2024 INSC 554

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION

Civil Appeal Nos. 4056-4064 of 1999

Mineral Area Development Authority & Anr. **…Appellants**

Versus

M/S Steel Authority of India & Anr Etc. **…Respondents**

With

Civil Appeal No. 7937 of 2019
With
Writ Petition (Civil) No. 512 of 2018
With
Civil Appeal No. 7938 of 2019
With
Civil Appeal No. 7936 of 2019
With
Civil Appeal No. 6221 of 2008
With
Civil Appeal No. 5250 of 2019
With
Writ Petition (C) No. 729 of 2019
With
Writ Petition (C) No. 1029 of 2019
With
Special Leave Petition (C) No. 16028 of 2021
With
Civil Appeal No. 4286 of 2023

With
Civil Appeal No. 5682 of 2007
With
Civil Appeal No. 1295 of 2008
With
Civil Appeal No. 874 of 2013
With
Civil Appeal Nos. 8269-8271 of 2013
With
Civil Appeal No. 8268 of 2013
With
Civil Appeal No. 8267 of 2013
With
Civil Appeal No. 6135 of 2013
With
Civil Appeal No. 8272 of 2013
With
Civil Appeal No. 9458 of 2013
With
Special Leave Petition (Civil) No. 18600 of 2013
With
Civil Appeal No. 4332 of 2013
With
Civil Appeal No. 5329 of 2002
With
Civil Appeal No. 4993 of 2006
With
Civil Appeal No. 8273 of 2013
With
Civil Appeal No. 8274 of 2013
With
Civil Appeal No. 3869 of 2014
With
Civil Appeal No. 2632 of 2013
With
Civil Appeal No. 14685 of 2015
With
Civil Appeal No. 6784 of 2014
With
Writ Petition (Civil) No. 376 of 2015
With
Civil Appeal No. 10082 of 2016
With
Civil Appeal No. 886 of 2017

With
Civil Appeal No. 4588 of 2017
With
Civil Appeal No. 205 of 2017
With
Civil Appeal Nos. 5728-5729 of 2018
With
Civil Appeal Nos. 4722-4724 of 1999
With
Civil Appeal No. 5333 of 2002
With
Civil Appeal Nos. 5335-5336 of 2002
With
Civil Appeal No. 5332 of 2002
With
Civil Appeal No. 1352 of 2005
With
Civil Appeal No. 1883 of 2006
With
T.P. (Civil) No. 722 of 2006
With
Civil Appeal No. 4745 of 2006
With
Civil Appeal No. 4990 of 2006
With
Civil Appeal No. 5599 of 2006
With
Civil Appeal No. 5649 of 2006
With
Civil Appeal No. 378 of 2007
With
Civil Appeal No. 665 of 2007
With
Civil Appeal No. 1180 of 2007
With
T.P. (Civil) No. 481 of 2007
With
T.P. (Civil) No. 906 of 2007
With
Civil Appeal No. 3401 of 2008
With
Civil Appeal No. 3400 of 2008
With
Civil Appeal No. 3402 of 2008

With
Civil Appeal No. 8311 of 2011
With
Civil Appeal No. 4293 of 2012
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Civil Appeal No. 2055 of 2009
With
T.P. (Civil) No. 951 of 2006
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Civil Appeal No. 4991 of 2006
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Civil Appeal No. 4992 of 2006
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Special Leave Petition (Civil) No. 763 of 2007
With
Special Leave Petition (Civil) No. 15900 of 2007
With
Civil Appeal No. 3403 of 2008
With
Civil Appeal No. 98 of 2009
With
T.P. (Civil) No. 613 of 2009
With
T.P. (Civil) No. 626 of 2009
With
Civil Appeal No. 4479 of 2010
With
Civil Appeal No. 4478 of 2010
With
Civil Appeal No. 3643 of 2011
With
Civil Appeal Nos. 4710-4721 of 1999
With
Civil Appeal No. 2174 of 2009
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Civil Appeal No. 6498 of 2008
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With
Civil Appeal No. 7397 of 2008
With
Civil Appeal No. 96 of 2009

With
Civil Appeal No. 6499 of 2008
With
Civil Appeal No. 97 of 2009
And With
Special Leave Petition (Civil) No. 26160 of 2008

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

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A. Background

1. The present batch of appeals bears on the distribution of legislative powers between the Union and the States on the taxation of mineral rights. The legislative entry which lies at the core of the present reference is Entry 50 of List II of the Seventh Schedule to the Constitution. The entry deals with taxes on mineral rights subject to "any limitations imposed by Parliament by law relating to mineral development." Regulation of mines and mineral development is enumerated under both the Union List (Entry 54 of List I) and the State List (Entry 23 of List II) of the Seventh Schedule. The entrustment of the subject to the State legislatures under Entry 23 of List II is made subject to the provisions of Entry 54 of List I.

2. Parliament enacted the Mines and Minerals (Development and Regulation) Act, 1957[1] in exercise of its legislative powers under Article 246 of the Constitution. The subject which the legislation predominantly covers is relatable to Entry 54 of List I. The MMDR Act is a comprehensive code for the regulation of mines and development of minerals. Section 9 provides that the holder of a mining lease shall pay royalty in respect of any mineral removed or consumed from the leased area at the specified rates. In **India Cement Ltd.** v. **State of Tamil Nadu**,[2] a seven-Judge Bench of this Court held that royalty is tax and the state legislatures lack competence to levy taxes on mineral rights because the subject-matter is covered by the MMDR Act. The Court also held that royalty cannot be used by the State legislature as a measure of tax on mineral-bearing lands under Entry 49 of List II. Later in time, in **State of West Bengal** v. **Kesoram Industries Ltd**.[3]

[1] "MMDR Act"
[2] (1990) 1 SCC 12 [34]
[3] (2004) 10 SCC 201 [71]

a Constitution Bench of this Court held that the decision in **India Cement** (supra) stemmed from an inadvertent error and clarified that royalty is not a tax.

3. In the aftermath of **India Cement** (supra) and **Kesoram** (supra), State legislatures exercised their legislative powers to impose taxes on mineral-bearing land in pursuance of Entry 49 of List II by applying the mineral value or royalty as the measure of the tax.[4] States such as Rajasthan[5] and Uttar Pradesh[6] also sought to impose environment and health cess and fees for transporting coal and coal-dust collected from mines. The constitutional validity of these levies was challenged before the High Courts on the ground that they were beyond the legislative competence of the State legislatures. The levies were also assailed on the ground that they were in violation of the law laid down in **India Cement** (supra).

4. One such matter is Civil Appeal No. 4056-64 of 1999, where the petitioners initially filed writ petitions before the High Court of Judicature at Patna challenging the validity of the Bihar Coal Mining Area Development Authority (Amendment) Act 1992 and the Bihar Mineral Area Development Authority (Land Use Tax) Rules 1994, which levied tax[7] on land being used for mining. Relying on **India Cement** (supra), the High Court allowed the petition by holding that the

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[4] Mineral Area Development Authority v. Steel Authority of India, Civil Appeal No. 4056-64 of 1999; Sanghi Infrastructures MP Ltd. v. Union of India, Writ Petition (C) No. 512 of 2018.
[5] Ambuja Cement v. State of Rajasthan, Diary No. 21291 of 2023; Wolkem Industries v. State of Rajasthan, Civil Appeal No. 8273 of 2013; Wonder Cement Ltd. v. State of Rajasthan, Civil Appeal No. 4588 of 2017.
[6] Kanoria Chemicals v. State of UP, Civil Appeal No. 1295 of 2008; Hindalco Industries Ltd. v. State of UP, Civil Appeal No. 3869 of 2014.
[7] Section 89, Bihar Coal Mining Area Development Authority Act 1986. [It reads:
Levy of Tax on Use of Land for Other Than Agricultural and Residential Purposes –
(1) The Authority shall subject to the provisions of this Act and Rules framed thereunder levy tax, by notification published in the Official Gazette on land being by any person, group of persons, company, the Central Government or the State Government, Local or Corporate Body for mining, commercial or industrial purposes with the prior approval of the State Government.
Provided that the tax so levied shall not exceed Rupees 1.50 per square meter annually for any such land but such tax shall not be levied on land which is subject to Holding Tax.
(2) The State Government shall, out of the tax so levied and collected, determine the amount to be deposited into the consolidated Fund of the State Government from time to time."]

tax was not within the scope of Entry 49 of List II of the Seventh Schedule. The correctness of the High Court's decision was assailed before this Court. On 30 March 2011, a Bench of three Judges noticed the divergence between **India Cement** (supra) and **Kesoram** (supra) and referred the following questions to a Bench of nine Judges to provide a decisive ruling:

a. Whether 'royalty' determined under Sections 9/15(3) of the MMDR Act is in the nature of tax;
b. Can the State Legislature while levying a tax on land under Entry 49 List II of the Seventh Schedule of the Constitution adopt a measure of tax based on the value of the produce of land? If yes, then would the constitutional position be any different insofar as the tax on land is imposed on mining land on account of Entry 50 List II and its interrelation with Entry 54 List I?
c. What is the meaning of the expression "Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development" within the meaning of Entry 50 of List II of the Seventh Schedule of the Constitution of India? Does the MMDR Act contain any provision which operates as a limitation on the field of legislation prescribed in Entry 50 of List II of the Seventh Schedule of the Constitution of India? In particular, whether Section 9 of the MMDR Act denudes or limits the scope of Entry 50 of List II?
d. What is the true nature of royalty/ dead rent payable on minerals produced/ mined/ extracted from mines?
e. Whether the majority decision in **Kesoram** (supra) could be read as departing from the law laid down in **India Cement** (supra)?

f. Whether "taxes on lands and buildings" in Entry 49 List II of the Seventh Schedule to the Constitution contemplate a tax levied directly on the land as a unit having definite relationship with the land?

g. What is the scope of the expression "taxes on mineral rights" in Entry 50 of List II of the Seventh Schedule to the Constitution?

h. Whether the expression "subject to any limitation imposed by Parliament by law relating to mineral development" in Entry 50 of List II refers to the subject matter in Entry 54 of List I of the Seventh Schedule to the Constitution;

i. Whether Entry 50 of List II read with Entry 54 of List I of the Seventh Schedule to the Constitution constitute an exception to the general scheme of Entries relating to taxation being distinct from other Entries in all the three Lists of the Seventh Schedule to the Constitution as enunciated in **M P V Sundararamier & Co**. v. **State of Andhra Pradesh**[8];

j. Whether in view of the declaration under Section 2 of the MMDR Act made in terms of Entry 54 of List I of the Seventh Schedule to the Constitution and the provisions of the said Act, the State legislature is denuded of its power under Entry 23 of List II and/ or Entry 50 of List II; and

k. What is the effect of the expression "subject to any limitation imposed by Parliament by law relating to mineral development" on the taxing power of the State legislature in Entry 50 of List II, particularly in view of its uniqueness in the sense that it is the only entry in all the entries in three Lists (Lists I, II, and III) where the taxing power of the State legislature has been subjected to "any limitation imposed by Parliament by law relating to mineral development."

[8] (1958) 1 SCR 1422

B. Issues

5. During the course of the hearing,[9] counsel for the petitioners and respondents agreed that the main questions that fall for determination by this Court could be reframed in the following terms:

   a. What is the true nature of royalty determined under Section 9 read with Section 15(1) of the MMDR Act? Whether royalty is in the nature of tax;
   b. What is the scope of Entry 50 of List II of the Seventh Schedule? What is the ambit of the limitations imposable by Parliament in exercise of its legislative powers under Entry 54 of List I? Does Section 9, or any other provision of the MMDR Act, contain any limitation with respect to the field in Entry 50 of List II?
   c. Whether the expression "subject to any limitations imposed by Parliament by law relating to mineral development" in Entry 50 of List II *pro tanto* subjects the entry to Entry 54 of List I, which is a non-taxing general entry? Consequently, is there any departure from the general scheme of distribution of legislative powers as enunciated in **M P V Sundararamier** (supra)?
   d. What is the scope of Entry 49 of List II and whether it covers a tax which involves a measure based on the value of the produce of land? Would the constitutional position be any different *qua* mining land on account of Entry 50 of List II read with Entry 54 of List I?

[9] Civil Appeal No. 4056-4064 of 1999, Mineral Area Development Authority v. Steel Authority of India, Transcript of Hearing, 27 February 2024, 8-9.

e. Whether Entry 50 of List II is a specific entry in relation to Entry 49 of List II, and would consequently subtract mining land from the scope of Entry 49 of List II?

6. The Union of India has filed an affidavit stating that the issues in this reference do not involve the interpretation of Entry 53 of List I of the Seventh Schedule which pertains to oilfields, mineral oil resources, petroleum and petroleum products. Counsel on both sides have not addressed submissions on any issues pertaining to the interpretation of Entry 53 of List I. We have accordingly neither discussed nor considered any issues pertaining to Entry 53 of List I. We have circumscribed the scope of the reference to the above-mentioned issues referred to the nine-Judge Bench as reframed in the above terms.

C. Submissions

i. Submissions of the petitioners

7. Mr Rakesh Dwivedi, learned senior counsel, made the following submissions:

a. Royalty is the consideration for parting with the right to work the mine and win minerals which are vested either in the Government or a private person. Section 9 of the MMDR Act statutorily determines the price to be compulsorily paid by the lessee to the lessor in lieu of the grant of rights under a mining lease. Royalty paid by the lessee under Section 9 does not meet either the criteria of a ‘tax’ or an ‘impost’ under Article 366(28) of the Constitution. Therefore, royalty is not a tax on either minerals or mineral rights;

b. Entry 49 of List II - “taxes on lands and buildings” - must be construed expansively because it is not subordinated to any other entry in the Seventh Schedule. The expression “lands” in Entry 49 has been interpreted to include all kinds of lands, including mineral-bearing land. Minerals continue to remain a part of the land until they are extracted. Therefore, the value of minerals can be used as a measure to tax mineral bearing land;

c. Entry 54 of List I and Entry 23 of List II are general entries relating to the subject matter of regulation of mines and mineral development. Entry 23 of List II has been expressly subordinated to the provisions of List I with respect to regulation and development under the control of the Union. Thus, the subject matter available to the State legislature under Entry 23 of List II is the residue of what is left after declaration by Parliament under Entry 54 of List I. Moreover, Entries 54 of List I and 23 of List II, being general entries, do not provide a source of imposing any kind of tax;

d. The legislative power of the State legislatures to levy tax on mineral rights under Entry 50 of List II has been made subject to “any limitations imposed by Parliament by law relating to mineral development.” Parliament has no legislative competence to tax with respect to any subject matter enumerated in List II of the Seventh Schedule. Parliament cannot assume to itself the power to tax mineral rights, but can only impose limitations on the states when they exercise their powers in pursuance of Entry 50 of List II;

e. The limitations contemplated under Entry 50 of List II have to be express because they deprive the State legislatures of their plenary power to impose tax. The MMDR Act does not expressly limit the legislative competence of the State legislatures to tax mineral rights. Royalty is neither tax, nor an exaction

in the nature of tax. It cannot serve as a limitation envisaged by Entry 50 of List II;

f. Under Entry 50 of List II, the limitations are required to be imposed "by law" made by Parliament. They cannot be imposed by a delegate acting under parliamentary legislation; and

g. Entry 54 of List I read with Entry 50 of List II is not an exception to the principle laid down in **M P V Sundararamier** (supra). Entry 54 of List I is a regulatory entry, while Entry 50 of List II is a taxing entry. The power to impose "any limitations" under Entry 50 of List II cannot be interpreted so as to bestow upon Parliament legislative powers to tax mineral rights. There cannot be any overlap of the power of taxation because the legislative power of Union and States to tax is mutually exclusive and clearly demarcated under the Seventh Schedule.

