

S.N. Sundersen and Co. Vs. State of Madhya Pradesh and anr.

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Court : Madhya Pradesh

Decided On : Jan-15-1963

Reported in : AIR1963MP213

Judge : P.V. Dixit, C.J. and ;K.L. Pandey, J.

Acts : Mines and Minerals (Regulation and Development) Act, 1957 - Sections 4(2) and 13; Minerals Concession Rules, 1960 - Rule 27(1); Mineral Concession Rules, 1949 - Rule 41(1); [Constitution of India](#) - Article 246; Madhya Pradesh Land Revenue Code, 1959 - Sections 247 and 247(4)

Appeal No. : Misc. Petn. No. 213 of 1962

Appellant : S.N. Sundersen and Co.

Respondent : State of Madhya Pradesh and anr.

Advocate for Def. : R.J. Bhave, Govt. Adv.

Advocate for Pet/Ap. : R.S. Dabir and ;R.P. Sinha, Adv.

Disposition : Petition allowed

Judgement :

Pandey, J.

1. This is a petition under Article 226 of the Constitution by the holder of a mining concession for a writ of certiorari and such other writ or order as this Court may consider appropriate. It is mainly directed against an order dated 4 January 1962 whereby the Sub-Divisional Officer, Katni (respondent 2), directed the petitioner to pay Rs. 2,570/- as compensation for the surface of 11.35 acres of land before commencing the mining operations.

2. By a provisional agreement dated 26 December 1960, the petitioner was allowed to extract and remove fire-clay from 58.05 acres of land of village Jharela, tahsil Murwara, as therein specified. One of the terms of that agreement is that the petitioner shall observe and conform to the requirements of the Mineral Concession Rules, 1949. On 17 April 1961, the petitioner applied for permission to commence the mining operations over 11.35 acres of the land. The respondent 2, by his order dated 29 May 1961, overruled the petitioner's contention that, under Section 247(4) of the Madhya Pradesh Land Revenue Code, 1959, it was not liable to pay any compensation for the land which was grass land owned by the State Government. Subsequently, by the impugned order dated 4 January 1962, the respondent 2 determined the compensation to be Rs. 2,570/- on the basis of the market-value of the land and directed the petitioner to pay the amount. Being aggrieved, and having paid the amount under protest, the petitioner has moved this Court.

3. Before us, the direction to pay Rs. 2,570/- as compensation has been challenged as an illegal exaction not sanctioned by the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter called the Act), and Section 247 of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter called the Code). In our opinion, this contention is, as we would show in the sequel, well-founded and must be accepted.

4. Under the general law, it is well-established, that a grantor cannot derogate from his own grant. It follows from this principle that one, who grants a thing, is presumed to grant everything which is necessary for the enjoyment of the thing granted. Applying this principle to a mineral concession, there is an implied grant of all rights accessory for the full enjoyment of the right to take away minerals. So,

in *Haripada Bandopadhyaya v. Equitable Coal Co., Ltd.*, AIR 1923 Cal 335, a Division Bench of the Calcutta High Court stated:

'So far as the second point is concerned, it is settled law that a right of using the surface to which the mine owner may be entitled by implication is confined to such things as are reasonably and strictly necessary for the convenient working of the mines'.

In view of this legal position, the State Government cannot require the petitioner to pay any compensation for using the surface area of the land strictly for the purposes of the mine unless there be any provision to the contrary either in the statute governing the matter or in the agreement itself. As we would show in a moment, the matter is specifically covered by the agreement.

5. Sub-section (2) of Section 4 of the Act is as under:

'No prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder'

The relevant Rule 27(1)(d) of the Mineral Concession Rules, 1960, framed under Section 13 of the Act reads: '

'27(1). Every mining lease shall be subject to the following conditions and such conditions shall be incorporated in every mining lease:

..... (d) the lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent and water rate at such rate, not exceeding the land revenue, water rate and cesses assessable on the land, as may be specified by the State Government in the lease;'

This corresponds to Rule 41(1)(iv) of the Mineral Concession Rules, 1949, which have been specifically mentioned in the agreement dated 26 December 1960. That Rule reads:

'41(1). Every mining lease shall include the following conditions:

..... (iv) The lessee shall also, pay, for the surface area used by him for the purposes of the mine, surface rent at such rate, not exceeding the land revenue and cesses assessable on the land, as may be specified by the State Government in the lease.'

From the Rule reproduced above, it is plain that, for the surface area, which the petitioner may use for the mine, compensation payable cannot exceed the land revenue and cesses assessable on such land. Since, by the terms of the agreement, the petitioner is required, and he had expressly undertaken, to pay surface rent in accordance with this Rule, he could not have been called upon to pay any other compensation for the use of the surface of the land for the purposes of the mine. To require it so to do is not only contrary to the terms of the agreement, but it also amounts in effect to importing a condition prohibited by Section 4(2) of the Act reproduced above.

