

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA 1477 of 1990 (O&M)

Date of Decision: March 22, 2022

State of Punjab and others ...Appellants

Versus

M/s Swadesh Kumar

... Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. K.K. Beniwal, Addl. A.G. Punjab
for the appellants-State.

None for the respondent.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through Video
conferencing on account of outbreak of pandemic COVID-19.

Earlier M/s Swadesh Kumar had instituted a suit for
permanent injunction against State of Punjab and others
seeking a decree for permanent injunction restraining the
defendants-State from assessing, levying or recovering a sum
of Rs.4323.40/- paise as royalty from the plaintiff for the earth of
land owned and used by the plaintiff for making bricks at their

brick kiln.

The plaintiffs have termed such an act to be highly illegal and against the principles of natural justice terming that notice so sent by the Tehsildar exercising the powers of Assistant Collector (Recovery) was highly vague and the brick kiln having been installed in their own personal property, no such assessment could be made and having been paid for the price of the use of the land to the owner who is a private person had already paid price of the earth which at no point of time vests in the State Government and relied on **“Wajib-ul-arz”** claimed that the earth which is minor mineral does not belong to the Government and hence the suit.

The stand of the defendant-State in their written statement was of denial holding out that Civil Court did not have jurisdiction in terms of Section 158 of the Punjab Land Revenue Act, 1987 and under Section 41(h) of the Specific Relief Act no injunction can be granted in favour of the plaintiff and only an appeal lies in terms of Section 54(f) of the Punjab Minor Mineral

Concession Rules, 1964 and sought dismissal of the suit.

The learned trial Court framed the following issues:-

1. *Whether the defendants are not entitled to recovery of Rs.4323.40 paise from the plaintiff as royalty as mentioned in the plaint? OPP.*
2. *Whether the plaintiff is entitled to injunction prayed for? OPP.*
3. *Whether the Civil Court has no jurisdiction to try this suit? OPD.*
4. *Whether the suit is hit under Section 78 of the Punjab Land Revenue Act? OPD.*
5. *Whether the suit is not maintainable under Section 41(h) of the Specific Relief Act? OPD.*
6. *Whether the suit is barred by the principles of res-judicate? OPD.*
7. *Relief.*

Plaintiff Sawdesh Kumar examined himself as PW1

and after tendering documents closed the evidence.

On the other hand, defendant examined Mohinder Paul Singh as DW1 and after tendering documents closed their evidence.

The Court of learned Sub-Judge, 1st Class (A), Bathinda vide judgment and decree dated 29.03.1989 granted decree for permanent injunction restraining the defendants from assessing, levying or recovering the amount of Rs.4323.40 paise as royalty from the plaintiff from the brick kiln earth used by them.

Similarly an appeal was filed by the State the Court of Additional District Judge vide impugned judgment and decree dated 20.02.1990 dismissed the appeal which is the subject matter of the present regular second appeal.

In the light of admitted legal proposition as has been laid down in '**Kirodi (since deceased) through his L.R. Vs. Ram Parkash and others**' Civil Appeal No. 4988 of 2019; SLP(C) No. 11527 of 2019 decided on 10.05.2019, the Court is

not supposed to frame substantial question of law in view of the provisions enshrined under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana.

Upon hearing Mr. K. K. Beniwal, learned State counsel for the appellants and on perusal of the records.

From the submissions of the two sides, it permeates that the plaintiff-respondent is running a brick kiln on a land which is privately owned and from which after digging earth bricks are prepared. It is not put to question by the learned State counsel for the appellant Mr. K.K. Beniwal, Addl. A.G. Punjab that the land is a private property, for which, the plaintiff had paid the requisite price and even as per the entries made in the “Wajib-ul-arz” none of the area upon which the brick kiln is situated falls in the ownership of the State Government.

The law laid down by now is well settled reference of which can be taken note from the ratios laid down in **Punjab State Vs. Jagdish Chander** 1986 R.R.R. 474, **State of Punjab**

Vs. **M/s Vishkarma and Co.** 1993(2) R.R.R. 38 and RSA No. 1714 of 1989 titled as **The State of Punjab and others** Vs. **M/s Ram Dass Bhagwan Dass** and connected case decided on 23.11.2011, which lays down the principle that such a royalty cannot be levied on such activity on a private land. The revenue document "**Wajib-ul-arz**" shows that as per the records of right the land is neither a mine, sand etc. nor is owned by the State Government and therefore no right vests in the Government over this earth from which bricks are being manufactured being a land that vests and owned by private individual. The Government has no right over the same to make any levy as claimed by it.

It is no where illustrative from the evidence as to the depth for which there has been excavation of the land to draw the earth. The law laid down in the ratios, **Punjab State Vs. Jagdish Chander, State of Punjab Vs. M/s Vishkarma and Co. and The State of Punjab Vs. M/s Ram Dass Bhagwan Dass**, *ibid*, sufficiently controverts the submissions of the

learned State counsel that the earth falls within the minor and mineral, to which, the State Government has a right.

The two Courts below has given a well reasoned findings and, therefore, the appeal is without any merit and stands dismissed.

March 22, 2022

(FATEH DEEP SINGH)

amit rana

JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No