Supreme Court of India
Amar Jyoti Stone Crusting Co vs The Union Of India And Others on 8 August, 1961
Equivalent citations: 1967 AIR 46, 1962 SCR (3) 62
Author: N R Ayyangar
Bench: Sinha, Bhuvneshwar P.(Cj), Das, S.K., Sarkar, A.K., Ayyangar, N. Rajagopala, Mudholkar, J.R.

PETITIONER:
AMAR JYOTI STONE CRUSTING CO.

Vs.

RESPONDENT:
THE UNION OF INDIA AND OTHERS

DATE OF JUDGMENT:
08/08/1961

BENCH:
AYYANGAR, N. RAJAGOPALA
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AYYANGAR, N. RAJAGOPALA
SINHA, BHUVNESHWAR P.(CJ)
DAS, S.K.
SARKAR, A.K.
MUDHOLKAR, J.R.

CITATION:
1967 AIR 46 1962 SCR (3) 62

ACT:
Quarry-Refusal of permit-Ownership of minerals-Presumption-Punjab Land Revenue Act, 1887 (XVII of 1887) s. 42.

HEADNOTE:
The appellant had been granted a permit by the Collector for quarrying store upto,June 30, 1957 under the Delhi Minor Mineral Rules 1938 framed under s.155(1) of the Punjab Land Revenue Act, 1887. On the expiry of the term of this permit the appellant applied for another permit but it was refused on the ground that the land had been included
63
in "a controlled area" reserved for other purposes by proceedings under the Delhi (Control of Buildings) Act, 1955. The appellant filed a suit praying for a declaration that it had a right to quarry stones from the land in suit without a permit as the ownership of the minerals was vested in the landowner from whom it had taken the land and for a mandamus to the collector to grant the permit as the 1955 Act had ceased to be operative after December 30, 1937.

Held, that the appellant had not proved its title to the mineral rights in the land and was not entitled to the declaration. Section 42(2) Punjab Land Revenue Act, 1887, provided that when in any record of rights, completed after November 18, 1871, it was not expressly mentioned that any quarry belonged to the Government it shall be presumed to belong to the landowners. In the present case neither party produced any such record of rights, and no presumption could be invoked in favour of the owner. The presumption arises only when such a record of rights is before the court and flows from the contents of the document.

Held, further, that the application for a permit was refused on good and relevant grounds. The subsequent repeal of the Delhi (Control of Buildings) Act, 1955, did not entitle the appellant to an order directing the issue of a permit as no other application for a permit was pending at that time.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 112 of 1961. Appeal by special leave from the judgment and order dated September 26, 1960, of the Punjab High Court, (Circuit Bench) at Delhi in R. S. A. No. 123-D of 1959.

N. S. Bindra, I. C. Jain and O. P. Rana, for the Appellant.

C. K. Daphtary, B. Sen and T. M. sen, for Respondents Nos. 1 to 3. Tarachand Brijmohan Lal, for Respondent No. 4.

1961. August 8. The Judgment of the Court was delivered by AYYANGAR, J.-This appeal has been filed pursuant to leave granted by this Court under Art. 136 of the Constitution against the decision of the Punjab High Court in second appeal No. 123-D of 1959. The appellant-firm is the lessee under a lease dated December 21, 1955 of kasra Nos. 1621, 1646, 1652, 1653 and 1703 in Naraina Village within the administration of the Chief Commissioner of Delhi. As lessee the firm was working certain stone-quarries in the fields which were the subject- matter of its lease; The right of persons to quarry in the area is subject to the provisions contained in the Delhi Minor Mineral Rules, 1938 framed in exercise of the powers conferred by s.155(1) of the Punjab Land Revenue Act, 1887. Under these rules an application has to be made to the Collector for the grant of permits to effect quarrying who was empowered to grant them at his discretion, the duration of these permits being one year; When such quarrying took place the royalty at the rates specified in the rules was payable by the permit-holder. The rules, however, expressly saved from their operation and from the need for a permit or the payment of royalty, the quarrying of any mineral proved to be on land belonging to the land-owner in which he had the right 'to the mineral under s.42 of the Punjab Land Revenue Act, 1887. The appellant-firm had applied for and obtained permits under these rules and were paying the royalty prescribed therefor from the commencement of their lease right up to June 30, 1957. For quarrying thereafter its application for a permit was not granted. The appellant-firm thereupon issued notice to the governmental authorities under s;80 of the Civil Procedure Code and filed the

suit out of which the present appeal arises, on October 8, 1957.

