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the case and the suit is available for further trial. On being so informed the trial Court has no option, but to recall the suit to its file and then proceed to dispose it of. It may be that what the learned counsel for the non-evacuee mortgagors says may prevail and because of the finality of orders under Act 64 of 1951, nothing more would be required to be done in the suit except to pass a final decree disposing it of, but that will be a matter which will be decided by the Court itself. It is further clear that, even if the approach of the learned trial Judge is to be accepted, that application for revival of the suit was necessary, there was no question of a partial revival of the suit for the purposes of costs only. The suit either remains stayed and the stay in this case may be interpreted as dismissal of the suit as the learned counsel for the non-evacuee mortgagors has contended or it is no longer stayed, in which case it must be disposed of on merits. In my opinion, the latter is the case and the learned trial Judge was not right in ordering that the suit is only revived for the purposes of costs under the Act.

The result is that this revision petition succeeds and the suit of the petitioner as plaintiff no longer remains stayed. It is a suit which is now back on the file of the learned trial Judge to be disposed of and must be disposed of according to law. In the peculiar circumstances of this case the parties are left to their own costs.

R.S.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

KHUSHAL SINGH AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 81 of 1965.

1965

May, 24th

Mines and Minerals (Regulation and Development) Act (LXVII of 1957)—S. 15—Power of the State Government to make rules—Scope of—Punjab Minor Minerals Concession Rules (1964)—Rules 28, 33 and 61—Whether constitutional—Wajab-ul-arz—Value of—Interference by the Government with the property or property rights of the citizens in whose lands quarries or mines of minor minerals are found—How to be made.

Held that (1) section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, authorises making of rules by the State Government not only for the purpose of regulating the grant of prospecting licences and mining leases but also for the purposes connected therewith. This can include the making of rules for giving a mining lease by whatever name it may be called or by a contract, the consideration of which is determined by a process of a public auction ;

(2) the Punjab Minor Minerals Concession Rules, 1964, framed under section 15(1) of the Mines and Minerals (Regulation and Development) Act 67 of 1957 and particularly rules 28, 33 and 61 thereof are *intra vires* section 15(1) of the Act and are not *ultra vires* Article 31(2) or 31(3) of the Constitution ;

(3) the ultimate value of the *wajab-ul-arz* is that of a contract between the residents of the village and the Revenue authorities of the State, even though it is a part of the record-of-rights ;

(4) if and when the State Government or any of its executive authorities attacks or interferes with any property of the petitioners and such action is questioned, impugned or challenged, it would be necessary for the executive authority concerned to support the legality of its threatened or impugned action in any appropriate proceedings which may be commenced by the petitioners. If the executive is not able to so support the legality of the impugned action, it will be restrained and prohibited by High Court, if approached by the petitioners, *ex debito justitiae ;*

(5) the implied provision for hearing, the express safeguards for determination of and advance payment of compensation and the laying down of the criteria for determining the compensation payable to owners of land, whose possession is interfered with under the Punjab Rules save the said rules from any sustainable attack on their validity or constitutionality ;

(6) if the owner or occupier of land, the minor mineral rights in which have been put to auction by the local Government, refuses to give his consent to the exercise of those rights which are claimed by the Government, either directly or by refusing to allow the contractor to enter on his land, neither the Government nor the contractor can interfere with the land belonging to or occupied by such person

unless and until the owner or occupier has been paid such advance compensation as is determined by the Collector or other appropriate authority under rule 61 read with para 27 of prescribed form 'L' of the indenture of contract in accordance with the principles laid down in the Land Acquisition Act; and

(7) that any act, threat or interference by any executive authority in the manner of an attempt to take or excavate lime-stone or sand from the land belonging to and owned by petitioners Nos. 2 and 3 either without their consent or (in case the consent is refused) without paying advance compensation to them as hereinabove stated would be violative of the rule of law and of the property rights of the said petitioners and would be liable to be restrained and prohibited in appropriate proceedings.

Case referred by the Hon'ble Mr. Justice Shamsher Bahadur by order, dated the 7th April, 1965 *to a Division Bench for decision owing to an important question of law being involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice R. S. Narula, by order, dated the 24th May,* 1965.

Petition under Article 226 *of the Constitution of India praying that a writ of* mandamus *or any other appropriate writ, order or direction be issued directing the respondent not to enforce the Punjab Minor Minerals Concession Rules,* 1964 *or of* 1953, *which may be declared as null and void and the respondent be ordered not to require the obtaining of permits or the payment of royalty by the petitioners before they remove, sell, etc., their minerals and the respondent be ordered not to interfere with the rights of the petitioners to lease out their property and the minerals contained in it, in any way they like, and the auction of the property of the petitioners be set aside and the petitioners' dispossession from the land in dispute be stayed. The petitioner No.* 1 *be allowed to continue extracting lime-stone, sand; etc.*

H. S. DOABIA, ADVOCATE, for the Petitioners.

M. R. SHARMA, ADVOCATE FOR THE ADVOCATE-GENERAL, for the Respondents.

ORDER OF THE DIVISION BENCH

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NARULA, J.—The main question involved in this writ petition is whether the Punjab Minor Mineral Concession Rules, 1964 (hereinafter referred to as the Punjab Rules) framed under Section 15(1) of the Mines and Minerals

(Regulation and Development) Act (67 of 1957), (hereinafter called **the Act**), and particularly rules 28 and 33 of the said Punjab Rules allowing contracts for extraction of minor minerals granted by auction from land belonging to other persons are unconstitutional or not. The facts giving rise to this writ petition are like this.

