

Rajasthan High Court

Tewari Jhoomarlal Swaroop Lal vs The State Of Rajasthan And Ors. on 26 August, 1970

Equivalent citations: AIR 1971 Raj 251, 1970 (3) WLN 811

Author: V Tyagi

Bench: V Tyagi

ORDER V.P. Tyagi, J.

1. Messrs. Tewari Jhoomarlal Swarooplal has filed this writ application under Article 226 of the Constitution and it arises out of the following circumstances :

The petitioner firm, got a lease of an area of 30 sq. miles in three blocks of 10 sq. miles each in Tehsils Bayana and Rupbas on a dead rent of Rs. 2 lac per annum for a period of five years commencing from 1st May, 1961. For some reason the lease agreement could not be executed and, therefore, the State Government preferred to cancel the lease of the petitioner firm. The Mining Engineer, Kota, by his letter dated 21st of August. 1963 informed the petitioner that the possession of the leased area including all working and other pits, trenches, quarries, etc., were taken over by the Mining Department from 21st August, 1963, and the petitioners were directed not to quarry the sandstone and also not to carry on any work incidental thereto in that area. The Department had raised certain claim against the petitioner for the non-payment of royalty and therefore the stones excavated by the petitioner and lying in the stock at the railway stations of Banshi Paharpur and Band Baretha were attached by the Government.

Later on, by another letter dated 22nd August, 1964, the Assistant Mining Engineer. Sawai-Madhopur wrote to the Collector, Bharatpur that the stock belonging to the petitioner has now become the State property by virtue of the conditions laid down in the Minor Mineral Concession Rules, 1959, after the lease of the petitioner was cancelled. The petitioner, it appears, made representation to the Government that the stock lying at the railway yard at the two railway stations of Banshi Paharpur and Band Baretha cannot be taken to be the stock lying in the leased area and, therefore, it cannot become the State property.

These representations of the petitioner did not bring any fruitful result to the petitioner and, therefore, the, petitioner has preferred to file this writ application with a prayer that by issuing an appropriate writ, order or direction the orders of the respondents holding that the petitioner's stock of stones lying at the railway stations of Banshi Paharpur and Band Baretha by virtue of the conditions incorporated in Rule 19 of the Minor Mineral Concession Rules. 1959, may be quash-ed and it may be declared that the stock belongs to the petitioner. The petitioner also prayed that by issuing a writ of prohibition, the respondents may be restrained from forbidding the petitioner to remove, sell and despatch his stock of stone.

2. All the respondents submitted a joint reply to the writ application and asserted their claim that the stock of the petitioner lying at the aforesaid railway stations is within the leased out area and, therefore, under Rule 19 of the Minor Mineral Concession Rules. 1959, it became the State property after the lease of the petitioner was determined by the State Government.

3. On an application filed by the petitioner, this Court by its order dated 11th July, 1966 allowed the petitioner to sell the stock of stone under the supervision of a Government Officer and the following terms were imposed for the sale of the said stock :--

1. That the petitioner may be allowed to pay 6 1/4% brokerage on sale proceeds.
2. That the petitioner may be permitted to defray expenses to the extent of 6 1/4% of the gross sale price towards the pay of the staff and other expenses.

The sale price was, however, ordered to be deposited In the bank and the petitioner was restrained from drawing any amount from the bank without the permission of the Court. This permission to sell the stock was given to the petitioner with the consent of the learned Advocate-General. The sale price collected by the petitioner was deposited by the petitioner in the bank.

4. By his letter dated 4th April, 1970, the Assistant Mining Engineer (Recovery). Sawai-Madhopur informed the petitioner that the Government have taken decision that the petitioner's sandstone lying at the railway station of Band Baretha was outside the leased area and as such It was the property of the petitioner,

5. Now, therefore, remains the dispute with regard to the stock of the petitioner lying at the railway station of Banshi Paharpur.

6. When this case came up for hearing on the last occasion, the learned Deputy Government Advocate was asked to produce the plan of the land which was leased out to the petitioner in three blocks. Mr. Bhargava prayed for time to produce the record to show that the Railway yard of Banshi Paharpur lies within the leased area. A plan has. however, been shown to me by the learned Deputy Government Advocate today. In this plan the area leased out to the petitioner has been marked with red pencil, and point 'H' has been shown to be touching the railway line near railway station, Banshi Paharpur. It is not clear from this plan whether the area of the railway station of Banshi Paharpur falls within the area leased out to the petitioner. Learned Deputy Government Advocate and the officer of the Department who had brought the plan are not in a position to state whether the railway station of Banshi Paharpur definitely lies within the area leased out to the petitioner. In such circumstances, it is difficult for the Court to hold that the stock of the petitioner at Banshi Paharpur is lying within the leased area and on that account the claim of the State that the property in the stock of stone has passed to the State under Rule 19 of Minor Mineral Concession Rules does not appear to be prima facie justified.

