 3 for not causing any interference in the smooth preparation of the brick over plot No. 302 and in operating the brick kiln in village Ghanghora Ghanghori and also not to stop the minor mining and preparation ofbrick and further to renew the permit of the petitioners for the said purpose for the coming financial year on payment of royalty and fee.

2. The petitioner No. 1, Kumar Brick Work is the partnership firm and the petitioner No. 2 is one of its partners. Kumar Brick Works is engaged in the business of manufacture and sale of bricks. It was established sometimes in the year 1996 and carries on manufacturing activities in the village Ghanghora Ghanghori, police station Bhojipura district Barellly. The petitioners claim to have purchased the clay of plot No. 302, which is situate in village Rahpara Karim Bux at the border of the village Ghanghora Ghanghori. It is averred by the petitioners that they had applied for licence for running the brick-kiln in village Ghanghora Ghanghori to the concerned Zila Panchayat. The petitioners deposited the necessary licence fee for running two chiminies for brick-kiln for the years 1996-97, 1997-98 and 1998 99 after the permission for running the brick-kiln was granted. The petitioners also deposited the necessary fee for grant of permit to use clay for manufacture of bricks with respondent No. 2. After enquiry, the respondent No. 2 granted Mining Permit to the petitioner to prepare bricks from the clay of plot No. 302. The petitioners had deposited the amount of royalty, demanded by the respondent No. 2 also. The licence and permit granted by the respondent No. 2 was valid upto March 31. 1998, whereas the licence granted by the Zila Panchayat for running the brick-kiln was valid upto March 31, 1999. It is claimed by the petitioners that they had also taken consent to run the brick-kiln from the Divisional Officer, Pollution Control Board. The petitioners allege that the respondent Nos. 2 and 3 started causing interference in the smooth functioning of the petitioners in the preparation of the bricks over the plot mentioned above on one pretext or another. The respondent No. 2 wrote a letter on February 7, 1998, directing the respondent

No. 3 to lodge a first information report against the petitioners forpreparation of bricks over plot No. 302 as he had not complied with the order to stop the preparation of the bricks. The respondent No. 3 in compliance of the said letter dated 17.2.1998 sent a letter dated 16.2.1998 to the Station Officer Police Station, Bhojipura for lodging a first information report against the petitioners for violation of Section 4 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the Act) and Rule 3 of the U. P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as the rules).

3. In the counter-affidavit filed by Janardan Prasad Dwivedi, Mines Inspector, Office of the District Magistrate, Bareilly, on behalf of the respondents, it has been denied that any permit has been issued to Kumar Brick Works, Ghanghora Ghanghori and in fact the petitioners have interpolated the words Ghanghora Ghanghori in the copy of the challan by which they had deposited Rs. 20,400 (filed as Annexure-5 to the writ petition) the village Ghanghora Ghanghori has been written subsequently and, thus, they had tried to mislead the Court. Since no royalty had been deposited by the petitioners for carrying on the mining activities in the village Ghanghora Ghanghori, the notice was issued for depositing the amount of royalty. It has further been stated that in the year 1992, the District Magistrate. Bareilly, had passed an order prohibiting the establishment of any new brick-kiln within the radius of 10 Kms. from the Air Force Station, Bareilly, and, therefore, there is no question of issuing any permit to any new brick-kiln in the village Ghanghora Ghanghori. It has further been stated in para 6 of the said counter-affidavit that the permit had been issued to the petitioners to operate brick-kiln in the village Bhojipura. In para 8 of the counter-affidavit, it has been stated that since the petitioners were operating their brick-kiln illegally within the prohibited area without any permit or licence, the respondents are fully justified in taking action against them. It has also been stated in para10 of the counter-affidavit that under Rule 81B of the Air Craft Rules, 1937 framed under the provisions of the Air Craft Act, 1934, there is prohibition for depositing the rubbish, filth and other polluted and obnoxious matters within radius of 10 Kms. from the aerodrome reference point.