8. Mr S Niranjan Reddy, learned senior counsel, made the following submissions:

a. It is a settled law that the rights to sub-soil minerals vest in the title holder of the land. The ownership to sub-soil minerals generally follows the ownership of the land, unless the owner of the land is deprived of the same by some valid legal process;

b. Ordinarily, the land owner, or the mining lessor, contractually requires the lessee to pay royalty as a compensation for the loss of the value of minerals from the land. Under Section 9 of the MMDR Act, Parliament has statutorily capped the amount of royalty that can be contractually collected by the lessor. Moreover, Section 9(3) of the MMDR Act (which limits the power of the Central Government to increase the rates of royalty) does not serve as a limitation on the taxing power of the State legislatures under Entry 50 of List II;

c. The Constitution is cognizant of the fact that the legislative power of the States to tax mineral rights may impede mineral development. Therefore, the Constitution has empowered Parliament to limit or restrict the taxing powers of the State legislatures under Entry 50 of List II by a law relating to mineral development; and

d. The word "lands" under Entry 49 of List II includes lands of every character. The measure of a tax cannot determine the nature of tax. The productivity of land can be used as a measure for levy of taxes on lands. Resultantly, mineral produced from a land can always be used as a measure to tax lands.

9. Mr Vijay Hansaria, learned senior counsel, made the following submissions:

a. The MMDR Act only deals with the regulation of mines and mineral development. Further, the legislation does not seek to legislate on the entire field of mines and minerals, but only to the extent provided. The levies such as royalty and dead rent payable under the MMDR Act are not in the nature of tax but only a payment for a right to enjoy the land and the usufruct of the land;

b. Entry 50 of List II, being a taxing entry, has to be construed with clarity and precision. The expression "law relating to mineral development" occurring in Entry 50 of List II has to be construed in light of Section 18 of the MMDR Act which deals with mineral development. Section 18 does not impose any express limitation on the legislative power of the states to tax mineral rights; and

c. Parliament does not have the legislative powers to tax minerals rights using its residuary powers because the subject matter has been expressly enumerated in the State List.

10. Ms Sansriti Pathak, learned counsel, made the following submissions:

    a. The State, being the proprietor of minerals, can receive royalty for parting with its mineral rights and can also levy tax on the same minerals in the capacity of the sovereign; and

    b. The expression "any limitations" appearing in Entry 50 of List II cannot be construed to mean prohibition. Parliament can only limit the exclusive legislative powers of the State legislature to tax minerals, but cannot prohibit them.

ii. Submissions of the respondents

11. Mr R Venkataramani, the learned Attorney General for India, made the following submissions:

    a. The grant of permission to undertake any activity in relation to a mineral is based on certain terms and conditions prescribed under the MMDR Act. The consideration for the grant of such permission is royalty, which in essence is the demand for parting with the privilege of working the mineral;

    b. It is immaterial whether royalty is designated as a tax. Any levy relating to mineral development, in so far as it is in relation to mineral rights, will serve as a limitation on the taxing powers of the State legislature under Entry 50 of List II;

    c. Both Entry 54 of List I and Entry 50 of List II constitute a family of entries. Taxes on minerals rights must be understood as such levies, charges, impositions or demands that are related to mineral development. Entry 50 of List II cannot be a source of authority for imposing any levy, charge, impost, or demand which

is either unconnected with mineral development or in relation to any other alien purpose, such as education cess;

d. The MMDR Act contemplates all manner of levies, charges, imposts, or demands that can be legitimately provided for having a nexus with mineral rights. Therefore, the provisions of the MMDR Act will be treated as a limitation on the power of the States to demand or impose similar levies, imposts or demands of the same nature. Although Entry 50 of List II is a taxing entry, it will be limited by a law relating to mineral development enacted under a general entry, that is, Entry 54 of List I; and

e. Entry 49 of List II cannot include any matter in relation to mineral rights activities. Any levy with reference to the value of mineral produced from a mineral bearing land will be treated as a levy in relation to mineral rights.

12. Mr Tushar Mehta, the learner Solicitor General of India, made the following submissions:

a. The only pertinent issue in this reference is whether the State Government can impose levies under Entry 50 of List II over and above the amount of royalty received by them under the MMDR Act. The State legislature's competence to tax mineral rights under Entry 50 does not extend to taxing other aspects such as mining activities and minerals produced;

b. The Central Government fixes the rates of royalty to ensure harmonized development of minerals in India. The MMDR Act exhausts the field of statutory charges and levies on minerals and thereby denudes the power of the State legislature to impose any levy relating to mineral development. The MMDR Act

occupies the entire field of legislation covered by both Entries 23 and 50 of List II;

c. In the context of mineral-bearing lands, the words “lands” used in Entry 49 of List II can only mean the surface of the land. It cannot be interpreted expansively to include sub-soil minerals because the subject matter of mines and minerals is covered by Entry 54 of List I and Entries 23 and 50 of List II. If mineral produce or mineral rights are used as a measure for taxation of lands under Entry 49 of List II, it will impact the Union’s powers to legislate under Entry 54 of List I to limit the taxes on mineral rights in the manner contemplated in Entry 50 of List II; and

d. Any levy imposed by the States with reference to the value of minerals produced is in pith and substance a tax on mineral rights under Entry 50 of List II. Since subject-matter of mineral rights covered by Entry 50 of List II is limited by a parliamentary law, giving an expansive reading to Entry 49 of List II by interpreting lands to include mineral deposits will lead to an overlap between the two entries.

13. Mr Harish Salve, learned senior counsel, made the following submissions:

a. Entry 50 of List II is *sui generis* because it is the only legislative entry which limits the taxing power of the State legislatures by reference to a general law;

b. The MMDR Act is a complete code on all aspects relating to regulation of mines and development of minerals. All mineral rights are granted according to the provisions of the central legislation regardless of whether that the minerals vest in the State Government;

c. The important issue in this reference pertains to the nature of "any limitations" mentioned under Entry 50 of List II. The State legislature's power under Entry 50 of List II is excluded if taxes on mineral rights become incompatible with mineral development as contemplated by a regulatory law enacted under Entry 54 of List I. Any levy by State legislatures under Entry 50 of List II impinges upon mineral development;

d. Royalty belongs to the same genus as a tax on mineral rights in the sense that both are exactions by the sovereign in exercise of their statutory powers. The expression "taxes on mineral rights" has a very narrow focus and has to be interpreted accordingly. In a constitutional sense, the expression "tax on mineral rights" connotes that exaction which gives the States the share of the mineral produced. The royalty payable under Section 9 of the MMDR Act meets that definition;

e. The expression "mineral development" used in Entry 50 of List II has to be traced to the entire architecture of the MMDR Act. Therefore, the entirety of the MMDR Act serves as a limitation on the taxing powers of the State legislatures under Entry 50 of List II. Further, other provisions of the MMDR Act cover the taxing powers of the State legislature by satisfying the threshold of "any limitation" under Entry 50 of List II;

f. The tax on mineral rights can only be a tax on an owner (who is a private person) of minerals seeking to monetize the mineral resources. Resultantly, the State Government can exercise its legislative powers under Entry 50 of List II only in situations where the mineral rights vest in private persons; and

g. The measure of tax must have a nexus with the nature of tax. In India, all minerals vest in the State. Ownership of land does not give the owner the right

to the sub-soil minerals. Therefore, a tax on mineral bearing land cannot be imposed on the owner on the basis of the value of the sub-soil minerals.

14. Dr A M Singhvi, learned senior counsel, made the following submissions:

a. Royalty and dead rent are compulsory imposts under the MMDR Act, and not a result of negotiations leading to a contractual agreement. Royalty meets the criteria of tax under Article 366(28) of the Constitution;

b. The legislative declaration under Section 2 of the MMDR Act denudes the States of any power to tax mineral rights under Entry 50 of List II. Even if the legislative declaration does not *ipso facto* exclude the legislative competence of the State legislatures under Entry 50 of List II, the MMDR Act contains specific provisions such as Sections 9, 9A, and 9B imposing taxes on mining lessees which occupy the field of taxation of mineral rights;

c. The express language of Entry 50 of List II suggests that the taxing power of the State legislature is subordinated by a legislation made under Entry 54 of List I. This necessarily implies that Entry 54 of List I read with Entry 97 of List I empowers Parliament to tax mineral rights; and

d. Entry 54 of List I read with Entry 97 of List I implies a *sui generis* and complete code on the legislative subject of regulation of mines and mineral development and taxation of minerals and mineral rights. Therefore, Entry 54 of List I and Entry 50 of List II constitute an exception to the principle laid down in **M P V Sundararamier** (supra).

15. Mr Darius Khambata, learned senior counsel, made the following submissions:

a. The limitations imposed by Parliament under Entry 50 of List II need not be express, they can also be implied. Therefore, once Parliament imposes

charges or levies under a law relating to mineral development, it occupies the entire field pertaining to the subject-matter of Entry 50 of List II; and

b. The MMDR Act is a complete code on the regulation of mineral development, including the field of taxation or exactions on minerals and mineral rights. The scheme of the MMDR Act is such that Parliament not only imposes a tax on mineral rights, but also curtails the powers of the State legislature under Entry 50 of List II.

16. Mr A K Ganguly, learned senior counsel, submitted that minerals cannot constitute as a measure for tax on land because they cease to be a part of land once extracted.

17. Mr S K Bagaria, learned senior counsel, submitted that the totality of levies pertaining to minerals and mineral rights are comprised in Sections 9, 9A, 9B, and 9C of the MMDR Act which leave nothing for the State legislature to tax under Entry 50 of List II. Moreover, the expression 'tax on mineral rights' under Entry 50 of List II will not empower State legislatures to levy tax on minerals.

18. Mr Arvind Datar, learned senior counsel, made the following submissions:

a. Since Entry 50 of List II is "subject to" any limitations imposed by Parliament by law relating to mineral development, the legislative power of the State legislature to tax mineral rights must yield to parliamentary legislation, that is, the MMDR Act. The taxing powers under Entry 50 of List II are made subject to a law made by Parliament to maintain uniformity and promote mineral development; and

b. The scope of taxes on mineral rights under Entry 50 of List II is limited and only entails a taxation on the activity of excavation and mining. This has already

been accounted for under the MMDR Act. The taxes on minerals produced is akin to an excise duty and can only be levied under Entry 84 of List I, and the taxes on sale of minerals can be levied under Entry 54 of List II.

19. Mr Sujit Ghosh, learned senior counsel, submitted that the sovereign right of the State legislature can be curtailed by Parliament in the interests of mineral development. Counsel further contended that the 'aspect' of taxation of mineral rights has been taken over by Parliament by virtue of Section 9 of the MMDR Act.

20. Ms Aishwarya Bhati, the Additional Solicitor-General of India, submitted that the taxing powers of the State legislatures under Entry 50 of List II is not eclipsed by a taxing power of Parliament, but by a regulatory power. The learned ASG also emphasized that the concept of inter-generational equity has to be borne in mind by this Court to balance the legislative power of the State legislatures to tax mineral rights against the need for the development of minerals.

D. Distribution of legislative fields relating to mines and minerals

21. A mineral is an inorganic substance found either on or under the surface of the earth.[10] Minerals are natural and non-renewable resources. They serve as vital raw materials for the core sectors of the economy. India produces a diversity of minerals such as coal, iron-ore, bauxite, manganese and chromite. Many industries, especially those critical to the infrastructure sector such as power,

[10] Ramanatha Aiyar Advanced Law Lexicon (Volume 3) 3543; In Banarsi Dass Chadha v. Lt Governor, Delhi Administration, (1978) 4 SCC 11 [4]. (Justice O Chinappa Reddy, on behalf of a three-Judge Bench observed: "The word "mineral" is not a term of Article. It is a word of common parlance, capable of a multiplicity of meanings depending upon the context. For example, the word is occasionally used in a very wide sense to denote any substance that is neither animal nor vegetation. Sometimes it is used in a narrow sense to mean no more than precious metals than gold and silver. Again, the word "minerals" is often used to indicate substances obtained from underneath the surface of the earth by digging or quarrying."); V P Pithupitchai v. Special Secretary to the Government of TN, (2003) 9 SCC 534.

steel, cement, and aluminum, are heavily dependent on minerals. For example, coal is an essential raw material for several key industries such as iron, steel, and cement, which in turn are basic ingredients for almost all manufacturing industries and physical infrastructure.

22. Most of the minerals are spatially located in a few mineral rich states, namely, Andhra Pradesh, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Orissa, Rajasthan, and West Bengal.[11] Since mineral resources are a shared inheritance of the people, it has always been the imperative of the Indian state to ensure equitable distribution of mineral wealth to sub-serve the common good.[12] Considering the socio-economic importance of mineral resources to economic development, the Constitution has emphasized that the state shall play an important role in facilitating and regulating mining activities.

23. The history of the distribution of legislative powers relating to the regulation of minerals and development of mineral rights could be traced to the Government of India Act 1915-19[13]. Section 45A of the GOI Act 1915 provided for the classification of subjects in relation to the functions of government as central and provincial subjects for the purpose of distinguishing the functions of the Governor-General in Council and the Indian Legislature from those of the local governments and local legislatures. Pursuant to Section 45A and Section 129A (which empowered the Governor-General to make further provisions for the regulation of certain matters by rules), the Governor-General prescribed the Devolution Rules. The Devolution Rules prescribed the distribution of the

[11] Ligia Norohna et al, 'Resource Federalism in India: The Case of Minerals' (2009) 44(8) Economic and Political Weekly 51, 52.
[12] Government of India, Ministry of Mines, 'National Mineral Policy 2019'
[13] "GOI Act 1915"

subject-matter of the regulation of mines and mineral resources in the following manner:

> "**Part I Central Subjects**
>
> 25. Control of mineral development in so far as such control is reserved to the Governor General in Council under rule made or sanctioned by the Secretary of State, and regulation of mines.
>
> **Part II Provincial Subjects**
>
> 24. Development of mineral resources which are Government property; - subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines."

24. The primary aim behind the introduction of the Devolution Rules was to transfer certain responsibilities to provincial legislative assemblies.[14] However, the colonial state reserved to itself almost the entirety of the subject matter relating to mineral development and regulation of mines. The provincial legislatures were given limited power to the extent of development of mineral resources which were Government property. The Government of India Act 1935[15] retained the distribution of legislative powers between the Centre and Provinces. Section 100 of the GOI Act 1935 demarcated the legislative powers of the Federal and Provincial Legislatures.[16] The relevant entries relating to mines and mineral development were as follows:

[14] See Debates in the House of Commons on the Government of India Act 1919 (3rd December 1919)
[15] "GOI Act 1935"
[16] GOI Act 1935, Section 100. (It read:
Subject matter of Federal and Provincial Laws:
(1) Notwithstanding anything in the two next succeeding subsections, the Federal Legislature has and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the "Federal Legislative List").

> "List I. – Federal Legislative List
>
> 36. Regulation of mines and oilfields and mineral development to which such regulation and development under a Federal control is declared by Federal law to be expedient in the public interest.
>
> List II. – Provincial Legislative List
>
> 23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.
>
> 44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development."

25. During the debates in the House of Commons on the above entries, the then Solicitor General stated that the provinces could enact their own regulations if there was any "inaction" by the Federal Legislature.[17] Thus, legislative power in relation to regulation of mines and mineral development was accorded to both the Federal and Provincial Legislatures. However, the subject matter in the Provincial Legislative List was made subject to the provisions of the Federal Legislative List. The Dominion Legislature enacted the Mines and Minerals

(2) Notwithstanding anything in the next succeeding sub-section, the Federal Legislature, and subject to the preceding sub-section, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the "Concurrent Legislative List").
(3) Subject to the two preceding sub-sections, the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial Legislative List").
(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislature List except for a Province of any part thereof.")

