

M/s. Ropar Construction Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 2, 2013

Acts Referred: Constitution of India, 1950 " Article 14

Mines and Minerals (Development and Regulation) Act, 1957 " Section 15, 4(1)

Citation: (2013) 171 PLR 419

Hon'ble Judges: Rekha Mittal, J; Rajive Bhalla, J

Bench: Division Bench

Advocate: Gurcharan Dass, for the Appellant; Ashwani Talwar, Addl. A.G., Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Rajive Bhalla, J.

The petitioner prays for issuance of a writ of certiorari quashing demand notice dated 28.01.2008 (Annexure P-5),

orders passed on 28.05.2008 (Annexure P-7), 22.10.2008 (Annexure P-9), 10.08.2009 (Annexure P-11), Memo No. 237, dated 23.10.2012

(Annexure P-15) and notification dated 03.02.2000 (Annexure P-18), issued under the Punjab Minor Minerals Concession Rules, 1964

(hereinafter referred to as "the 1964 Rules") and under the Punjab Minerals (Vesting of Rights) Act, 1996 (hereinafter referred to as "the 1996

Act"). The petitioner, in essence, prays that the show cause notice and orders requiring the petitioner to pay royalty and price of minor mineral i.e.

ordinary earth excavated by the petitioner being illegal and void, may be quashed. The facts of the case that have led to the filing of the writ petition

are as follows:-

2. The petitioner was awarded a contract to construct an embankment of the Morinda-Khamano rail section in Punjab, relating to the Chandigarh-

Ludhiana new broad gauge rail link from Km 51.400 to KM 55.5500, by the Government of India, Department of Railways, vide letter dated

31.07.2007. The petitioner has, admittedly, excavated ordinary earth/sand from private agricultural land owned by Balbir Singh son of Nirmal and

Jagtar Singh son of Nirmal Singh, resident of village Bathan, Tehsil Khamano, district Fatehgarh Sahib, after making payment.

3. The Assessing Authority, i.e., General Manager-cum-Mining Officer, Department of Industries, District Industries Centre, Mandi Gobindgarh,

Punjab, served a demand notice, dated 28.01.2008, under Rule 54-C(6) of the 1964 Rules, calling upon the petitioner to pay Rs. 9,56,250/-, i.e.,

Rs. 3,18,750/- as royalty and Rs. 6,37,500/- as price of earth. The petitioner filed an appeal, under Rule 54-F, of the 1964 Rules, before the

State Geologist, claiming that the petitioner is not liable for payment of royalty or price of ordinary earth as he has excavated ordinary earth from

private land after payment of the price and without causing any damage to any canal, trees, and has not excavated earth beyond a level of three

feet. The appeal was dismissed on 28.05.2008.

4. The petitioner filed another appeal under Rule 54-F(1)(b) of the 1964 Rules, which was dismissed by the Director of Industries and Commerce,

Punjab, on 22.10.2008. The petitioner filed yet another appeal under Rule 54-F(1)(c), of the 1964 Rules, before the State Government, i.e.,

Principal Secretary, Department of Industries and Commerce, Punjab. The appeal was dismissed on 10.08.2009.

5. The petitioner, thereafter, filed Civil Writ Petition No. 16830 of 2009, challenging the demand notice as well as the above orders. The writ

petition was disposed of by passing the following order:-

2. The petitioner questions the impugned demand on the plea that only "royalty" has been taken from the similarly placed persons who too had

extracted minerals, whereas the petitioner is being subjected to the price value of the minor minerals also.

3. Having heard learned counsel for the petitioner and after going through various affidavits filed by it, I am of the considered view that per se no

fault can be found with the impugned demand notice (Annexure P-5). Suffice it to say that if the petitioner has any material to get itself absolved

from the liability in toto or in part, the appropriate recourse for it would be to represent to the competent authority in response to the demand

notice, which shall be considered and disposed of by the Mining Authority in accordance with law. It is directed that the petitioner's

representation, if any, shall be entertained only if it pays the "royalty" amount of Rs. 3,18,750/- along with such representation.

4. Appropriate order shall be passed within a period of three months from the date of receipt of a certified copy of this order.

