The State Of Punjab vs M/S. Om Prakash Brick Kiln Owner on 21 January, 2025

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Bench: Abhay S. Oka

2025 INSC 88

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10687-10694 OF 2013

STATE OF PUNJAB & ORS. … APPELLANTS

versus

M/S OM PRAKASH BRICK
KILN OWNER, ETC. … RESPONDENTS

JUDGMENT

ABHAY S. OKA, J.

FACTUAL ASPECT

1. The appellants are the original defendants, and the respondents are the original plaintiffs. The respondents filed suits against the appellants for a permanent injunction restraining them from assessing, levying or recovering any amount as royalty from the respondents on account of the use of earth by the respondents for making bricks. According to the respondents who were operating brick kilns, they took different lands (for short, 'the said lands') from private owners on lease. ANITA MALHOTRA The respondents used to excavate earth from the said lands to Date: 2025.01.21 18:19:11 IST Reason:

> manufacture bricks in their brick kilns. The respondents' case was that no part of the land was vested in the Government and according to the Wajib-ul-arz, brick earth

does not belong to the State Government. Reliance was placed on Section 42 of the Punjab Land Revenue Act, 1887 (for short, 'the Land Revenue Act') and, in particular, sub-section (2) thereof. It was further contended that under the Mines and Mineral (Regulations and Development) Act, 1957 (for short, 'the 1957 Act') or under the Punjab Minor Mineral Concession Rules, 1964 (for short, 'the Mineral Rules'), there was no provision entitling the first appellant – State Government to levy royalty on the use of brick earth. The respondents contended that the appellants' action of assessing royalty and sending notices for recovery was illegal.

2. The appellants resisted the suit by filing their written statements. It was contended that the Civil Court had no jurisdiction to entertain the suit in view of Rule 54F of the Mineral Rules, which provides a remedy of appeal against orders of assessment of royalty. The appellants also raised objections to the maintainability of suit on the ground of non- joinder of necessary parties. It was contended that the respondents had failed to implead the owners of the said lands. The appellants further challenged the maintainability of the suit for want of a notice under Section 80 of the Civil Procedural Code, 1908. On merits, it was contended that according to Wajib-ul-arz of the village Jallalabad, every mineral, including brick earth, vests in the first appellant – State Government in accordance with Section 42 (2) of the Land Revenue Act. The appellants also contended that under Section 15 of the 1957 Act, the State Government was empowered to make Rules for making a provision for charging royalty. Accordingly, under the Mineral Rules framed by the State Government, the appellants were entitled to levy royalty.

3. The Trial Court dismissed the suit vide judgement dated 22nd August 1983. The Trial Court rejected the appellants' preliminary objections regarding the bar of suit and non- maintainability of the suit. The Trial Court held that on the plain reading of Section 42 of the Land Revenue Act, in a case where the record of rights was completed before November 18, 1871, and there is no express provision made therein that any forest or quarry belongs to the landowners, the same shall be presumed to belong to the State. The Trial Court held that the record of rights regarding the land in question was made before 18th November 1871, and since the Wajib-ul-arz did not specify that the quarries belonged to the land owners, it was held that the subject quarry is vested in the State Government in terms of Section 42 (1) of the Land Revenue Act. The Trial Court further held that by a notification issued under Section 3(e) of the 1957 Act, brick earth was declared a minor mineral. The Trial Court held that even though the settlement in the years 1911-12 and 1962-63 did not show the subject land as a quarry, that was not significant as, at that time, brick earth was not declared as a minor mineral.

4. The decree passed by the Trial Court was confirmed in the appeal preferred by the respondents by the learned Additional District Judge vide judgement dated 18th April 1984.

The First Appellate Court observed that both the appellants and respondents had produced Wajib-ul-arz of the village of 1911-12 and 1962-63. Both these Wajib-ul-arz mentioned that the right to recover minor minerals in the said lands vested in the State. The case of the respondents was that as brick earth was not specifically mentioned in either of the Wajib-ul-arz, the appellants were not entitled to charge royalty. The First Appellate Court, however, rejected this argument and held that

there was a presumption of ownership in favour of the first appellant under sub-Section (1) of Section 42 of the Land Revenue Act and the mere fact that the Wajib-ul-arz did not specifically mention ownership of the State over brick earth, would not disentitle the appellants from levying tax on the mining of brick earth by virtue of it being declared a minor mineral.

