

Hundraj Mariwalla Vs. Additional District Magistrate (L.R.) and ors.

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Court : Kolkata

Decided On : Jul-18-1979

Reported in : AIR1980Cal3

Judge : Dipak Kumar Sen, J.

Acts : Mines and Minerals (Regulation and Development) Act, 1957 - Sections 3 and 15; ;West Bengal Minor Minerals Rules, 1973 - Rule 3

Appeal No. : C.R. Nos. 15218-15219(W) of 1975

Appellant : Hundraj Mariwalla

Respondent : Additional District Magistrate (L.R.) and ors.

Advocate for Def. : P.N. Palit, Adv.

Advocate for Pet/Ap. : Ramapati Ray, Adv.

Disposition : Application dismissed

Judgement :

ORDER

Dipak Kumar Sen, J.

1. Hundraj Mariwalla, the petitioner, herein carries on the business of manufacturing of bricks. For such manufacture the petitioner obtains ordinary

earth from 4.22 acres of land under different plots under different khatians in Mouza Kumrakhali, P.S. Sonarpur, Dist. 24-Parganas. In 1969 the petitioner obtained a permit from the Additional District Magistrate, 24-Parganas for digging and using earth from the said lands for manufacturing; bricks, which has since been successively renewed. The final renewal was up to the 31st March 1975. One of the terms of the said permit is as follows: --

'The Raiyat shall not himself, or permit any person to quarry or dig or use any earth or clay from his land except under a lease granted under the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957).'

2. On the 21st May 1971 the Additional District Magistrate served a notice on the petitioner directing him to take out a mining lease under the West Bengal Mines and Minerals Rules, 1959, within a month from the date of receipt of the said notice. The petitioner submitted a written objection thereto. Subsequently on the 2nd March 1974 the Additional District Magistrate again served another notice on the petitioner calling upon him to take out a mining lease under the West Bengal Mines and Minerals Rules, 1959 to which the petitioner again objected in writing. Finally, the Additional District Magistrate issued an order on the 7th May 1975 directing the petitioner to apply for a quarry permit under Rule 25 of the West Bengal Minor Minerals Rules, 1973 on or before the 20th May 1975. It was stated that on the petitioner's failing to comply with the order legal action will be taken against the petitioner. In the present application the petitioner has sought to impugn the said two notices dated the 21st May 1971 and the 2nd March 1974 as also the said order dated the 7th May 1975. The petitioner contends that he uses ordinary earth for the purpose of manufacture of bricks which is neither a mineral nor a minor mineral within the meaning of the Minor Minerals (Regulation and Development) Act, 1957 or of the West Bengal Minor Minerals Rules, 1973.

3. The petitioner's grounds for impugning the said two notices and the order are, inter alia, as follows:--

(a) Ordinary earth used for brick making does not come within the definition of minor minerals as laid down in Section 3(e) of the Mines & Mineral (Regulation and Development) Act, 1957;

(b) The Rules so far as they provide for taking out a licence and paying royalty for digging of ordinary earth are ultra vires the rule making power conferred by the Mines and Mineral (Regulation and Development) Act, 1957.

4. The present Rule was issued on the 4th August 1975 calling upon the respondents, namely, the Additional District Magistrate, 24-Parganas, the Junior Land Reforms Officer, Sonarpur; the Sub-Divisional Land Reforms Officer, Alipore and the State of West Bengal to show cause why appropriate Writs should not be issued directing them to forbear from giving effect to the said impugned notices and the order and commanding them to refrain from proceeding thereunder and for setting aside or quashing the same.

5. At the hearing, learned Advocate appearing for the petitioner has drawn my attention to the relevant provisions of the Mines and Minerals (Regulation and Development) Act, 1957 as follows:--

Section 3(a)-- 'Minerals' includes all minerals except mineral oils.

Section 3(e)-- 'Minor Minerals' means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral.

Section 15(1)-- The State Government may by notification in the Official Gazette make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

6. He also referred to the West Bengal Minor Minerals Rules, 1973 framed under the said Mines and Minerals (Regulation and Development) Act, 1957. Rule 3 of the said Rules provides as follows:--

Rule 3: In these rules unless the context otherwise requires--

(f) 'Mineral' means minor minerals as defined in clause (e) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957.

(i) 'Quarry Permit' means a permit granted under Chapter III of these rules to extract and remove any minor mineral in specified quantities from a specified area.

7. The learned Advocate for the petitioner cited a decision of this Court in *State of West Bengal v. Jagadamba Pra-sad Singh* reported in : AIR1969 Cal281 where it was held by a Division Bench that Schedule I of the Rules so far as it provided for taking out of a licence and paying royalty for digging up ordinary earth for brick making was ultra vires the rule making power in Section 15(1) of Mines and Minerals (Regulations and Development) Act, 1957. It was held that the expression 'minor minerals' included ordinary clay but did not include ordinary earth and ordinary clay and ordinary earth could not be equated.

8. This application is opposed on behalf of the respondents Nos. 1, 2, 3 & 4. An affidavit of the Junior Land Reforms Officer, Sonarpur Land Reforms Circle, affirmed on the 6th June 1979 has been filed in opposition to the petition. The learned Advocate appearing for the respondents has drawn my attention to a subsequent decision of this Court in *Sanat Kumar Burman v. Collector, Burdwan* reported in : AIR1979 Cal139 where a Single Bench of this Court followed a decision of the Supreme Court in *Banarasi Das Chadha & Bros. v. Lt. Governor, Delhi Adiminstration* reported in : [1979]1SCR271 . The Supreme Court held in that case that brick earth was to be treated as a minor mineral under the Mines and Minerals (Regulation and Development) Act, 1957 as the Central Government in exercise of powers conferred by Section 3(e) of the Mines and Minerals (Regulation and Development) Act, 1957 had by a notification No. G.S. Rule 436 dated the 1st June 1958 declared brick earth to be a minor mineral. The Supreme Court observed as follows:--

'In the context of the Mines & Minerals (Regulation and Development) Act, we have no doubt that the word 'mineral' is of sufficient amplitude to include brick earth. As already observed by us if the expression minor mineral as defined in the Act includes ordinary clay and ordinary sand, there is no earthly reason why brick earth should not be held to be any other mineral which may be declared as a minor mineral. We do not think it necessary to pursue the matter further except to say that this was the view taken in *Laddu Mal v. State of Bihar*, : AIR1965 Pat491 ;

Amar Singh Modilal v. State of Haryana, (FB) and Sharma & Co. v. State of U. P., : AIR1975 All386 . We do not agree with the view of the Calcutta High Court in the State of West Bengal v. Jagadamba Prasad Singh, : AIR1969 Cal281 because nobody speaks of 'ordinary earth' as a mineral, it is not a minor mineral as defined in the Mines and Minerals (Regulation and Development) Act.'

9. In the instant case, admittedly, the petitioner is quarrying earth and using the same for the purpose of manufacture of bricks. Such earth therefore is to be deemed to be brick earth. In that view of the matter such earth falls within the mischief of the notification issued by the Central Government on 1st June 1958 and has to be treated as minor mineral. In view of the decision of the Supreme Court in Banarasi Das Chaddha & Bros-(supra), the decision of this Court in Jagadamba Prasad (supra) cannot be held to be good law.

10. The learned Advocate appearing for the petitioner sought to distinguish between the expression 'ordinary earth' and 'brick earth', but in view of the actual user of the earth in question it appears that such distinction will make no difference in the dispute involved in the instant case. For the reasons above the petitioner is not entitled to succeed in this application. The Rule is discharged. Interim orders, if any, are vacated. There will be no order as to costs.