

Ramesh Kumar Vs. State of Raj. and ors.

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Court : Rajasthan

Decided On : Sep-23-1996

Reported in : 1997(1)WLC208; 1996WLC(Raj)UC324; 1996(2)WLN296

Judge : R.R. Yadav, J.

Appeal No. : S.B. Civil Writ Petition No. 5332 of 1990

Appellant : Ramesh Kumar

Respondent : State of Raj. and ors.

Advocate for Def. : Mr. R.L. Jangid

Disposition : Petition allowed

Judgement :

R.R. Yadav, J.

1. Instant writ petition has been filed by the petitioner for quashing the order dated 9.10.90 passed by Collector, Jaisalmer, Anx. 5 to the writ petition, in exercise of his power under Section 91 of Rajasthan Land Revenue Act imposing penalty for constructing house over lease land granted to him as envisaged under Section 89(7) of the said Act. He further sought a relief for quashing notice issued in consequence thereof for his appearance in his court by Tehsildar, Jaisalmer, Anx. 8 to the writ petition.

2. Brief facts leading up to filing of present writ petition are that the petitioner had applied for grant of mining lease for mineral masonry stone near village Badabagh Tehsil and District Jaisalmer for an area measuring 100 meters X 100 meters whereupon the Mining Engineer, Jodhpur granted a mining, lease. A lease was executed between State and the petitioner on 20.4.90, a copy whereof is filed alongwith writ petition and marked as Anx. 1.

3. A close scrutiny of terms and conditions stipulated in lease deed Anx. 1 to the writ petition reveal the liberties, powers and privileges of petitioner making him entitled in connection with any of the purposes mentioned in the lease deed to erect, construct, plant, dressing, floors, furnaces, coke ovens, brick kilns, workshops, stores, houses, bungalows, godowns, shed and other buildings and other works and conveniences of the like nature on or under the said land given to him on lease. An explanation under clause 3(ii)(b) is added in the lease-deed which reads thus:

3(ii)(b).--Permission for surface operation in a land not already in use:--before using for surface operation any land which has not already been used for such operations, the Lessee/Lesseees shall give to the Collector of the District two calendar months previous notice in writing specifying the situation and the extent of the land proposed to be so used and the purpose for which the same is required and the said land shall not be so used if objection is issued by the Collector within two months after receipt by him of such notice unless the objection so stated shall on reference to the Government be annuled or waived.

4. There are further stipulations in Sub-clause (14) of Clause 4 of the mining lease, Anx. 1 to the writ petition, which reads thus:

Building erected by the lessee--The lessee/lesseees may erect on the area granted to him/them any building required for bonafide mining purposes and such building shall be the property of the Government after expiry of the lease.

5. It is evident from the order passed by the respondent No. 2, Anx. 5 to the writ petition, that Tehsildar, Jaisalmer initiated proceedings under Section 91 of the Rajasthan Land Revenue Act read with Section 89 of the said Act against raising

of construction by petitioner over the lease land without permission of the Collector. It is evident from Anx. 5 to the writ petition that the Tehsildar, Jaisalmer in exercise of his power under Sub-section (7) of Section 89 of Rajasthan Land Revenue Act imposed penalty calculating the same at the rate of fifty times which on appeal before the Collector, Jaisalmer was reduced from fifty times to fifteen times.

6. I have heard the learned Counsel for the parties at length and perused the materials available on record critically.

7. An identical question came up for consideration before me in SB Civil Writ Petition No. 2857/1987 decided on 19.9.96, where in paragraph 10, it was held which reads thus:

10.--Argument of learned Counsel for respondent Mr. R.L. Jangid gives an impression as if the validity of short term permit/lease Anx. 1 granted to the petitioner cannot be upheld without disobeying the provisions contemplated under Sub-section (7) of Section 89 of the Rajasthan Land Revenue Act. Suffice it to say in this regard that the Rajasthan Land Revenue Act has been passed by the State Legislature while Act of 1957 has been passed by the Parliament. Assuming for sake of argument that the contention raised by Mr. R.L. Jangid, learned Counsel for respondent No. 1 is correct even then in case of inconsistency between the Rajasthan Land Revenue Act passed by the State Legislature and Act of 1957 passed by the Parliament, the latter would prevail over the former for the reason that the 'minerals' find place at item No. 54 of the Union List of Seventh Schedule, upon which, only Parliament has exclusive power under the Constitution of India to legislate upon and matters enumerated under the Union List are beyond the legislative competence of the State Legislature. Similarly, the Legislature of State has exclusive legislative power to enact upon the items enumerated under State List of Seventh Schedule of the Constitution. It is true that as regards concurrent list, Parliament as well as Legislature of States, both are competent to legislate upon the items enumerated thereunder subject to mandatory provisions contained under Article 254 of the Constitution.

8. It is argued by the learned Counsel for the petitioner Shri S.D. Vyas that the present controversy is squarely covered by the ratio decidendi of the decision rendered by me in case of Jeeva Ram (supra).

