

PETITIONER:
STATE OF PUNJAB

Vs.

RESPONDENT:
VISHKARMA AND CO. ETC.

DATE OF JUDGMENT 05/02/1993

BENCH:
VENKATACHALA N. (J)
BENCH:
VENKATACHALA N. (J)
SHARMA, L.M. (CJ)
MOHAN, S. (J)

CITATION:
1993 SCR (1) 761 1993 SCC Supl. (3) 62
JT 1993 (1) 448 1993 SCALE (1) 417

ACT:
Mines and Minerals (Regulation & Development) Act, 1957/The Punjab Minor Mineral Concession Rules, 1964-Removal of brick earth by brick-Manufacturers from lands on leases or licences granted by landowners-- Whether obtainment of permit/licence and payment of royalty are necessary.
Punjab Land Revenue Act 1987: Sections 31, 41 and 42-Scope and applicability of: Wajib-ul-arz--What is.

HEADNOTE:
Respondent companies filed suits in Civil Courts for perpetual injunctions restraining the Appellant State from demanding payment of royalty for removal of brick-earth from owners' lands and insisting upon obtaining of requisite mining licences or permits. They based their claim on the premise that though the brick earth was classified as minor mineral under the Rules, since the State of Punjab was not the owner of brick-earth in the lands concerned, no necessity arose for payment of royalty and for obtainment of mining licences or permits. The Civil Courts accepted the claim and decreed the suits, granting the reliefs prayed for..

The Appellant State carried the matter before the First Appellate Court in vain. Further Regular Second Appeals before the High Court were also dismissed by a Common Judgment, impugned herein, by way of Civil Appeals by Special Leave. The Appellant contended (i) that the Courts below went wrong in holding that the brick-earth did not vest in the State on the basis of entries in wajib-ul-arz pertaining to the lands of the estates of the land owners; (ii) that as the presumption, drawn from the entries in wajib-ul-arz, to the effect that the brick earth in the lands 'concerned belonged to the lands' owners, was only rebuttable, the decrees should have been set aside, remanding the suits to the courts of first instance with a direction to them to afford an opportunity to the State to adduce rebuttal evidence.

762

Dismissing the Appeals, this Court,
HELD:1. Although Brick-earth is indisputably a minor mineral, it is not any of the mines or minerals covered by

section 41 of the Revenue Act as would make it become the property of the State. If the owner of such brick-earth is the State of, Punjab, liability to pay royalty for removal of such brick-earth and to obtain permit or licence for such removal, would necessarily arise because of the operation of the Act and the Rules. But the courts below have concurrently found on their reading of the entire in wajib-ul-arz pertaining to the estates concerned that the brick-earth was in lands which formed the estates of the private owners and as such the same belonged to such landowners. [766G]

2. Wazib-ul-arz document being record-of-rights of estates completed after 18th day of November 1871, and there being nothing expressly stated in them that the forest or quarry or land or interest in the estates belong to the Government, the lands in such estates including brick-earth in them shall be presumed to belong to the concerned land-owners as is declared in sub-section (2) of Section 42 of the Revenue Act. [767A.B]

3. The Courts have again pointed out that there being no provision similar to the provision in sub-section (3) which permits adducing of rebuttal evidence against the presumption that the lands belong to the State under Sub-Section (1) of Section 42 of the Revenue Act, the presumption which arises under sub-section (2) of Section 42 of the Revenue Act that the forest or quarry or land or interest belong to land her, cannot at all be rebutted by the State by adducing any contrary evidence. Even otherwise, when the State has not chosen to adduce any evidence to rebut the presumption arising from the entire in Wajibul-arz documents-record-of-rights there can be no valid reason for the Courts to hold that the brick-earth in the lands of the estates concerned has become the property of the State, so as to require the brick-manufacturers to pay royalty for removal of such brick-earth and obtain permits or licences under the Rules. [767C-F]

4. When all the Courts below have concurrently recorded findings to the effect that the ownership of the brick-earth belong to land-owners and not to the State on a correct appreciation of all evidence adduced in the case and on a proper application of the law governing the same, there could be no justification to interfere with such findings in these appeals.

763

So also no valid reason has been shown to set aside the lower courts' judgments and decrees and send the matters to the Courts of first instance with a direction to permit the State to adduce rebuttal evidence as regards entries in record-of-rights. [767G-H]

5. Wajib-ul-arz is a document included in the record-of-rights since it contains the statements on matters envisaged under clauses (a) and (b) of sub-section (2) of Section 31 of the Punjab Land Revenue Act, 1887.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 14581469 of 1988.