Shrimati Sobhni Devi, petitioner No. 2, is admittedly the owner of 69 Bighas 19 Biswas of land in village Gharog, Tehsil Kandaghat, district Simla. Under written agreement, which expired on 30th October, 1964 and thereafter under an oral agreement, the said land had been given by Shrimati Sobhni Devi to Khushal Singh, petitioner No. 1, for extraction of limestone and sand therefrom. Ram Nath, petitioner No. 3, is also admitted to be owner of 107 Bighas and 10 Biswas of land in village Sumti in the same tehsil and district. According to the averments in the writ petition, Ram Nath had also given the right to extract stones (limestone and building stone) for 15 years to Khushal Singh, petitioner No. 1. Khushal Singh is stated to be in possession of both the tracts of land in question as lessee or licensee of the owners. He had been extracting limestone and sand from the said land under permits granted by the Assistant District Industries Officer, Simla, which expired on 31st December, 1964. For the period after that date no permits have been granted to Khushal Singh, petitioner. Particulars of the permits and the precise areas for which they were granted have been mentioned in the written statement of the State. There is, however, nothing to show that the owners of the respective pieces of land, i.e., petitioners Nos. 2 and/or 3, ever participated in or consented to the grant of the permits by the Government to Khushal Singh, petitioner. By a public auction held by the Assistant District Industries Officer, Simla, on 28th December, 1964, the limestone and sand present in the land belonging to Shrimati Sobhni Devi, petitioner No. 2, was sold for one year to Madan Lal Sahni, respondent No. 3, who was the highest bidder for the same. Similarly limestone and sand in some portions of the land belonging to Ram Nath, petitioner No. 3 was sold for one year by public auction on 28th December, 1964 to Bakshi Munshi Ram Basin, respondent No. 4. According to the writ petition, kilns for burning limestone for preparation of lime have been installed on the site by Khushal Singh, petitioner who is stated to have

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been orally prohibited on or about 24th December, 1964, by the Assistant District Industries Officer, Simla, from extracting any further limestone or sand from the lands in question. In January, 1965 all the three petitioners jointly filed this writ petition for restraining the State of Punjab and the Assistant District Industries Officer, Simla, from interfering with the rights of petitioners Nos. 2 and 3 to lease out their property and the minerals contained in it in any manner they like. It has been further prayed in the writ petition that the Punjab rules may be declared null and void and the State may be directed not to enforce them. The petitioners also pray that the auction sales held on 28th December, 1964, relating to "the property of the petitioners" may be set aside and the respondents may be restrained from dispossessing the petitioners of the same. As a result, it is prayed that petitioner No. 1 may be allowed to continue to extract limestone and sand, etc., from the pieces of land belonging to petitioners Nos. 2 and 3.

The Motion Bench (S. B. Capoor and I. D. Dua, JJ.), while admitting this writ petition on 29th January, 1965, directed *status quo* to be maintained till further orders. This interim order was confirmed by Pandit J., on 10th February, 1965 to last till the decision of the writ petition.

These auction sales were conducted on the basis of auction notice issued by the Department of Industries, Punjab, in December, 1964, of which notice a copy has been attached to the writ petition as annexure 'A' thereto. The notice states that auction of minor minerals contracts of Simla District would be held in the office of the Asistant District Industries Officer, Simla, on the 28th and 29th December, 1964 and that the contract would be for the period ending 31st of March, 1966. It is also stated in the auction notice that the other terms and conditions of auction would be the same as contained in rules 29, 30, 32 and 33 of the Punjab Rules. List of minor mineral quarries of Simla District attached to the public notice shows that the minor mineral found in the two sites in question is "low grade lime".

In its written statement the State of Punjab has urged that the mineral rights in respect of the villages in question vest in the State in accordance with the entries contained

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in the *sharat wajab-ul-arz* read with section 42 of the Punjab Land Revenue Act, 1887. It is contended on behalf of the State on that basis that any agreement executed or likely to be executed contrary to the conditions stipulated in the said *wajab-ul-arz* would be illegal and void. The provisions of the Punjab Minor Minerals Rules, 1934 are stated to have been made applicable to the erstwhile Pepsu areas in the year 1957, whereafter, according to the return made by the State, the extraction of minerals was permissible on short-term permits issued by the Revenue authorities. It has further been averred by the State in the written statement that petitioner No. 1, himself (not the owners of the sites, but the lessee thereof) obtained certain permits from the Revenue authorities for the extraction of sand and limestone from various pieces of land of which particulars have been given. The *wajab-ul-arz* on which reliance is placed to claim ownership of the minerals contains the word "*pathar*" in certain context to which reference will be made in a later part of this judgment. The State urges that the mineral rights in respect of sand quarries of the sites in question are also included in the term "*pathar*" (rocks) as had been held by certain author in his treatise on "The Principles of Petrology". The State Government, it is said, is fully competent to make the rules for the regulation of minor minerals in the State under Sections 2 and 15 of the Act. Rules 35, 38, 39 and 40 are, however, stated to be not applicable to this case as mineral rights in respect of the minor minerals in question relating to the land in dispute are claimed to belong to the State. The landowners, according to the State, have no right to work the mines and quarries without obtaining permits or without entering into contract with the competent State authority for that purpose.

Though many contentions appear to have been raised in the writ petition, only two main points were urged and pressed before us by Shri Harbans Singh Doabia, the learned counsel for the petitioners. He formulated these two points in the following words:—

(1) Petitioners Nos. 2 and 3 are the owners of their respective pieces of land and, therefore, of everything contained in or under the land and this

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confers on the said petitioners the right to restrain the State from interfering with their ownership of their said property. If the State in spite of having admitted the ownership of petitioners Nos. 2 and 3, claims the right to extract or take away the minerals from that land, which right is disputed by the petitioners, the State must file a suitable action in an appropriate Court of competent jurisdiction to have its claim decided but cannot proceed under the Punjab Rules and decide the disputed claim itself; and

(2) Even if it is either proved or presumed that the minerals in question do not belong to the petitioners, they cannot be dispossessed of the same, i.e., the petitioners cannot be deprived of their possessory title otherwise than in course of proceedings authorised by some valid law.