9. The aforesaid contention advanced on behalf of petitioner is refuted by learned Counsel for the respondents Shri L.M. Lodha inviting my attention towards Item No. 23 of State List of the Seventh Schedule of the Constitution. It is urged by Shri Lodha that decision rendered by me in case of Jeeva Ram (supra) requires reconsideration as said item No. 23 of State List escaped my notice.

10. It is true that while I was deciding the case of Jeeva Ram (supra), item No. 23 of the State List was not brought to my notice but in my considered opinion even if item No. 23 of the State List is taken into account it would not make any change in the law laid down, by me in case of Jeeva Ram (supra) for the reasons stated hereinbelow.

11. Mere look at the provisions of item No. 23 of State List of Seventh Schedule of the Constitution reveal that these provisions are made subject to the provisions of Union List of the aforesaid Schedule with respect to regulation and development under the control of the Union. The expression 'Union' used under item No. 23 of State List means Parliament. It is to be imbibed that under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred as Act No. 67 of 1957) the union has taken all the powers to itself and authorised State Governments to make rules for regulating leases for minor minerals. In pursuance of delegated power under Section 15 of Act No. 67 of 1957 the State has framed Rules known as Minor Minerals Concession Rules from time to time and now Minor Mineral Concession Rules, 1986 are in operation. Now whole of the field relating to minor minerals is occupied within the jurisdiction of Parliament and no scope is left for enactment of Section 89(7) of the Rajasthan Land Revenue Act for imposing penalty pertaining to minor minerals area for which lease has been granted to the petitioner under Minor Minerals Concession Rules, 1986 for extracting masonry stone.

12. I am fortified in taking the aforesaid view from a decision rendered by the Apex Court in case of Baij Nath Kedia v. The State of Bihar and Ors. reported in :

[1970]2SCR100 . The aforesaid plea of item No. 23 of State List was taken by State Government to defend the Constitutional vires of amended Section 10 of Bihar Reforms Act which was negated by their lordships of Supreme Court and amendment of Section 10 of the Bihar Reforms Act was held to be ultravires.

13. The present proceedings were initiated by Tehsildar under Section 91 of the Rajasthan Land Revenue Act treating the petitioner occupying the lease land as trespasser and in that proceeding imposed penalty fifty times without mentioning fifty times of dead rent or royalty while under Section 89(7) of the said Act penalty is to be calculated not exceeding a sum at the rate of fifty rupees per ton or fraction thereof, of the minerals so extracted or removed. In this regard suffice it to say that the petitioner who has obtained a lease on 20.4.90, Anx. 1 to the writ petition, cannot be said to be a trespasser and no such proceedings can be initiated against him. The provisions contained under Sections 91 and 89 of the Rajasthan Land Revenue Act are liable to be ignored in the present case for the reasons stated in the preceding paragraphs in the light of ratio decidendi propounded by Apex Court in case of Baij Nath (supra).

14. In the present case terms and conditions stipulated in explanation 3(ii)(b) of lease deed dated 20.4.90, Anx. 1 to the writ petition, quoted above, based on Sub-section (4) and Sub-section (5) of Section 89 of the Rajasthan Land Revenue Act passed by State Legislature are to be treated to be superficial and void conditions as field is already occupied by Section 15 and Section 19 of Act No. 67 of 1957 and no scope is left for enacting Section 89 and 91 of aforesaid Act for State Legislature about mining area allotted to the petitioner. It is to be noticed that Section 19 of Act No. 67 of 1957 clearly provides that any mining lease granted, renewed or acquired in contravention of the provisions of the said Act or any rules or orders made thereunder shall be void and of no effect.

15. I am conscious of the fact that under amended Rules of the Court only Division Bench can take cognizance to declare any enactment to be ultravires, therefore, I am not declaring Section 89 of Rajasthan Land Revenue Act as ultravires sitting singly but I am simply ignoring it on the basis of decision rendered by Apex Court in case of Baij Nath (supra).

16. In abundant caution, it is observed that the respondents are not going to suffer any prejudice because the constructions raised by the petitioner over lease land or any building erected by him on the lease area granted to him such building would automatically becomes the building of the State, after expiry of the lease as stipulated in Sub-clause (14) of Clause 4 of the Mining Lease Agreement, Anx. 1 to the writ petition.

17. It would be pertinent to observe that if the petitioner has raised any construction beyond his lease land measuring 100 meters x 100 meters then in such a situation Tehsildar, Jaisalmer would be at liberty to proceed afresh for his eviction as envisaged under Section 91 of the Rajasthan Land Revenue Act.

18. As a result of the aforementioned discussion, the instant writ petition is allowed and the order passed by the Collector, Jaisalmer, Anx. 5, and the notice for appearance issued from the court of Tehsildar, Jaisalmer in consequence thereof, are quashed and a writ of prohibition is issued to Tehsildar, Jaisalmer directing him not to proceed in case No. 499/90 in pursuance of the remand order passed by the Collector, Jaisalmer on 9.10.90. However, it is made clear that if the petitioner has raised any construction beyond his lease land measuring 100 meters x 100 meters then the Tehsildar, Jaisalmer would be at liberty to initiate a fresh proceeding for his ejectment as envisaged under Section 91 of the Rajasthan Land Revenue Act.