[17] Government of India Bill, Seventh Schedule (Legislative Lists) Hansard (Volume 301) (13 May 1935). [The Solicitor General said: "If there is inaction at the Centre the Provinces can go ahead with their own regulations and developments, but to the extent to which the Centre desires and declares by law that there shall be central regulations and control, then the subject comes out of the purely restricted Provincial field and becomes a subject of control at the Centre."]

(Regulation and Development) Act 1948 in pursuance of the subject contained in Entry 36 of the Federal Legislative List.

26. Entry 44 of the Provincial Legislative List enumerated the subject matter of taxes on mineral rights, but made the taxing power of the Provinces subject to any legislation relating to mineral development enacted by the Federal Legislature. This scheme of the distribution of legislative powers with respect to the subject-matter of mines and mineral development as well as the taxation of mineral rights is reflected in the Constitution.

27. The Seventh Schedule to the Constitution enumerates the following entries pertaining to regulation of mines and mineral development and the taxation of mineral rights:

> "**List I – Union List**
>
> 54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
>
> **List II – State List**
>
> 23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
>
> 50. Taxes on mineral rights subject to any limitation imposed by Parliament by law relating to mineral development."

28. Although the above entries are substantially similar to the scheme under the GOI Act 1935, one of the differences lies in the removal of "oil fields" from Entry 54 of List I and Entry 23 of List II. The regulation and development of oil fields is now enumerated under Entry 53 of List I.[18] The other difference is that while the GOI Act 1935 required a declaration by Federal law, the Constitution now requires a declaration by Parliament. The entry pertaining to taxes on mineral rights is largely similar to Entry 44 of the Provincial Legislative List, except for the fact that Entry 44 provided for imposition of "any limitations" by "any Act" enacted by the Federal Legislature relating to mineral development, while Entry 50 of List II does not include the expression "any Act" enacted by Parliament. Before we delve into the intricacies of the interpretation of the legislative entries, we need to bear in mind the constitutional philosophy underlying the Indian federal setup.

E. Underlying constitutional philosophy

i. Scheme of distribution of legislative powers and constitutional limitations

29. Part XI of the Constitution deals with the relations between the Union and the States. Article 245 provides that subject to the provisions of the Constitution, Parliament may make laws for the whole or any part of the territory of India and the Legislature of a State may make laws for the whole or any part of the State.[19] The power to enact laws is inherently related to the sovereignty of the Union and State legislatures in their respective fields.[20] While the sovereign legislative

[18] Entry 53 of List I, Seventh Schedule, Constitution of India. [It reads: "53. Regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable."]
[19] Article 245, Constitution of India
[20] Jindal Stainless Steel v. State of Haryana, (2017) 12 SCC 1 [617]

powers of Parliament and the State legislatures are plenary, they are subject to well-defined constitutional limitations. The language of Article 245 makes the exercise of legislative powers expressly subject to the provisions of the Constitution. Therefore, laws made by a legislature may be void not only for the lack of legislative power in respect of the subject-matter, but also for transgressing constitutional limitations.[21] It is the duty of constitutional courts to resolve disputes regarding a breach of constitutional limits by the Union and State legislatures.[22]

30. The scheme of distribution of legislative powers between Parliament and the State legislatures is embodied in Article 246. Article 246 is similar to Section 100 of the GOI Act 1935. Article 246 deals with the subject matter of laws made by Parliament and the Legislatures of States and is set below:

> "246. Subject-matter of laws made by Parliament and by the Legislatures of States –
>
> (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to makes laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
>
> (2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have the power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List")
>
> (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the

[21] H M Seervai, Constitutional Law of India, Volume 3 (4th edn.) [22.6] 2306; State of Kerala v. Mar Appraem Kuri Company Ltd., (2012) 7 SCC 106, [41].
[22] State of West Bengal v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571

> matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List")
>
> (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

31. Article 246 confers exclusive power on Parliament to make laws with respect to any of the matters enumerated in List I (the Union List) of the Seventh Schedule. The exclusive power of the State legislatures with respect to the matters enumerated in List II is subject to the exclusive legislative powers of Parliament. In **Hoechst Pharmaceuticals** v. **State of Bihar**,[23] this Court culled out the following principles underlying Article 246:

a. Parliament has exclusive power to make laws with respect to the matters enumerated in List I;
b. The non-obstante clause in Article 246(1) provides for predominance or supremacy of the Union legislature;
c. The legislative powers of the Union legislature is not encumbered by anything contained in Articles 246(2) and 246(3) for these clauses are expressly limited and made subject to the non-obstante clause in Article 246(1);
d. The State legislature has exclusive power to make laws with respect to any of the matters enumerated in List II;
e. The exclusive power of the State legislature to legislate with respect to any of the matters enumerated in List II has to be exercised subject to Article

[23] (1983) 4 SCC 45

246(1), that is, the exclusive power of Parliament to legislate with respect to matters enumerated in List I;

f. Consequently, in case of any conflict between an entry in List I and an entry in List II which is not capable of reconciliation, the power of Parliament to legislate with respect to a matter enumerated in List I must supersede *pro tanto* the exercise of power of the State legislature; and

g. Both Parliament and State legislatures have concurrent powers of legislation with respect to any of the matters enumerated in List III, the law enacted by Parliament prevailing in the event of any inconsistency or conflict.

32. Article 245 (read with Article 246) is the source of the legislative powers of Parliament and the State legislatures. The entries in the Seventh Schedule delineate the subject matter over which the appropriate legislature can enact laws. The entries are legislative heads and not the source of legislative powers.[24] A legislation could be composite in nature, drawing upon several entries in a particular list.[25] Such a legislation is referred to as a "ragbag" legislation.

33. Article 254 clarifies that if the law made by a State legislature is repugnant to any provisions of a law made by Parliament with respect to any of the matters enumerated in List III, the law made by Parliament would prevail and the law made by the State legislature would be void to the extent of the repugnancy. The issue of repugnancy arises only when both the legislatures are competent to legislate on the subject with respect to List III.[26] The issue of repugnancy does not arise if the legislations enacted by Parliament and the State legislatures deal

[24] Calcutta Gas Company (Proprietary) Ltd v. State of West Bengal, 1962 Supp (3) SCR 1, [8]
[25] Ujagar Prints (II) v. Union of India, (1989) 3 SCC 488 [53]; State of West Bengal v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 [27].
[26] Ch Tika Ramji v. State of U P, 1956 SCC OnLine SC 9 [26]; State of Maharashtra v. Bharat Shanti Lal Shah, (2008)

with separate and distinct legislative subject matters. By virtue of Article 248, Parliament has exclusive legislative powers to make laws with respect to any of the matters not enumerated in List II or List III.[27] However, how should courts deal with a situation where two legislations, enacted by Parliament and State legislature in pursuance of their respective legislative powers, appear to conflict with each other? The answer lies in Article 246 itself.

34. Article 246 incorporates the principle of federal supremacy.[28] In **Hoechst Pharmaceuticals** (supra), this Court held that the words "notwithstanding anything contained in clauses (2) and (3)" in Article 246(1) and the words "subject to clauses (1) and (2)" in Article 246(3) embody that principle. The principle postulates that in case of an inevitable conflict between Union and State powers, the Union's power of legislation over a subject enumerated in List I shall prevail over the State powers of legislation over a subject enumerated in List II and III. However, it is also settled that this principle cannot be resorted to unless there is an irreconcilable direct conflict between the entries in the Union and State Lists.[29] Such a conflict must be an actual one and not a mere seeming conflict between the two entries in two lists.[30]

35. **Hoechst Pharmaceuticals** (supra) laid down the following principles to resolve any direct conflict between the entries in List I and List II: (i) in case of seeming conflict, the two entries should be read together without giving a narrow and restricted reading to either of them; (ii) an attempt should be made to see whether the two entries can be reconciled so as to avoid a conflict of jurisdiction; and (iii) no question of conflict arises between two Lists if the impugned legislation in pith

[27] Article 248, Constitution of India.
[28] Kishori Shetty v. The King, (1949-50) 11 FCR 650
[29] State of Kerala v. Mar Appraem Kuri Co. Ltd, (2012) 7 SCC 106 [39]
[30] Offshore Holdings (P) Ltd. v. Bangalore Development Authority, (2011) 3 SCC 139 [99]

and substance appears to fall exclusively under one list and the encroachment upon the other list is incidental.

36. Articles 245 and 246 embody the essence of Indian federalism. The division of legislative powers between Union and States is an emanation of the federal project.[31] This division also serves as a constitutional limitation on legislative powers. Parliament cannot entrench upon the plenary power of the State legislatures in the ordinary course, except where the Constitution itself specifically allows it.[32] The appropriate legislature must possess legislative competence to enact a law on the subject matter it seeks to legislate.

37. With respect to the powers of taxation, Article 265 provides that no tax shall be levied or collected except by authority of law. In **Mafatlal Industries** v. **Union of India**, a nine-Judge Bench of this Court held that the "law" mentioned under Article 265 refers to a valid law whose validity has to be determined with reference to other provisions in the Constitution.[33] Therefore, with respect to taxation laws particularly, there is a constitutional requirement that the law imposing tax must be in conformity with the provisions of the Constitution, particularly Part III dealing with the fundamental rights. This is also a constitutional limitation because the appropriate legislature has to ensure that the law is in accord with the principles of equality and non-discrimination. Any

[31] Constituent Assembly Debates, Vol. 11 (25 November 1949). [Dr. B R Ambedkar – "As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of Federalism is that the Legislative and Executive authority is partitioned between the Centre and the States not by any law to made by the Centre but by the Constitution itself. This is what the Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It may be that the Constitution assigns to the Centre too large field for the operation of its legislative and executive authority than it to be found in any other federal Constitution. It may be that the residuary powers are given to the Centre and not to the States. But these features do not form the essence of federalism. The chief mark of federalism as I said lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our Constitution."]
[32] See Articles 249, 250, and 252, Constitution of India.
[33] (1997) 5 SCC 536 [25].

legislation enacted by the legislature in excess of its constitutional powers is *void*.[34]

ii. Interpretation of legislative entries

38. The structure of the legislative entries in the three Lists of the Seventh Schedule follows an express and deliberate pattern. The entries are classified into general and taxing entries.[35] In the Union List, entries 1 to 81 enumerate general subject matters, while entries 82 to 92-C pertain to the powers of taxation. Similarly, entries 1 to 45 in the State List enumerate the general entries and entries 46 to 63 provide for taxing entries. The legislature does not derive the power to tax from the general entries - taxation is considered to be a distinct matter for purposes of legislative competence. The distinction between the general and taxing entries was explained by this Court in **M P V Sundararamier** (supra) in the following manner:

> "In List I, Entries 1 to 81 mention the several matters over which Parliament has authority to legislate. Entries 82 to 92 enumerate the taxes which could be imposed by a law by Parliament. An examination of these two groups of Entries shows that while the main subject of legislation figures in the first group, a tax in relation thereto is separately mentioned in the second. Thus, entry 22 in List I is "Railways", and Entry 89 is "Terminal taxes on goods or passengers, carried by railway, sea, or air; taxes on railway fares and freights". If Entry 22 is to be construed as involving taxes to be imposed, then Entry 89 would be superfluous. Entry 41 mentions "Trade and commerce with foreign countries; import and export across customs frontiers". If these expressions are to be interpreted as including duties to be levied in respect of that trade and commerce, then Entry 83 which is "Duties of customs including export duties" would be wholly redundant. Entries 43 and 44 relate

[34] R M D Chamarbaugwalla v. Union of India, 1957 SCC OnLine SC 11 [12]
[35] R Abdul Quader & Co. v. STO, (1964) 6 SCR 867, [8]

> to incorporation regulation and winding up of corporations. Entry 85 provides separately for Corporation tax. Turning to List II, Entries 1 to 44 form one group mentioning the subjects on which the States could legislate. Entries 45 to 63 in that List form another group, and they deal with taxes. Entry 18, for example, is "Land" and Entry 45 is "Land Revenue". Entry 23 is "Regulation of mines" and Entry 50 is "taxes on mineral rights". **The above analysis – and it is not exhaustive of the Entries in the Lists – leads to the interference that taxation is not intended to be comprised in the main subject in which it might on an extended construction be regarded as included, but is treated as a distinct matter for purposes of legislative competence**. And this distinction is also manifest in the language of Art. 248, Cls. (1) and (2), and of Entry 97 in List I of the Constitution. […]
>
> To sum up: […] **(2) Under the scheme of the Entries in the Lists, taxation is regarded as a distinct matter and is separately set out.**"
>
> (emphasis added)

39. The above position of law has been expressly affirmed by the nine-Judge Bench of this Court in **Jindal Stainless Ltd** v. **State of Haryana**.[36] Thus, it is an accepted principle that the subject matter of taxation is dealt with under distinct entries and, therefore, cannot be traced to a non-taxing entry. The taxing powers of Parliament and the State legislatures are mutually exclusive and clearly demarcated. There can be no overlap between the taxing powers of the Union and the States. Entries relating to taxing powers must be construed with clarity and precision to maintain exclusivity and a construction of a taxation entry which may lead to overlapping must be eschewed.[37] If a taxing power is enumerated within a particular legislative list, it is automatically excluded from the purview of

[36] Jindal Stainless Steel (supra) [120], [237.5], [639]
[37] Godfrey Phillips India Ltd. v. State of UP, (2005) 2 SCC 515 [46]

subject-matters in other legislative lists. The residuary power of Parliament also includes the power of making any law imposing a tax not mentioned in either List II or List III.

40. The legislative fields or entries in the Seventh Schedule have used general words to define and delineate the legislative powers of Parliament and State legislatures. The rule that words should receive their ordinary, natural, and grammatical meaning applicable to statutes also applies to the entries contained in the Seventh Schedule.[38] It is also a well-accepted principle that the entries should not be read in a narrow or pedantic sense but must be given their broadest meaning and the widest amplitude because they are intrinsic to a machinery of government.[39] The ambit of the entries extends to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in them.[40] Since the Seventh Schedule uses general terms, there is always a possibility of an overlap and conflict between two or more entries.

41. Many entries in the Seventh Schedule may appear to overlap because of the language used in the entries. The necessary corollary to the scheme of legislative distribution is that that any invasion by Parliament in the field assigned to the States and vice versa is a breach of the Constitution.[41] Even though the Constitution distributes legislative powers between the Union and the States, there have been situations where a legislation purporting to deal with a subject in one list, touches on a subject in another list. To remedy such situation, the doctrine of pith and substance is used to examine whether the legislature has

[38] Navinchandra Mafatlal v. Commissioner of Income Tax, Bombay City, (1954) 3 SCC 623
[39] Hans Muller of Nurenburg v. Superintendent, Presidency Jail (1955) 1 SCR 1284; Elel Hotels & Investments Ltd v. Union of India, (1989) 3 SCC 698; State of Rajasthan v. G Chawla, 1958 SCC OnLine SC 33 [8].
[40] United Provinces v Atiqa Begum, (1940) 2 FCR 110; Express Hotels (P) Ltd. v. State of Gujarat, (1989) 3 SCC 677; Sardar Baldev Singh v. CIT, 1960 SCC OnLine SC 147 [20]
[41] Dr. B R Ambedkar, CAD Volume 7 (4 November 1948).

the competence to enact a law with regard to either of the three lists under the Seventh Schedule of the Constitution.[42] There may arise situations where a legislature may frame a law that in substance and reality transgresses its legislative competence. Such a piece of legislation is called "colourable legislation" because the legislature veils its transgression by making it seem as if the legislation is within its legislative competence.[43] To examine whether the legislature has transgressed its legislative competence, the substance of the legislation is material. If the subject-matter is in substance beyond the legislative powers of the legislature, the form in which the law is clothed would not save it from the vice of unconstitutionality.[44]

42. The Constitution has used specific expressions to resolve potential overlaps or conflicts between and among the entries in the three Lists. The entries in the Seventh Schedule have used different phraseologies to either subject or restrict their scope and ambit. Some of the legislative entries in the State List have been made subject to broad or specific limitations or restrictions with respect to the entries in the Union List or Concurrent List. This would emerge from the tabulation set out below:

Phraseology used	Entries in State List
Subject to the provisions of any law made by Parliament	37
Subject to the provisions of entries in List I	2, 17, 22, 24, 33
Subject to a particular field of legislation in List I	23
Subject to the provisions of entries in List III	26, 27, 57
Subject to the provisions of List I and List III	13
Subject to any limitations imposed by Parliament by law	50
Other than	7, 12, 32, 63
Not including	1, 51, 54, 66

[42] A L S P P L Subrahmanyan Chettiar v. Muthuswami Goundan, (1940) 2 FCR 188; A S Krishna v. State of Madras, 1957 SCR 399 [8];
[43] K C Gajapathi Narayan Deo v. State of Orissa, (1953) 2 SCC 178 [11]
[44] K C Gajapathi Narayan Deo (supra) [12]

43. The above table is an indication of the extent to which the legislative powers of the States have been restricted, limited, or altogether precluded. The use of the expression “other than” or “not including” serves the purpose of redacting from the ambit of the legislative power of the States to the extent suggested. Where the Constitution intends to limit or preclude the legislative powers of the State to a particular extent, it has used specific terminologies such as “other than” and “not including”.