It is around these two submissions that the whole argument of Mr. Doabia, has revolved.

In reply, it has been urged by the learned counsel for the State that the mineral rights do not belong to petitioners Nos. 2 and 3, though they are owners of the land and that in accordance with the *wajab-ul-arz* read with section 42 of the Punjab Land Revenue Act, these rights vest in and belong to the State and can be given away by the State either on lease or on contract basis on any terms to any third person.

In order to appreciate the rival contentions of the parties on the above-said two points it is necessary to first set out the relevant provisions of the Act. "Minerals" as defined in section 3(a) of the Act includes all minerals except mineral oils. Under clause (c) of that section "mining lease" has been defined to mean a lease granted for the purpose of undertaking mining operations, etc. Clause (d) of section 3 defines "mining operations" as any operations undertaken for the purpose of winning any mineral. Section 3(e) of the Act defines "minor minerals" as follows: —

"(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand

used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral."

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It is significant to note that "minor minerals" has been specifically made to include within its scope "building stones", "ordinary sand" and "any other mineral which the Central Government may by notification in the Official Gazette, declare to be a minor mineral".

By notification No. MII-159(18)/54-A-II, dated 1st June, 1958, the Central Government, in exercise of its powers under section 3(e) of the Act, declared "limestone used for lime burning" amongst certain other minerals as a minor mineral. But by a further notification No. MII-169(40)/58, dated 20th September, 1961, the Central Government, in exercise of the same powers amended the earlier notification so as to describe the relevant mineral in the following words:—

"limestone used in kilns for manufacture of lime used as building material".

It is significant to note that in para 2 of the writ petition it has been stated that the first petitioner (who is alleged to be in actual possession of the sites) has constructed kilns for manufacturing lime in a part of the land in dispute.

It is the notification dated 20th September, 1961, which is relevant for the purposes of this case as the auction took place in December, 1964. As a result of this notification lower quality lime used for building purposes has also been included in the list of minor minerals.

Sections 4 to 13 of the Act (dealing with restrictions on undertaking of prospecting and mining operations and procedure for obtaining prospecting licenses or mining leases in respect of land in which the minerals vest in the Government) do not apply to prospecting licenses and mining leases in respect of minor minerals by virtue of operation of section 14 of the Act. Section 15(1) of the Act empowers the State Government, by notification in the Official Gazette, to make rules for regulating the grant of prospecting licenses

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and mining leases in respect of minor minerals and for the purposes connected therewith. It is in exercise of the powers conferred by this section that the Punjab Rules have been framed.

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At the outset the learned counsel for the petitioners urged that though the State can make rules for regulating the grant of prospecting licenses and mining leases in respect of mining minerals, it cannot make rules under that section for any purpose other than regulating the grant of the said licences or leases. He also urged that limestone is not a minor mineral as defined in section 2(c) of the Act and, therefore, the impugned action of the State Government relating to that substance is wholly unauthorised. In view of the two notifications referred to above and particularly the notification, dated 20th September, 1961 the last objection of Mr. Doabia has no force. Nor do I find any merit in the first contention of Mr. Doabia in this behalf as section 15 authorises making of rules by the State Government not only for the purpose of regulating the grant of prospecting licences and mining leases, but also for the purposes connected therewith. This can include the making of rules for giving a mining lease by whatever name it may be called or by a contract, the consideration of which is determined by a process of a public auction.

Mr. Doabia then urged that on the authority of the judgments of the Supreme Court in *Wazir Chand and another* v. *The State of Himachal Pradesh and others* (1), and in *Bishan Das and others* v. *State of Punjab and others* (2), the minerals on the land belonging to petitioners Nos. 1 and 2 cannot be seized from the possession of the petitioners or their agent unless some specific and valid provision of law authorises such a course. In *Wazir Chand's case* Mahajan C.J., who wrote the judgment of the Court held as follows: —

> "It is obvious that the procedure adopted by the Kashmir and the Chamba Police was in utter violation of the provisions of law and could not be defended under cover of any legal authority. That being so, the seizure of these goods from the possession of the petitioner or his servants

(1) A.I.R. 1954 S.C. 415.
(2) A.I.R. 1961 S.C. 1570.

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amounted to an infringement of his fundamental rights both under Article 19 and Article 31 of the Constitution and relief should have been granted to him under Article 226 of the Constitution."

In *Bishan Das's* case it was held, *inter alia*, as follows:—

"The petitioners could not be held to be trespassers in respect of the *dharamsala*, temple and shops; nor could it be held that the *dharamsala*, temple and shops belonged to the State, irrespective of the question whether the trust created was of a public or private nature. A trustee even of a public trust can be removed only by procedure known to law. He cannot be removed by an executive fiat. A person who *bona fide* puts up constructions on land belonging to others with their permission would not be a trespasser, nor would the buildings so constructed vest in the owner of the land by the application of the maxim *quicquid plantatur solo, solo cedit.* Hence, in respect of the *dharamsala*, temples and shops the State had not acquired any rights whatsoever merely by reason of their being on the land belonging to the State. If the State thought that the constructions should be removed or that the condition as to resumption of the land should be invoked, it was open to the State to take appropriate legal action for the purpose."

