

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

127(3)

RSA-2118-1992 (O&M)
Date of decision: 07.03.2024

State of Punjab and others ...Appellants

VERSUS

M/s Shivji Ram & Co. and others ...Respondents

RSA-2474-1992 (O&M)
Date of decision: 07.03.2024

Punjab State and others ...Appellants

VERSUS

M/s. Hazari Lal Kamal Mitter ...Respondent

RSA-2475-1992 (O&M)
Date of decision: 07.03.2024

Punjab State and others ...Appellants

VERSUS

Firm M/s. Arora Brick Kiln Owner ...Respondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Saurav Verma, Addl. A.G., Punjab
for appellants in all cases.

None for the respondents in call cases.

VINOD S. BHARDWAJ, J. (Oral)

1. The defendant-State of Punjab has filed the above said appeals
in which common question of law arises for consideration. The said appeals

are thus being decided by a common judgment.

2. For facility of reference, however, facts extracted from Civil Suit No.106 of 27.02.1988 decided on 29.11.1990 (**RSA-2118-1992**).

3. The respondent-plaintiff had filed the said suit for permanent injunction against the State of Punjab on the allegations that the respondent-plaintiff (Firm) is the owner of Brick Kiln situated at village Alike. Land owned by one Mohinder Singh had been obtained for the manufacturing of bricks. Brick earth was dug out from the said land taken on lease and no land had been obtained from the Government for the purpose of excavating earth for manufacturing bricks. A demand of Rs.32069.20 had been raised by the State on account of royalty on brick earth excavated by the respondent-plaintiff. It is claimed that the appellants-defendants (State of Punjab) had no authority to recover such charge and the above said suit was filed.

4. Upon notice, the appellants-defendants (State of Punjab) filed written statement and raised objections as regards that the Civil Court has no jurisdiction to try the suit under the Punjab Land Revenue Act and also that injunction cannot be granted when equally efficacious remedies were available to the respondent-plaintiff (Firm) in the form of applying and approaching with the Department of Mines. It was also pointed out that respondent-plaintiff does not hold any certificate from the Government in Form B and do not have right to extract any mines & minerals including brick earth. The said right and title vests in the State of Punjab as per the entries in *Wazib-ul-arz* of village Alike. The notice was claimed to have been rightly served upon the respondent-plaintiff.

5. On completion of the pleadings, following issues were framed:-

- “1. Whether the plaintiffs are entitled to the injunction as prayed for? OPP.**
- 2. Whether the civil court has no jurisdiction to try the suit? OPD.**
- 3. Whether the plaintiffs have not served notice U/s 80 C.P.C. before the institution of suit? OPD.**
- 4. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD.**
- 5. Relief. ”**

6. While the respondent-plaintiff appeared as PW-1 to prove its case, Bahadar Singh, Clerk appeared on behalf of appellant-defendant as DW-1.

7. Upon consideration of the respective evidence, the Sub-Judge 1st Class, noticed the evidence in the form of the *Wazib-ul-arz* of village Alike which was proved on record as Ex. P-8. A reference was made to the various judgments which laid down a Rule of Law where a right or title of mines & mineral has been vested in a State and the State Government can demand royalty. The *Wazib-ul-arz* did not vest any right in the State for the brick earth in view of Section 42 (2) of the Punjab Land Revenue Act and it was nowhere provided that in the above said *Wazib-ul-arz* that the same would belong to the Government. A presumption was noted to have been claimed by the Government for claiming such right. The suit filed by the respondent-plaintiff was accordingly decreed by the Sub-Judge 1st Class, Mansa, vide judgment and decree dated 29.11.1990. Aggrieved thereof, the

respondent-State preferred an appeal before the District Judge, Bathinda. Vide his judgment dated 04.05.1992, the appeal was dismissed by the District Judge, Bathinda by observing that as per the *Wazib-ul-arz* which was prepared after 18.11.1971 and there is no express provision that any forest or quarry or any such land or interest would belong to the Government and that in the absence of such averment, the law presumes that right would rest with the land owner. The presumption created under Section 42(2) of the Land Revenue Act has not been rebutted by the State of Punjab by leading any cogent reason, the operative part of the judgment reads thus:

“ 8. Before me the ld. Government Pleader assailed the findings of the trial court on issue No. 1 and I shall confine my discussion on this issue only. The ld. Government pleader practically repeated all the submission which were made by him before the trial court and his preliminary objections is that as per notification issued by the Government brick-earth has been declared as minor minerals. Therefore, according to the Wazib-ul-Arz Ex. P.8 the brick earth vests in the State Government and the State Govt. is competent to claim royalty on the excavation of earth which is used by the plaintiff firm for the purpose of manufacturing bricks. The arguments of the ld. Government Pleader is devoid of merit. No doubt the excavation of brick earth has been declared as minor minerals but this is not enough for the Govt. to claim royalty until and unless it is established that according to the Wazib-ul-Ara of the village excavating of earth vests in the

State Government and in this regard I would like to refer to the provisions of section 42 of the Punjab Land Revenue Act which lay down as follows:-

“42. Presumption as to ownership of forests, quarries and waste land

(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-right 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 submitted 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 the comparison between the assessment of villages in which there existed, and the assessment of villages of similar character in which there didn't exist any forest or quarry of 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 Ex. P8 is the attested copy of the Wazib-ul-Arz and a perusal of the same would show that it was prepared after 18th of Nov. 1971 and it is not expressly provided in it that any forest or quarry or any such land or interest belong to the Govt. and in the absence of such averment the law presumes that it shall belong to the land owner. The presumption created under subsection 2 of the section 42 has not been rebutted by the State Govt. by any cogent evidence. The Govt. can claim relied if it is established prima facie from the entries of the revenue record that the excavation of the earth belongs to the Government, rather perusal of Ex.P.8 shows the there is specific mention in the Wazib-ul-arz that there is nothing which belongs to the State Govt. There is no jungle or any stone etc. or any quarry in this village and neither of it shall be considered as property of Govt. In these circumstances the legitimate inference is that the land from which brick earth is being taken by the plaintiff belongs to Mohinder Singh, the Government cannot claim royalty and in these circumstances the issuance of the demand notice for

claiming royalty from the plaintiff is illegal. Hence I affirm the findings of the trial court on issue No. 1 and seeing no merit in this appeal, dismiss the same with no order as to costs. File be consigned to the Record-room."

8. **Brief facts of RSA-2474-1992** are that the defendant-State of Punjab is in appeal against a judgment of reversal by the Additional District Judge, Kapurthala, in Civil Appeal No.47/22.02.1989/138 of 28.04.1992 whereby appeal of the plaintiff against the judgment and decree dated 03.01.1989 passed by the Sub-Judge 1st Class, Sultanpur Lodhi, has been allowed.

9. The respondent filed the suit for injunction averring that it is owner of the land in village Behbal Bahadar, Tehsil Sultanpur Lodhi and a Brick kiln had been installed in some portion of land for which brick earth was excavated from the land and the State demanded royalty for said brick earth by claiming the same to be a minor mineral. Reference was made to the *Shart-Wazib-ul-arz* as well as Section 42 of the Punjab Land Revenue Act to claim that it had an absolute right and State had no right to claim royalty.

10. In the written statement, the State of Punjab raised various objections including that brick earth was a mineral as per Notification dated 01.06.1958 and that royalty could be charged. It was also contended that Civil Court had no jurisdiction to try the case.

11. The following issues were framed:

- “1. Whether the suit is not maintainable as per preliminary objection No.3 of the W/statement? OPD**
- 2. Whether the Civil Court has no jurisdiction to entertain the suit? OPD**
- 3. Whether the alleged royalty, is illegal and invalid? OPD**
- 4. Whether the brick earth vests in the state as per the entries of the Sharat Wajab Ul arz of village Tarf Behbal Bahadur. If so its effects.**
- 5. Whether the plaintiff is entitled to the injunction as prayed for? OPD**
- 6. Relief.”.**

12. The trial Court dismissed the suit of the respondent-plaintiff.

The operative part of the judgment reads thus:

“7. I have heard the learned counsel for the parties and have also carefully gone through the record of the case and various documents placed on the file. In order to decide controversy it has to be seen as to whether the brick earth has also been declared as minor mineral under Minor Mineral Concession Rules, 1964. It has further to be seen whether the defendant Govt. has any right to claim royalty with regard to the brick earth excavated by the plaintiff from the land taken by him on lease from Gram Panchayat Tarf Behabl Bahadur. The careful perusal of the copy of the notification dated 1 June, 1958 Ex. D2 issued by the Government of India, on exercise of the powers conferred by clauses (a) of section 13 of the Minor

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Mineral (Regulation and Development) Act, 1957 the brick earth has been declared to be minor Mineral. There is no evidence on the file on behalf of the plaintiff to rebut the position as given in the notification Ex.D2. The learned counsel for the plaintiff has not been able to dispute the fact that brick earth has been declared as minor mineral vide notification Ex.D2.

8. Now it has to be seen as whether the defendant Govt. has any right to claim royalty with regard to the brick earth, which has been declared to be minor mineral vide aforesaid notification or in other words, the right to brick earth vests in the Government or not. In order to decide this proposition of law, the provisions of section 42 of Punjab Land Revenue Act, has to be carefully gone through.

9. The careful perusal of the Sub-Section (1) of section 42 goes to show that when in any record of rights completed before the eighteenth day of November, 1871 if it is not expressly provided that any forest, quarry, unclaimed, unoccupied or waste land spontaneous produce of other necessary interest in land belongs to the land owners it shall be presumed to belong to the Government. But under the provisions of sub section 2 of the said section when in any record of right completed after the aforesaid date it is not expressly provided that any forest or quarry of any such land or interest belongs to the Government, it shall be presumed to

belong to the land owners. Now it has to be seen as to when the Sharat Wajab Ul Arz of village Tarf Behbal Bahadur. The careful perusal of the copy of the Sharat Wajab Ul Arz placed on the file by the defendant as Ex.D1 shows that it was prepared in the year 1962-63. From this it is clear that Sharat Wajab Ul Arz of village Tarf Behbal Bahadur was prepared in the year 1962-63 so in the case Sub-section 2 of section 42 referred and discussed above, when in any record of right, completed after 18th November, 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied or in such land or interest belong to the Govt. It shall be presumed to belong to the land owner. In other words, it means that in the record prepared after 18th November, 1871 it shall be expressly provided in the Sharat Wajab Ul Arz that the rights of the minerals belong to the Government and unless there is so expressly provided, the said interest shall be presumed to belong to the land owners.

10. In the Sharat-Wajab-Ul-Arz Ex.D1 of village Tarf Behbal Bahadur it is written that:-

ਦੇਹ ਮੈਂ ਕਲ ਕਿਸੀ ਕਿਸਮ ਦੀ ਨਹੀਂ ਹੁੰਦੀ ਅਗਰ ਅਰਥ ਕੋਈ ਬਰਾਮਦ ਹੋਵੇ ਤੇ ਹੋਰ ਸਬਰ ਹੋਗਾ

If this language is interpreted in English then it will mean that there are no mines in village Tarf Behbal Bahadur and if any such mine is subsequently discovered, then the same will be

belonging to the Government. Although it is mentioned in the Sharat Wajab Ul Arz of village Tarf Behbal Bahadur there is no mine in the village for the time being and that if the same is discovered, subsequently that will belong to the Government. The learned counsel for the plaintiff has argued that the brick earth, which has been included within the definition of minor minerals cannot be said to have been found after the aforesaid Sharat Wajab Ul Arz was completed as the brick earth all along remains on the earth. For this view he has relied upon 1985 PLR Page 1961. The learned Counsel for the plaintiff has further argued that when there is no agreement between the parties with regard to the brick earth, no royalty can be charged by the Government. For this view he has relied upon 1985 AIR page 67, the learned counsel for the plaintiff has further agreed that the Government can claim royalty on brick earth, only if it is expressly provided in the Wajab Ul Arz that brick earth belongs to the Government. For this view he has relied upon 1983 PLR page 436 and 1988 PLR, page-69. All these authorities referred to and relied upon by learned counsel for the plaintiff are of single Benches.