4. In the rejoinder-affidavit filed by Laxman Das one of the partners, it has been denied that the name of the village Ghanghora Ghanghori was added subsequently in the challan submitted for the grant of licence. It has further been stated that there is no law prohibiting for grant of permit to the brick-kiln within the radius of 10 Kms. from the Air Port. In para 5 of the supplementary-affidavit filed by Khem Chand, one of the partners of the petitioner No. 1. It has been stated that previously the brick-kiln of the petitioners was situated in the village Piparsana, Bhojlpura and they had been paying royalty for grant of permit to run brick-kiln. However, after the close of brick-kiln at village Piparsana the petitioners deposited royalty to run the brick-kiln at village Ghanghora Ghanghori, and the clerk who had been filling the form committed clerical mistake and gave the address of the brick-kiln of village Piparsana which was got corrected immediately when the mistake was pointed out to him. It is further stated that the carbon paper was not utilised to correct the duplicate copy of the application form. In para 2 of the supplementary-affidavit, it has been stated that at least 28 brick-kilns are working within the radius of 10 Kms. of the Aerodrome and all of them have been granted licence to run the same. The petitioners have also filed copy of the permit granted to one Shanker Brick Field in the village Ghanghora Ghanghori to run the brick-kiln.

5. We have heard Shri N. D. Kesari, learned counsel for the petitioners and the learned standing counsel for the respondents.

6. The learned counsel for the petitioners submitted that the petitioners having applied for grant of permit to run its brick-kiln at village Ghanghora Ghanghori and havingdeposited the amount of royalty, it was not open to the respondents to treat the running of the brick-kiln of the petitioners as illegal and to file a first information report against the petitioners. He further submitted that the provisions of the Aircraft Act, 1934, are not at all applicable in the present case.

7. The learned counsel for the petitioner submitted that the order passed by the District Magistrate, Bareilly prohibiting the establishment of the new brick-kiln within the radius of 10 Kms. from the Air Force Station imposes unreasonable restriction on the petitioners' right to carry on the business and is, therefore, violative of Article 19(1)(g) of the Constitution of India.

8. In this connection, it may be mentioned that the District Magistrate had passed the order in the year 1992 prohibiting the establishment of new brick-kiln within the radius of 10 Kms. from the Air Force Station under the provisions of Rule 81B of the Aircraft Rules, 1937 (in short referred to as the 1937 Rules). The said rules have been framed under Section (5) (2) (q) of the Aircraft Act, 1934. Rule 81B of the 1937 Rules, prohibits any person from depositing rubbish and other polluted or obnoxious matter within a radius of 10 Kms. from the aerodrome reference point. Section 81B of the Rules 1937 reads as follows :

81B. Prohibition of slaughtering and flaying of animals, depositing of rubbish and other polluted or obnoxious matter in the vicinity of aerodromes.--No person shall slaughter or flay or any animal or deposit or drop any rubbish, filth, garbage or any other polluted or obnoxious matter including such material from hotels, meat shops, fish shops and bone-processing mills which attracts or is likely to attract vultures or other birds and animals, within a radius of ten kilometres from the aerodrome reference point :

Provided that the Director General or a Deputy Director General of Civil Aviation may, if he is satisfied that proper and adequate arrangements have been made by the owners of hotels, meat shops, fish shops and bone-processing mills so as to prevent attraction of vultures or other birds and animals, having regard to the vicinity of place of slaughter from the aerodrome, arrangements for disposal or deposit of carcass, rubbish and other polluted and obnoxious matter, grant permission in writing for the purpose.

9. The District Magistrate is empowered to pass prohibitory order restraining any person to deposit any rubbish, filth, garbage or any other polluted or obnoxious matter within the radius of 10 Kms. from the Aerodrome. There cannot be any two opinion on the question that the moving chimney brick-kilns are highly polluting in nature as has been held by the Hon'ble Supreme Court in the case of M. C. Mehta v. Union of India and others : (1998)9SCC149 . It is not the case of the petitioners that they have installed fixed chimney clay brick kiln or they are making the bricks by using flyash-sand lime technology in which the pollution is almost negligible. The moving chimney brick-kilns being highly polluting in nature, it is but natural

that the polluted materials would be deposited at the site of brick-kilns. It is also not in dispute that the brick-kilns of the petitioners which is situated at the village Ghanghora Ghanghori falls within the radius of 10 Kms. from the Air Force Station. Thus, the prohibition Imposed by the District Magistrate for establishment of new brick-kilns within the radius of 10 Kms. from the Air Force Station is in accordance with law and cannot be said to be unreasonable restriction so as to violate the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India.

