

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

**RSA-208-1992 (O&M)
Decided on:-10.04.2024**

M/s Gopal Krishan Mahabir Parshad Brick Kiln Owner
thr. Its partner Gopal Krishan

....Appellant..

vs.

State of Haryana and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: None for the appellant.

Mr. Chetan Sharma, DAG, Haryana.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 22.04.1989 and 21.03.1991 passed by the Courts below, whereby, a suit for permanent injunction filed at the instance of appellant-plaintiff, for restraining respondents from arresting its partners and also from effecting any recovery of royalty and penalty vide letter dated 15.10.1986, was dismissed.

2. Briefly stating, the appellant being a partnership firm was running brick kiln while using clay from the land situated within the revenue estate of village Daha, District Bhiwani, having obtained license from the prescribed authorities since 1976-77, besides the said land being under lease from the concerned Gram Panchayat. It was pleaded further that somewhere in the year 1981-1982, the revenue estate of village Daha was shifted from District Bhiwani to District Hisar and a notice dated 15.10.1986 was served

upon the appellant-firm against a recovery of Rs.72,968/- being due towards the royalty on account of digging of minor mineral (brick earth) between August, 1976 to March 1982, followed by issuance of arrest warrants against its partners. Hence, the suit.

4. Upon notice, a detailed written statement was filed on behalf of the defendants-respondents wherein it was submitted that though a license was obtained by the appellant-firm for the purpose of running of brick kiln besides having obtained land on lease from Gram Panchayat, Daha, however, under the provisions of Punjab Minor Mineral Concession Rules, 1964 (for short, "1964 Rules"), the appellant-firm was enjoined to pay royalty to the office of respondent No.2, which was thus competent to issue the recovery notice and the same was therefore in consonance with the relevant rules and the regulations.

5. The trial Court vide judgment and decree dated 22.04.1989, dismissed the suit filed at the instance of appellant-plaintiff while holding that the appellant-plaintiff failed to prove on record the payment receipts pertaining to royalty between August 1976 to March 1982, though the payment towards the same for the later period was established on record.

6. Aggrieved thereof, the appellant-plaintiff filed first appeal, however, the same was dismissed vide judgment and decree dated 21.03.1991 passed by the Court of learned Additional District Judge, Hisar.

7. The present appeal was filed, assailing the findings recorded by the Courts below.

8. No one has appeared on behalf of the appellant.

9. Learned counsel for the respondents submits that there was no

illegality or perversity in the judgments passed by the Courts below, in the absence of any evidence been produced on record from the side of the appellants-plaintiffs as regards payment of royalty between August 1976 to March 1982 and thus, in the absence of the best evidence having not been produced on record, the Courts below were well within their right to dismiss the suit filed at the instance of appellant-plaintiff and thus, the judgments and decrees passed by the Courts below warrant no interference.

10. Upon hearing the learned counsel representing the respondents and having gone through the paper book, I find substance in the present appeal on the sole ground of the claim set-up by the respondents-defendants in pursuance to the show cause notice dated 15.10.1986, being not made out. In the given facts and circumstances of the present case, there being no proof on record that the land from where brick earth was being extracted was owned by the respondent-State of Haryana.

11. Reference in this regard can be made to the law laid down by this Court in case of ***“Dr. Shanti Saroop and another vs. State of Punjab and others”***, 1969 AIR (Punjab and Haryana) 79 and ***“M/s Om Parkash Brick Kiln owner vs. State of Punjab and others”***, 2008 (1) RCR (Civil) 447. Relevant extract from para 82 of ***Dr. Shanti Saroop*** case (supra) is reproduced hereunder:-

82.It is only from such areas where this minor mineral vests in the Government that the right to charge royalty is made. It has been emphasised in the letters issued by the State Government to the lessees that the Shariat Wajab-ul-Arz is to be examined in every case to find out whether the property in the minor mineral vests in the State Government. As held in *Kushal*

Singh and others v. The State of Punjab and others (supra), the jurisdiction of the Civil Court to decide the rival claims of the parties relating to ownership of the mineral rights in the land does not appear to be barred by any provision of law and any party wanting a decision on this point can institute a suitable action according to law. The State Government itself has not claimed royalty on the minor minerals which are not owned by it

12. In this case, no evidence on record by respondent-State was produced that as per Shariat Wajab-ul Arz, the land in dispute taken on lease by the appellant from Gram Panchayat, from where brick earth was extracted ever vested in the respondent-defendant. As the demand of royalty was made by respondent, the primary burden was upon it and in the absence of any such evidence on record, the claim made by respondent being based on impugned notice as well the follow up action based there upon was wholly without any legal basis.

13 The aforesaid aspect of the matter was never considered by either of the Courts below, thus, in the given facts and the aforementioned judgments being applicable thereupon, the present appeal is allowed and the findings recorded by the Courts below are hereby set aside, consequently, the suit filed by the appellant-plaintiff is decreed and the law points involved in the present appeal are answered in the aforesaid terms.

14. All pending applications stand disposed of.

10.04.2024

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No