7. Even for the sake of arguments, if it is assumed that the railway station of Banshi Paharpur, where the petitioner has put his stock of stones excavated from the quarries is within the leased out area, I find it difficult to hold that the stones of the petitioner vest in the Government under Rule 19 of the Minor Mineral Concession Rules. The reason for this finding is not far to seek.

8. Rule 19 of the said rules states that all accumulated stock and immovable property left in the leased out area after the date of expiry or determination of lease shall be deemed to be Government

property.

9. Minor Mineral Concession Rules prescribe a standard form for executing a mining lease for minor minerals. This standard form is given in Schedule IV annexed to the rules. Sub-clause (4) of Clause 5 of this standard form deals with the forfeiture of property left within the leased area for more than six months after the determination of the lease, but I am not concerned with this provision as the property other than the mineral! extracted by the petitioner has not been forfeited by the State Government. Sub-clause (14) of Clause 6 of this standard form, however, deals with the stock lying at the end of the lease and it reads as follows :

"The Lessee/Lessees shall on the termination or sooner determination of the lease remove all extracted minerals from the premises of the leased areas. All extracted minerals in the said lands left over undisposed after the termination or determination of lease, shall be deemed to be property of the Government."

10. If this term of the standard Form of mining lease is read with the provisions of Rule 19 of the said rules, then it becomes clear that only that mineral which has been extracted by the lessee but not removed from the premises of the leased area shall be deemed to be the Government property. The use of the word "premises" in Sub-clause (14) of Clause 6 provides a clue for the interpretation of Rule 19 of the said rules. This condition of the standard form of the mining lease as prescribed by the rules makes it clear that the lessee should remove the minerals extracted before the determination of the lease from the premises of the leased out area where it has been extracted and if the lessee fails to do so then the mineral shall vest in the Government after the termination of the lease. The use of the word "premises" clearly indicates that the lessee should remove the extracted mineral from the place from where it has been extracted by him which naturally means that it should be removed from the pit's mouth or from the quarry where the mining operation has taken place.

In the present case, according to the averment made by the petitioner the entire stock of stone extracted from the quarries was taken away by the petitioner to the railway yard or to the nearby plots purchased by the petitioner for stocking it or allotted to him by the erstwhile State of Bharatpur. According to the statement made on oath by the petitioner, the entire stock of stone extracted from the quarries is removed by him to a place miles away from the quarries and is now kept for sale at the Railway Station of Bansi Paharpur. From these facts, which have not been controverted by the respondents in their reply, it can safely be said that the mineral extracted from the quarries was removed by the petitioner from the 'premises' viz., the quarries in the leased area.

11. The scope of Rule 19 can be judged from other angle also. This possibility cannot be ruled out in all cases that the lessee, who has been leased out a vast area under the Minor Mineral Concession Rules may reside within the leased area itself and he may accumulate his stock of mineral in the godowns constructed by him in his own town. If the stock of the lessee is not sold out by him before the term of his lease has expired, then in that event he is bound to lose his property if Rule 19 is interpreted in the Way in which the Government has chosen to interpret it in this case. If such a wider interpretation is given to Rule 19, then the stock of lessee though put in his own home would

become the property of the Government after the expiry of his lease period.

Sub-clause (4) of Clause 5 of the standard form of agreement deals with the forfeiture of the property of the lessee and according to it if the lessee is allowed the machinery, vehicles, etc. to be left within the leased area for more than six months after the determination of his lease, then they will stand forfeited to the Government. If such a wide interpretation is given to this clause as is given to Rule 19 by the Government then in case of lessee who resides within the leased area it would become difficult for him to save his property from forfeiture unless such property was removed by him from his own house and kept outside the leased area which may in some cases be quite vast. The law makers could never have imagined such a situation while enacting Rule 19 of the Minor Mineral Concession Rules and prescribing the abovementioned condition in the standard form of lease agreement.

Mr. Tewari is right when he submits that Rule 19 when read with Sub-clause (14) of Clause 6 of the standard form of agreement, as given in the schedule attached to the Minor Mineral Concession Rules can lead to no other inference except the one that only that mineral of the lessee which has been extracted by him and is lying at the site of the quarry would become the property of the Government after the period of lease is determined by the Government. The mineral that has been removed by the lessee for stocking at a place from where he could conveniently dispose it of, though the place may lie within the leased area, cannot come within the purview of operation of Rule 19 of the rules. I agree with the learned counsel and feel that even if the station of Banshi Paharpur lies within the leased out area, the stock of sandstone of the petitioner lying near that railway station cannot become the property of the Government by virtue of Rule 19 of the Minor Mineral Concession Rules, 1959.

12. For the reasons mentioned above, the writ petition is allowed and it is hereby ordered that the sandstone stocked by the petitioner within the railway yard of Banshi Paharpur or on the lands adjacent thereto shall be the property of the petitioner.

13. The interim orders passed by this Court during the pendency of the writ petition are hereby vacated.

14. The petitioner shall get his costs from the respondents.