44. Where the entries have used the phrase “subject to”, the legislative power of the State is made subordinate to Parliament with respect to either the Union List or the Concurrent List. The expression “subject to” conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject.[45] Therefore, where the Constitution intends to displace or override[46] the legislative powers of the States, it has used specific terminology – “subject to”. However, the Constitution has also indicated the extent to which a particular legislative entry under List II is subordinated. For instance, the subjection is either with respect to provisions of List I or List III, or it can also be to the extent of “any limitations” imposed by Parliament by law. Thus, it is imperative that the entries in List II must be read and interpreted in their proper context to understand the extent of their subordination to Union powers.

45. There are numerous entries in the State List where the Constitution has imposed no restrictions on the exercise of the legislative powers of the States.[47] With

[45] South India Corporation (P) Ltd. v. Secretary, Board of Revenue, (1964) 4 SCR 280 [19]
[46] State of Bihar v. Kameshwar Singh, (1952) 1 SCC 528. [“18. […] It was said that the words “subject to the provisions of List III Entry 42” must be taken to mean that the law-making power under Entry 36 could only be exercised subject to the two conditions as to public purpose and payment of compensation, both of which are referred to in Entry 42. Those words, in my opinion, mean no more than that any law made under Entry 36 by a State Legislature can be displaced or overridden by the Union Legislature making a law under Entry 42 of List III.”]
[47] See Entries 4, 5, 6, 8, 9, 10, etc., List II, Seventh Schedule, Constitution of India.

respect to such entries, the absence of any express limitations indicates that the Constitution did not intend to fetter the legislative powers of the States.

46. In addition to the above terminologies, the entries in the Seventh Schedule also indicate the manner in which a restriction or limitation can be imposed on the legislative powers of the State. This assumes clarity from the following tabulation:

Phraseology Used	Entries
Declared by or under law	23, 27, 67 of List I
Declared by Parliament by law	24, 52, 53, 54, 56, 62, 63, 64 of List I
Imposed by Parliament by law	50 of List II

47. The Constitution deploys three expressions to signify the manner in which the legislative power could be exercised by Parliament – "declared by or under law", and "declared by Parliament by law", and "imposed by Parliament by law" The difference in the character of these provisions can be gathered from the Constitution (Seventh Amendment) Act 1956 which substituted the expression "declared by Parliament by law" with "declared by or under law made by Parliament" in Entry 67[48] of the Union List. The object of the amendment was to enable the delegate under the statute to make the required declaration.[49] The expression "by law" means that the legislative power should be effectuated through the provisions of a statute. In comparison, "by or under law" means that the legislative intent could be effectuated either through the provisions of the

[48] Entry 67, List I, Seventh Schedule, Constitution of India. [It reads – "Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance."]

[49] Constitution (Seventh Amendment) Act, 1956, State of Objects and Reasons – "Clause 24 – Entry 67 of the Union List refers to "ancient and historical monuments and records, and archaeological sites and remains, declared by Parliament by law to be of national importance. A large number of ancient monuments, archaeological sites, etc. have been declared to be of national importance by an Act of Parliament. It requires another Act of Parliament to make the slightest alteration in, or addition to, the lists in that Act, which seems to be and unduly cumbrous procedure. It is, therefore, proposed to amend the entry substituting for the words "declared by Parliament by law", the words "declared by or under law made by Parliament". The same amendment is also proposed to be made in connected provisions, entry 12 of the State List, entry 40 of the Concurrent List and article 49."

statute or by any subordinate authority vested with powers in that behalf by the statute.[50] It is important to note that Entry 50 of List II use the expression "by law relating to mineral development". We will have to bear the meaning of the expression "by law" in mind to give an appropriate interpretation to the entry.

iii. Fiscal Federalism

48. Federalism is one of the basic features of the Indian Constitution.[51] Federalism embodies a division of powers between the units of the federation, that is, the Union and the States. Indian federalism is defined as asymmetric because it tilts towards the Centre, producing a strong Central Government. Yet, it has not necessarily resulted in weak State governments.[52] The Indian States are sovereigns within the legislative competence assigned to them. The delicate balance of power is secured by constitutional courts by interpreting the scheme of distribution of powers.[53] In **S R Bommai** v. **Union of India**,[54] Justice B P Jeevan Reddy observed that the courts should be circumspect in adopting an approach or interpretation which may have an effect of whittling down the powers reserved to the States:

> "276. The fact that under the scheme of our Constitution, greater power is conferred upon the Centre vis-à-vis the States does not mean that States are mere appendages on the Centre. Within the sphere allotted to them, States are supreme. The

[50] In Dr Indramani Pyarelal Gupta v. W R Natu, (1963) 1 SCR 721 a Constitution Bench of this Court explained the difference between "by law" and "under law" in the following terms: "15. […] The meaning of the word "under the Act" is well known. "By" an Act would mean by a provision directly enacted in the statute in question and which is gatherable from its express language or by necessary implication therefrom. The words "under the Act" would, in that context, signify what is not directly to be found in the statute itself but is conferred or imposed by virtue of powers enabling this to be done; in other words; bye-laws made by a subordinate law-making authority which is empowered to do so by the parent Act. The distinction is thus between what is directly done by the enactment and what is done indirectly by a subordinate law-making authority which is empowered to do so by the parent Act."
[51] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 [582]
[52] Granville Austin, Cornerstone of a Nation (OUP, 1966) 187
[53] In re, Special Reference No. 1 of 1964, (1965) 1 SCR 413; Jindal Stainless Steel (supra) [612]
[54] (1994) 3 SCC 1

> Centre cannot tamper with their powers. More particularly, the courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States. […]"

49. In a federal form of government, each federal unit should be able to perform its core constitutional functions with a certain degree of independence. The Constitution has to be interpreted in a manner which does not dilute the federal character of our constitutional scheme.[55] The effort of the constitutional court should be to ensure that State legislatures are not subordinated to the Union in the areas exclusively reserved for them.[56]

50. In **Union of India** v. **Mohit Minerals Private Limited**,[57] this Court recognized fiscal federalism as an important attribute of Indian federalism. Fiscal federalism is concerned with the assignment of functions to different levels of government and devolution of appropriate fiscal instruments to carry out these functions.[58] In India, these fiscal instruments typically take the form of tax and debt instruments. Similar to the division of constitutional powers and responsibilities, the Constitution has also shared tax-raising responsibilities between the Union and the States.[59]

51. The Constitution is cognizant of the imbalance between resources at the disposal of states and the Union. The Constitution remedies the imbalance by way of intergovernmental distribution[60] and grants.[61] One of basic features of fiscal federalism is that both the Union government and the State governments ought

[55] Jindal Stainless Steel (supra) [85].
[56] Jindal Stainless Steel (supra) [615].
[57] (2022) 10 SCC 700 [56]
[58] Wallace E Oates, 'An Essay on Fiscal Federalism' (1999) 37(3) Journal of Economic Literature 1120, 1121.
[59] The legislative power of Parliament to tax is enumerated in entries 82 to 92B of List I. Similarly, the legislative power of state is enumerated is enumerated in entries 46 to 62 of List II.
[60] Article 270(2), Constitution of India
[61] Articles 273 and 275, Constitution of India

to have adequate fiscal resources to discharge their constitutional responsibilities. List I and List II of the Seventh Schedule contain various subject-matters under which Parliament and the State legislatures can respectively levy taxes. The purpose of such a distribution is to entrust adequate fiscal powers with the legislatures to raise revenues to meet the growing fiscal expenditures and rein in the fiscal deficit. The legislatures can formulate the principles underlying any taxing legislation, define the taxing event or the charge of tax as well the mode and manner of its implementation.

52. The subjects in respect of which the framers of the Constitution desired that there should be uniformity of law throughout the country have been enumerated under the Union List, while matters which may require laws to be made having regard to the particular needs and peculiar problems of each State have been placed under the State List.[62] For instance, the State legislatures can tax the consumption or sale of electricity. Although electricity is an important raw material for many industries, the States are allowed to determine the rates of the levy by taking into consideration the particular needs of the State. By laying down a heterogenous distribution of legislative powers, the Constitution underscores that the asymmetry of our federation is an integral aspect of our federal form of governance.

53. Dr B R Ambedkar in his treatise on the evolution of provincial finances in colonial India observed that the cornerstone of the financial relationship between the Federal and State governments was characterized by separation of sources and contributions from the yield.[63] Any dilution in the taxing powers of the State

[62] Khazan Chand v. State of Jammu and Kashmir, (1984) 2 SCC 456 [14]
[63] Dr. B R Ambedkar, The Evolution of Provincial Finance in British India: A Study in the Provincial Decentralization of Imperial Finance' (1923) 152-171.

legislatures will necessarily impact their ability to raise revenues, which in turn will impede their ability to deliver welfare schemes and services to the people. The ability of the State Governments to invest in physical infrastructure, health, education, human capacity, and research and development is directly co-related to the raising of government revenues.[64] Constitutional courts have to be cognizant of this context while adjudicating on issues affecting the taxing powers of the State legislatures.

54. While speaking of fiscal federalism in the context of mineral resources, we have to be mindful of the fact that not all states are equally endowed with mineral resources. States such as Chhattisgarh, Jharkhand, and Orissa have greater reserves of mineral resources. Resultantly, the contribution of the mining sector in the state domestic product is higher for these states.[65] Despite the abundance of mineral wealth, many of these states lag economically and suffer from, what many economists refer to as, "resource curse".[66] For instance, mineral rich states such as Jharkhand, Chhattisgarh, and Orissa have lower per capita incomes than the national averages.[67] Taxation is among the important sources of revenue for these States, impacting on their ability to deliver welfare schemes and services to the people. Fiscal federalism entails that the power of the States to levy taxes within the legislative domain carved out to them and subject to the

[64] 'State Finances: A Study of Budgets of 2023-2024, Revenue Dynamics and Fiscal Capacity of Indian States' Reserve Bank of India (December 2023) 28.
[65] Ligia Noronha, et al, 'Resource Federalism in India: The Case of Minerals' (2009) 44(8) Economic and Political Weekly 51, 53.
[66] Economic Survey 2016-2017, Ministry of Finance, Government of India (January 2017) 292. ("Resource curse" refers to the phenomenon of economies with abundant natural resources having the tendency to grow less rapidly than resource-scarce economies.")
[67] Ministry of Statistics and Programme Implementation, State-wise date on per capita income' (24 July 2023) < https://www.pib.gov.in/PressReleasePage.aspx?PRID=1942055>

limitations laid down by the Constitution must be secured from unconstitutional interference by Parliament.

iv. Natural resources and the public trust doctrine

55. The public trust doctrine is founded on the principle that certain resources are nature's bounty which ought to be reserved for the whole populace, for the present and for the future.[68] Since these resources are intrinsically important to every person in society, the State acts as a public trustee to safeguard them. In **M C Mehta** v. **Kamal Nath**,[69] Justice Kuldip Singh observed that the State is the trustee of all natural resources which are by nature meant for public use and enjoyment. The learned Judge further observed that the State has a legal duty to protect natural resources which cannot be converted into private ownership.[70] The environment and natural resources are national assets and subject to intergenerational equity.[71] The public trust doctrine looks beyond the needs of the present generation and obligates the State to protect natural resources for future generations as well.[72]

56. While dealing with the allocation of spectrum in **Centre for Public Interest Litigation** v. **Union of India**,[73] this Court held the State should distribute natural resources in consonance with the principles of equality and public trust to ensure against action detrimental to public interest. The public trust doctrine imposes restrictions and obligations on the government to protect long-established public

[68] Joseph L Sax, 'The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention' (1970) Michigan Law Review 471, 484.
[69] (1997) 1 SCC 388 [34]
[70] ibid
[71] M C Mehta v. Union of India, (2009) 6 SCC 142 [45]
[72] T N Godavarman Thirumulpad v. Union of India, (2006) 1 SCC 1 [89]
[73] (2012) 3 SCC 1

rights over short-term private rights and private gain.[74] However, the obligation extends to every person who exercises rights over natural resources to use them without impairing or diminishing the rights of people and long term interests in that property or resource.[75] In **Reliance Natural Resources Ltd.** v. **Reliance Industries**,[76] in the context of Article 297[77] of the Constitution, this Court held that the nature of the word "vest" must be seen in the context of the public trust doctrine.[78]

57. The principle which emanates from the above discussion is that the State holds all natural resources, including minerals, as a trustee of the public and must deal with them in a manner consistent with the nature of such a trust.[79]

58. The Central Government or the State Government may not always be the "owner" of the underlying minerals. But the Constitution empowers both Parliament (under Entry 54 of List I) and the State legislatures (under Entry 23 of List II) to regulate mines and mineral development, the entrustment to the State being subject to the power of Parliament to regulate the domain. The Constitution has entrusted the Union and the States with the responsibility to regulate mines and mineral development in consonance with the principles of the public trust doctrine and sustainable development of mineral resources. Under the MMDR Act, the Central Government, acting as a public trustee of minerals, regulates prospecting and mining operations in public interest.[80] In the process, the legislation seeks to increase awareness of the compelling need to restore the

[74] Fomento Resorts & Hotels Ltd. v. Minguel Martins, (2009) 3 SCC 571 [55]
[75] Fomento Resorts & Hotels Ltd. (supra) [55]
[76] (2010) 7 SCC 1 [114]
[77] Article 297, Constitution of India.
[78] Reliance Natural Resources Ltd. (supra) [122]
[79] Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1 [88]
[80] State of Rajasthan v. Gotan Lime Stone Khanji Udyog (P) Ltd. (2016) 4 SCC 469 [29]; Orissa Mining Corporation Ltd. v. Ministry of Environment & Forests, (2013) 6 SCC 476 [58].

serious ecological imbalance and protect against damage being caused to the nature.[81] In **Pradeep S Wodeyar** v. **State of Karnataka**,[82] one of us (Justice D Y Chandrachud) observed that the essence of the MMDR Act is to "protect humankind and every species whose existence depends on natural resources from the destruction which is caused by rapacious and unregulated mining." The Court noted that the restrictions under Section 4 of the MMDR Act are intrinsically meant to protect the environment and communities who depend on the environment.

