# State Of Mysore vs Swamy Satyanand Saraswati, ... on 31 March, 1971

## Equivalent citations: 1971 AIR 1569, 1971 SCR 284, AIR 1971 SUPREME COURT 1569

## Author: G.K. Mitter

## Bench: G.K. Mitter, K.S. Hegde, P. Jaganmohan Reddy

PETITIONER:
STATE OF MYSORE

Vs.

RESPONDENT:
SWAMY SATYANAND SARASWATI, RELIGIOUSPREACHER, RAICHUR

DATE OF JUDGMENT31/03/1971

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
HEGDE, K.S.
REDDY, P. JAGANMOHAN

CITATION:
1971 AIR 1569 1971 SCR 284

ACT:
Grant by Jagirdar-If includes right to minerals in favour of grantee Burden of proof.

HEADNOTE:
The Nizam of Hyderabad granted a jagir to his prime minister. The successor of the jagirdar granted an island in one of the villages, comprising a hillock of granite, to the predecessor-in-interest of the respondent. The area covered by the grant was acquired by the State Government for purposes of an irrigation project.
On the question whether the respondent was entitled to sub-soil rights, and as a consequence, became entitled to compensation for the granite and quarries as minerals,
HELD:It was for the respondent to establish his claim to minerals or quarry rights by putting forward proof of the

grant thereof by the Nizam to the jagirdar and by the jagirdar to his predecessor. But assuming that the Nizam conferred the right on the jagirdar, the patta granted by the jagirdar and the connected documents showed that what was in contemplation of the jagirdar and his grantee at the time of the grant, was either the cultivation of the land or the grazing of cattle on it. Nobody at that time had any thought or idea of the land being put to any other use or any mining or quarrying rights being exercised therein. When the grantor was careful to exclude even the fruit bearing trees, it would be wrong to hold that he must have parted with the sub-soil rights by implication. Therefore,the right to minerals was not granted to the respondent's predecessor.[287B-C; 289B; 292D-E]

What has to beconsidered in each case is the purpose for which the lands are leased oran interest created therein with all the clauses which throw any light on the question as to whether the grantor purported to include his rights to the sub-soil in the grant when there was no express mention of it. If the grant shows that the purpose of the grant was to allow the user of the surface only it would be wrong to presume that subsoil rights were also covered thereby. [292C-D]

The test of what is a mineral is, what at the date of the instrument, the word meant in the vernacular of the mining world, the commercial world, and among landowners; and in case of conflict that meaning must prevail over the purely scientific meaning. Since granite is a mineral according to this test the respondent had no right to the granite or quarries. [293B-C]

State of Andhra Pradesh v. Duvvuru Balarami Reddy, [1963] 1 S.C.R. 173, followed.

Hari Narayan Singh v. Sriram Chakravarti, 37 I.A. 136, Durga Prasad Singh v. Braja Nath Bose, 39 I.A. 133, Girdhari Singh v. Megh Lal Pandey 44 I.A. 246, Sashi Bhusan Misra v. Jyoti Prasad Singh Deo, 44 I.A. 46, Govinda Narayan Singh v. Sham Lal Singh, 58 I.A. 125, Bejoy Singh Dudhoria v. Surendra Narayan Singh, I.L.R. 61 Cal. I (P.C.) and Attorney General v. Welsh Granite Co. The Law Times Reports 549, applied.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 496 of 1966. Appeal by special leave from the judgment and order dated August 10, 1964 of the Mysore High Court in Regular Appeal (H) No. 75 of 1956.