5. By the impugned judgment, second appeals preferred by the respondents have been allowed, and the suits filed by the respondents have been decreed. The High Court concluded that by way of mere declaration of brick earth as a minor mineral, no rights can vest in the State Government to levy royalty. It was held that since the appellants failed to prove that they are owners of brick earth, they are not entitled to claim any royalty from the respondents.

SUBMISSIONS

6. Learned Additional Advocate General appearing for the State of Punjab submitted that Section 15 of the 1957 Act empowers the State Government to make Rules enabling it to charge a royalty on the extraction of minor minerals. He pointed out that, admittedly, a notification was issued under Section 3 of the 1957 Act by which brick earth was declared as a minor mineral. He submitted that the first regular settlement of the village in question was made before the year 1871. Nothing was on record to show that in the Wajib-ul-arz, forests and quarries, etc, were shown as belonging to the land owners. Therefore, there was a presumption of ownership in favour of the first appellant – the State Government. Reliance was placed on Rule 54A of the Mineral Rules, which provided that no person shall undertake quarry or mining operations unless and until he holds a certificate of approval in Form “B”. He submitted that the royalty is payable irrespective of the ownership.

7. The learned counsel appearing for the respondents supported the impugned judgment by contending that the State has not discharged the burden to prove that the brick earth is vesting in it. It was submitted that merely because brick earth was declared as a minor mineral, the first appellant

- State Government does not get a right to levy royalty.

CONSIDERATION OF SUBMISSIONS

8. On 1st June 1958, the Government of India published a notification in the exercise of powers conferred under clause (e) of Section 3 of the 1957 Act by which brick earth was declared a minor mineral within the meaning of the 1957 Act. As can be seen from the judgment of the Trial Court, the respondents did not claim to be the owners of the said lands from which they were excavating brick earth. According to the respondents, the said lands were owned by someone else and were taken on lease by the respondents. In short, the respondents' stand was that the said lands were vested in private persons. If that be so, the persons claiming to be the land owners ought to have been made a party to the suit to enable the Court to decide the issue of title. Section 41 of the Land Revenue Act provides that all mines of metal and coal and all earth oil and gold shall be deemed to be the property of the State. Section 42 of the Land Revenue Act is material, which 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 no expressly provided that any forest quarry, unclaimed unoccupied, deserted or waste-land, spontaneous produce or other accessary interest in land belongs to the land-owners, 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 land- owners.
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> (3) The presumption created by sub-section (1) may be rebutted by showing—
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> (a) from the records or report made by the assessing officer at the time of assessment; or
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> (b) if the record or report, is silent, then from a comparison between the assessment of villages in which there existed, and the assessment of villages of similar character in which there 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.
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> (4) Until the presumption is so rebutted, the forest, quarry, land or interest shall be held to belong to the Government." (emphasis added) Therefore, if the record of rights was completed after 18th November 1871 and if it was not expressly recorded that any forest or quarry or any such land or interest belongs to the Government, the same shall be presumed to belong to the land owners. As regards the lands of which record of right was completed before 18th November 1871, unless it was recorded that any forest quarry, unclaimed, unoccupied, deserted or wasteland belongs to the land owners, it shall be presumed to be of the ownership of the State Government. The High Court, in the impugned judgment, held that the presumption under sub-Section (2) of Section 42 of the Land Revenue Act would not apply. The reason is that at the relevant time, brick earth was not declared as a minor mineral.

9. In our view, the High Court has missed the real issue. As far as the ownership of the said lands is concerned, admittedly, respondents were not the owners. The respondents claimed that they had taken the said lands on lease from the real owners. The persons claiming to be the real owners were not parties to the suit. Most importantly, the Trial Court did not frame any issue on the ownership of the land in question. The District Court did not frame the point for determination on this aspect.

