

Bhagwandas Gangasahai vs Union Of India (Uoi) And Ors. [Alongwith ... on 11 October, 1955]

Equivalent citations: AIR1956SC175

JUDGMENT

Imam, J.

1. These two petitions under Article 32 of the Constitution have been heard together as the question for decision is the same in both of them. It is claimed by the petitioners that their fundamental rights had been infringed by the leasing out of an area of land in Abu Road Taluka to Messrs Jeewan and Sons, Respondent No. 3. for a term of 20 years whereby the latter were permitted to excavate lime-stone.

This was done without inviting any application or tender for the same or the holding of any auction and without notice to the public or to any lime-stone merchants or railway contractors. The petitioners had been excavating lime-stone for many years in Abu Road Taluka previous to the aforesaid lease. They had also leases for limekilns for lime burning for the past 10 years. They were informed that they would not be granted permission to excavate lime-stone nor would their leases for their lime-kilns be renewed but would be allotted suitable lands from certain survey numbers from Akra village.

2. On behalf of the petitioners it was contended that by the granting of the lease to Respondent No. 3 a monopoly was created, it was further contended that during the pendency of their lease for the lime-kilns they were served with peremptory notice directing them to close their lime-kilns within 24 hours, and that by this action of the Government their fundamental rights to hold property and carry on their business had been violated.

3. It is difficult to comprehend, having regard to the facts, how any fundamental rights of the petitioners had been infringed by the granting of the above-mentioned lease to Respondent No. 3. The area ultimately leased to Respondent No. 3 contains no portion which was previously in the lease of the petitioners. The Government as owners of the land with its minerals was 'prima facie' entitled to lease it out to Respondent No. 3 and the petitioners have been unable to show under what authority of law they had a right to have that area leased out to them instead of Respondent No. 3. The action of the Government in granting the lease to Respondent No. 3 cannot in the circumstances of the case be regarded as one by which monopoly of lime-stone business was given to Respondent No. 3, as contended on behalf of the petitioners.

4. It was, however, said that the lease granted to Respondent No. 3 was illegal being contrary to the provisions of the Mines and Minerals (Regulation and Development) Act, 1948 (Central Act No. LIII

of 1948) (hereinafter referred to as the Act) and the Rules framed thereunder, namely, the Mineral Concession Rules, 1949. It was pointed out that section 4 of the Act prohibits the granting of a mining lease otherwise than in accordance with the Rules made thereunder and any such lease granted contrary to the provisions of the Act was void and of no effect.

The Mineral Concession Rules, 1949 define what is "minor mineral" and this expression means "building stone, boulder shingle, gravel, lime-stone and kankar used for lime burning, murrum, brick-earth, ordinary clay, ordinary sand, and road metal". Rule 4 of these Rules states that they shall not apply to minor minerals, the extraction of which shall be regulated by such rules as the Provincial Government may prescribe. It may be stated that when the lease in question was granted, no Rules had been framed by the Government of Bombay.

The Rules framed by the Government of Bombay came into existence in 1955 and we are not concerned with them. Mr. Anthony for the petitioners contended that as lime-stone is a "minor mineral", although the lease in question is said to have been granted under Rule 26, it could not have been so granted because the Mineral Concession Rules, 1949 did not apply to such a lease. There being no Rules framed by the Bombay Government under the provisions of the Act, the lease had been granted in contravention of the express provisions of Section 4 of the Act and, therefore, was void and of no effect. The action of the Government in granting the lease was illegal and as it infringed the fundamental rights of the petitioners, the petitioners were entitled to ask this Court to issue a writ in the nature of 'mandamus'.

5. As already observed we are unable to see what fundamental right of the petitioners had been infringed. Assuming the action of the Government in granting the lease was illegal, a petition for a writ under Article 32 of the Constitution is not maintainable unless there has been a violation of some fundamental right. An examination of the terms of the lease, however, would show that it does not come within the definition of "minor mineral" as given in the Mineral Concession Rules, 1949.

The lease states that it is a mining lease concerning lime-stone only. The lease does not speak of lime-stone to be used for lime burning. The use of lime-stone can be for other purposes than lime burning and there is no justification on the materials on the record, for the suggestion made on behalf of the petitioners that the lime-stone is only used for lime burning. Since there is nothing in the lease to show that it was with reference to a minor mineral, the Mineral Concession Rules, 1949 apply to it and the action of the Government in granting the lease cannot be said to be illegal.

6. It was next contended that as the petitioners had been directed to close their lime-kilns during the pendency of their lease without any justification, there had been a violation of their fundamental rights and they were entitled to ask for a writ under Article 32 of the Constitution. According to the petitioners themselves the term of their lease was extended up to the 31st of July, 1955 and to-day there is no lease in existence in their favour.

Whatever cause of action the petitioners may have by way of damages or otherwise for the alleged improper action of the Government the present petitions under Article 32 of the Constitution become infructuous so far as this aspect of the case is concerned. It is, however, necessary to point

out that the respondents do not admit that in fact the petitioners had any lease at all. According to the respondents the petitioners were mere licencees.

On behalf of the petitioners no document of lease or in the nature of a lease has been produced. Reference was made to Ex. 'R' Annex. 2 in Petition No. 676 of 1954 This document, however, far from showing any lease in favour of the petitioners, indicates that the petitioners were regarded as licencees. In paragraph 4 of this document the word lease' is used; but the opening paragraph of the document clearly shows that the petitioners, Bhagwandas Gangasahai, Lime Merchants, were seeking permission to make non-agricultural use of survey No. 230 of Morthalla of Abu Road Taluka and that the Mamlatdar was informing the merchants that the permission asked for had been granted.

It is difficult in these circumstances to come to any definite conclusion that the petitioners had a lease of the lime-kiln and that they were not licencees. In any event even if there was a lease it had come to an end after the 31st of July, 1955 and the petitioners have failed to show that they had any right to have it renewed. Mr. Anthony urged that the practice in the past had been to renew the lease and in paragraph 4 of Ex. 'R' it was clearly stated that the merchant will have to apply, before the expiry for renewal.

Paragraph 4 merely states that the merchant will give up possession of the land on the expiry of the lease or he will have to apply for renewal before the expiry of the lease. Nothing stated in this paragraph establishes that the petitioners had a right to have the lease renewed or that a guarantee had been given to the petitioners that the lease would be renewed.

7. These petitions are accordingly dismissed with two sets of costs. One set of costs will be paid to Respondent No. 3, Messrs Jeewan and Sons and the other set of costs to Respondents 1, 2 and 4.