S. T. Desai, B. D. Sharma, Shyamala Pappu and S. P. Nayar, for the appellant.

M. Natesan, B. Parthasarathy, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for respondent Nos. 1 and 3. The Judgment of the Court was delivered by Mitter, J.-The main question involved in this appeal is whether the respondent was entitled to sub-soil rights by virtue of the pattas granted in favour of his predecessor-in-interest by Nawab Salar Jung III of Hyderabad and as a consequence thereof became entitled to compensation claimed by him for acquisition of a large block of land containing a hillock of granite which was required for the Tungabhadra Project and was notified for acquisition under the Hyderabad Land Acquisition Act on February 3, 1946. The relevant facts are as follows. In 1820 the Nizam of Hyderabad granted a jagir, the terms whereof do not appear from the record before us, to his Prime Minister known as Nawab Salar Jung T. This jagir consisted of many villages in the district of Raichur one of them being Madlapur on the bank of the river Tungabhadra. In the year 1930 the successor of the original grantee of the jagir, Nawab Salar Jung III made a grant of an island in that village comprising S. Nos. 154, 312 and 313 with a hillock rising to a height of 250 ft. and measuring Ac. 290-00 in favour of one Swami Nijananda, the predecessor-in-interest of the respondent. In February 1946 the entire area covered by the grant to Swami Nijananda was proposed to be acquired for an irrigation and hydroelectric project known as the Tungabhadra Project which had been embarked upon by the Governments of Hyderabad and Madras States. The purpose of acquisition was the gathering of granite stone for the construction of a dam across the river Tungabhadra. The acquisition proceedings were completed pursuant to a final notification made on June 16, 1947 followed by an award by the Land Acquisition Officer on July 24, 1950. Before the Land Acquisition Officer two claims were put forward, one on behalf of the respondent Swami Satyananda and the other by Nawab Salar Jung III. But as all jagirs including that of Nawab Salar Jung were abolished during the pendency of the acquisition proceedings, the claim for compensation by Nawab Salar Jung III also disappeared. The claim of Swami Satyananda was for Rs. 29,91,600. The Land Acquisition Officer awarded Rs. 31,260-8-0 as the total compensation disallowing the claim in respect of the granite hillock on the ground that it was not covered by the grant to Swami Nijananda. The District Judge to whom reference was made under the Land Acquisition Act enhanced the compensation to Rs. 48,892 exclusive of statutory allowance and interest. Two of the issues framed by the District Judge related to the respondent's claim to a right in the quarry and also to the situs thereof i.e. as to whether it was within the patta land belonging to the claimant. He found that the rock was situated within the patta land of the claimant but with regard to the quarry rights he took the view on the basis of two Farmans of the Nizam Exs. A-21 and A-22 and Section 2(d) of the Mines Act and Section 3 of the Hyderabad Land Revenue Act that the claimant had no right to the minerals and quarries. He did not record any finding as to whether the jagir granted by the Nizam included the mining rights and whether the patta granted by the jagirdar conferred the same rights on the claimant in view of his conclusion on the points of law urged that mining rights were in the exclusive ownership of the Nizam.

The High Court took the view that the District Judge had proceeded on the assumption that there was a grant to Nawab Salar Jung I with all the mineral products in the land by the jagir of 1820. It however held, differing from the District Judge, that the Farmans Exs. A-21 and A-22 did no more than explain the provisions of Section 63 of the Land Revenue Act and did not affect any subsisting rights in the minerals if they belonged to the jagirdar. According to the High Court the question as to whether the grant to Nawab Salar Jung did or did not include the granite in the hillock was never raised at any stage and it was assumed by every one that the grant to Nawab Salar Jung included the

right to granite and that right was a subsisting right even while the Hyderabad Land Revenue Act 1907 was enacted. The High Court was not willing to entertain the contention raised by the Advocate-General for the first time that the grant did not include the right to granite in the hillock. The High Court apparently fortified its conclusion placing reliance,on the fact that copies of all the grants of jagirs should have been available with the State authorities and as the original grant to Nawab Salar Jung or an authenticated copy thereof was not produced, the necessary inference would be that the same would not support the contention of the Advocate-General.

The High Court further took the view that the granite in respect of which compensation was claimed in the case was not a mineral and that being so neither Section 63 of the Hyderabad Land Revenue Act nor the Farmans referred to in Exs. A-21 and A-22 were relevant to the issue before it and it would not be possible to hold that the minerals and mineral products in the hillock vested in the Government under Section 63 of the Hyderabad Land Revenue Act. In our view it is not necessary to consider the effect of the Farmans or of Section 63 of the Hyderabad Land Revenue Act. It was for the respondent to establish his claim to minerals or quarry rights by putting forward proof of the grant thereof by the Nizam to Salar Jung and to show that his rights in the land held by him were co-extensive with those of Nawab Salar Jung 111. There is no scope for any presumption that the Nizam had parted with the mineral rights to the jagirdar or that the jagirdar had done so in his turn. Even assuming that the Nizam conferred the right of minerals in the land or to quarry for granite therein to Nawab Salar Jung 1, the question still remains, what right did the patta of the Salar Jung estate confer on the predecessor-in-interest of the claimant. The patta for S. Nos. 312 and 313 was marked as Ex. 49 in this case. It contains various columns including those for the name of "Khatedar", 'any increase or decrease in the land on account of cultivation or left uncultivated', 'remarks of the, village officers', "opinion of the Tahsildar" and "the approval of the 'Nizam' of settlement". Under the column headed "opinion of the Tahsildar" is to be found the following :-