10. There is no dispute that brick earth was declared as a minor mineral by a notification under Section 3(e) of the 1957 Act. We have carefully perused the Mineral Rules. Rule 3 provides for exemptions from payment of royalty. Rule 3 does not provide for an exemption in respect of the excavation of brick earth for manufacturing bricks. Apart from the fact that the land ownership issue was not decided by the Trial Court and the First Appellate Court, even if we assume that the lands

on which the respondents carried out excavation were private lands, the question is whether the State Government was powerless to levy royalty. The answer to the question is in Rules 54A, 54B, and 54C, which read thus:

> “54A. Prohibition of under taking quarrying or mining operation - No person shall undertake quarrying or mining operation unless and until he holds a certificate of approval in Form "B" :
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> Provided that no such certificate shall be necessary for undertaking quarrying or mining operation by a person exempted under rule 3.
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> 54B. Returns.
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> - Every assessee shall for each month furnish a return in Form 'N' about the production and disposal of minor minerals, during that month by the 10th day of the month following that to which the return relates. 54C. Assessment of royalty.
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> (1) If the Assessing Authority is satisfied without requiring the presence of the assessee or the production by him of any evidence that the returns furnished in form 'N' in respect of any period are correct and complete, he shall assess the amount of royalty due from the assessee on the basis of such returns and record assessment order in Form 'O'.
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> (2) If the Assessing Authority is not satisfied without requiring the presence of the assessee who furnished the returns in Form 'N' or production of evidence that the returns furnished in Form 'N' in respect of any period are correct and complete, he shall serve on such assessee a notice in Form 'P', requiring him on a date and a place specified therein, to attend in person or to cause to be produced any evidence (on which such assessee may rely) in support of such returns.
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> (3) In case the assessee having furnished the returns in respect of a period in Form 'N' fails to comply with the terms of the notice in Form 'P' issued under sub-rule (1), the Assessing Authority shall within three years after the expiry of such period proceed to assess to the best of his judgment, the amount of the royalty due from the assessee and record the assessment order in Form 'O'.
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> (4) If an assessee does not furnish the returns in respect of any period by the due date, the Assessing Authority shall serve a notice upon the assessee in Form 'Q' and after giving the assessee a reasonable opportunity of being heard shall, within a period of three years after the expiry of the said period, proceed to assess to the best of his judgment the amount of royalty if any due from the assessee and record the assessment order in form 'O'.

(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 thereon 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 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 mineral 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 then 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.

(7) If in consequence of definite information which has come into his possession the Assessing Authority discovers that an assessee has been under- assessed or escaped assessment of royalty in any year, the Assessing Authority may, at any time within three years after the expiry of that year re-assess the royalty in Form 'O' after giving the assessee a reasonable opportunity of being heard.

(8) The Assessing Authority may, at any time, within one year from the date of any order passed by him of his own motion, rectify any clerical or arithmetical mistake apparent from the record and within a like time period rectify any such mistake which has been brought to his notice by any person, affected by such order." (emphasis added)

11. Therefore, even if a person owns the land, he cannot undertake quarrying or mining operations therein unless he holds a certificate of approval in Form "B". A person to whom the certificate is issued is required to file returns showing the production and disposal of mines or minerals. The royalty is determined as provided in sub-Rule (1) of Rule 54C.

12. Therefore, once it is accepted that brick earth was a minor mineral under the Mineral Rules, the first appellant – the State Government, gets the right to levy royalty on the production and disposal of minor minerals. An appeal is provided under Rule 54F of the Mineral Rules against an order of the assessment of royalty. This remedy is an efficacious remedy available to challenge the levy of royalty.

13. The three Courts have unnecessarily gone into the issue of ownership of the said lands or minerals therein. The issue was about the right of the first appellant – the State Government to levy royalty. Once it is shown that under the Mineral Rules, the first appellant – State Government was

entitled to levy royalty on the activity of mining of brick earth, the issue of ownership of the said lands becomes irrelevant. The reason is that the owners of the said lands in which the excavation is made are not in the exempted category specified in Rule 3 of the Mineral Rules. Though, for different reasons, the Trial Court and the First Appellate Court were right in dismissing the suits. In view of the discussions made above, the respondents did not make out a case for the grant of a decree of permanent injunction restraining the appellants from recovering royalty from the respondents. However, on the quantum of royalty, an appeal under Rule 54F is always available.

14. Therefore, the impugned judgment dated 19th September 2007 of the High Court is hereby quashed and set aside, and the decrees of the dismissal of suits passed by the Trial Court are restored. We make it clear that we have made no adjudication on the right of ownership of the said lands, which the respondents used to excavate brick earth.

15. Appeals are, accordingly, allowed on the above terms with no orders as to cost.

.....J. (Abhay S. Oka) .....J. (Ujjal Bhuyan) New Delhi;

January 21, 2025