59. The principle that the Union and State Governments act as public trustees of mineral resources has been incorporated in the MMDR Act. Section 4-A empowers the Central Government to prematurely terminate a prospecting license, exploration license, or mining lease, after consultation with the State Government in the interests of (i) the regulation of mines and mineral development; (ii) preservation of the natural environment; (iii) control of floods; (iv) prevention of pollution; (v) avoiding danger to public health or communications; (vi) ensuring the safety of buildings, monuments or other structures; (vii) conservation of mineral resources; and (viii) maintaining safety in the mines or for such other purposes.[83] Moreover, the MMDR Act now mandates grant of mining leases,[84] exploration licences,[85] and composite licences[86] in respect of notified minerals through the process of auction. The Central Government is empowered to prescribe the terms and conditions subject to

[81] State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 [32]
[82] (2021) 19 SCC 62 [49.3]
[83] See State of Haryana v. Ram Kishan, (1988) 3 SCC 416 [7]. [This Court observed that Section 4-A "was enacted with a view to improve the efficiency in this regard and with this view directs consultation between the Central Government and the State Government. The two governments have to consider whether premature termination of a particular mining lease shall advance the object or not, and must, therefore, take into account all considerations relevant to the issue, with reference to the lease in question."]
[84] Section 10B, MMDR Act
[85] Section 10BA, MMDR Act
[86] Section 11, MMDR Act

which the auction shall be conducted.

60. The regulatory regime under the MMDR Act recognizes the important role of the state in regulating mines and mineral development. This emerges from the stand point of the following perspectives: (i) the State is a public trustee of natural resources, including minerals; (ii) pursuant to its role as a public trustee, the State has been empowered to regulate prospecting and mining operations; (iii) the provisions of the statute reflect the priority of the state to regulate mining and related activities to ensure sustainable mineral development. (iv) prospecting and mining operations may be carried out by both the government as well as private lessees bearing in mind the public interest; and (v) the Government has to ensure that mineral concessions are granted in a fair and transparent manner.

61. Having encapsulated the broad drift of the constitutional and statutory provisions, we now deal with the issues arising in this reference in the ensuing segments.

F. Whether royalty is tax

i. Royalty under the MMDR Act

62. The MMDR Act was enacted by Parliament in exercise of its legislative power derived from Article 246 read with Entry 54 of List I. The Act seeks to provide for the regulation of mines and development of minerals under the control of the Union. Section 2 contains a declaration in terms of Entry 54 of List I, providing that "it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."[87] The declaration indicates that Parliament intends to take

[87] Section 2, MMDR Act.

the regulation of mines and development of mines under the control of the Union to the extent indicated in the statute.

63. Chapter II of the MMDR Act deals with general restrictions on undertaking prospecting and mining operations. Section 4 provides that no person shall undertake any reconnaissance, prospecting or mining operations in any area except under and in accordance with the terms and conditions of a reconnaissance permit; prospecting licence; exploration licence; or mining lease granted under the Act. It also provides that no mineral concession shall be granted otherwise than in accordance with the provisions of the Act and the rules made under it.

64. Section 9 deals with royalties in respect of mining leases. Section 9(1) provides that the holder of a mining lease granted before the commencement of the Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at the commencement of the statute, 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 after such commencement, at the rates of royalties prescribed under the Second Schedule. The non-obstante clause is only applicable to mining leases granted before the commencement of the MMDR Act.

65. Section 9(2) provides that the holder of a mining lease granted after the commencement of the MMDR Act is also liable to 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 specified in the Second Schedule. Section 9(3) empowers the Central Government to amend the Second Schedule to enhance or reduce the rate at which royalty shall be payable in

respect of minerals enumerated in the Second Schedule. However, it also provides that the enhancement in the rate of royalty in respect of any mineral shall not be done more than once during any period of three years. The then Minister of Mines and Oil (Mr K D Malviya) stated during the Lok Sabha debate preceding the passage of the Bill that the purpose of capping further increases in the rates of royalty was to ensure financial security to the private sector.[88]

66. The rates of royalty payable in respect of minerals in the Second Schedule of the MMDR Act are computed either on an ad valorem basis at a specified percentage of the average sale price or at specific rates on per tonnage basis. While Section 9 authorizes the charging of royalty, the Second Schedule provides the method of computation. The rate of royalty and method of computation differ from mineral to mineral. This Court has held that the Second Schedule has to be read as a part and parcel of Section 9.[89]

67. The process of mining generally involves two stages: (i) extraction of the ores (also known as run-of-mine mineral) from the earth; and (ii) mineral beneficiation which entails separating the mineral from their ores. Rule 64-B of the Mineral Concession Rules 1960 provides for charging of royalty in case of minerals subjected to processing. It provides that if the processing of run-of-mine mineral is carried out within the leased area, royalty shall be chargeable on the processed mineral removed from the leased area. In case run-of-mine mineral is removed from the leased area to a processing plant located outside the leased

[88] Mr K D Malviya, Lok Sabha Debates, Volume X (9th December to 21st December 1957) 7123. (The Minister stated: "We gave consideration to the question of what should be the minimum time which could give a sense of security to the private sector, so that they could invest their money and have a fairly reasonable view of their investment and production programmes. Suppose we took powers to reduce or increase the royalties every six months, it will make the position very insecure from their point of view. As long as we want a mixed pattern of economy to go on and the private sector to flourish, surely my hon friend does not expect me to put a sense of insecurity in the mind of the private sector, when every six months they will have to ask "look here. Are you going to increase the royalty or are you going to decrease it' What are you going to do?".)
[89] National Mineral Development Corporation Ltd. v. State of M P, (2004) 6 SCC 281 [23]

area, the royalty shall be chargeable on the unprocessed run-of-mine mineral and not the processed product. Thus, royalty is payable on removal of the mineral from the boundaries of the leased area.[90] Rule 64D of the Mineral Concession Rules 1960 deals with the manner of payment of royalty on minerals on ad valorem basis.

68. Section 9A deals with payment of dead rent by the lessee. It provides that the holder of a mining lease shall pay to the State Government dead rent at such rate as may be prescribed in the Third Schedule. However, where the holder of the mining lease also becomes liable to pay royalty under Section 9, such person shall be liable to pay either royalty or dead rent, whichever is higher. The dead rent is calculated on a rate per hectare basis as specified under the Third Schedule. Section 9A was inserted by an amendment in 1972 with a two-fold purpose, namely to: (i) provide a statutory basis for calculation of dead rent; and (ii) prohibit the Central Government from enhancing the rate of dead-rent more than once during any period of three years.[91]

69. Section 9B provides for establishment of the District Mineral Foundation[92] in any district to work for the interest and benefit of persons and areas affected by mining related operations. The purpose of Section 9-B and the object of the DMF is to further the cause of social justice for those affected by mining related operations, such as tribals who may be dislocated or displaced from their habitat.[93] Section 9B(5) provides that the holder of a mining lease shall pay, in addition to the royalty paid under Section 9, an amount which is equivalent to such percentage of the royalty as may be prescribed by the Central Government.

[90] Tata Steel Ltd. v. Union of India, (2015) 6 SCC 193 [71]
[91] D K Trivedi & Sons v. State of Gujarat, 1986 Supp SCC 20 [45].
[92] "DMF"
[93] Federation of Indian Mineral Industries v. Union of India, (2017) 16 SCC 186 [43]

70. Section 9C provides for the establishment of a non-profit autonomous body called the National Mineral Exploration Trust[94] for the purposes of regional and detailed exploration in such manner as may be prescribed by the Central Government. Section 9C(4) mandates the holder of a mining lease to pay a sum equivalent of two percent of the royalty paid in terms of Section 9 to the Trust. The purpose of creating the NMET is to use the funds accrued from mining lease-holders for encouraging exploration.

71. Section 13 authorizes the Central Government to make rules regulating the grant of mineral concessions in respect of minerals and for purposes connected therewith. Section 13(2) lists various matters in respect of which the Central Government can make rules. A similar power is vested with the State Government under Section 15 to make rules with respect to minor minerals. Section 25 empowers the Government to recover rent, royalty, tax, fee or other sum due to the Government under the Act as arrears of land revenue.

72. The Central Government has framed the Mineral Concession Rules 1960 in exercise of the powers conferred by Section 13. Rule 31 of the Mineral Concession Rules 1960 provides that the lease deed shall be executed between the lessor and lessee in terms of the Form K. According to the recitals of Form K, the State Government executes the lease deed in favor of the lessor “in consideration of the rents and royalties, covenants and agreement by and in these presents and the Schedule hereunder written reserved and contained and on the part of the lessee/lessees to be paid observed and performed.” Further, all the mine beds/ veins/ seams with respect to specified minerals lying and being in or under lands are demised by the State Government to the lessee together

[94] “NMET”

with the liberties, powers, and privileges to be exercised or enjoyed in connection with the demise. The recitals indicate that the lease deed serves as a statutory agreement between the State Government, being the lessor, and the lessee.

73. Part V of Form K deals with rents and royalties reserved by the lease and specifies the rate and mode of payment of dead rent, royalty, surface rent, and the water rate. This part mandates the lessee to pay royalty to the State Government at the rates prescribed by the Central Government in the Second Schedule to the Act.[95] Part VI contains provisions relating to rents and royalties and provides for the mode of computing royalty:

> "Mode of computation of royalty
>
> 2. For the purposes of computing the said royalties the lessee/lessees shall keep a correct account of the mineral/minerals produced and dispatched. The accounts as well as the weight of the mineral/minerals in stock or in the process of export may be checked by an officer authorized by the Central or State Government."

74. Part VII contains the covenants of the lessee/lessees. The lessee undertakes to pay the rent, water rate, and royalties specified under Parts V and VI in addition to the payment of taxes, rates, assessments and impositions being in the nature of public demands from time to time. Party VIII contains the covenants of the State Government. It provides that a lessee paying the rents, water rate, and

[95] Mineral Concession Rules 1960, Form K, Part V. It reads:
["Rate and mode of payment of royalty
3. Subject to the provisions of clause 1 of this Part, the lessee/lessees shall during the subsistence of this lease pay to the State Government at such times and in such manner as the State Government may prescribe royalty in respect of any mineral/minerals removed by him/them from the leased area at the rate for the time being specified in the Second Schedule to the Mines and Minerals (Development and Regulation) Act, 1957"]

royalties may quietly hold and enjoy the rights and premises during the term of the lease deed without unlawful interruption from the State Government.

ii. Purpose of Section 9 of the MMDR Act

75. The regime of mineral licensing prior to the enactment of the MMDR Act was governed by the Mines and Minerals (Regulation and Development) Act 1948[96] read with the Mineral Concession Rules 1948. Under the previous regime, all grants and permissions (such as prospecting licences[97] and mining leases[98]) were approved and issued by the State Government. The Industrial Policy Resolution of 1956 proposed an active role for the State in setting up new industrial undertakings to achieve "planned and rapid development."[99] Minerals such as coal, lignite, mineral oils, iron ore, copper, zinc, and atomic minerals were exclusively reserved for the State, while the private sector was allowed to participate along with the public sector in case of minor minerals. The MMDR Act was enacted in pursuance of the above goals stated in the Industrial Policy Resolution. Another important consideration behind the enactment of the MMDR Act was to revise old and outmoded mining lease agreements and allow the private sector reasonable encouragement to develop mines and minerals.[100] Through the MMDR Act, both the Central Government, and in case of minor minerals, the State Government, have been assigned a greater responsibility of development of minerals in India. This classification between major and minor

[96] "MMRD Act 1948"
[97] Rule 13, Mineral Concession Rules 1948. [It read: "13. Restrictions on grant of prospecting licence – (1) No prospecting license shall be granted to any person unless he holds a certificate of approval from the State Government concerned. […]"; Rule 17, Mineral Concession Rule 1948. It reads: "17. State Government may grant or refuse a license – (1) Subject to the provisions of rule 13, the State Government may grant or refuse the license."]
[98] Rule 26, Mineral Concession Rules 1948. [It read: "26. Restrictions on grant of mining leases – (1) No mining lease shall be granted to any person unless he holds a certificate of approval from the State Government concerned or is covered by Rule 12."]
[99] Cabinet Secretariat, Industrial Policy Resolution (30 April 1956)
[100] Mr J R Mehta, Lok Sabha Debates, Volume X (9th December to 21st December 1957) 7111.

minerals was primarily done considering the export trade, the earning of foreign exchange, economic development, and industrial progress.[101]

76. An important distinction between the MMRD Act 1948 and the MMDR Act which replaced it is that the former did not contain a provision similar to Section 9 of the subsequent legislation. Nevertheless, provisions pertaining to royalty were included in the Mineral Concession Rules 1948 as part of the essential conditions of a mining lease.[102] At the introduction of the Mines and Minerals (Regulation and Development) Bill in Parliament the then Minister of Mines explained the legislative intent in the following terms:

> "The existing Act did give authority to the Government through rules to modify the rates and the quantum of royalty that was to be charged by the State Government. We have taken this opportunity to put a maximum limit also. With regard to the time also, at that time there was no limit and it could not be changed so long as the agreement lasted. **But now considering all the conditions that prevail these days, we thought that the Government should have the right to examine the whole structure of the rates of royalty and see whether it was desirable to introduce a change in the royalty by way of either an increase or a decrease. If it was considered desirable to increase it, the Government would recommend an increase. If it was desirable to reduce it, a reduction might be made**."[103]

(emphasis added)

[101] Ibid, 7124
[102] Rule 41, Mining Concession Rules 1948.
[103] Lok Sabha Debates, Volume VIII (11th November to 22nd November, 1957, Third Session) 395.

77. The Minister further stated that allowing State Governments to fix the rates of royalty "will not be a healthy feature for trade in that particular commodity."[104] Section 9 sought to remedy the disparity of royalty rates across India.[105]

78. Rates of royalty were primarily governed by the terms of lease prior to the enactment of the MMDR Act. Once a mining lease was entered into between a lessor and lessee, the rates of royalty would remain static during the subsistence of the lease. Section 9 of the MMDR Act has enabled the Central Government to examine the rates of royalty in respect of all minerals and modulate them periodically after taking into consideration various factors, including the uniformity of mineral prices. The primary reason for empowering the Central Government to fix the rate of royalty could be traced to the Industrial Policy Resolution which underscored the active and predominant role of the State in organizing and utilizing mineral resources. The State Governments were not empowered to determine royalty in order to maintain a uniform regime of royalty across India. This was intended to promote domestic industry and maintain competitive commodity prices in the international market.[106]

iii. Contours of a mining lease

a. Lease and license

79. Article 31A of the Constitution was inserted by the Constitution (First Amendment) Act 1951 to deal with the saving of laws providing for acquisition of estates:

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[104] Ibid, 462
[105] K P Varghese v. ITO, (1981) 4 SCC 173 [8]. It was observed that "[…] the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted."
[106] Lok Sabha Debates, Volume VIII (11th November to 22nd November, 1957, Third Session) 463

> "31A. Saving of law providing for acquisition of estates, etc –
>
> Notwithstanding anything contained in article 13, no law providing for –
>
> […]
>
> (e) **the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,**
>
> shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19."
>
> (emphasis added)

80. In **Gujarat Pottery Works** v. **B P Sood, Controller of Mining Leases for India**,[107] a Constitution Bench of this Court held that the object of Article 31-A(1)(e) was to make laws providing for the extinguishment or modification of leases in connection with mineral rights immune from the provisions of Articles 14, 19, and 31.

81. The expressions 'lease' and 'licence' have been used in the context of mining operations in the Constitution and in the MMRD Act. Therefore, it is important to understand the meaning of these expressions in their general legal sense to appreciate their application to mineral operations.