> "The land bearing S. No. 254 Paramboke known as Bolurguddi' is situated in Madlapur village, the area of which is Ac. 290-00 and it has not been surveyed. Narasimha Bharati Swamy has filed an application wherein he has approved/accepted land the extent of Ac. 89-00 area in Tahsil office. As the village was under survey the Tahsil office sent the file to the Settlement Department... According to the profit accruing to the State as pointed measuring 109 acres and 13 guntas, having an measuring 13 acres 13 guntas having an assessment of Rs. 19 in all 183 acres 33 guntas and with a total assessment of Rs. 46 were given into the possession of the applicant and the remaining 109 acres 20 guntas have been included in the Paramboke the survey number of which is 154, the Government has got the right over the trees bearing fruit. The patta bearing S. Nos. 312- 313 may be made in the name of the applicant Narsimha Bharati Swamy from 1331 Fasli. The letter received from the Settlement is worthy of perusal. According to the remarks of Settlement Department, the entry of unculti- vated land has been made since 1330 F. because it was approved in 1330 F. The file of the Thasil has also been submitted. The acceptor has filed an application in the District office stating that the entry of the patta be made in the year 1330 Fasli and that he is willing to pay the amount."

Ex. 50 is a copy of the proforma No. 8 (Takavi) statement of village Madlapur and is for Paramboke (patta) granted on 7th Mehar 1336 F. The remarks of the Tahsil office in this case read :

> "An assessment of Rs. 28-4-9 of the unsurveyed guntas at the Bolguddi is approved as per the District Office Order. Nijanand Narasimha Bharati Swamy of Dolurguddi is granted the excess of 'Lawani' in accordance with Rs. 0-4- 0 agreement from 'Dhara' to 'Rev-Sharan'."

Reference may also be made to the letter issued by the Superintendent, Settlement Department, Salar Jung Estate where the petition for grant of patta of land of Bolur Gedda by Narasimha Bharati Swamy mentioned as one for the purpose of grazing cattle. According to this letter :

> measuring 209 acres and known as Bolur Gedda has been lying as a waste since a long time. The land in the said survey number is not fit for cultivation. On all the occasions water of the stream will be surrounded on all the four sides. It would be useful only for grazing the cattle. Near about the said survey land there are two tamarind trees. But the product of the trees has not been auctioned at any time.
>
> Now regarding the rent received by the Government of the State as indicated by the petitioner in regard to the aforesaid land of the land measuring 109 acres 13 guntas and measuring 74 acres and 20 guntas assessed at Rs. 19, thus a total of 183 acres and 33 guntas assessed at Rs. 46 has been given in possession of the petitioner and the rest of the land 106 acres and 20 guntas has been included in this 'purpose' land only and its survey number is 154.
>
> The tamarind trees standing on the said survey land would belong to the Government only. In case a petition is presented in future the lands may be included in the patta as per rules. The patta of the survey lands bearing S. Nos. 312, 313 may be made in the name of the peti-
>
> tioner Sri Nijanand Narasimha Bharati Swamy from the year 1331 F."
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> It is amply clear from the above that what was in contem- plation of the grantor and grantee at the time of the grant was either the cultivation of the land or the grazing of cattle on it. Nobody at that time had any thought or idea of the land being put to any other use or any mining or quarrying rights being exercised therein. The grantor was careful to exclude even the fruit-bearing trees. It would be wholly unrealistic to construe the grant as conferring mining rights by implication simply because of the fact that there was no mention of it.
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> A long line of decisions of the Judicial Committee of Privy Council relating mainly to the grants of land and leases by the Zamindars in Bengal makes it amply clear that sub-soil rights are not to be treated as having been conveyed by implication in grants of surface rights to tenure-holders pattidars (lessees) etc. In this connection it may be