6. It is, however, urged that Rule 27(1)(d) of the Mineral Concession Rules, 1960 and the corresponding Rule 41(1)(iv) of the old Rules, which affect the rights of the State Government over 'land' as specified in Entry 18 of List II of the Constitution, could not be framed under the Statutory power to make rules for regulating the grant of mining leases generally and, in so far as the statutory provision authorises the making of such rules, it should be regarded as an unpermissible legislative encroachment on a field reserved to the State by Article 246(3) of the Constitution. In this connection, it is argued on the authority of *Bhupendra Narayan v. Rajeshwar Prosad*, 58 Ind App 228: (AIR 1931 PC 162) that, where minerals are involved, the surface of the land should be distinguished and treated on a different footing from the mineral-bearing strata of the soil. We are unable to accept this contention. The relevant entry empowering the Parliament to enact the Act is Entry 54 of List I of the Constitution, which is:

'Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest,'

The impugned rule has been framed under the statutory power conferred by the Act on the Central Government to make rules for regulating the grant of mining

leases generally. The Rule provides for payment of compensation for the use of the surface area 'for the purposes of the mine' or, as the 1960 Rule says, 'for the purposes of mining operations'. It is not a rule providing for compensation for land generally but is restricted to compensation payable for the surface area only in so far as it is used for the purposes of the mine. When the legislative competence of the Parliament to enact a law, which empowers the making of such a rule, is challenged on the ground that it encroaches on a field, covered by the State List, the doctrine of pith and substance is the usual test applied. In *Atiabari Tea Co., Ltd v. State of Assam*, 1961-1 SCR 809: (AIR 1961 SC 232) Gajendragadkar, J. speaking for the majority, observed:

'These observations would indicate that the test of pith and substance is generally and more appropriately applied when a dispute arises as to the legislative competence of the Legislature, and it has to be resolved by reference to the entries to which the impugned legislation is relatable. When there is a conflict between two entries in the legislative lists, and legislation by reference to one entry would be competent but not by reference to the other, the doctrine of pith and substance is invoked for the purpose of determining the true nature and character of the legislation in question (Vide: *Prafulla Kumar v. Bank of Commerce Ltd., Khulna*, 74 Ind App 23: (AIR 1947 PC 60) and *Subrahmanyam Chettiar v. Muttuswami Goundan*, 1940 FCR 188: (AIR 1941 FC 47)).' (Pages 865-6 (of SCR): (at p. 256 of AIR)).

As already indicated; the rule, in substance and effect, provides for compensation for mining operations carried on over the surface area of land. That being so, it is clearly within the expression 'regulation of mines and mineral development' occurring in Entry 54 of List I. No doubt, to some extent, it trenches upon the field covered by 'land' in Entry 18 of List II, but this is merely incidental and ancillary to the purpose or the object of the Act which is the regulation of mines and the development of minerals. If the rule, while subserving the purpose of the Act, incidentally affects a matter outside its authorised sphere, it cannot be regarded as bad. In *Edward Mills Co. Ltd. Beawar v. State of Ajmer*, 1955-1 SCR 735: ((S) AIR 1955 SC 25), the Supreme Court observed:

'As was said by O'Connor, J. himself in the above case (Baxter v Ah Way, (1909) 8 CLR 626), when a Legislature is given plenary power to legislate on a particular subject, there must also be an implied power to make laws incidental to the exercise of such power. It is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power.' (Page 749 (of SCR): (at p. 32 of AIR)).

In view of this position, we are unable to accept that the rule is not within the rule-making power conferred by the Act upon the Central Government.

7. We are also of opinion that the State Government cannot claim under Sub-section (4) of Section 247 of the Code any compensation for the use of the surface area of the land owned by it. That sub-section reads:

'If, in the exercise of the right herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the Government or its assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall be calculated by the Sub-Divisional Officer, or, if his award is not accepted, by the Civil Court, as nearly as may be, in accordance with the provisions of the Land Acquisition Act, 1894 (1 of 1894).'

Since the compensation therein mentioned is payable by 'the Government or its assignee' to 'any persons' whose rights are infringed, we are of opinion that it does not contemplate payment of any compensation by the assignee to the State Government. It is argued that the expression 'any persons' should be regarded as including the State Government. We are unable to accept this construction because, in our opinion, the expression 'any persons' has been used in contradistinction to 'the Government or its assignee'. When the State Government works any mine and thereby it infringes the rights of any person over the surface area or when it undertakes to pay compensation for occupation or disturbance of the surface area, it has to pay compensation to the person whose rights are infringed. In other cases, the assignee has to pay compensation to such person. We also think the construction sought to be placed on Subsection (4) would do violence to the general principle we have mentioned in paragraph 4 above. We had occasion

to consider the scope of the provisions, which are reproduced in Section 247 of the Code, in two earlier cases: *Amalgamated Coalfields Ltd. v. Board of Revenue*, M. P., 1962 MPLJ 14 and *Amalgamated Coalfields Ltd. v. Collector, Chhindwara*, M. P. No. 135 of 1962, D/- 29-8-1962 (MP). In the first case, we observed:

'Since this right of access to, and where necessary occupation of, land for mining or quarrying was likely to infringe the right of the owner of the surface, who might be a different person, neither the Government owning the underground minerals nor its assignee could occupy or disturb the surface without compensation payable to the owner of the surface as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1894'.

In the second case, we stated:

'Sub-section (4) speaks about certain consequences of 'the exercise of the right herein referred to over any land.' The land envisaged by this sub-section and the next is the land held by another person because compensation is required to be paid to him by the Government or the assignee and, without the previous sanction of the Collector, the assignee cannot 'enter on or occupy the surface' of the land unless the compensation has been determined and tendered to that person'.

Our conclusion is that Sub-section (4) of Section 247 of the Code could not be called in aid to require the petitioner to pay any compensation to the State Government for the surface of the land in question.

8. The result is that the petition succeeds and is allowed. The orders dated 29 May 1961 and 4 January 1962 are quashed. The respondents shall bear their own costs and pay those incurred by the petitioner to whom the security amount shall also be refunded. Hearing fee Rs. 75/-.