10. Shri N. D. Kesari, learned counsel for the petitioners, then submitted that the mining permits have been granted by the respondentNo. 2 to about 28 brick-kilns which are situated in the village Ghanghora Ghanghori and refusal by the respondent No. 2 to grant permit to the petitioners to do mining of clay amounts to hostile discrimination and is violative of fundamental rights of the petitioners envisaged under Article 14 of the Constitution of India.

11. The submission of the learned counsel for the petitioners has no force in as much as it has not been stated by the petitioners that the said 28 brick-kilns are new brick-kilns in the village in question after the year 1992. No material has been brought on record to prove that 28 brick-kilns have been established after 1992, i.e., to say, after the District Magistrate had passed the order prohibiting the establishment of new brick-kilns within the radius of 10 Kms. from the Air Force Station. Admittedly, the petitioners were running brick-kilns in the village Piparsana, Bhojipura and only in the year 1997-98 they wanted to establish their brick-kilns at village Ghanghora Ghanghori. The authorities, therefore, have rightly not Issued the permits for mining the clay.

12. So far as the contention of the learned counsel for the petitioners that the District Magistrate had issued the notice dated 31.7.1997 calling upon the petitioner to deposit royalty amount of Rs. 20,400 in the years 1996-97 and 1997-98 is concerned, the authorities are wholly justified in demanding the royalty even in a case where the mining is done illegally without any permit or valid lease.

13. The learned standing counsel, on the other hand submitted, that the petitioners had not applied for grant of permit in the village Ghanghora Ghanghori and had interpolated the challan by adding village Ghanghora Ghanghori subsequently. No

permit has been issued to the petitioners to run its brick-kiln in the village Ghanghora Ghanghori and, therefore, the activities were wholly illegal and in violation of Section 4 of the Act and Rule 3 of the rules. He further submitted that the District Magistrate has passed an order prohibiting theestablishment of new brick-kiln within a radius of 10 Kms. from the Air Force Station Bareilly as far back in the year 1992 and there is no material on record to show that any new brick-kiln has been established within the aforesaid prohibited area after 1992. He submitted that the order passed by the respondents closing the brick-kiln of the petitioners and lodging a first information report for violation of Section 4 of the Act and Rule 3 of the Rules is perfectly in accordance with law and calls for no interference by this Court under Article 226 of the Constitution of India.

14. It is not disputed that the brick-kiln of the petitioner No. 1 was previously situated at the village Piparsana. The petitioner had deposited the royalty of Rs. 20,400 for the year 1997-98 and had mentioned the name and address under column in whose behalf the amount is being deposited as 'M/s. Kumar Bricks Works Bhojipura (Piparsana),' as per Annexure-5 to the writ petition. The word Ghanghora Ghanghori had been added subsequently as would be clear from the copy of the challan filed as Annexure-5 to the writ petition. If the amount of royalty was deposited for the brick-kiln situated at Ghanghora Ghanghori, then in the challan the same would have been mentioned immediately after the name of the petitioner No. 1 and not after giving complete address of the petitioner No. 1. Thus, from the perusal of the Annexure-5 it is clearly established that the petitioners had not applied for grant of permit for the brick-kiln situated at the village Ghanghora Ghanghori and the amount of royalty deposited by the petitioners was in respect of brick-kiln situated at the village Piparsana. Thus, the mining activities carried on by the petitioners for manufacture of bricks in village Ghanghora Ghanghori was wholly illegal and without any permit. The respondent Nos. 2 and 3 were fully justified in taking action to stop the running of brick-kiln by the petitioners at village Ghanghora Ghanghori and for issuing directions for lodging the first information report against them for violation ofSection 4 of the Act and Rule 3 of the Rules.

15. In view of the aforesaiddiscussions, we do not find any merit in this writ petition and it is dismissed.

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