Mr. Doabia also relied on an unreported judgment of this Court (G. D. Khosla and S. S. Dulat, JJ.), dated 5th August, 1959, in Civil Writ No. 241 of 1958—*Messrs Krishna Furnishing Company* v. The *State of Punjab*. In this case the State wanted to take possession of the premises originally let out to Messrs Krishna Furnishing Company, purporting to act under section 9 of the Capital of Punjab (Development and Regulation) Act (27 of 1952), on the ground that the State had become entitled to resume the lease in accordance with the covenants thereof. It was argued on behalf of the original lessee that even if the State had become entitled to resume possession of the originally tenanted premises, it was bound to follow the ordinary process of law and not to oust the erstwhile lessee under the special Act. The

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Punjab Act did not, however, contain any provision authorising the use of force for resuming possession unlike section 4(2) of the Punjab Requisitioning and Acquisition of Immovable Property Act or the Government Premises (Eviction) Act as amended in 1956. In this connection the Division Bench of this Court held as follows:—

> "In the present case the entire Act says nothing whatsoever about the use of force, and to import the conception of force impliedly in interpreting the word "resume" would be stretching the meaning beyond straining point. "Resume" merely means take back, but take back not illegally but in a lawful manner, and when a person refuses to vacate premises into the possession of which he was admitted as a lessee, the landlord cannot throw him out by force unless the use of force is expressly authorised by law."

Reliance was also placed by the learned counsel for the petitioners on another unreported judgment of this Court (Mehar Singh and P. D. Sharma, JJ.), dated 23rd April, 1964, in Civil Writ No. 1099 of 1962—*Messrs Krishna Furnishing Company* v. *The State of Punjab*. All that was held in this latter case of *Messrs Krishna Furnishing Company* was that the occupant of the premises (which originally belonged to the Government and were, therefore, public premises, but had later become the property of a statutory corporation, the State Bank of Patiala), could not be got ejected under Punjab Act 31 of 1959 as title in the premises had passed from the State of Punjab to the State Bank of Patiala. I have not been able to appreciate how this judgment helps the petitioners in the instant case.

All that emerges from these cases cited by the learned counsel for the petitioners is that no one can be deprived of his property consisting even of a possessory title otherwise than by a procedure known to law and that whenever such an action of the State is impugned, the action must be restrained unless it can be defended by the State under cover of any valid legal authority. There is no quarrel with this legal proposition. As long ago as in 1931, it had been

held by Lord Atkin in *Eshugbayi Eleko* v. *Officer Administering the Government of Nigeria and another* (3), as follows:—

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> "The executive can only act in pursuance of the powers given to it by law. In accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a Court of justice."

This salutary principle, which is now enshrined in Articles 19 and 31 of the Constitution of the Republic of India, was also approved by a Division Bench of this Court (Eric Weston C.J., and J. L. Kapur, J.), in *Khushal Singh and another* v. *Rameshwar Dayal and others* (4). In that case it was held that merely because Khushal Singh had no authority to continue to be in possession of certain premises did not authorise the Deputy Commissioner of Delhi to throw him out of those premises by Police force. The Bench held in that case as follows:—

> "As was said by their Lordships of the Privy Council in the case referred to above *Eshugbayi Eleko* v. *Officer Administering the Government of Nigeria and another* (3), interference with the liberties and properties of citizens has to be supported by some law, and the State must support the legality of its actions before us. No such law was brought to our notice and I do not know of any under which the action taken could be justified."

It was, therefore, held that as the action taken by the officers of the State could not be supported by any legal authority, the petitioners in that case were entitled to an order under Article 226 of the Constitution directing the State to restore the possession of the premises in question to them.

As stated above the propositions of law established by these authorities are unexceptionable. Up to the time of filing the writ petition only an auction of the mineral rights

(3) A.I.R. 1931 P.C. 248.
(4) I.L.R. 1954 Punj. 211=A.I.R. 1954 Punj. 151.

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in the lands in question had taken place. The petitioners claim to be still in possession of the sites through petitioner No. 1. It is not the case of the State that the petitioners have already been dispossessed. No order directing the petitioners to hand over possession of the sites to respondents Nos. 3 and 4 has either been alleged to have been passed nor has any such order been produced before us. In what has happened so far the State and the auction-purchasers are the only parties. If and when the petitioners are threatened to be dispossessed of the sites or any interference with the same is imminent, the order or the authority under which such action is sought to be taken will have to be in accordance with some law. If any such order or authority is questioned by the petitioners, it would be for the State to show the law under which the impugned action is taken and there is no doubt that if the State would not be able to support it under some valid law in force for the time being, such action is to be restrained in appropriate proceedings. The State has in this connection relied on the following provisions of the Punjab Land Revenue Act (17 of 1887) (hereinafter referred to as the Revenue Act):—

> "41. All mines of metal and coal, and all earth-oil and gold washing shall be deemed to be the property of the Government for the purposes of the State and the State Government shall have all powers necessary for the proper enjoyment of the Government's right thereto.
>
> 42. (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

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(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 villages 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.

43. (1) Whenever, in the exercise of any right of the Government referred to in either of the two last foregoing sections, the rights of any person are infringed by the occupation or disturbance of the surface of any land, the State Government shall pay, or cause to be paid to that person compensation for the infringement.

(2) The compensation shall be determined as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1870.

44. An entry made in a record-of-rights in accordance with the law for the time being in force, or in an annual record in accordance with the provisions of this Chapter and the rules thereunder, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

45. If any person considers himself aggrieved as to any right of which he is in possession by an entry in a record-of-rights or in an annual record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877."