The appellant prayed in the suit for two main reliefs : (1) a declaration that it had a right to quarry stones from the suit-land apparently even without a permit, and (2) alternatively for a perpetual injunction directing the defendants-the Union of India and the Collector and the Delhi Development Authorities-to issue the required permit on payment of royalties as before. The first of the above reliefs was based on the plea that the land-owner from whom it claimed title under the lease, had vested in him the ownership of the minerals with the result that the appellant had a right to effect the quarrying without the necessity for a permit under the Delhi Minor Mineral Rules referred to earlier. The other alternative prayer was rested on the ground that even if the mineral rights in the suit-land vested in Government, the appellant had a legal right to carry on quarrying operations on the land and that there was an obligation on the part of the Collector to grant the permit applied for. It was the further case of the appellant that the Collector refused the permit mala fide, and for reasons which were extraneous to the purpose for which the power to grant permits was vested in him under the statutory rules. The Trial Court dismissed the suit holding against the appellant on every crucial issue and this judgment has been affirmed by Courts right up to the High Court in the judgment now under appeal. Two principal points have been urged by Mr. Bindra-learned counsel for the appellant in support of its plea. His first contention was that the learned Judge of the High Court had misunderstood and misapplied the provisions of s.42) of the Punjab Land Revenue, Act and , that, if that section were properly construed, the appellant's lessor should be held to be the owner of the mineral rights in the suit- lands. For understanding this contention it is necessary to set out the terms of s.42. It reads "42. (1) When in any record-of-rights completed before the eighteenth day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed, un-

occupied, deserted or waste land, spontaneous produce or other accessory 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.

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

(a) from the record or report made by the assessing officer at the time of assessment, or

(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.

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

Learned Counsel is, no doubt, right in his sub. mission that the learned single Judge of the High Court wrongly treated sub-cl. (4) of this section as equally applicable to the presumption raised in favour of the landowner by sub-s. (2), but this does not, however, establish that the appellant is, on the facts of this case, entitled to invoke the pre-

sumption enacted in sub-s.(2). It was common ground that records of-rights had been prepared in respect of the village of Naran twice after 1871 though the relevant entries in the documents were not placed before the Court by either side. Mr. Bindra submitted that if once it was roved that a record-of-rights had been prepared for a village after 1871, the presumption in sub-s.(2) in favour of the land-owner being entitled to the minerals was attracted and that as the defendants in the present case had not produced the record-of-rights the, Court should have proceeded on the basis that the appellant bad proved its title to the minerals. We are wholly unable to accept this construction of the section. Section 42 (2) raises a presumption against the Government when in any record-ofrights completed after November 18, 1871 it is not expressly provided that any quarry belongs to the Government, but this presumption arises only when the record-of-rights is before the Court and flows from the contents of the produced document. The sub-section is no authority whatsoever for raising a presumption as to the contents of a recordof-rights which is not produced and is not before the Court. Learned Counsel for the appellant is not also justified in inviting the Court to draw a presumption against the defendants from the non-production of the document, because the record-of-rights is a public document and therefore available to the appellant as well who could have obtained a certified copy and filed it if it supported its case. The appellant produced for the year 1948-49 merely the Jamabandi account of the village and relied on the fact that there was no mention therein of the Government being proprietor of the mineral rights ; but obviously the contents of this document could have no bearing on the custom obtaining in the village as to the proprietorship of the minerals which would find mention only in a wajib-ul-arz and a jamabandi account is certainly'not a document on the basis of which the presumption in s.42(2) could be invoked. The position, therefore, was that the relevant record of-rights was not before the Court and consequently the presumptions raised neither by sub-ss.(1) or (2) of s.42 could be invoked in favour of Government or the owner.

There were, however, two facts before the. Courts on the basis of which the title to the, minerals could have been decided. The first was that the appellant had been working the minerals only on the strength or permits obtained from the Collector and, as we have pointed out earlier, this could have happened only if its lessor was not the owner of the minerals. Learned Counsel, no doubt, sought to explain this conduct of the appellant on the basis that it might have made application for a permit under a mistake as to its rights. This however does not help him, because the making of the application would constitute an admission which would throw upon the appellant burden of proving that it was done under a mistake and the mistake established to the satisfaction of the Court. This was not even attempted. This apart, a plaintiff who comes to Court with an allegation that be is the owner of the minerals would have to prove his title to the property before he, could succeed in the suit, but the appellant led no evidence to prove his title. Mr. Bindra made a submission that a presumption in favour of the plaintits ownership arose under s. 110 of the Indian Evidence Act by reason of the appellant's admitted possession of the property. This however is entirely without force, since the possession of the minerals, with which alone we are now concerned was under the permit