[107] (1967) 1 SCR 695

82. A "lease" connotes a transfer of a right of enjoyment in immoveable property for a certain time in lieu of consideration.[108] Section 105 of the Transfer of Property Act 1882 defines a lease of immoveable property as a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.[109] The provision defines 'lessor', 'lessee', 'premium', and 'rent'. The "*transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.*" This Court has interpreted the expression "rent" widely to mean any payment for the use or occupation of land or building including the payment by a lessee in respect of the use or occupation of any land or building.[110]

83. According to Section 3(26) of the General Clauses Act 1897, immoveable property is defined to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.[111] Section 2(6) of the Registration Act defines immoveable property to include land, buildings, hereditary allowance, rights of way, lights, ferries, fisheries, or any other benefit to arise out of land, and things attached to earth, or permanently fastened to anything which is attached to the earth, except for standing timber, growing crops, and grass.[112] A mineral is also a benefit arising out of land. The right to carry out mining operations to extract minerals under a

[108] Mulla on the Transfer of Property Act 1882 (13th edn)
[109] Section 105, Transfer of Property Act 1882
[110] State of Punjab v. British India Corporation, (1964) 2 SCR 114 [15]
[111] Section 3(26), General Clauses Act 1897.
[112] Section 2(6), Registration Act 1908

mining lease has been held by this Court to be a right to enjoy immoveable property within the meaning of Section 105.[113]

84. The expression "licence" is defined in the Indian Easements Act 1882 as follows:

> "**52. "License" defined**. - Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence."[114]

85. In **Associated Hotels of India Ltd** v**. R N Kapoor**,[115] Justice K Subba Rao (as the learned Chief Justice then was) observed that a lease creates an interest in property, while a licence only permits another to make use of the property, whose legal possession continues to remain with the owner. A lease envisages and transfers an interest in the demised property creating a right in rem in favour of the lessee, while a licence only makes an action lawful which without it would be unlawful.[116]

86. Under the MMDR Act, a "prospecting licence" is granted for the purpose of undertaking prospecting operations.[117] Prospecting operations are defined to mean any operations undertaken for the purpose of exploring, locating, or proving a mineral deposit.[118] Chapter III of the Mineral Concession Rules 1960

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[113] State of Karnataka v. Subhash Rukmayya Guttedar, 1993 Supp (3) SCC 290 [6]; Sri Tarkeshwar Sio Thakur jiu v. Dar Dass Dey, (1979) 3 SCC 106 [37].
[114] Section 52, Indian Easements Act 1882
[115] (1960) 1 SCR 368, [28]. ["28. […] The following propositions may, therefore, be taken as well established: (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties – whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease."]
[116] Mangal Amusement Park Private Ltd. v. State of Madhya Pradesh, (2012) 11 SCC 713 [15].
[117] Section 3(g), MMDR Act
[118] Section 3(h), MMDR Act

deals with the grant of prospecting licences in respect of land in which the minerals vest in the government. Form F contained in the Mineral Concession Rules 1960 states that under a prospecting licence, the State Government grants to the licesee the sole rights to enter upon lands and to search, win, carry away or dispose of minerals won. Rule 14 read with Schedule III allows the prospecting licensee to win and carry away a limited quantity of minerals in lieu of the payment of specified royalty. Under a prospecting licence, the licensee does not get an interest in the land or in the minerals contained therein. The licensee is only allowed to carry away a limited quantity of minerals after payment of specified royalty.[119] Even a prospecting licensee has to pay royalty to the State Government for carrying away the minerals won during prospecting operations.

87. A "mining lease" is defined under the MMDR Act to mean a lease granted for the purpose of undertaking mining operations and includes a sub-lease granted for such purpose.[120] The expression "mining operations" has been defined to mean any operations undertaken for the purpose of winning any mineral. The expression "winning" has been explained by this Court to mean getting or extracting minerals from the mines.[121] In **Sri Tarkeshwar Sio Thakur Jiu** v. **Dar Dass Dey & Co**,[122] Justice R S Sarkaria observed that the expression "mining operations" is expansive, so as to comprehend every activity by which the mineral is extracted or obtained from the earth irrespective of whether such

[119] Mineral Concession Rules 1960, Schedule III
[120] Section 3(c), MMDR Act
[121] Gujarat Pottery Works v. B P Sood, (1967) 1 SCR 695 [18]; Bhagwan Dass v. State of Uttar Pradesh, (1976) 3 SCC 784 [13]. [Justice Y V Chandrachud (as the learned Chief Justice then was) observed: "In any case, the definition of mining operations and minor minerals in Section 3(d) and (e) of the Act of 1957 and Rule 2(5) and (7) of the Rules of 1963 shows that minerals need not be subterranean and that mining operations cover every operation undertaken for the purpose of "winning" any minor mineral. "Winning" does not imply a hazardous or perilous activity. The word simply means "extracting a mineral" and is used generally to indicate any activity by which a mineral is secured. "Extracting", in turn, means, drawing out or obtaining. A tooth is 'extracted' as much as is fruit juice and as much as a mineral. Only, that the effort varies from tooth to tooth, from fruit to fruit and from mineral to mineral."]
[122] (1979) 3 SCC 106 [15]

activity is carried out on the surface or in the bowels of the earth. Section 3(fa) defines “production” or any derivative of the word “production” to mean the winning or raising of mineral within the leased area for the purpose of processing or dispatch. The expression “dispatch” has been defined to mean the removal of minerals or mineral products from the leased area and to include the consumption of minerals and mineral products within such area.[123] It is worth noting that royalty is payable under Section 9 on the removal or consumption of minerals by the lessee in the leased area. Thus, essentially royalty is payable on the dispatch of minerals from the leased area.

88. This segment indicates that under a lease deed for mining operations, the owner transfers the interest in the minerals to the lessee in lieu of the payment of rent, which usually takes the form of royalty. To answer whether this payment is akin to a tax, we must understand the nature of a mining lease under the MMDR Act.

b. The nature of a mining lease under the MMDR Act and the Mineral Concession Rules 1960

89. The MMDR Act and the Mineral Concession Rules 1960 detail the procedure for the grant of mining leases in three situations: first, where the minerals vest in the government;[124] second, where the minerals vest in a person other than the government;[125] and third, where the minerals vest partly in the government and partly in a private person.[126] Chapter IV of the Mineral Concession Rules 1960 (containing Rules 22 to 40) deals with the grant of mining leases in respect of land in which the minerals vest in the government. Rule 22(1) provides that an

[123] Section 3(aa), MMDR Act
[124] Chapters II, III, IV, and IVA of Mineral Concession Rules 1960
[125] Chapter V, Mineral Concession Rules 1960
[126] Rule 53, Mineral Concession Rules 1960

application for the grant of a mining lease in respect of land in which the minerals vest in the government shall be made to the State Government. Rule 27 provides the conditions which are applicable to mining leases under Chapter IV. Rule 27(1)(c) provides that the lessee shall pay either dead rent or royalty (whichever is higher) to the State Government.[127] Rule 27(1)(d) deals with payment of surface rents, water rents, etc. by the lessee to the State Government.[128] Rule 27(2) allows the State Government to include such other conditions as it may deem necessary in regard to matters enumerated therein. Rule 27(3) allows the State Government, either with the previous approval of the Central Government or at the instance of Central Government, to impose such further conditions as may be necessary in the interests of mineral development.

90. Chapter V (containing Rules 41 to 52) deals with the procedure for obtaining prospecting licences or mineral lease in respect of land in which the minerals vest in a person other than the Government. Unlike Rule 22(1), the provisions of Chapter V do not require the lessee to make an application to the State Government. Rule 45 pertains to the conditions of mining leases with respect to minerals vesting in private persons. The relevant part of Rule 45 is produced below:

> "45. Conditions of mining lease – Every mining lease shall be subject to the following conditions –
>
> (i) the provisions of clauses (b) to (l) and (p) to (i) of sub-rule (1) of Rule 27 shall apply to such leases with the modification that in clauses (c) and (d) for

[127] Rule 27(c), Mineral Concession Rules 1960.
[128] Rule 27(d), Mineral Concession Rules 1960

> the words "State Government" the word "lessor" shall be substituted;
>
> […]
>
> (iii) the lease may contain such other conditions, not being inconsistent with the provisions of the Act and these rules, as may be agreed upon between the parties;
>
> (iv) if the lessee makes any default in payment of royalty as required by Section 9 or commits a breach of any of the conditions of the lease, the lessor shall give notice to the lessee requiring him to pay the royalty or remedy the breach, as the case may be, within sixty days from the date of the receipt of the notice and if the royalty is not paid or the breach is not remedied within such period, the lessor without prejudice to any proceeding that may be taken against the lessee determine the lease;
>
> (v) the lessee may determine the lease at any time by giving not less that one year's notice in writing to lessor."

91. Rule 45(i) provides that certain specific conditions which apply under Rule 27 to mining leases in respect of minerals which vest in the Government are also applicable to leases of minerals vesting in private persons. While under Chapter IV the State Government can stipulate additional conditions, Rule 45(iii) of Chapter V provides that the lease may contain such other conditions, not being inconsistent with the provisions of the MMDR Act and the Mineral Concession Rules, **as may be agreed upon between the parties**. If the lessee of a mining lease granted under Chapter IV, were to default in the payment of royalty or dead rent or commit a breach of any conditions of the lease the State Government is empowered to determine the lease. In case of a lease governed by Chapter V,

the lessor is empowered to determine the mining lease if the lessee defaults in payment of royalty or commits a breach of any of the conditions of the lease. These differences indicates that in case of a mining lease under Chapter V of Mineral Concession Rules: (i) the State Government is not the lessor (that is the proprietor of the minerals who is a private person); and (ii) royalty, dead rent, and other rents are to be payable to the lessor and not the State Government.

92. In **State of Meghalaya** v. **All Dimasa Students Union**,[129] this Court held that: (i) Chapter V of the Mineral Concession Rules has to be treated to be dealing with minerals owned by private persons; (ii) a mining lease granted according to Chapter V of the Mining Concession Rules 1960 is a mining lease granted by the owner of the minerals and not the State Government; and (iii) no authority can grant a mining lease in respect of minerals which vest with private owners without the authority of such owners.

93. The right of proprietors to grant leases and receive royalty stems from the proprietary interest in the immovable property including the minerals. The MMDR Act regulates the exercise of the proprietary rights in the minerals in the larger public interest.[130] The statute specifies the terms of the lease, but the lease deed is ultimately entered between the State Government (or the private person, as the case may be) and the lessee. Similarly, the rates of royalty are fixed by the Central Government under Section 9, but royalty is received by the mining lessor, that is the State Government or a private person.

[129] (2019) 8 SCC 177 [129]-[130]
[130] Monnet Ispat & Energy Ltd (supra) [138]

iv. Meaning of "royalty"

94. At the outset we clarify that in this reference, we are dealing with 'royalty' in the context of the MMDR Act. Royalty is generally understood as compensation paid for rights and privileges enjoyed by the grantee. It has its genesis in the agreement entered into between the grantor and grantee. In **Inderjeet Singh Sial** v. **Karam Chand Thapar**,[131] this Court observed that royalty is equivalent to the expression "jura regalia" or "jura regia". Jura regalia is defined as royal prerogatives or rights.[132] For centuries, gold and silver mines (also called as royal metals) in the United Kingdom were treated as belonging to the Crown. Royal metals could be mined only after payments in the form of royalties were made to the Crown. The use of the word "royalty" underwent change in the United Kingdom with the decentralization of the sovereignty which was absorbed by the landowners.[133] Land ownership was concentrated in the hands of landowners, who conceded the right to work mines to lessees in return for **consideration** which took the form of dead-rent and royalties.[134]

95. This Court has had occasion to analyze the meaning of the expression "royalty" in its decisions. In **H R S Murthy** v. **Collector of Chittoor**,[135] a Constitution Bench observed that royalty connotes a payment made for materials or minerals won from land. In **D K Trivedi** v. **State of Gujarat**,[136] the distinction between "royalty" and "dead rent" was explained thus:

> "39. **In a mining lease the consideration usually moving from the lessee to the lessor is the rent**

[131] (1995) 6 SCC 166.
[132] Ramanatha Aiyar, Advanced Law Lexicon (Volume 3) 2789.
[133] J U Nef, The Rise of the British Coal Industry (Routledge, 1966)
[134] Royal Commission on Mining Royalties, Final Report of the Royal Commission Appointed to Inquire into the Subject of Mining Royalties (1893) 4.
[135] (1964) 6 SCR 666 [6]
[136] 1986 (Supp) SCC 20

> **for the area leased (often called surface rent), dead rent and royalty. Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called "royalty".** It may, however, be that the mine is not worked properly or as not to yield enough return to the lessor in the shape of royalty. **In order to ensure for the lessor a regular income, whether the mine is worked or not, a fixed amount is provided to be paid to his by the lessee. This is called "dead rent".** "Dead rent" is calculated on the basis of the area leased while royalty is calculated on the quantity of minerals extracted or removed. Thus, while dead rent is a fixed return to the lessor, royalty is a return which varies with the quantity of minerals extracted or removed. […]"
>
> (emphasis added)

96. Minerals are exhaustible and finite resources. Each quantity of mineral removed leads to the depletion of the mineral stock of the mine.[137] Under a mining lease, a lessee acquires a right or interest in minerals. This right or interest allows the lessee to extract minerals and consume them. Royalty is a payment made by the lessee to the lessor or proprietor of the minerals for the removal of minerals. Royalty also serves to compensate the lessor for the degradation of the value of the mine because of the extraction of minerals.[138]

97. In **Bherulal** v. **State of Rajasthan**,[139] a Division Bench of the Rajasthan High Court explained the concept of royalty in the following terms:

[137] W R Sorley, 'Mining Royalties and their Effect on the Iron and Coal Trades' (1889) 52(1) Journal of Royal Statistical Society 60, 66
[138] Ibid.
[139] 1956 SCC OnLine Raj 9 [8]

> "8… In Wharton's Law Lexicon, 'royalty' is defined as "payment to a patentee by agreement on every article made according to his patent, or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every on or other weight raised." **The present case is of the third kind, namely payment to the owner of minerals for the right of working the same. This payment is based on the produce, and the rate is fixed as so much per ton or other weight. It is clear that royalty has nothing to do with where the purchaser is taking the mineral, or to whom he is going to sell it, whether at the place where the mine is situated or at some place hundreds of miles away. […] It is clear, therefore, that royalty is a charge by the owner of minerals from those to whom he gives the concession to remove them, and the charge is on production, the rate being fixed according to weight."**
>
> (emphasis added)

98. The essential characteristics of royalty are that (i) it is a consideration or payment made to the proprietor of minerals, either the government or a private person; (ii) it flows from a statutory agreement (a mining lease) between the lessor and the lessee; (iii) it represents a return for the grant of a privilege (to the lessee) of removing or consuming the minerals; and (iv) it is generally determined on the basis of the quantity of the minerals removed.

99. In comparison, dead rent acts as a deterrent against a leaseholder cornering a mining lease and keeping the mineral resources idle.[140] Similar to royalty, dead rent is also a statutory imposition and an integral part of the mining lease, but it generally does not serve as a consideration for the removal or consumption of minerals. The dead rent is determined on the basis of the area of land covered by the lease. Imposition of dead rent ensures that the proprietor obtains a fixed

[140] Government of India, Ministry of Mines, 'Mineral Royalties' 27 (January 2011)

rent from the lessee even if the mine remains unworked. Therefore, dead rent is not in addition to royalty but an alternative.