Before us, the case of the State is:—

(i) that limestone and sand are "mines of metal" and, therefore, under section 41 of the Punjab

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Land Revenue Act, they are deemed to be the property of the Government and that, therefore, the State Government has all the powers necessary for the enjoyment of its rights to those metals;

(ii) that as no record-of-rights completed before 18th November, 1871, for the villages in question has been produced by either party, the quarries in question have to be presumed to belong to the Government;

(iii) according to the *sharat wajab-ul-arz* of one of the villages in question produced by the State, which is claimed to be a part of the record-of-rights of that village, it is expressly provided that any mines of stones which are in existence or which would thereafter come into existence there, would belong to the Government, that limestone as well as sand fall within the category of "stones" and, therefore, under section 42(2) of the Revenue Act, these minerals in the land belonging to the petitioners are owned by the Government;

(iv) that if limestone and sand are not "metal" within the meaning of section 41 of the Revenue Act, it is open to the petitioners, if they are so advised, to rebut the presumption raised by section 42(2) of the Revenue Act and they cannot have this disputed question decided in these proceedings;

(v) that the petitioners cannot question the impugned action of the State on the ground of their not having been paid any compensation because section 43 of the Revenue Act specifically provides that if the rights of any person are infringed by the occupation or disturbance of the surface of any land, the State Government shall pay or cause to be paid to the person so affected compensation for the infringement and that it is provided in sub-section (2) of section 43 that such compensation shall be determined as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1870; and

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(vi) that there is a presumption in favour of the entries in the record-of-rights and if the petitioners want to question the same, they must approach a Court of competent jurisdiction under section 45 of the Revenue Act for a declaration to the effect that the relevant entry in the record-of-rights on which the State relies is not a correct entry.

In reply, the learned counsel for the petitioners stated that section 41 of the Revenue Act has no application to this case as neither quarries of sand nor quarries of limestone can be classed as "mines of metal". Regarding the respondents' argument under section 42(1) of the Revenue Act, it is contended by Mr. Doabia that the State has not proved that in the record-of-rights completed before 18th day of November, 1871, it has not been expressly provided that quarries of sand and limestone belong to the then owners of these sites. In the alternative and in reply to the contention of the respondent based on the provisions of sub-section (2) of section 42 of the Act it is submitted by Mr. Doabia that section 42 has no application to this case for the reason that the territory in which the sites in question are situated was not governed by the provisions of the Revenue Act in 1871, because at that time they were a part of the State of Patiala, which was an independent sovereign State and the laws of Punjab did not apply to those territories. Mr. Doabia suggests a further argument for excluding the operation of section 42 of the Revenue Act to this case. He says that sand and limestone on the surface of the sites in question are neither "forest" nor "quarry" nor "unclaimed, unoccupied, deserted or waste land" nor "spontaneous produce", etc. The case of the State is that these minerals are covered by the word "quarry" in sub-section (1) of section 42 of the Revenue Act. Mr. Doabia, on the other hand, contends that when looked at the company in which the word "quarry" occurs in section 42(1) of the Revenue Act it is obvious that it is not understood in the sense in which the State implies. He particularly distinguishes the word "quarry" from the word "mine" and emphasises that it is not quarry rights but mineral rights which have been auctioned in the instant case. He also states that even if the case is covered by section 42 of the Revenue Act, the second and third petitioners are not admitting the claim of the Government and

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the State cannot proceed in the matter without first getting the dispute as to the rival rights of the parties decided by a civil Court or other competent tribunal. It is also faintly argued by Mr. Doabia that *wajab-ul-arz* is not a record-of-rights. It is further contended by him that even if the *wajab-ul-arz* is seen, it does not contain any declaration of ownership of the minerals in question relating to the time when this record was prepared. He denies that sand is stone (*pathar*). The last submission of Mr. Doabia in connection with the first point is that in any case the State authorities could not decide anything relating to these matters against the interest or claim of his clients without notice to them and without hearing them and that the auction notice issued in respect of the minerals contained in his clients' land without such notice and hearing is void and all proceedings in pursuance of the same should be declared non-existent by this Court. Limestone, adds Mr. Doabia, is not a minor mineral as it is not covered by the definition in the Act and the Punjab Rules.

I am inclined to agree with the contention of Mr. Doabia that quarries of sand and stone cannot be equated to "mines of metal and coal" within the meanings of section 42 of the Revenue Act. Indeed, this aspect of the State's case has not been pressed by the learned counsel for the respondents.

There is, however, no merit in the contention of Mr. Doabia that section 42 of the Revenue Act has no application to the case because in 1871 the land in question was not subject to the applicability of that Act. The fallacy in the argument of the learned counsel for the petitioners in this behalf is that he wants to read into section 42(1) of the Revenue Act, the words "in respect of land to which this Act applied in 1871" after the words "when in any record-of-rights" in the opening part of that section. There is no warrant for doing so. 18th of November, 1871, is the date on which the Punjab Land Revenue Act (33 of 1871), came into force. The 1871 Act was repealed by section 2 of the Revenue Act read with the relevant entry in the Schedule of the unamended Revenue Act of 1887. I think, it is not necessary that the record-of-rights to which reference is made in section 42(1) of the Revenue Act must only be such records as were prepared under

this Act. In fact this is not possible. No record-of-rights under the Revenue Act or even under the 1871 Act, could have been completed before 18th November, 1871. The argument of Mr. Doabia to the effect that section 42 can apply only to such records-of-rights which have been prepared under this Act, is, therefore, wholly fallacious and I have no hesitation in repelling the same. Admittedly no reference has been made before us by any of the parties to any record-of-rights completed before 18th November, 1871, in respect of the lands in question showing whether it is or it is not expressly provided that the quarries in question belong to the Government or not. On the facts before us section 42(1) of the Revenue Act has, therefore, no application to this case. This would not, however, preclude all the parties interested in the matter in resorting to the provisions of that section for proving or disproving their rival claims in any appropriate Court or in other appropriate proceedings.