noted that by the Permanent Settlement of 1793 the zamindars with whom the lands were settled were held to be owners of all mines and minerals in their zamindaries. The decisions of the Privy Council relate principally to grants of land in coal-bearing areas before the discovery of any coal therein. One of the early cases of this type was that of Hari Narayan Singh v.. Sriram Chakravarti(1). There the dispute was as to the right to minerals lying under a village called Petena situate within the zamindari of the first appellant. The appellant's predecessor had conveyed some sort of interest in the village to a set of persons called Goswamis who were shebaits or priests of an idol. The Goswamis had purported to grant to the respondents two leases by virtue of which the latter claimed to have exercised rights with respect to minerals. There was no evidence whatever that the zamindar Raja had ever granted mineral rights to the Goswamis or any other person. The courts in India concurrently found that, no prescriptive rights had been proved by the respondents to any underground rights in the village. The High Court took the view that the Goswamis being tenure-holders had per- manent heritable and transferable rights, from which it was inferred that the underground rights also belonged to them. The Subordinate Judge had however inferred from the smallness of the jumma (rent) that only the surface rights and not the underground rights were intended to be let out to the Goswamis. The Board held that (p. 146) :

". . . . the title of the zamindar raja to the village Pctena as part of his zamindari before the arrival of the Goswamis on the scene being established as it has been, (1) 371. A. 136.

19-1 S.C. India/71 he must be presumed to be the owner of the underground rights thereto appertaining in the absence of evidence that he ever parted with them, and no such evidence has been produced." Durga Prasad Singh v. Braja Nath Bose (1) was a case where the zamindar of a permanently settled estate who asked for a declaration of his right to minerals as against a lessee from a digwar tenure holder. The digwar tenure was originally granted in consideration of the performance of military service to which police duties were attached. The tenure was hereditary and inalienable, the digwar being appointed by Government and being liable to be dismissed by Government for misconduct. On such dismissal the next male heir if fit to be appointed had the right to be appointed. The digwar of Tasra granted a perpetual lease of the coal mines underlying two villages to Tasra Coal Company in 1892. On the question as to whether the digwar had a proprietary right in the underground minerals the Board took the view that the permanent settlement having been made between the Government and the zamindar of Jharia and no attempt having been made to prove that the mineral rights were vested in the digwar before or at the time of the permanent settlement and there being no evidence to show that the zamindar had ever parted with mineral rights to the digwar, the latter could not be held to have any proprietary right in the minerals.

In Girdhari Singh v. Megh Lai Pandey (2) the question before the Board was whether a mokarari lease of land with all rights carried a right to the subjecent minerals in a permanently settled estate. According to the Board (see page 248) "It is unavailing to urge that the right granted by the mokrari

pottah to the lessee is of a permanent, heritable, and transferable character, as, even although this be the case, it does not advance the question whether the lease itself embraced within its scope the mineral rights. On the contrary, unless there. be by the terms of the lease an express or plainly implied grant of those rights, they remain reserved to the zamindar as part of the zamindari."

Their Lordships referred to the decisions mentioned above as also to that of Sashi Bhushan Misra v. Jyoti Prasahad Singh Deo(3) and adopted the principle (p. 249) :

> "..... when a grant is made by a zamindar of a tenure at a fixed rent although the tenure may be permanent, heritable, and 'transferable, minerals will not be (1) 391. A. 133. (2) 441. A.
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> 246. (3)44 I. A. 46.

held to have formed part of the grant in the absence of express evidence to that effect." According to the Board "On the assumption that the expression (mai hak hakuk) means 'with all rights'. or may be properly amplified as 'with all right, title and interest', such expressions ... did not increase the actual corpus of the subject affected by the pottah. They only give expressly what might otherwise quite well be implied, namely, that that corpus being once ascertained, there will be carried with it all rights appurtenant thereto, including not only possession of the subject itself, but it may be of rights of passage, water or the like which enure to the subject of the potta and may even be derivable from outside properties. It must be borne in mind also that the essential characteristics of a lease is that the subject is one which is occupied and enjoyed and the corpus of which does not in the nature of things and by reason of the user disappear. In order to cause the latter specially to arise, minerals must be expressly denominated, so as thus to permit of the idea of partial consumption of the subject leased." Accordingly it was held that the words founded on did not add to the true scope of the grant nor cause mineral rights to be included within it.

It should be noted here that there was a reference to the trees on the land in the pottas it being expressly provided that the lessee would be entitled to take the price of the trees by cutting and selling them and the zamindar would not have any right thereto. This was held by the Board to negative the idea that mokarari pottab could be comprehensively viewed to include mineral rights. According to the Board :

> "Such a lease is a lessee of the surface only. This is the general case to which in the present case there is alone superadded a right to the trees. The minerals are not included."