100. If royalty is a consideration paid by the lessee to the lessor as part of the terms of a mining lease, can this payment be considered in the nature of tax? This is the next issue for our consideration.

v. Characteristics of Tax

101. Taxation is a mode of raising revenue to fund public expenditure. The power of taxation is an essential and inherent attribute of sovereignty.[141] In the decision of the US Supreme Court in **McCulloch** v. **Maryland**,[142] Chief Justice John Marshall described the sovereign right of taxation thus:

> "It is admitted that the power of taxing the people and their property is essential to the very existence of Government, and may be legitimately exercised on the objects to which it is applicable, to the utmost extent to which the Government may choose to carry it. The only security against the abuse of this power is found in the structure of the Government itself. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation."

102. Taxes are monetary burdens or charges imposed by legislative power upon persons, or property to raise revenues.[143] The government needs requisite funds to discharge its primary governmental functions.[144] No responsible government can function and achieve its welfare objectives without levying and collecting taxes.[145] The objects to be taxed can be taxed by the legislature according to the

[141] Thomas Cooley, The Law of Taxation (4th edn, 1924) 149
[142] 17 U.S. 316 (1819)
[143] Amrit Banaspati Co. Ltd. v. State of Punjab, (1992) 2 SCC 411 [10]
[144] Dena Bank v. Bhikabhai Prabhudas Parekh & Co., (2000) 5 SCC 694 [8]
[145] Jindal Stainless Steel [112.2]

exigencies of its needs so long as they happen to be within the legislative competence of the legislature.[146] Although the power of taxation is pervasive and an incidence of sovereignty, it is subject to well-defined constitutional limitations.

103. In **Matthews** v. **Chicory Marketing Board**,[147] Latham CJ defined "tax" as a "compulsory exaction of money by a public authority for public purposes, enforceable by law, and … not a payment for services rendered." In **Commissioner, Hindu Religious Endowment, Madras** v. **Sri Lakshmindra Thirta Swamiar of Sri Shirur Mutt**,[148] this Court relied on the above elucidation to enumerate the following essential characteristics of a tax:

> "44. […] It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law. The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of quid pro quo between the taxpayer and the public authority. Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the taxpayer depends generally upon his capacity to pay."

104. A tax has the following essential characteristics: (i) it is a compulsory exaction of money by a public authority; (ii) it is imposed under statutory power without the consent of the tax payer; (iii) the demand is enforceable by law; (iv) it is an imposition made for public purposes to meet the general expenses of the state

[146] Rai Ramkrishna v. State of Bihar, (1964) 1 SCR 897 [12]
[147] 60 CLR 263
[148] (1954) 1 SCC 412

without reference to any special benefit to be conferred on the payer of the tax; and (v) it is part of the common burden.[149]

105. Article 366(28) defines "taxation" to include "the imposition of any tax or impost, whether general or local or special." This Court has interpreted the word "tax" in its widest amplitude to include all money raised by taxation.[150] In **Jindal Stainless Steel** (supra), one of us (Justice D Y Chandrachud) held that the expression "any tax" means "any levy which the State is constitutionally competent to legislate."[151]

106. One of the issues debated in the reference pertains to the meaning of the word "impost." Thomas Cooley in the *Law of Taxation* defines "imposts" to mean "any tax, tribute, or duty."[152] This Court has generally construed the expression "imposts" to include taxes[153] and fees[154] realizable by the authority of law.[155] In **CIT** v. **McDowell and Co. Ltd**.,[156] this Court held that the term "impost" means compulsory levy and that "tax" in its wider sense includes all imposts.[157] In **McDowell** (supra), the assesse sought to claim a deduction under Section 43-B(a) of the Income Tax Act 1961 on the payment of bottling fees made to the State Government under the Rajasthan Excise Act 1950. Section 43-B(a) allowed a deduction in respect of any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force. The issue before the two-Judge Bench was whether bottling fees

[149] *See* Mahant Sri Jagannath Ramanuj Das v. State of Orissa, (1954) 1 SCC 455 [11]
[150] D G Gose and Co. (Agents) (P) Ltd. v. State of Kerala, (1980) 2 SCC 410 [5].
[151] Jindal Stainless Steel (supra) [730.1]
[152] Thomas Cooley, The Law of Taxation (4th edn, 1924) 74
[153] Sea Customs Act, S 20(2), In re, 1963 SCC OnLine SC 40 [37] (Held that customs duty or excise duty was an impost within the meaning of Article 366(28));
[154] CCE v. Chhata Sugar Co. Ltd., (2004) 3 SCC 466 [36] (It was observed that an impost can be either a tax or fee.)
[155] Indian Banks' Association v. Devkala Consultancy Service, (2004) 11 SCC 1 [18]
[156] (2009) 10 SCC 755 [22]
[157] Reiterated in Jindal Stainless Steel (supra) [20], [395]

chargeable from the assessee amounted to a tax, duty, cess, or fee. The two-Judge Bench formulated the characteristics of imposts thus:

> "21. "Tax", "duty", "cess" or "fee" constituting a class denotes various kinds of imposts by State in its sovereign power of taxation to raise revenue for the State. Within the expression of each specie each expression denotes different kind of impost depending on the purpose for which they are levied. The power can be exercised in any of its manifestation only under any law authorising levy and collection of tax as envisaged under Article 265 which uses only the expression that no "tax" shall be levied and collected except authorized by law. In its elementary meaning conveys that to support a tax legislation action is essential, it cannot be levied and collected in the absence of any legislative sanction by exercise of executive power of State under Article 73 by the Union or Article 162 by the State.
>
> 22. Under Article 366(28) "Taxation" has been defined to include the imposition of any tax or impost whether general or local or special and tax shall be construed accordingly. "Impost" means compulsory levy. The well-known and well-settled characteristic of "tax" in its wider sense includes all imposts. Imposts in the context have following characteristics:
>
> (i) The power to tax is an incident of sovereignty.
>
> (ii) "Law" in the context of Article 265 means an Act of legislature and cannot comprise an executive order or rule without express statutory authority.
>
> (iii) The term "tax" under Article 265 read with Article 366(28) includes imposts of every kind viz. duty, cess or fees.
>
> (iv) As an incident of sovereignty and in the nature of compulsory exaction, a liability founded on principle of contract cannot be a "tax" in its technical sense as an impost, general, local or special."

107. The Court held in **McDowell** (supra) that bottling fees are a payment made by the assessee to the State Government "as consideration for acquiring the exclusive privilege"[158] The payment was held to be neither a fee nor a tax but consideration for the grant of approval by the government to contract on the exclusive right to deal in bottling liquor. Therefore, bottling fees were held not to fall within the purview of Section 43-B(a).

108. The expression "tax" under Article 265 includes every kind of impost in the form of a compulsory exaction. An impost is a compulsory exaction. The power to levy an impost is an incident of sovereignty. A liability arising out of contract cannot be termed as an impost or tax. A consideration paid under a contract to the State Government for acquiring exclusive privileges and rights with respect to a particular activity cannot be termed as an "impost" or "tax" under Article 366(28).

109. The government may demand payments in the nature of a price or consideration for parting with its exclusive privilege to carry on activities of a particular description. Well-known examples involving the parting of the exclusive privilege by the government include telecommunication activities and the manufacture and sale of intoxicants. The price paid for parting with an exclusive privilege vesting in government is neither a tax nor a fee.[159] In **State of Punjab** v. **Devans Modern Breweries**,[160] the issue before a Constitution Bench was whether the levy of an import fee by the state on potable liquor manufactured in other states was beyond the legislative competence of the state legislature. Justice R C Lahoti (as the learned Chief Justice then was) speaking for the majority,

[158] McDowell and Co. Ltd. (supra) [17]
[159] Har Shankar v. Excise and Taxation Commissioner, (1975) 1 SCC 737 [56]; State Bank of India v. Jage Ram, (1980) 3 SCC 599 [20]; Government of Andhra Pradesh v. Anabeshahi Wine and Distilleries Pvt Ltd., (1988) 2 SCC 25 [6]
[160] (2004) 11 SCC 26

observed that the State Government has unfettered power to regulate the import of intoxicants in exercise of its regulatory powers. The learned Judge held that the levy was neither a tax nor a fee, but "simply a levy for the act of granting permission or for the exercise of power to part with the privilege."[161] The expression "impost" cannot hence be extrapolated to mean a price levied by the State for granting permission to part with its exclusive privilege. Imposts are such levies that are in the nature of tax.

110. The basic issue for determination is whether royalty payable under Section 9 of the MMDR Act is in the nature of a tax or impost. The need to decide the issue of "whether royalty is tax" arises in the backdrop of the divergence of opinion in the decisions in **India Cement** (supra) and **Kesoram** (supra).

vi. Royalty is not in the nature of tax

a. Prelude to India Cement

111. Whether 'royalty is a tax' had been adjudicated upon by several High Courts before the issue reached this Court for decision in **India Cement** (supra). There was a divergence of view among the High Courts. A few High Courts had held that royalty is not a tax but a consideration for parting with the exclusive privilege over mineral rights. Others had held that royalty was a compulsory exaction, and hence a tax. In its decision in **India Cement** (supra) this Court referred to them, without actually analyzing their rationale.

112. In **Laddu Mal** v. **State of Bihar**,[162] the petitioners challenged the notices issued to them by the Assistant Mining Officer, demanding payment of royalty for a

[161] Devans Modern Breweries (supra) [113]
[162] 1965 SCC OnLine Pat 30

period from 1958 to 1964 under the Bihar Minor Mineral Concession Rules 1964. The Division Bench of the Patna High Court held that royalty is a levy in the nature of tax because of its compulsory nature. Royalty was held to be a compulsory exaction because it was imposed under a statute and because in the event of non-payment, it was recoverable as arrears of land revenue. However, it was held that the demand of royalty prior to 1964 when the Bihar Minor Mineral Rules came into effect was without the authority of law.

113. In **Laxminarayana Mining Co**. v. **Taluk Development Board,**[163] licence fees levied on persons engaged in mining under the provisions of the Mysore Village Panchayats and Local Board Act 1959 were challenged before the Mysore High Court. Justice E S Venkataramiah (as the learned Chief Justice then was) held that the State legislature had no legislative power to impose the levy since its subject matter was covered by the MMDR Act. The High Court also held that the levy was in substance a tax on mineral rights.[164] In the context of Entry 50 of List II, the High Court observed that: (i) tax on mineral rights includes royalty payable on extracted minerals; (ii) mineral rights and mining activities which are carried out in exercise of mineral rights are indistinguishable; (iii) Parliament has occupied the entire subject matter of the regulation of mines and mineral development as well as tax on mineral rights by virtue of the legislative declaration under the MMDR Act; and (iv) the provisions of the MMDR Act pertaining to the levy, fixation and collection of royalty (Section 9) as well as its recovery as arrears of land revenue (Section 25) suggest that the expression "royalty" under Section 9 connotes the levy of a tax. The essence of the High Court's decision was that since royalty is in the nature of a tax on mineral rights

[163] 1972 SCC OnLine Kar 80
[164] Laxminarayana Mining Co. (supra) [17]

and is covered by Parliamentary legislation, the legislative power of the State legislature to levy taxes on mineral rights stands excluded.

114. The contrary view of other High Courts (footnoted below) was that royalty is not a tax.[165] We will not refer to all the decisions adopting that view, to avoid multiplicity, except for the decision of the Punjab and Haryana High Court in **Dr. Shanti Swaroop Sharma** v. **State of Punjab**.[166] In that case, the petitioners challenged the demand of royalty by the State Government under the Punjab Minor Mineral Concession Rules 1964. The petitioners contended that royalty, being a tax, cannot be levied under delegated legislation. The High Court rejected the contention holding that: (i) royalty is a share of produce or profit paid to the owner of land for granting the privilege of producing minerals; (ii) mere occupation of land containing minor minerals does not make the occupier liable to pay royalty; (iii) the liability to pay royalty arises only when a lessee extracts minerals in pursuance of a mining lease; (iv) royalty cannot be termed as a compulsory exaction because the compulsion to pay royalty arises out of the contractual conditions of the mining lease and not through the force of law; (v) the fact that the State Government can recover royalty as arrears of land revenue does not give it a character of tax because other dues such as moneys due under contract and fees can be recovered in the same manner. The High Court disagreed with the decision of the Patna High Court in **Laddu Mal** (supra). This

[165] Saurashtra Cement & Chemical Industries Ltd. v. Union of India, 1979 SCC OnLine Guj 23 (Gujarat High Court held that royalty payable under Section 9 was not a tax. Therefore, Parliament had legislative competence to prescribe royalty under the MMDR Act in pursuance of its regulatory powers under Entry 54 of List I); Laxmi Narayan Agarwalla v. State of Orissa, 1983 SCC OnLine Ori 16 (The Orissa High Court disagreed with the decisions in Laddu Mal (supra) and Laxminarayana Mining Co. (supra). It was held if royalty is held to be tax, Section 9 would have to be invalidated because Parliament has no legislative power to impose tax under Entry 54 of List I.)
[166] AIR 1969 Punj and Har 79

judicial canvas was available before the seven-Judge Bench in **India Cement** (supra).

b. Divergence between India Cement and Kesoram

115. In **India Cement** (supra), the seven Judge Bench was called upon to determine the validity of the Madras Panchayat Act 1958. Section 115 of the Act levied a local cess on land revenue payable to government. An explanation to the provision stated that land revenue included royalty. Thus, the impugned provision considered royalty as part of land revenue. The issue was whether the State legislature could levy cess on royalty once Parliament had taken control of the regulation of mines and development of minerals under the MMDR Act.

116. The State's justification proceeded on the following entries: (i) Entry 45 of List II - land revenue; (ii) Entry 49 of List II - taxes on lands and buildings; (iii) Entry 50 of List II - taxes on mineral rights; and (iv) Entry 66 read with Entry 23 of List II - levy of fees. Justice Sabyasachi Mukharji (as the learned Chief Justice then was) writing for the majority, observed that the cess was levied essentially on royalty and not on land revenue, both of which are distinct concepts. The State's recourse to Entry 45 of List II was negatived. With respect to Entry 49 of List II, Justice Mukharji observed that royalty is directly relatable to the minerals extracted and therefore would only be relatable to Entries 23 and 50 of List II, and not Entry 49 of List II.[167] Therefore, the statutory provision was in pith and substance held to be a tax on royalty and not on land. The decision in **H R S Murthy** (supra), according to which cess paid on royalty has a direct relationship with land and only a remote relationship with minerals, was overruled. A detailed

[167] India Cement (supra) [33]

analysis pertaining to Entry 49 of List II has been undertaken in a later segment of this judgment.

117. On Entries 23 and 66 of List II, Justice Mukharji observed that the legislative power of the State legislature to levy fees is denuded by the enactment of the MMDR Act by Parliament. Finally, on Entry 50 of List II, Justice Mukharji observed that the bar provided in Section 9(3) on the enhancement of royalty specified under the Second Schedule also applies to the state legislature. Imposition of cess on royalties was held to have the effect of amending the Second Schedule and was held ultra vires Section 9(3). Section 9 was regarded to be a limitation on the taxing power of the State legislature under Entry 50 of List II.[168] Moreover, the Court held that the field is covered by the MMDR Act and hence the legislative power of the state stands denuded.[169] Paragraph 34 of the judgment sets out the conclusions:

> "34. In the aforesaid view of the matter, **we are of the opinion that royalty is a tax**, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State legislature because Section 9 of the Central Act covers the field and the State legislature is denuded of its competence under Entry 23 of List II. In any event, we are of the opinion that cess on royalty cannot be sustained under Entry 49 of List II as being a tax on land. **Royalty on mineral rights is not a tax on land but a payment for the user of land**."
>
> (emphasis added)

[168] India Cement (supra) [32]
[169] India Cement (supra) [33]

118. In a concurring opinion, Justice G L Oza held that royalty is not a unit of charge merely on land, but on labour and capital as well. Resultantly, imposition of cess on royalty was held not to be a levy or tax on land in terms of Entry 49 of List II. Justice Oza suggested that the cess could have been saved, if it was levied on surface rent or dead rent. In his view, surface rent or dead rent is relatable to land, hence a cess on surface rent or dead rent would fall within the purview of Entry 49 of List II.