In regard to the application of sub-section (2) of section 42, the first question that arises is whether the *wajab-ul-arz* is a part of the record-of-rights or not. Leaving aside the question of the value of the entries in *sharat wajab-ul-arz,* it cannot be disputed that *wajab-ul-arz* is a part of the record-of-rights. That being so, the next question that has to be answered is as to what is the value and effect of the copy of record-of-rights produced by the State in this case. A copy of the *wajab-ul-arz* of village Rehon, Pargana Bharouli Khurd, Tehsil Pinjore, Patiala State, for certain years has been produced by the State. It is impossible to make sure from the record before us whether any of the sites in question are situated within the area to which this *wajab-ul-arz* relates. It does not appear to belong to Sumti at all. Assuming this to be so, the relevant lines in the *wajab-ul-arz* read as follows:—

> *"Hamari bhoj men koi nazool wa janglat wa matruk wa ghair maqbuza arazi nahin hai aur na koi kan pathar ya koila ki hai. Han, albatta agar koi kan az qism koila bramad ho, to woh malkiyat sarkar hogi. Ham malikan muawza arazi wa nuqsan fasal us arazi ke lene ke musthaq honge jismen woh kan bramad hogi."*

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Translated into English this entry would read:—

"In our *bhoj* there are no ——— forests ———. Nor is there any mine of stones or coal. Of course if any mine of the nature of coal is ever found the same shall belong to the Government and we owners would only be entitled to compensation for the land and for the loss to the crops in respect of that land in which the mine is discovered."

The next paragraph in the *wajab-ul-arz* starts with the words—

"Jangal sarkari jo hamari bhoj men waqya hai woh malkiyat sarkar hai."

Translated into English it would mean—"Whatever forest is there in our *bhoj* belongs to the Government."

After dealing with certain matters relating to jungles the *wajab-ul-arz* continues to read:—

"Pathar ki kanen jo mojuda hain ya ayinda bramad hongi woh malkiyat sarkar hongi."

The English translation of this sentence would be:—

"Whatever mines of stones are there or would be discovered later on would belong to the Government."

The contention of the learned counsel for the petitioners is that even if this *wajab-ul-arz*, is relevant and even if it is a part of the record-of-rights, it clearly declares that at the relevant time when this was prepared, there were no quarries of sand or limestone and that it is the first paragraph which deals with this subject. According to him the last quotation from the *wajab-ul-arz* relates to the jungle and not to the other land. In any case it is urged that the relevant entry in the *wajab-ul-arz* should be one which could show the ownership of existing mines and quarries and not of what would be the position in future. On the meagre data before us it is not possible to pronounce on the exact meaning or effect of this *wajab-ul-arz*. Nor can

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this Court, while acting in exercise of its jurisdiction under Article 226 of the Constitution, be called upon to decide a disputed question of fact like this, particularly when even the applicability of the *wajab-ul-arz* to the sites in question is not admitted.

The question that arises in this respect is as to who could go to a competent court to have those rival claims between the parties settled and whether there is any other appropriate machinery provided by the Revenue Act or by the Act or the Punjab Rules for determination of these disputes. The jurisdiction of the Civil Courts to decide the rival claims of the parties relating to the ownership of the mineral rights in the land do not appear to be barred by any provision of law. In any case no such provision has been pointed out to us by any of the learned counsel appearing for the parties in this case. Any party aggrieved in any particular circumstances can, therefore, institute a suitable action in Court according to law.

The provisions of section 43 of the Revenue Act merely provide for payment of compensation for infringement of any rights of any landowner or other person which infringement is caused by the exercise of any right by the Government in such matters. Criteria for determining the compensation is also laid down in sub-section (2) of section 43 of the Revenue Act.

I do not think, we are called upon to decide in these proceedings whether sand is or is not stone within the meanings of the *wajab-ul-arz*. In any case it cannot be disputed that limestone does fall within the category of stones. The grievance of Mr. Doabia, about anything relating to his property having been decided without notice to him is premature. So far as he is concerned, nothing has yet been decided by the authorities. The Act and the Punjab Rules provide adequate machinery for such decisions being made at the appropriate stage. If there is any dispute between the parties, which cannot be settled under the Act and the Rules, an aggrieved party can have recourse to normal proceedings in a competent Civil Court of original jurisdiction.

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I have already held above that on account of the notification, dated 20th September, 1961, under section 3(e) of the Act limestone meant for building purposes is a minor mineral since after the date of that notification.

There does appear to be some difference, according to ordinary dictionary meaning, between a quarry and a mine. Quarry is generally understood as an open excavation or involves surface work. Mine on the other hand normally envisages going deeper into the land by digging a pit or excavating after digging. It is, however, not necessary to decide in this case as to what, if any, is the difference between a mine and a quarry as that question is germane to the decision on merits involved under section 42 of the Revenue Act which point is not being decided in this case. *Prima facie* it appears that minor minerals like limestones of inferior type and ordinary sand on the surface of land or a little below it would be included in the description "quarry".

Mr. Doabia's objection about no quarry rights having been auctioned is also misconceived. To the auction notice of December, 1964, is attached the list of "minor mineral quarries", the rights in which have been auctioned. It is, therefore, futile for Mr. Doabia to suggest that the rights which have been auctioned are not for quarrying.

It is the second question raised by Mr. Doabia, which appears to present greater difficulty. Even if the minerals are proved to belong to the Government but they are in the land admittedly owned by petitioners Nos. 2 and 3, what is the authority of law under which the petitioners' possessory rights of those minerals and ownership rights of that land can be interfered with by the State? In view of the settled law cited above it hardly needs any argument to hold that if the State is not able to support such action by some statutory provision, it would have to be restrained by this Court. Mr. Sharma, appearing for the State, invites our attention in this connection to rules 33 and 61 of the Punjab Rules and to para 27 of prescribed form 'L' of the Punjab Rules.