granted by the Collector-a situation which clearly negatived the plaintif fs ownership of the minerals having regard to the schemes of the Minor Mineral Rules. The Courts below were therefore right in holding that the appellant's claim on the basis of established proprietary rights to the quarry should fail The respondents have filed in this Court an application for the admission of additional evidence and the items of evidence so sought to be admitted are the entries in the wajib-ul-arz of the record-ofrights of the suit-village prepared in 1880 and 1908-09. These clearly recite the fact that the Government were owners of the stone-quarries in the village. Learned Counsel for the appellant strenuously objected to the admission of additional evidence at this stage and submitted that if the application were allowed he should be given an opportunity of adducing evidence to disprove the correctness of these entries. In view of our conclusion as regards the rights of the appellant even without these additional documents, we do not consider it necessary to admit them. We hold that the appellant has not proved its title to the mineral rights in the suit-lands and that its claim for a declaration on that basis was properly dismissed by the Courts below.

The other point urged by learned Counsel was that even if it be that the Government were the proprietors of the minerals and the permission of the-Collector was necessary to be obtained under the Minor' Mineral Rules, 1938, still the Collector was under a legal obligation to grant a permit to the appellant sunless there were proper grounds for refusing the permit and that the grounds of his refusal in the present case were improper and mala fide. In this connection it was pointed out that the Collector had refused the permit sought by the appellant because of a resolution of the Delhi Development Provisional Authority constituted under Act 53 of 1955. By reason of proceedings of that authority the land in suit bad been included in "a controlled area", i.e., an area which was reserved for other purposes, with the result that it was thought proper and expedient to prohibit quarrying in it. In the plaint it was alleged that the Collector acted improperly in giving effect to the recommendation of the Board in the matter of prohibiting quarrying on the suit-land. Before us, however, learned Counsel did not seriously contest, the position that if the land was in "a controlled area" under Act 53 of 1955 and there was need to prohibit quarrying in the interests of the health of the people inhabiting the residential area, adjoining the quarries, and the Collector was appraised of this fact by the Development Authority, the order of the Collector refusing permission could not be successfully impugned. But learned Counsel urged that Act 53 of 1955 had ceased to be operative after December 30, 1957 when it was replaced by the Delhi Development Act of 1957 and that under the latter enactment the area had not been so notified. Having regard to this changed situation the contention was, that at the date when the trial Court passed judgment it should have taken judicial notice of the fact that Act 53 of 1955 had ceased to be in force and that the notification thereunder had lapsed, and that if these matters were taken into account the appellant had a clear legal right to the relief of mandamus which he prayed for, directing the Collector to grant the permission sought. It is not necessary for the purpose of this case to examine the limits subject to which a Court could take into account subsequent facts and afford relief on the basis of such facts. The position so far as the appellant was concerned was this : It had made an application to the Collector to permit it to quarry stones and this had been refused. It was this refusal which was challenged as illegal and it was on this basis that the relief of mandatory injunction was sought in the plaint. It would be one thing if the appellant was able to make out the case that the Collector's refusal to grant the permission in April-May 1957 was improper but that is not the situation her.-. The argument was that the Trial Court ought to have taken into account the fact that long subsequent to the filing of the

plaint the statute or order which justified the refusal of the permission had ceased to exist and that this vested in the appellant a right to obtain the grant of a permit. The argument, in our opinion, proceeds on a fallacy. If the application of the appellant was properly refused by the Collector before the suit, the result was that there was no pending application before the authority for the grant of a permit. It is common ground that during the pendency of there proceedings in the trial Court no fresh application was made to the Collector on the basis of the altered state of facts. There was corsequently no application pending before the Collector which he could be directed by the issue of a mandatory injunction by the Court to grant. It is clear therefore that the change in the law in the shape of Act 53 of 1955 ceasing to be operative does not assist the appellant to obtain any relief in this suit. In the view we have taken it is not necessary for us to 'canvass the point which has been discussed in the Courts below as to whether in cases where the Government is the owner of a property its discretion in its management and control could be the subject of directions by the Court unless, of course, the statute or statutory rule enables individuals to claim any particular rights. The appeal fails and is dismissed with costs. Appeal dismissed.