11. On the other hand, the learned G.P. has relied upon the judgment of our Hon'ble High Court Punjab and Haryana in letter patent of appeal No. 264 of 1974 and letter patent appeal No. 416 of 1974 and has argued that in view of the decision of their lordships in the aforesaid authorities, the defendant

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Government is fully competent to charge royalty on the brick earth from the plaintiff as the same is minor mineral for which the right vests in the Government. I have considered the respective contentions of the learned counsel for the parties and have also carefully gone through the authorities relied upon by them. In the letter patent appeal No. 264 of 1974, it was held by single Judge that the **kankar** mentioned in the above entry referred to stones available in the bed of Nallah and there being no specific mention regarding stone which is found embedded in the Pahar, the same is presumed to belong to the land owner by virtue of the provisions of section-42 of the Punjab Land Revenue Act. This finding of the Single Bench was challenged before the Division Bench and it was held by their lordship of the Division Bench that as per entry of the Wajab Ul Arz, it was specifically mentioned that in future any mines or minerals if discovered, they shall belong to the Government. It is therefore obvious that the stone quarry situated in the said land according to this entry in the Wajab Ul Arz would belong to the Government and consequently, whether the word **Kankar** has reference to the available in the bed of the Nallah or to the stones embedded in Pahar is hardly of any consequence. But even if it may be said that the Kankar includes the masonry stone, we are of the view that the Kankar which is discovered in future has no reference to the Kankar which was available in the bad or Nallah has been specifically mentioned in the entry

and the Kankar which was to be discovered in future would obviously have reference to the kankar other than the one available in the bed of the Nallah. So in either case whether the masonry stone is taken to be a mineral or a kankar it would vest in the Government according to the said entry of the Wajab Ul Arz.

12. In the second letter patent appeal No. 416/74 it was held by their lordship that the learned Single Judge, thought that since sand was not expressly mentioned in the entries, the right to quarry sand belonged to the owners of the land and not to the Government but that would be to completely ignore the entry to the effect that if any mine was discovered in the future, it would belong to the Government. The entries mean that while there was no existing mine in either of the village, any future mine if and when discovered, would belong to the Government, clearly it follows that the right to all minerals, without exception was vested in the Government. This conclusion is supported by the circumstances that the respondent himself took short term lease from the Government.

13. After careful perusal of the decision given by their lordship which are on Division Benches shows that any mine, which is discovered subsequently for which there is no mention in the Wajab Ul Arz Ex.D1, belongs to the Government and not to the land owner. After carefully going through all the authorities referred to by learned counsel for the parties, I am of

the considered view that the brick earth though not specifically mentioned in the Wajab-Ul-Arz of village Tarf Bahbal Bahadar but if any mine is subsequently discovered that shall belong to the Govt. as the brick earth has already been declared as minor mineral vide Notification Ex.D2 referred to and discussed above. With due regard to the findings of this lordship in the authorities titled as 1985 PLR 1969, wherein it has been held that brick earth cannot be said to be mineral to be found subsequently as the brick earth all along with remained on the earth I am of the considered view that the brick earth is definitely minor minerals and can be said to be found subsequently as and when the same is excavated from the earth, although it remained the part of the earth until excavated. For this view I find support from the decision of their lordship in the letter patent appeal No. 264 of 1974 where the stone, which was the part of the Pahar was also considered to be minor mineral to be found subsequently along with Kankar etc. which was already available in the bad or Nallah. In other words brick earth which is a minor mineral can be said to have been found subsequently when the same is excavated from its origin i.e. the earth by any act of excavation. Both these issues are decided accordingly in favour of the defendants and against the plaintiff.

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13. Aggrieved of the same, an appeal was filed before the District Judge, Kapurthala. The appeal was allowed and judgment of trial Court

reversed vide judgment dated 29.07.1992. The operative part of the judgment reads thus:

“6. I have heard the counsel for the parties, and have gone through the records with their help. While assailing the findings of the trial Court, on issues No.3, 4 and 5 it was contended that brick earth was not a minor mineral and under section 42 of the Punjab land Revenue Act, it do not vest in the Punjab Government. No Royalty could be charged. Reliance was placed upon AIR 1991 P.H. 134 State of Punjab Versus M/s Subash Chander. While refuting the above submissions of the plaintiff, the learned G.P. contended that as per notification Ex.D2 brick earth had been declared to be a minor mineral. As per Ex. D3 and D4 the judgments of our high Court, the brick earth was minor mineral.

