

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH.

318

RSA No.2459 of 1988.  
Date of Decision: 15.03.2018.

State of Punjab and another

....Appellants.

Versus

M/s Gosain and Sons and others

....Respondents.

\*\*\*

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

----

**Present:** Mr. Rajesh Bhardwaj, Senior Deputy Advocate General, Punjab  
for the appellants.

None for the respondents.

\*\*\*\*

**Shekher Dhawan, J.**

Present Regular Second Appeal is directed against the judgment and decree dated 12.10.1987 passed by learned Additional District Judge, Ludhiana, whereby the appeal filed by the respondent No.1-plaintiff against the judgment and decree dated 19.03.1985 passed by learned Sub Judge Ist Class, Ludhiana, dismissing the suit of respondent No.1-plaintiff, was accepted and the judgment of the trial Court was set aside.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that the plaintiff filed a suit for permanent injunction restraining the

defendants from recovering any royalty for having excavated brick earth from the suit land detailed in the head note of the plaint, in pursuance of notice dated 26.06.1981. It was averred that the plaintiff firm is having a licence under Punjab Control of Brick Supply Order, 1956 and carries its business of manufacturing bricks and sale thereof after taking the suit land, situated in village Ramgarh, on lease on 10.01.1977 for excavation of earth work. The notice dated 26.06.1981 issued by defendant No.2 for recovery of royalty is under challenge being void, illegal and without jurisdiction as the land from which the earth is excavated does not belong to the defendants and brick earth is not a minor mineral.

4. The defendants contested the suit taking various preliminary objections. On merit, it was asserted that brick earth is a minor mineral land and it vests in the Government and as such, the defendants are entitled to claim royalty on its excavation and user by the plaintiff for manufacturing bricks. It was further averred that the demand notice issued by the defendants is legal and not liable to be set aside.

5. On the basis of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether plaintiff firm is not liable to pay royalty assessed by the defendants? OPP.
2. Whether plaintiff is entitled to injunction prayed for? OPP.
3. Whether the jurisdiction of the civil court is barred under Section 158 of the Punjab Land Revenue Act? OPD.
4. Whether the suit of the plaintiff is not maintainable under Section 54(f) of the Minor Mineral Concession Rules? OPD.

5. Whether plaintiff firm is estopped by its act and conduct from filing the present suit? OPD.

6. Relief.

6. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance decided issues No.1 and 2 against the plaintiff whereas issues No.3 to 5 were decided against the defendants and, consequently, the suit of the plaintiff was dismissed.

7. The plaintiff remained successful as its first appeal was accepted by the learned Additional District Judge, Ludhiana on 12.10.1987 and the judgment and decree dated 19.03.1985 passed by the trial Court was set aside holding that the Government cannot claim any royalty because as discussed above, the land owner is deemed to be owner of all the forests etc.

8. Feeling aggrieved with the judgment and decree passed by the first appellate Court, the defendants have preferred the instant appeal.

9. The submissions made by learned counsel for the appellants State of Punjab have been considered and record of the case has been perused.

10. When the appeal was admitted, though no substantial question of law was framed, however, during the course of arguments, the following substantial questions of law arise for consideration:-

*“1. Whether brick earth excavated from private land would vest in State by virtue of notification dated 01.06.1958?*

*2. Whether the State is entitled to claim royalty on the brick earth extracted by brick kiln owner?”*

11. The matter in controversy has been recently decided as per judgment from Hon'ble the Supreme Court in case of **State of Punjab Vs. M/s Vishkarma and Co., 1993(1) JT 448** and it was held as under:-

*“Brick-earth with which we are concerned in the present appeals, is a minor mineral was not disputed, although it is not any of the mines or minerals corned by Section 41 of the Revenue Act as would make it become the property of the State. If the owner of such brick-earth is the State of Punjab, liability to pay royalty for removal of such brick-earth and to obtain permit or licence for such removal necessarily arises because of the operation of the Act and the Rules. But the courts below have concurrently found that the present appeals have amen was in lands which formed the estates of the private owners and as such the same belonged to such land-owners. It is so found on their reading of the entries in Wajib-ul-arz pending to the concerned estates. Wajib-ul-arz is a document included in the record-of-rights cannot be disputed since it contains the statements on matters envisaged under clauses (a) and (b) of subsection (2) of section 31 of the Act. According to the courts below Wajib-ul-arz document being record-of-rights of estates completed after 18th day of November, 1871, and there being nothing expressly stated in them that the forest or quarry or land or interest in the estates belong to the Government, the lands in such estates including brick-earth in them shall be presumed to belong to the concerned land-owners as is declared in sub-section (2) of section 42 of the Revenue Act.”*

12. Learned Senior Deputy Advocate General, for the appellants State of Punjab has not disputed the fact that after passing the judgment by the learned Appellate Court, the controversy has been set at rest as per judgment from Hon'ble Supreme Court.

13. The plaintiff had produced Ex.P2 Wajib-Ul-Arz for the year 1962. Undisputedly, the same was prepared after 1871. In that way, sub Section 2 of Section 42 of the Land Revenue Act would be applicable. If the ownership of the State Government regarding brick has not been specifically mentioned, it has to be presumed that the same belongs to the land owner. The entry in Wajib-Ul-Arz Ex.P2 reads as under:-

*“At the present there is no Nazul land, forest stones, kankaar mine etc. in the land. However, in future if any such things is discovered it would be owned by the Govt.”*

14. Admittedly, the brick earth has been declared as minor mineral vide notification dated 01.06.1958. It is also an admitted fact that the land from which brick earth has been excavated belongs to private owner and plaintiff is lessee thereon. In such circumstances, provisions of Section 42 of the Land Revenue Act become relevant to determine whether brick earth vests in State or landowner. Section 42 of the Punjab Land Revenue Act is reproduced below:-

*“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 not expressly provided that any forest, quarry, unclaimed, unoccupied, 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 sub-section (1) may be rebutted by showing*

*(a) from the records 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 village 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.”*

15. Further, Hon'ble Division Bench of this Court in case **State of Punjab and others Vs. M/s Ram Dass Bhagwan Dass, 2012(5) RCR (Civil) 280** while referring to the notification dated 01.06.1958, held that mere declaration of brick earth as minor mineral by way of notification in itself shall not create any right with the State Government to claim royalty because of the reason that ownership of the same will be vested in the landowners if there was no entry in the shariat-wajib-ul-arz to the contrary.

16. The law laid down in aforesaid thus provides clear answer to the questions of law framed in this case. Brick earth excavated from private land would not vest in State. Mere entry that all types of minerals discovered in future shall vest in State is just a vague entry and cannot be used to defeat the non-rebuttable presumption of law created in favour of landowner under Section 42(2) of the Punjab Land Revenue Act, 1887.

17. In view of the above, the judgment and decree dated 12.10.1987 recorded by the learned trial first appellate Court is hereby affirmed. Resultantly, the present Regular Second Appeal is dismissed.

**(SHEKHER DHAWAN)**  
**JUDGE**

**15.03.2018**  
*jitender*

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No