5. Ordered accordingly. Dasti.

6. The petitioner, thereafter, filed LPA No. 868 of 2012, which was disposed of, on 02.07.2012, in the following terms:-

The appellant-Company is aggrieved by order dated 10.08.2011, whereby it was granted liberty to approach the respondents for redressal of its

grievances that as it has merely extracted earth for raising the level of a railway line, the Government has no right to claim royalty.

We have heard counsel for the appellant and find no reason to interfere with order dated 10.08.2011 much less grant any relief to the appellant.

The appellant has been granted liberty, by the learned Single Judge to approach the respondents for redressal of its grievance. The appellant may

approach the authority concerned in accordance with law. In case, the appellant puts forth its grievances, they shall be considered and decided in

accordance with law, within three months.

7. The petitioner submitted a detailed representation, dated 27.07.2012, to the Mining Authority, i.e., General Manager-cum-Mining Officer,

Department of Industries, District Industries Centre, Mandi Gobindgarh, Punjab, after depositing Rs. 3,18,750/- as royalty.

8. The General Manager-cum-Mining Officer, Department of Industries, District Industries Centre, Mandi Gobindgarh, sent a parawise reply to

the representation, informing the petitioner that as his appeals have already been dismissed, a sum of Rs. 9,56,250/- is recoverable from the

petitioner, minus Rs. 3,18,750/- already deposited. The petitioner has filed the present writ petition to challenge the demand notice and orders

rejecting his appeal.

9. Counsel for the petitioner submits that the petitioner was granted a certificate of approval, under Rule 6 of the 1964 Rules, thereby negating the

ground taken by the respondents that the petitioner has excavated minor minerals without lawful authority. The petitioner has excavated ordinary

earth/sand from private land after paying the price to landowners. The State has no right to recover royalty or the price of minerals as held by the

Hon"ble Supreme Court in State of Punjab Vs. Vishkarma and Co. and Others, . A similar view was taken by a Division Bench and Single Bench

of this Court in The State of Punjab and others Vs. M/s. Subash Chander, Janta Brick Kiln Co. and Another Vs. The State of Punjab and Others,

. It is further argued that the appeals, filed by the petitioner were dismissed by passing cyclostyled orders without dealing with the petitioner"s pleas

or considering that the land, in dispute, does not vest in the government and is, therefore, no amount is recoverable, as held in M/s. Om Parkash

Brick Kiln owner v. State of Punjab and others, 2008 (1) R.C.R. (Civil) 447. The petitioner has excavated earth/sand from private land after

following all binding conditions relating to excavation of minor mineral, i.e., no excavation beyond three meters, no excavation around a canal,

tubewell, watercourse etc. It is further submitted that similarly situated contractors have not been charged royalty, thereby violating Article 14 of

the Constitution of India.

10. Counsel for the State of Punjab, submits that the writ petition should be dismissed as it is devoid of merit. The petitioner has, admittedly,

excavated ordinary earth without a licence or a permit. Ordinary earth was declared a minor minerals, by the Government of India, vide notification

dated 03.02.2000. The petitioner had excavated 63,750 tonnes of ordinary earth without any lawful authority, it was served a notice in form-"R"

under Rule 54(C)(5) of the 1964 Rules, raising a demand for Rs. 9,56,250/- in form-"S", issued under Rule 55(C)(6) of the 1964 Rules. The

petitioner has not been able to prove that he obtained a lease/licence or a permit and is, therefore, liable to pay royalty and the price of minor

minerals. The petitioner has no right to excavate and consume minor minerals, even from the private land without obtaining a mining lease, a

contract or a short term permit. The certificate of approval granted to the petitioner is the first step in grant of a lease/contract/permit and,

therefore, does not absolve the petitioner from obtaining a lease/licence or permit. It is further submitted that Section 4(1) of the 1957 Act

provides that no person shall undertake a mining operation in any area, except under and in accordance with the terms and conditions of a

permit/licence or a mining lease, granted under this Act or the rules framed thereunder. The excavation of minor minerals is governed by the Punjab

Minor Minerals Concession Rules, 1964, issued u/s 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred

to as "the 1957 Act"). The petitioner has not obtained any lease/contract/permit for excavating and consuming minor minerals and is, therefore,

liable for the price and royalty thereof. The appeals filed by the petitioner were rightly dismissed after taking into consideration all relevant factual

and legal provisions. It is further pointed out that ordinary earth, is a minor mineral and came to vest in the State of Punjab under the 1996 Act and

under notification dated 28.03.2008, issued by the State of Punjab. The judgments referred to by the petitioner relate to brick earth are, therefore,

not applicable to the present case.

