

JAI SINGH

v.

UNION OF INDIA & ORS.

November 19, 1976

[H. R. KHANNA AND V. R. KRISHNA IYER, JJ.]

Practice and procedure—Extra-ordinary jurisdiction—Whether relief to be granted when alternative remedy availed of, and disputed questions of facts involved.

The appellant has leased some land from the Government of Rajasthan for mining gypsum. A dispute arose between the parties regarding the rate of royalty payable by the appellant. The appellant's revision petition against the lessor's decision to charge at the higher rate was dismissed by the Central Government and then his writ petition was dismissed by the High Court on the grounds that the matter involved determination of disputed questions of fact, and that an alternative remedy has been availed of by the appellant.

Dismissing the appeal the Court,

HELD : The extent of purity of the gypsum won by the appellant is a question of fact. Furthermore, after the dismissal of the writ petition the appellant has filed a suit, in which he has agitated the same question which is the subject matter of the writ petition. The appellant cannot pursue two parallel remedies in respect of the same matter at the same time.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2206 of 1968.

From the Judgment and Order dated the 29-3-1968 of the Rajasthan High Court in D. P. Civil W. P. No. 257/68.

S. M. Jain, for the appellant

B. Dutta, for respondent No. 1

Miss Maya Rao, for respondents Nos. 2-5.

The Judgment of the Court was delivered by

KHANNA, J. This appeal on certificate is against the order of the Rajasthan High Court dismissing in limine the petition under articles 226 and 227 of the Constitution of India, filed by the appellant against the Union of India, the State of Rajasthan and two others, praying for quashing the demand made from the appellant in respect of royalty.

The appellant took on lease 180 acres of land from the Government of Rajasthan on June 18, 1962 for the purpose of mining gypsum ore for a period of 20 years. Section 9(2) of the Mines and Minerals (Regulation and Development) Act, 1957 relates to royalties in respect of mining leases. According to that provision, the holder of a mining lease granted on or after the commencement

A of the said Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral. The Second Schedule provides at item No. 13 the rate on which royalty, etc., in respect of gypsum is to be paid. According to that item at the relevant time, royalty would be at the rate of Rs. 1.25

B per tonne of gypsum containing 85 per cent and above $\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$ and at the rate of 75 paise per tonne of gypsum containing less than 85 per cent of $\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$.

Royalty was demanded from the appellant in respect of gypsum won by him at the rate of Rs. 1.25 per tonne. The case of the appellant, however, is that the gypsum which was won by him contained less than 85 per cent of $\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$. As against that, the stand taken by the respondents is that the appellant failed to furnish the analysis reports from a standard laboratory to show that gypsum won by him contained less than 85 per cent $\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$. Revision filed by the appellant against the decision of the Rajasthan Government to charge royalty at the rate of Rs. 1.25 per tonne was dismissed by the Central Government.

D The High Court dismissed the writ petition on the ground that it involved determination of disputed questions of fact. It was also observed that the High Court should not in exercise of its extraordinary jurisdiction grant relief to the appellant when he had an alternative remedy. After hearing Mr. Sobhagmal Jain on behalf of the appellant, we see no cogent ground to take a view different from that taken by the High Court. There cannot, in our opinion, be any doubt on the point that the extent of purity of the gypsum won by the appellant is a question of fact. It has also been brought to our notice that after the dismissal of the writ petition by the High Court, the appellant has filed a suit, in which he has agitated the same question which is the subject matter of the writ petition. In our opinion, the appellant cannot pursue two parallel remedies in respect of the same matter at the same time.

F Mr. Sobhagmal points out that the suit brought by the appellant has been dismissed in default and that an application for the restoration of the suit has been filed in the trial court. Learned counsel for the respondents state that they would not oppose the application for restoration of the suit. We, therefore, dismiss the appeal

G but with no order as to costs.