7. Having considered the respective submissions of both the parties, I find that the case is a matter of record and interpretation of law. No amount of oral evidence is required to decide the case. In AIR 1991 P.H. 134, (D.B.) our High Court after discussing all previous authorities, had laid down that the ratio of all the previous ruling was that unless there is a specific mention to the contrary, in the record of rights is completed after 18 November 1871, the brick earth belongs to the land owner. In para No. 10 it was held that the brick earth was well known and if there is no mention to the same in the record of rights completed after 18, November 1871 the brick earth

would not vest in the Government. Rather it would vest in the land owners.

8. In the present case the defendants had produced on record an-attested copy of a copy from the Wajab-Ul-Arz Ex. D1. Firstly under the law only a certified copy from the revenue record is admissible. A copy of a copy is not admissible in evidence. Ex.D1 as such in an admissible piece of evidence. Moreover, a reference to Ex. D1 shows that it was prepared after November 1871. The dictum laid down in Subash Chander, case supra is fully applicable to the present case. In Ex. D1 there is no mention, that the brick earth vests in the government. Resultantly, the brick earth vests in the land owners. It is not the case of the defendants that the land in dispute was owned by the Government. Resultantly the findings of the trial Court on issues No. 3, 4, and 5 are hereby reversed. The verdict on the same is returned, in favour of the plaintiff-appellant.

9. Since the action of the respondents was ultravires, as such the civil court had jurisdiction to try the suit. The verdict on issue No. 2 is reversed and is returned in favour of the appellant. The suit is maintainable. The verdict on issue No. 1 is also returned in favour of the plaintiffs. ”

14. **Brief facts of RSA-2475-1992** are that the defendant-State of Punjab is in appeal against the judgment of reversal, the facts in this case are similar to those involved in RSA-2474-1992 and same judicial officers have

passed the judgment. The same are thus not being extracted to avoid repetition since baring the description and location of land, all other aspects in pleadings and reasoning are identical.

15. Still aggrieved, the present appeal has been preferred.

16. Learned State counsel reiterates the arguments that mines & minerals vested in the State as per the *Wazib-ul-arz* and that the demand of royalty for the brick earth used by the respondent-plaintiff was in accordance with the statutory provisions and the Civil Court had no jurisdiction to examine the said issue.

17. On a query, however, he could not refer to the specific Clause of the *Wazib-ul-arz* as per which the above said right on the mines & minerals had been vested with the State Government. In the absence of any such evidence having been led by the respondent-State there can be no presumption against the true land-owner especially when a presumption flows in favour of the landowner by virtue of Section 42 (2) of the Punjab Land Revenue Act. Even though such a presumption of right is by a deeming fiction of law, however, such presumption would operate in his favour unless cogent, convincing and admissible evidence is led by the State Government to establish that the land owner does not have any right and the same stands vested in the State Government. Once the Government seeks to enforce a right which has not been conferred upon it, such a demand can always be assailed by means of filing an appropriate suit before the Civil Court.

18. Learned counsel for the appellant-defendants (State) has not been able to refer to any evidence on the basis whereof the findings recorded

by the Sub-Judge 1st Class, Mansa, and as affirmed by the District Judge, Bathinda, in RSA-2118-1992 or as reversed in other two RSA’s bearing Nos. 2474 of 1992 and 2475 of 1992 can be said to be based upon misreading of evidence, perverse or illegal. Reference had also been made to a Division Bench judgment of this Court to support the view, nothing has been brought forth to establish that the view was not as per the law or that the Division Bench judgment is not applicable to the facts of the case.

19. In the absence of any such evidence, there is no occasion for this Court to upset the finding of facts recorded by the Court below which has been duly recorded after going through the terms and conditions of the *Wazib-ul-arz* and the position in law as expounded.

20. All the three appeals are accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

07.03.2024
Mangal Singh

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