The definition of minor minerals in rule 2(b) of the Punjab Rules is the same as contained in section 3(e) of

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the Act. Rule 28 provides that contracts may be granted by the Government by auction or tender for a maximum period of 5 years in respect of minor minerals. Sub-rule (2) of rule 28 says that the amount to be paid annually by the contractor (auction-purchaser) to the Government would be determined in the auction or by tender to be submitted for acceptance by the competent authority. Rule 33 provides that when a bid is confirmed, the successful bidder shall have to execute a deed in form 'L' and that if a contract in the prescribed form is not executed within three months from the date of communication of the acceptance of the bid to the auction-purchaser, the order accepting the bid or tender shall be deemed to have been revoked. Statutory form 'L' is an indenture to be executed between the Punjab Government and the auction-purchaser called the contractor. For making any change in the prescribed form there is no provision or machinery. Para 27 of the prescribed form reads as follows:—

> "In case the occupier or owner of the said lands refuses his consent to the exercise of the rights and powers reserved to the Government and demised to the Contractor/Contractors under these presents, the Contractor/Contractors shall report the matter to the Government, who shall ask the Collector of the district concerned to direct the occupier or owner to allow the Contractor/Contractors to enter the said lands and to carry out such operation as may be necessary for working the mine, on payment, in advance, of such compensation to the occupier or owner by the Contractor/Contractors, as may be fixed by the Collector under the Land Acquisition Act, 1894."

The only other rule which is relevant for consideration of the matters involved in this case is rule 61, which is reproduced below:—

> "61. *Acquisition of land of third parties and compensation thereof.*—In case the occupier or owner of land in respect of which minor mineral rights vest in the Government, refuses his consent to the exercise of the right and powers, reserved to

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the Government and demised to the lessees or contractors, as the case may be, the lessees or contractors shall report to the Government and shall deposit with it the amount offered as compensation and if the Government are satisfied that the amount of compensation offered is fair and reasonable or if it is not so satisfied and the lessee shall have deposited with it such further amount as the Government shall consider fair and reasonable the Government shall order the occupier to allow the lessee to enter the land and to carry out such operations as may be necessary for the purposes of this lease. In assessing the amount of such compensation the Government shall be guided by the principles of the Land Acquisition Act."

A perusal of these rules would show that when the appropriate Government authority auctions the mineral rights in the land of a private person, the auction-purchaser, in order to entitle himself to the rights purchased by him, has to execute the prescribed deed in form 'L'. After doing so, he has to approach the owner or occupier of the land in respect of which the minor mineral rights vest in the Government and which rights have been purchased by the contractor for the relevant period. If the owner or the occupier gives his consent to the exercise of the rights of the contractor, no other question might arise. According to rule 61, if the owner or occupier refuses his consent to the exercise of the right and powers reserved to and claimed by the Government and demised to the contractor, the contractor cannot forcibly occupy the land or forcibly start excavation process. The contractor is then enjoined upon to report to the Government and to first deposit with the Government such amount of compensation which he wants to offer for the owner or the occupier. Government has then to see whether the amount offered and deposited by the contractor is sufficient or not. If it is found by the Government that the amount of compensation offered by the contractor is not fair or reasonable, the Government has to order in pursuance of para 27 of the prescribed contract that the Collector of the district concerned should enquire into the matter and determine the compensation payable to the occupier or owner by the

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contractor. The criteria for determination of that compensation is laid down in section 43(2) of the Revenue Act and is again repeated in para 27 of the prescribed contract form. According to those provisions, this compensation has to be fixed by the Collector "under the Land Acquisition Act, 1894". This implies that as far as possible the procedure of the Land Acquisition Act may be followed for such determination and in any case the quantum of compensation must be determined in accordance with the principles laid down in that Act. The scheme of the Punjab Rules seems to be that as soon as the amount of this compensation is determined, the Collector of the district concerned shall be asked by the Government to direct the occupier or owner to allow the contractor to enter the land in question and to carry out such operations as may be necessary for working the mine or the quarry on payment in advance to the owner or occupier, as the case may be, of such compensation as may have been determined by the Collector. Reading rule 61 and para 27 of the prescribed form 'L' referred to above together there seems to be no doubt that a complete requisite machinery for safeguarding the owners and occupiers of land in such contingencies has been provided by the Punjab Rules. Even in rule 61, it has been clearly stated that in assessing the amount of such compensation the Government shall be guided by the principles of the Land Acquisition Act. In this view of the matter it appears that the petitioners have rushed to this Court without allowing the stage at which they could have any such just grievance to be reached. Mr. Doabia urges that his clients had been orally ordered to hand over possession to respondents Nos. 3 and 4. I would hold that any such threat would be contrary to rule 61 and para 27 of the prescribed contract form and if any such course is insisted upon by the Government, it would be illegal and *ultra vires* the Punjab Rules and would be liable to be restrained. There is no doubt that on the facts admitted in this case interference with the property rights of petitioners Nos. 2 and 3 is involved. This can, therefore, be attained or achieved by the Government only strictly in accordance with the Punjab Rules.

Though in the writ petition the Punjab Rules have themselves been attacked on the allegation that they are *ultra vires* Article 19 of the Constitution, no such submission was made before us at the hearing of the petition.

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The learned counsel for the petitioners, however, contended that rule 61 of the Punjab Rules is *ultra vires* section 15 of the Act as that section only provides for regulating the granting of leases, etc. I would hold that the scope of section 15 is made much wider by the addition of the words "purposes connected therewith" and, therefore, rule 61 is not outside the scope of section 15 of the Act. Indeed, without a provision of the nature of rule 61, the Punjab Rules themselves might have been liable to be struck down as *ultra vires* under Article 31 of the Constitution. The objection of Mr. Doabia about no machinery for payment of compensation having been provided for by the Rules is exposed to be incorrect and is, therefore, repelled. The last objection of Mr. Doabia was that rule 61 of the Punjab Rules is hit by Article 31(2) of the Constitution and that Article 31(3) of the Constitution bars the making of any rules for acquisition or requisition purposes unless the provisions of sub-article (3) of Article 31 of the Constitution are complied with. The contention of Mr. Doabia about rule 61 providing for determination of compensation without notice to the landowners or occupiers appears to be misfounded. If there is a genuine apprehension on that account I would hold that the Government and/or the Collector must hear the owner or occupier of the land in question before deciding the amount of compensation payable to such owner or occupier of land under rule 61 of the Punjab Rules. In fact it appears that rule 61 provides for determination of compensation in accordance with the principles of the Land Acquisition Act and that Act necessarily provides that the compensation would be fixed after notice to and after hearing all persons interested in the matter.

