



RSA-807-1993 (O&M) 1

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

**(101) RSA-807-1993 (O&M)
Date of Decision : November 18, 2024**

Hari Singh (since deceased) through LRs .. Appellant

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. O.P. Goyal, Senior Advocate, with
Mr. Yugank Goyal, Advocate and
Mr. Harpreet Singh, Advocate, for the appellant.

Mr. Ashish Yadav, Addl. Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present regular second appeal has been filed challenging the judgment of the Courts below dated 22.11.1991 passed by the trial Court as well as that of the lower Appellate Court dated 09.02.1993 by which, the suit filed by the appellant-plaintiff seeking permanent injunction and mandatory injunction against the defendants for recovering an amount of Rs.65,375/- from the appellant-plaintiff.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The appellant-plaintiff entered into an agreement with the Gram Panchayat of Village Khudana, Tehsil and District Mahendergarh



through its Sarpanch for the lease of the certain land from 15.05.1982 till 31.03.1985 on the lease amount of Rs.17,100/- per annum. While the appellant-plaintiff was enjoying the said lease, a recovery notice was received by the appellant-plaintiff from defendants No. 1 to 3 for deposit of Rs.65,375/- for enjoying the land in question keeping in view the Haryana Mineral (Vesting of Rights) Act, 1973. Feeling aggrieved against the said notice of deposit of an amount of Rs.65,375/-, the appellant-plaintiff filed a civil suit seeking permanent and mandatory injunction restraining the defendants No. 1 to 3 from recovering the amount of Rs.65,375/-.

4. During the course of proceedings of the suit, it has already come on record that owner of the land, which was given on lease to the appellant-plaintiff, was respondent No.4- Gram Panchayat. A litigation between the State as well as the Gram Panchayat qua the ownership of the land in question had already been settled upto the Hon'ble Supreme Court of India wherein, a finding has been recorded that the owner of the suit land is the Gram Panchayat concerned.

5. Despite the said finding, the trial Court dismissed the suit filed by the appellant-plaintiff vide judgment and decree dated 22.11.1991 on the ground that under the 1973 Act, the minerals in the land in question becomes the property of the State and appropriate orders can be passed by the State against the owners for the enjoyment of the benefits being taken out from the land in question hence, as the appellant-plaintiff after getting the lease from Gram Panchayat, was extracting minerals from the land in question, he is required to pay an amount of Rs.65,375/-.



6. Being aggrieved against the judgment of the trial Court dated 22.11.1991, the appellant-plaintiff filed an appeal before the lower Appellate Court, which also came to be dismissed hence, the present regular second appeal.

7. While issuing notice of motion in the present appeal, the recovery of the amount of Rs.65,375/- was stayed.

8. Learned senior counsel appearing on behalf of the appellant-plaintiff argues that once, a finding of fact has already come on record that keeping in view the litigation between the Gram Panchayat and the State, the Gram Panchayat has been declared the owner of the land in question, which has rightly been leased out by the Gram Panchayat to the appellant-plaintiff, any grievance/claim under 1973 Act, can only be made against Gram Panchayat and not against the appellant-plaintiff who is only a lessee.

9. Learned senior counsel for the appellant-plaintiff further argues that without appreciating as to whether, the order of recovery can be passed against the lessee under 1973 Act or not and that too without holding any enquiry or passing any order holding the lessee liable to pay the amount in question after ascertaining the fact that minerals were extracted from the land in question, the notice for recovery of Rs.65,375/- could not have been ordered, which fact has been ignored by both the Courts below while passing the order dismissing the claim of the appellant-plaintiff.

10. Learned State counsel concedes the factum that keeping in view the litigation between the Gram Panchayat of Village Khudana and the State, which attained the finality upto the Hon'ble Supreme Court of India, the owner of the land in question, which was leased to the appellant-plaintiff, was the Gram Panchayat.