From the Judgment and Order dated 16.9.82 of the Punjab & Haryana High Court in R.S.A. Nos. 902-913 of 1973.

S.P. Goyal, Rajinder Sachar, Ms. Amita Gupta, G.K. Bansal, P.C. Dhiman, Ms. Prabha Jain, K.G. Bhagat, Ravindra Bana, K.H. Bhagat, Ms. Kusum Choudhary, B.D. Sharma, Narottam Vyas, P.N. Puri, S.C. Khunger and Ravi Khunger for the

appearing Parties.

The Judgment of the Court was delivered by VENATACHALA, J. 1. In these Civil Appeals by Special Leave, of the State of Punjab, correctness of the common judgment dated September 16, 1982 by which Regular Second Appeals Nos. 902-913 of 1973 were dismissed by the High Court of Punjab and Haryana, is questioned.

2. Facts, giving rise to these Civil Appeals lie in a narrow compass. In the District of Gurdaspur certain land-owners had permitted different brick-manufacturers to remove brick-earth from lands in their respective estates on leases or licences granted by them. The Mines and Minerals (Regulation & Development) Act, 1957 (for short 'the Act') having come into force in the State of Punjab, the Punjab Minor Mineral Concession Rules, 1964 (for short 'the Rules') were also made and brought into force with effect from April 25, 1964. With the coming into force of the provisions of the Act and the Rules in the State of Punjab, its officers took steps to prevent the said brick-manufacturers from removing the brick-earth from the lands in the estates on the strength of the leases and licences executed in their favour by the land-owners without obtaining the mining licences and paying royalty, under the Rules. The said manufacturers of bricks although removed brick-earth from the concerned lands by paying

764

royalty and obtaining licences for some years, they filed suits in civil courts of original jurisdiction to restrain by perpetual injunctions the State of Punjab and its officers from demanding payment of royalty for removal of brick-earth from owners' lands and insisting upon obtaining of minimum licences or permits for the purpose. The relief of injunctions sought in those suits was based on their claim that notwithstanding the fact that brick-earth was regarded as minor-mineral under the Rules, State of Punjab not being the owner of brick-earth in the concerned lands, there arose no need to pay royalty to State for removal of such brick-earth and to obtain mining licences or permits from the State. The claim so made, having found favour with the Civil Courts of first instance, the suits were decreed and reliefs sought for therein were granted. The First Appeals carried against such decrees by the State of Punjab before the First Appellate Courts did not meet with success. Further Regular Second Appeals carried to the High Court met with the same fate when they were dismissed by a learned single Judge of that Court by a common judgment dated September 16, 1982. It is that common judgment, which has become the subject-matter of the Punjab State's present Civil Appeals by Special Leave.

3. On behalf of the State it was contended firstly, that the courts below should not have, on the basis of entries in Wajib-ul-arz pertaining to the lands of the estates of the land-owners found that the brick-earth in such lands' did not vest in the state and secondly, that the lower appellate courts when were of the view that the entire in Wajib-ul-are, required the drawing of the presumption that the brick-earth in the concerned lands belonged to the lands' owners, they should have seen that such presumption was a rebuttable presumption and as such called for setting aside the decrees of the Courts of first instance, and remittal of the suits to the Courts of first instance with a direction to them to afford an opportunity to the State to adduce rebuttal evidence. Both these contentions cannot merit our acceptance for the reasons which we shall presently state.

4. As some of the provisions of the Punjab Land Revenue Act,

1887 (for short 'the Revenue Act') which directly bear on the said contentions would be helpful in appreciating the merit of those contentions, they are set out at the outset. Section 31 which deals with record-of-rights relating to each estate comprised of the lands from where brick-earth is being removed by the brick-manufacturers reads:

765

"31. Record-of-rights and documents included therein-(1) Save as otherwise provided by this Chapter, there shall be record-of-rights for each estate.

2. The record-of-rights for an estate shall include the following documents, namely

(a) statements showing, so far as may be practicable-

the persons who are land-owners, tenants or assignees of land revenue in the estate or who are entitled to receive any of the rents profits or produce of the estate or to occupy land therein;

(ii) the nature and extent of the interests of those persons, and the conditions and liabilities attaching thereto;

(iii) the rent, land revenue, rates, cesses or other payments due from and to each of those persons and to the Government.