11. We have heard counsel for the parties, perused the paper book, the impugned orders and the statutory provision and find no reason to issue

the writ, as prayed.

12. The petitioner claims that he is not liable to pay the price of the minor minerals, and can at best be held liable to pay royalty as he possesses a

certificate of approval and even otherwise has excavated ordinary earth from private land. The petitioner also alleges that ordinary earth does not

belong to the Government.

13. Before proceeding to decide the controversy, it would be appropriate to reproduce relevant provisions of the 1957 Act and 1964 Rules

14. Section 4(1) of the 1957 Rules as follows:-

Prospecting or mining operations to be under licence or lease.

4.(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms

and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules

made thereunder

15. Rules 5, 6(1), 54(1), 54(A), 54(C)(5)(6), and 54(F) of the 1964 Rules read as follows:-

5. Restriction on grant of mining lease.-

(1) No mining lease shall be granted in respect of land within a distance of 60 meters from any village or national highway.

(2) No mining lease shall be granted in respect of any such minor mineral as the Government may notify in this behalf. Such notification may be for

the whole of Punjab or any part thereof.

(3) No mining lease shall be granted to a person who does not hold a certification of approval from the Director.

6. Certificate of approval.-

(1) any person who is an Indian national shall on payment of a fee of Rs. 50/- be entitled to obtain a certificate of approval from the Director. The

application for certificate of approval shall be submitted to the Director in form "A". An affidavit shall be obtained from the applicant of his being

an Indian national.

54. Unauthorised working.-

(1) No person shall undertake any mining operations in any area, except under and in accordance with the terms and conditions of the mining

lease, contract or permit granted under these rules.

54-A. Prohibition of undertaking quarrying or mining operation.- No person shall undertake quarrying or mining operation unless and until he holds

a certificate of approval in Form ""B"".

54-C. Assessment of royalty.

(5) If upon information, which has come into his possession the Assessing Authority is satisfied that any person has raised, without any lawful

authority, any minor mineral from any land and has not paid the royalty due therein to the Government, the Assessing Authority shall within three

years after the expiry of the period during which the land was occupied by such person serve on such person a notice in Form "R" and after giving

such person a reasonable opportunity of being heard, proceed to assess to the best of his judgment the amount of royalty due from him. The

Assessing Authority may also pass an order for recovery from such person of the minor minerals so raised or where such minor mineral has

already been disposed of the price thereof.

(6) The amount of royalty due and the price of minor mineral, if any shall be paid by the assessee into the Government Treasury by such date as

may be specified in the notice in Form "S" issued by the Assessing Authority for this purpose and the date so specified shall not be less than thirty

days from the date of service of such notice:

Provided that the Assessing Authority may in respect of any particular assessee and for reasons to be recorded in writing extend the date of such

payment or allow the payment of royalty and price, if any, by instalments not exceeding four.

54-F. Appeals.-

(1) An appeal from every original order of assessment of royalty under these rules shall lie-

(a) if the order is made by an Assessing Authority, to the State Geologist;

(b) if the order is made by the State Geologist to the Director; and

(c) if the order is made by the Director to the Government.

(2) No appeal shall be entertained, unless it is filed within sixty days from the date of communication of the order appealed against or such longer

period as the appellate authority may allow for reasons to be recorded in writing.

(3) No appeal shall be entertained, by the appellate authority unless such appeal is accompanied by satisfactory proof of payment of the royalty

and the price of minor minerals:

Provided that if such authority is satisfied that the assessee is unable to pay the royalty or the price of the minor minerals, or both he may for

reasons to be recorded in writing entertain the appeal without the royalty or the price of the minor minerals or both having been paid.

16. Admittedly, minor minerals, vest in the State of Punjab, under the 1996 Act. It is not denied that ordinary earth was declared a minor mineral

by notification dated 03.02.2000, issued by the Government of India and pursuant to a notification dated 28.03.2008, issued by the State of

Punjab, all minor minerals have come to vest in the State of Punjab. The petitioner has not been able to advance any argument that would enable

us to cast any doubt on the legality of the statutory provisions as well as the notification issued by Government of India and the State of Punjab. It

is, therefore, beyond debate that ordinary earth is a minor mineral and vests in the State of Punjab.