Reliance has been placed by Mr. Sharma, the learned counsel for the State, in this connection on a Full Bench judgment of the Rajasthan High Court in *Ramjidas and others* v. *State of Rajasthan* (5). In that case it was held that the term "Legislature of a State" in Article 31(3) of the Constitution does not include within its meaning the Government of a State or some other authority while making rules, regulations or orders under authority given to it under a Central Act of the Parliament. The meaning of the words "the State" in Article 12 have no bearing on

(5) A.I.R. 1954 Raj. 97.

the meaning of the words "Legislature of a State" appearing in Article 31(3) of the Constitution.

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I am in respectful agreement with the law enunciated by the Full Bench of the Rajasthan High Court in the above case. In this view of the matter, there is no merit in the contention of Mr. Doabia that rule 61 of the Punjab Rules is *ultra vires* Article 31(3) of the Constitution.

I would, therefore, hold:—

(i) that the Punjab Minor Minerals Concession Rules, 1964, framed under section 15(1) of the Mines and Minerals (Regulation and Development) Act 67 of 1957 and particularly rules 28, 33 and 61 thereof are *intra vires* section 15(1) of the Act and are not *ultra vires* Article 31(2) or 31(3) of the Constitution;

(ii) that on the material placed before us, it is neither possible nor proper to decide the disputed question of applicability and effect of the *wajab-ul-arz* placed before us by the State, the ultimate value of which is that of a contract between the residents of the village and the Revenue Authorities of the State, even though it is a part of the record-of-rights;

(iii) that any dispute between the parties as to correctness or otherwise of this or any other *wajab-ul-arz* or other Revenue record or any disputed question of title should be got determined by the aggrieved party in an appropriate action in an ordinary civil or Revenue Court as the case may be, and none of these things can be decided in our writ jurisdiction;

(iv) that it is not open to petitioner No. 1, the alleged lessee of the sites in question, to impugn the auction sales in these proceedings;

(v) that no property rights of the owners (petitioners Nos. 2 and 3) have so far been infringed or interfered with by the State;

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(vi) that if and when the State Government or any of its executive authorities attacks or interferes with any property of the petitioners and such action is questioned, impugned or challenged, it would be necessary for the executive authority concerned to support the legality of its threatened or impugned action in any appropriate proceedings which may be commenced by the petitioners. If the executive is not able to so support the legality of the impugned action, it will be restrained and prohibited by this Court, if approached by the petitioners, *ex debito justitiae;*

(vii) that the implied provisions for hearing, the express safeguards for determination of and advance payment of compensation and the laying down of the criteria for determining the compensation payable to owners of land, whose possession is interfered with under the Punjab Rules save the said rules from any sustainable attack on their validity or constitutionality;

(viii) that if the owner or occupier of land, the minor mineral rights in which have been put to auction by the local Government, refuses to give his consent to the exercise of those rights which are claimed by the Government, either directly or by refusing to allow the contractor to enter on his land, neither the Government nor the contractor can interfere with the land belonging to or occupied by such person unless and until the owner or occupier has been paid such advance compensation as is determined by the Collector or other appropriate authority under rule 61 read with para 27 of prescribed form 'L' of the indenture of contract in accordance with the principles laid down in the Land Acquisition Act;

(ix) that any act, threat or interference by any executive authority in the manner of an attempt to take or excavate limestone or sand from the land belonging to and owned by petitioners Nos. 2 and 3 either without their consent or (in case the consent is refused) without paying advance compensation to them as hereinabove stated would be

violative of the rule of law and of the property rights of the said petitioners and would be liable to be restrained and prohibited in appropriate proceedings.

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No other point was pressed before us by the learned counsel for the parties.

I would, therefore, allow this writ petition to the extent indicated above, but, in the circumstances of the case, would leave the parties to bear their own costs.

INDER DEV DUA, J.—I agree.

Dua, J.

B.R.T.

LETTERS PATENT APPEAL

Before S. S. Dulat and R. P. Khosla, JJ.

DEWAN CHAND,—*Appellant*

versus

RAGHBIR SINGH, AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 85 of 1962.

1965

May, 26th

Limitation Act (IX of 1908)—Article 14—Suit to recover possession of mortaged land on the ground that mortgage had been extinguished—Whether governed by Article 14 when application under the Redemption of Mortgaged Lands (Punjab) Act (II of 1913) had been dismissed by the Collector on the ground that the matter was too complicated and parties should get a decision from civil Court.

Held, that where the Collector dismisses the application of a mortgagor under Section 9 of the Redemption of Mortgaged Lands (Punjab) Act, 1913, on the ground that the matter was too complicated and the parties should get their rights settled in the civil Court, the Collector decides nothing against the mortgagor and it is not necessary for him to file a suit to set aside that order of the Collector. If he later on files a suit for possession of the mortgaged land by redemption or on the ground that the mortgage had become extinguished, the suit is to be considered as a simple suit to establish the plaintiff's right in the land in obedience to the Collector's decision and not to set aside his order. Such a suit is not governed by Article 14 of the Limitation Act, 1908, but by the articles providing for possession or redemption.