(b) a statement of customs respecting rights and liabilities in the estate;

....."

Section 41 which refers to the right of the Government in mines and minerals reads thus

"41. Rights of the Government in mines and minerals-All mines of metal and coal and all earth-oil and gold washings shall be deemed to be the property of the Government for the purposes of the State and the State Government shall have all powers necessary for the proper enjoyment of the Government's rights thereto."

Section 42 which relates to presumption as to ownership of forests, quarries and waste lands reads thus:-

"42. Presumption as to ownership of forests, quarries and waste lands. (1) When in any record-of-rights completed before the eighteenth day of November, 1871, it is not

766

expressly provided that any forest, quarry, unclaimed, unoccupied, deserted or waste land, spontaneous produce or other accessory interest in land belongs to the landowners, it shall be presumed to belong to the Government.

(2) When in any record-of-rights completed after that date it is not expressly provided that any forest or quarry or any such land or interest belongs to the Government, it shall be presumed to belong to the landowners.

(3) The presumption created by sub-section (1) may be rebutted by showing

(a) from the records or report made by the assessing officer at the time to assessment; or

(b) if the record or report, is silent, then from a comparison between the assessment of villages in which they existed, and the

assessment of villages of similar character in which they did not exist, any forest or quarry, or any such land or interest that the forest, quarry land or interest was taken into account in the assessment of the land revenue.

(4) Until the presumption is so rebutted the forest, quarry, land or interest shall be held to belong to the Government.

5. Brick-earth with which we are concerned in the present appeals, is a minor mineral was not disputed, although it is not any of the mines or minerals covered by section 41 of the Revenue Act as would make it become the property of the State. If the owner of such brick-earth is the State of Punjab, liability to pay royalty for removal of such brick-earth and to obtain permit or licence for such removal necessarily arises because of the operation of the Act and the Rules. But the courts below have concurrently found that the present appeals have arisen in lands which formed the estates of the private owners and as such the same belonged to such land-owners. It is so found on their reading of the entries in Wajib-ul-arz pending to, the concerned estates. Wajib-ul-arz is a docu-

767

ment included in the record-of-rights cannot be disputed since it contains the statements on matters envisaged under clauses (a) and (b) of subsection (2) of section 31 of the Act. According to the courts below Wajib-ul-arz document being record-of-rights of estates completed after 18th day of November, 1871, and there being nothing expressly stated in them that the forest or quarry or land or interest in the estates belong to the Government, the lands in such estates including brick-earth in them shall be presumed to belong to the concerned land-owners as is declared in sub-section (2) of section 42 of the Revenue Act.

6. Again, it is pointed out by the courts that there being no provision similar to the provision in sub-section (3) which permits adducing of rebuttal evidence against the presumption that the lands belong to the State under sub-section (1) of section 42 of the Revenue Act, the presumption which arises under sub-section (2) of section 42 of the Revenue Act that the forest or quarry or land or interest belong to land-owner, cannot at all be rebutted by the State by adducing any contrary evidence. Even otherwise, according to them, when the State has not chosen to adduce any evidence to rebut the presumption arising from the entries in Wajib-ul-arz document record-of-rights relating to the estates of lands whose brick-earth is allowed by the land-owners to be removed by the brick-manufacturers who are the plaintiffs in the suits out of which the present Civil Appeals have arisen, there can be no valid reason for them to hold that the brick-earth in the lands of the estates concerned has become the property of the State, so as to require the brick-manufacturers to pay royalty for removal of such brick-earth and obtain permits or licences under the Rules.

7. In our view, when all the courts below have concurrently recorded findings to the effect that the ownership of the brick-earth belong to land-owners and not to the State on a correct appreciation of all evidence adduced in the case and on a proper application of the law governing the same, there could be no justification to interfere with such findings in these appeals. We are also not shown any valid reason as to why we should set aside the lower courts judgments and decrees and send the matters to the Courts of first instance

with a direction to permit the State to adduce rebuttal evidence as regards entries in record-of-rights.

768

8. These appeals therefore, fail and are dismissed. However, in the facts and circumstances, parties are directed to bear their respective costs in these appeals.

G.N.R.

Appeals dismissed.

769

JUDIS