17. Section 4(1), of the 1957 Act, prohibits any person from carrying out any mining operation in any area, except and in accordance with the

terms and conditions of a mining lease, contract or permit granted under the Rules. Section 15 of the 1957 Act empowers a State to frame rules,

regulating the grant of leases/licences/permits, to excavate minerals. The State of Punjab has framed the 1964 Rules, to regulate the grant of

contracts/leases/licences for excavation of minor minerals existing in the State of Punjab. Rule 5 of the 1964 Rules provides the procedure for

applying for a mining lease, contract or permit and by Rule 5(3) of the 1964 Rules provides that no mining lease shall be granted to a person, who

does not hold a certificate of approval from the Director. A certificate of approval is granted, in accordance with the procedure prescribed by Rule

6. Rule 54 of the Rules *ibid* titled as ""Unauthorised working"", provides that no person shall undertake any mining operation in any area, except and

in accordance with the terms and conditions of a mining lease, contract or permit, granted under these rules. Rule 54-A of the 1964 Rules provides

that no person shall undertake quarrying or mining operation unless and until he holds a certificate of approval in form-"B". Rule 54-B(5) of the

1964 Rules, provides that if the Assessing Authority is satisfied that any person has raised, without any lawful authority any minor mineral, the

Assessing Authority shall within three years after expiry of the period during which the land was occupied by such person serve upon such person

a notice in form-"R" and after giving such person a reasonable opportunity of being heard, pass an order for recovery of royalty and minor

minerals and if such minor minerals have already been disposed of the royalty and price thereof. Rule 54-F of the Rules *ibid* provides for appeals

against such orders.

18. The petitioner relies upon a certificate of approval, issued in its favour, under Rule 6 of the 1964 Rules to contend that the "Certificate of

Approval" is sufficient evidence of lawful authority to excavate minor minerals. The argument, in our considered opinion, is misconceived. A

certificate of approval, merely entitles a person to apply for a mining lease/licence/permit, under the 1964 Rules and is the first step in the

procedure for obtaining a mining lease, licence or permit. A certificate of approval cannot, by itself in the absence of a lease/licence/permit be

considered as lawful authority to excavate minor minerals. The holder of "Certificate of Approval" cannot excavate minor minerals without a valid

licence/lease/permit or contract or be heard to urge that the certificate confers lawful authority to excavate minor minerals. The petitioner is unable

to refer to any document in the shape of a licence, lease, permit or contract that conferred lawful authority, authorising him, to excavate minor

minerals from any land, including private land. The "Certificate of Approval" does not clothe the petitioner with lawful authority so as to enable him

to urge that the impugned notice of demand or orders of recovery are illegal and void. The State was, therefore, well within its power to assert that

as the petitioner has excavated minor minerals without any lease/licence/contract/permit, granted under the 1964 Rules, the petitioner is liable not

only to pay royalty but also liable to pay the price of minor minerals, so excavated. The petitioner was served with a show cause notice and, after

grant of an opportunity of hearing, held liable to pay royalty and the price of minor minerals. We find no error of jurisdiction or of law in the

impugned order, that would enable us to grant any relief to the petitioner. The petitioner had no right, to excavate ordinary earth without, first,

obtaining a lease/licence/contract or a permit. The orders, passed by the Appellate Authority, have been passed after taking into consideration the

relevant rules and the fact that the petitioner had no lawful authority, in the shape of a lease, licence or permit to raise minor minerals. The

petitioner's arguments based upon judgment in State of Punjab Vs. Vishkarma and Co. and Others, The State of Punjab and others Vs. M/s.

Subash Chander, and Janta Brick Kiln Co. and Another Vs. The State of Punjab and Others, are irrelevant as these cases pertain to brick earth.

We are, therefore, of the firm opinion that as the petitioner has excavated and consumed minor minerals without any licence/lease/contract or

permit, the impugned demand notice/orders are legal and valid.

The writ petition is, consequently, dismissed. No order as to costs.