Most of the above cases were referred to again by the, Board in Govinda Narayan Singh v. Sham Lai Singh (1) where after noting the earlier cases the Board concluded that' in the case of any claim against the zamindar to the lands which were included at the permanent settlement the burden of proof is upon the (1) 58 I. A. 125.

claimant. Reference may also be made to Bejoy Singh Dudhoria v. Surendra Narayan Singh (1) where the Board held that the grant of a patni lease by a zamindar of his zamindari lands "including all interest therein, and jalkar, banker, falkar, beels and jhils at an annual jama containing a stipulation that the grantee should not cut trees or excavate a tank was only consistent with the theory that the lessee and those claiming under him were not entitled to excavate the soil for the purpose of making bricks and that there was no transfer of the property in the soil". In our view the principle which is to be deduced from these cases is not one which is to be confined to the case of zamindars in permanently settled estates. What has to be considered in each case is the purpose for which the lands are leased or an interest created therein with all the clauses which throw any light on the question as to whether the grantor purported to include his rights to the subsoil in the grant when there was no express mention of it. If the lease shows that the purpose of the grant was to allow the user of the surface only it would be wrong to presume that sub-soil rights were also covered thereby. The patta Ex. 49 in this case amply demonstrates that what was in contemplation of the parties at the time of the grant in .1930 was the cultivation thereof or grazing cattle thereon. The grantor was even careful to reserve the right to fruit-baring trees. It would be a strange construction to hold that although the grantor expressly excluded such trees from his grant he must be taken to have parted with his sub-soil rights by implication.

We may also note that in State of Andhra Pradesh v. Duvvuru Balarami Reddy (2) where the respondents had obtained mining leases for mining mica from the owners of a certain shor- triem village it was held that shortriemdars had no rights in the minerals and the leases granted by them to the respondent had no legal effect. It is true that this Court was there dealing with rights of a different class of persons and it was claimed on behalf of the respondent that inasmuch as the grant included poramboke if followed that mere surface rights were not the subject matter of the grant. Rejecting this contention the Court observed (p.

183) :

> "So far as the sub-soil rights are concerned, they can only pass to the grantee if they are conferred as such by the grant or if it can be inferred from the grant that subsoil rights were also included therein.' (1) I. L.R. 61 Calcutta 1 (2) [1963] 1 S. C. R. 173 It is not in our view possible to hold otherwise than that granite is a mineral.

According to Halsbury's Laws of England :

> "There is no generad definition of the word 'mineral'. The word is susceptible of expansion or limitation in meaning according to the intention with which it is used... It is a question of fact whether in a particular case a substance is a mineral or not. . .
>
> The test of what is a mineral is what, at the date of the instrument in question, the word meant in the vernacular of the mining world, the commercial world, and among landowners, and in case of conflict this meaning must prevail over the purely scientific meaning".

(See Vol. 26, 3rd edition, Art. 674 page 320). In Article 675 at page 322 the learned authors summarise the case law on the subject as to whether particular substances are minerals or not. Reference is there made to the case of Attorney General v. Welsh Granite Co.(1) where granite was held to be included under the reservation of "minerals" in the Enclosure Act which reserved all mines, minerals, ores, coal, limestone, and slate to the Crown. According to Lord Coleridge, the word "minerals" was large enough to include granite.

In the view we have taken, it is not necessary to consider the effect of the Farmans or Section 63 of the Hyderabad Land Revenue Act. In our view the pattas only indicating that the grant was for the purpose of cultivation or grazing of cattle with the express reservation of the trees on the land to the grantor, the question of grant of sub-soil rights by implication does not arise. It is therefore not necessary to consider the effect of the Farmans Exs. A-21 and A-22 or of Section 63 of the Hyderabad Land Revenue Act. The claim to compensation on the basis of the sub-soil rights to the hillock must therefore be negatived and the appeal allowed.

In the result the decree of the High Court regarding the minerals in the land or quarry rights will be set aside and the judgement and order of the District Judge on that point restored. The respondent will be entitled to the costs of the appeal in pursuance of the, order of this Court made as a condition for setting aside the abatement of the appeal.

V.P.S. Appeal allowed.

(1) 1 The Law Times Reports 549.