11. Learned State counsel submits that notices for the recovery of the amount were only issued under 1973 Act, which gives the power to the State to recover the amount in case, the minerals in the land are being used by owner in any manner.

12. I have heard learned counsel for the parties and have gone through the record with their able assistance.

13. The only question which arise for adjudication in the present appeal is whether or not, under 1973 Act, without holding any enquiry or passing any order by the Collector making any person other than the owner liable to pay any amount, can a notice for recovery be passed straightaway against the appellant-plaintiff, who is the lessee of the Gram Panchayat.

14. In order to appreciate the issue, 1973 Act, under which the claim was made, needs to be taken into account to adjudge whether, straightaway, a notice can be issued by the Government without even complying with the provisions of 1973 Act. Relevant Section 3 (1) of the 1973 Act is as under:-

“3. (1) The State Government may, from time to time, by notification, acquire the right to any minerals in any land and the right to the minerals specified in the notification shall, from the date of its publication, vest in the State-Government.”

15. A bare perusal of the above reproduction would show that there has to be a notification by the State Government so as to acquire the right to any mineral in any land and the right to the mineral has to to be specified in the notification and the said right will come into operation only from the date of notification. Nothing has come on record as to whether, any notification has been issued qua the land in question to seek the right to the



minerals in the land which was leased to the appellant by the Gram Panchayat. In the absence of any such notification, no right can be claimed on land in question with regard to any minerals extracted from the said land.

16. Further, as per Section 4 of the 1973 Act, a person, who was having right to use the land, which is being claimed to be vested with the Government upon notification under Section 3 of the 1973 Act is to be paid amount so as to compensate him/her. Nothing has come on record that any such exercise was undertaken by the State of Haryana before issuing notice of recovery to the appellant-plaintiff. From the 1973 Act, it is clear that the respondents first have to issue a notification to acquire the rights in a particular land and then only proceed further. Thereafter, an enquiry is required to be done so as to ascertain whether any minerals were extracted from the land in question or not and who was the person, who will be entitled for compensation in case, the right is claimed by the Government on the minerals extracted from a particular land.

17. Learned State counsel has conceded that no such enquiry was conducted before issuing notice of recovery to the appellant-plaintiff. This clearly shows that provisions of 1973 Act were not complied with before issuing notice of recovery and straightaway, notice of recovery has been issued to the appellant-plaintiff without even mentioning as to whether, the land in question, which was taken on lease by the appellant from the Gram Panchayat, was part of any notification issued under Section 3 of 1973 Act.

18. The said factual assertion as well as the provisions of 1973 Act has not been dealt with by the Courts below while dismissing the suit filed



by the appellant-plaintiff as well as the appeal.

19. Before raising a claim for the recovery of any amount, the respondent-State has to show its right to claim the minerals over a particular property as their right keeping in view any notification under Section 3 of the 1973 Act.

20. No such findings have been recorded by the Courts below on the said right of the State to recover the amount from the appellant under 1973 Act.

21. It is conceded before this Court by the learned State counsel that there is no order passed against the appellant-plaintiff holding him liable for the payment of the amount by passing appropriate order under 1973 Act. It is also a fact that as of now, no order has been passed even against the Gram Panchayat by the respondents and straightaway claim was raised against the appellant-plaintiff only on the ground that he was the lessee of the land in question for the period mentioned therein.

22. Keeping in view the facts mentioned hereinbefore, the notice issued to the appellant-plaintiff by the authorities concerned for recovery of amount of Rs.65,375/- is set aside. The respondent-State is given liberty to pass appropriate fresh order by giving due opportunity of hearing to all the concerned including the appellant herein and to the Gram Panchayat before ascertaining as to whether the appellant or the Gram Panchayat is liable to pay any amount in the facts and circumstances of the present case after recording a finding of fact that any mineral has been extracted from the land in question, which vested with the State.



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23. The present regular second appeal is disposed of in above terms.

24. Civil miscellaneous application pending if any, also stands disposed of.

November 18, 2024

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No