119. In **Raojibhai Jivabhai Patel** v. **State of Gujarat**,[170] a three judge Bench of this Court referred to **India Cement** (supra) to reiterate that royalty levied on extracted mineral is in the nature of tax. In a series of subsequent decisions, particularly in **Orissa Cement Ltd v. State of Orissa**[171] and **Saurashtra Cement & Chemical Industries Ltd. v. Union of India,**[172] this Court followed **India Cement** (supra). In **State of M P** v. **Mahalaxmi Fabric Mills Ltd**,[173] this Court rejected the submission that paragraph 34 of **India Cement** (supra) contained a "typographical error". However, a divergence in opinion on whether royalty is in the nature of tax emerged.

120. In **Quarry Owners Association** v. **State of Bihar**, this Court held that royalty "does not constitute usual tax as commonly understood" but includes return for the consideration for parting with the property.[174] In **Kesoram** (supra), a Constitution Bench had to decide on the validity of a cess levied by the State on coal-bearing land. The measure of the cess was relatable to the quantity of minerals produced from land. Whether royalty is a tax was not directly in issue.

[170] 1989 Supp (2) SCC 744
[171] (1991) Supp 1 SCC 430 [36]
[172] (2001) 1 SCC 91
[173] 1995 Supp (1) SCC 642 [12]
[174] Quarry Owners Association v. State of Bihar, (2000) 8 SCC 655 [34].

In fact, Justice Lahoti, speaking for the majority, held that **India Cement** (supra) was distinguishable because in that case cess was levied on royalty and not on mineral rights or lands. However, the learned Judge felt "constrained" and "duty-bound" to point out a typographical error in the majority opinion in **India Cement** (supra) to prevent any "adverse impact on subsequent judicial pronouncements". Paragraph 34 of **India Cement** (supra) was held to contain a typographical error, which Justice Lahoti explained thus:

> "57. In the first sentence the word "royalty" occurring in the expression "royalty is a tax", is clearly an error. What the majority wished to say, and has in fact said, is "cess on royalty is a tax". The correct words to be printed in the judgment should have been "cess on royalty" in place of "royalty" only. The words "cess on" appear to have been inadvertently or erroneously omitted while typing the text of the judgment. This is clear from reading the judgment in its entirety. Vide paras 22 and 31, which precede para 34 abovesaid, Their Lordships have held that "royalty" is not a tax. Even the last line of para 34 records "royalty on mineral rights is not a tax on land but a payment for the user of land". The very first sentence of the para records in quick succession "… as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature…." What Their Lordships have intended to record is "… that cess on royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature …". That makes correct and sensible reading. A doubtful expression occurring in a judgment, apparently by mistake or inadvertence, ought to be read by assuming that the Court had intended to say only that which is correct according to the settled position of law, and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied or necessarily read in the context, also having regard to what has been said a little before and a little after. No learned Judge would consciously author a judgment which is self-inconsistent or incorporates passages repugnant to each other. Vide para 22, Their Lordships have clearly held that there is no entry in

> List II which enables the State to impose a tax on royalty and, therefore, the State was incompetent to impose such a tax (cess). The cess which has an incidence of an additional charge on royalty and not a tax on land, cannot apparently be justified as falling under Entry 49 in List II."

121. The decision in **Kesoram** (supra) analyzed the nature of royalty to hold that royalty is not a tax, but a payment made to the owner of land who may be a person and may not necessarily be the state.[175] It held that **India Cement** (supra) was caused by "an apparent typographical error or inadvertent error" and should not be understood as a correct declaration of law. **Kesoram** (supra) also expressed its disagreement with **Mahalaxmi Fabric Mills** (supra) to the extent it had held that there was no "typographical error" in **India Cement** (supra). Importantly, **Kesoram** (supra) concurred with **India Cement** (supra) on the aspect that cess on royalty is beyond the legislative competence of the state legislatures.[176]

122. The divergence on the point of law between **India Cement** (supra) and **Kesoram** (supra) is apparent and pertains to whether or not royalty is a tax. For the reasons to follow, we are of the opinion that royalty does not meet the characteristic requirements of a tax.

c. Royalty is not a tax

123. On first principles, royalty is a consideration paid by a mining lessee to the lessor for enjoyment of mineral rights and to compensate for the loss of value of minerals suffered by the owner of the minerals. The marginal note to Section 9 states that royalties are "in respect of mining leases." The liability to pay royalty

[175] Kesoram (supra) [71]
[176] Kesoram (supra) [115].

arises out of the contractual conditions of the mining lease.[177] A failure of the lessee to pay royalty is considered to be a breach of the terms of the contract, allowing the lessor to determine the lease and initiate proceedings for recovery against the lessee.

124. Section 9 of the MMDR Act statutorily regulates the right of a lessor to receive consideration in the form of royalty from the lessee for removing or carrying away minerals from the leased area. Prior to the enactment of the MMDR Act, such a condition was treated as part of a mining lease. The object of empowering the Central Government to specify rates of royalty for major minerals was to ensure a certain level of uniformity in mineral prices in view of the domestic and international market.

125. The fact that the rates of royalty are prescribed under Section 9 of the MMDR Act does not make it a "compulsory exaction by public authority for public purposes" because: (i) the compulsion stems from the contractual conditions of the mining lease agreed between the lessor and lessee; (ii) the demand is not made by a public authority, but the lessor (which can either be the State Government or a private party); and (iii) the payment is not for public purposes, but a consideration paid to the lessor for parting with their exclusive privileges in the minerals. Moreover, the fact that Section 25 allows recovery of royalty due to the Government under the MMDR Act or "under the terms of the contract" as arrears of land does not make royalty "an impost enforceable by law." Section 25 is a standard recovery provision allowing the government to recover any dues payable to it, flowing from statute or the terms of a contract. Pertinently,

[177] *See* Rules 27 and 45, Mineral Concession Rules 1960

contractual payments due to the government cannot be deemed to be a tax merely because the statute provides for their recovery as arrears.

126. There are major conceptual differences between royalty and a tax: (i) the proprietor charges royalty as a consideration for parting with the right to win minerals, while a tax is an imposition of a sovereign; (ii) royalty is paid in consideration of doing a particular action, that is, extracting minerals from the soil, while tax is generally levied with respect to a taxable event determined by law;[178] and (iii) royalty generally flows from the lease deed as compared to tax which is imposed by authority of law.

127. Under the MMDR Act, the Central Government fixes the rates of royalty, but it is still paid to the proprietor by virtue of a mining lease. In case the minerals vest in the government, the mining lease is signed between the State Government (as lessor) and the lessee in pursuance of Article 299 of the Constitution. Through the mining lease, the government parts with its exclusive privilege over mineral rights. A consideration paid under a contract to the State Government for acquiring exclusive privileges cannot be termed as an impost. Since royalty is a consideration paid by the lessee to the lessor under a mining lease, it cannot be termed as an impost.

128. This Court has held that royalty is not a tax, in several decisions. In **State of H P** v. **Gujarat Ambuja Cement Ltd**,[179] a three judge Bench of this Court held royalty not to be a tax. The subsequent decision in **Indsil Hydro Power & Manganese Ltd.** v. **State of Kerala**[180] brought out the distinction between tax and royalty in the following terms:

[178] Goodyear India Ltd v. State of Haryana, (1990) 2 SCC 71 [27]
[179] (2005) 6 SCC 499
[180] (2021) 10 SCC 165 [56]

> "56. Thus, the expression "royalty" has consistently been construed to be compensation paid for rights and privileges enjoyed by the grantee and normally has its genesis in the agreement entered into between the grantor and the grantee. As against tax which is imposed under a statutory power without reference to any special benefit to the conferred on the payer of the tax, the royalty would be in terms of the agreement between the parties and normally has direct relationship with the benefit or privilege conferred upon the grantee."

129. The principles applicable to royalty apply to dead rent because: (i) dead rent is imposed in the exercise of the proprietary right (and not a sovereign right) by the lessor to ensure that the lessee works the mine, and does not keep it idle, and in a situation where the lessee keeps the mine idle, it ensures a constant flow of income to the proprietor; (ii) the liability to pay dead rent flows from the terms of the mining lease;[181] (iii) dead rent is an alternate to royalty; if the rates of royalty are higher than dead rent, the lessee is required to pay the former and not the latter; and (iv) the Central Government prescribes the dead rent not in the exercise of its sovereign right, but as a regulatory measure to ensure uniformity of rates.

130. In view of the above discussion, we hold that both royalty and dead rent do not fulfil the characteristics of tax or impost. Accordingly, we conclude that the observation in **India Cement** (supra) to the effect that royalty is a tax is incorrect.

[181] Rules 27 and 45, Mineral Concession Rules 1960

G. Inter-relationship between Entry 23 of List II and Entry 54 of List I

131. The subject of regulating mines and mineral development is enumerated in Entry 23 of List II. However, Parliament can under Entry 54 of List I bring the regulation of mines and mineral development under its control to the extent that such control is declared by Parliament by law to be expedient in the public interest. Entry 54 of List I has three pre-requisites: (i) Parliament must make a law; (ii) the law must contain a legislative declaration that it is in the public interest to bring the regulation of mines and mineral development under its control; and (iii) the law must lay down the extent to which Parliament desires to control the field relating to the regulation of mines and mineral development. Entry 54 of List I exclude the legislative power of the state legislature under Entry 23 of List II to the extent to which the Parliamentary law covers the field. The interrelationship between Entry 54 of Union List and Entry 23 of State List has been dealt with by this Court in numerous decisions, which will be discussed in the following segments.

i. Meaning of "regulation of mines" and "mineral development"

132. Entry 54 of List I and Entry 23 of List II are general or regulatory entries dealing with the same subject matter, namely of "regulation of mines and mineral development." These entries deal with regulation of two aspects: (i) regulation of mines; and (ii) mineral development. By making Entry 23 of List II subordinate to Entry 54 of List I, the Constitution tilts the balance of legislative powers with respect to the regulation of mines and mineral development in favor of the Union.

133. Before delving further into the inter-relationship between the two entries, we deem it necessary to define the subject matter of the entries. The subject-matter

of the entries has to be understood from both the text and the context in which the words have been used.

134. The expression "regulation" generally means to manage the governance of an enterprise by means of rules or laws.[182] In **K Ramanathan** v. **State of Tamil Nadu**,[183] this Court explained the meaning of the power to regulate in the following terms:

> "19. It has often been said that the power to regulate does not necessarily include the power to prohibit, and ordinarily the word "regulate" is not synonymous with the word "prohibit". This is true in a general sense and in the sense that mere regulation is not the same as absolute prohibition. At the same time, the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated. The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression. It would therefore appear that the word "regulation" cannot have any inflexible meaning as to exclude "prohibition". It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the legislature seeks to remedy."

135. The word "regulate" is of wide import and the breadth of its meaning depends on the context in which it is used. This Court has construed the power to regulate to include the power to: (i) grant or revoke a permission or licence including

[182] Ramanatha Aiyar Advanced Law Lexicon (Volume 3) 4778.
[183] (1985) 2 SCC 116 [19]

incidental or supplemental powers;[184] (ii) prohibit depending upon the context and circumstance;[185] (iii) control or adjust by rule or to subject to governing principles;[186] and (iv) issue directions.[187] Thus, the expression "regulation" appearing in Entry 54 of List I and Entry 23 of List II must also receive a wide meaning, in keeping with the principle that the words used in the legislative entries must be interpreted broadly.

136. A "mine" is generally defined as an excavation in the earth for the purpose of obtaining minerals.[188] The expression was defined under the Mines Act 1952 to primarily mean any excavation for the purposes of searching for or obtaining minerals[189] and to include the place where such excavation is carried on.[190] The

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[184] State of Tamil Nadu v. Hind Stone, (1981) 2 SCC 205 [10]; State of Uttar Pradesh v. Maharaja Dharmander Prasad Singh, (1989) 2 SCC 505 [52]

[185] Talcher Municipality v. Talcher Regulated Market Committee, (2004) 6 SCC 178 [14]; Union of India v. Asian Food Industries Ltd, (2006) 13 SCC 542 [43]

[186] UP Coop. Cane Unions Federations v. West UP Sugar Mills Association, (2004) 5 SCC 430 [20]; Balmer Lawrie & Company Limited v. Partha Sarathi Sen Roy, (2013) 8 SCC 345 [24]

[187] Subramanian Swamy v. State of Tamil Nadu, (2014) 5 SCC 75 [67]

[188] Lord Provost and Magistrates of Glasgow v. Faire, (1888) [L.R] 13 App. Cas. 657

[189] Section 2(j) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and include –

(i) All borings, bore holes, oil wells and accessory crude conditions plants, including the pipe conveying mineral oil within the oil fields;
(ii) All shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;
(iii) All levels and inclined planes in the course of being driven;
(iv) All open cast workings;
(v) All conveyers or aerial rope-ways provided for bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;
(vi) All adits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;
(vii) All protective works being carried out in or adjacent to a mine;
(viii) All workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;
(ix) All power stations, transformer sub-substations, convertor stations, rectifier stations and accumulator, storage stations for supplying electricity or mainly for the purpose of working the mine or a number of mines under the same management;
(x) Any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of mine;
(xi) Any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting dressing or preparation for the sale of minerals or of coke is being carried on.

[190] Offshore Areas Mineral (Development and Regulation) Act 2002. Section 4(k) defines "mine" to mean "any place in the offshore area wherein any exploration or production operation is carried on, together with any vessel, erection, appliance, artificial island or platform and premises in the offshore area used for the purposes of exploration, winning, treating or preparing minerals, obtaining or extracting any mineral or metal by any mode or method, and includes any area covered by a composite licence, or an exploration licence, or a production lease where exploration or production operation has been, or is being, or may be, carried on under the provisions of this Act.

Occupational Safety, Health and Working Conditions Code 2020[191] has adopted a similar definition of mine under Section 2(1)(zl). The Working Conditions Code also defines "minerals" to mean all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation and to include mineral oils.[192] These definitions are indicative of the fact that: (i) the expression "mines" includes both the process by which minerals are extracted from the earth as well as the place where such extraction takes place; and (ii) minerals are obtained from the mine by the process of mining.

137. The expression "regulation of mines" can be understood in the backdrop of above discussion to mean the management of both the process of extracting minerals as well the place where such minerals will be extracted from sub-surface levels. The MMDR Act gives shape and meaning to the expression "regulation of mines and mineral development" through its provisions and the subordinate rules. To that effect, we find provisions under the MMDR Act pertaining to prospecting or mining operations under lease or licence,[193] restrictions on the grant of mineral concessions,[194] periods for which prospecting licences[195] or mining leases[196] may be granted or renewed, and royalties in respect of mining leases.[197] Chapter III deals with the procedure for obtaining mineral concessions in respect of land in which the minerals vest in the government. Chapter IV empowers the government to frame rules for regulating the grant of mineral concessions. Chapter V deals with the special powers of Central Government to undertake

[191] "Working Conditions Code 2020"
[192] Section 2(1)(zm), Working Conditions Code 2020.
[193] Section 4, MMDR Act
[194] Section 5, MMDR Act
[195] Section 7, MMDR Act
[196] Section 8, MMDR Act
[197] Section 9, MMDR Act

prospecting or mining operations in respect of lands in which the minerals vest in the Government of a State or any other person.[198] Thus, Chapters II to V of the MMDR Act invariably deal with aspects regulating the place of extraction of minerals and the process by which mines are worked. These provisions govern aspects such as conceding land to a person for carrying out mining operations (mining concession) or granting licences for working mines and winning minerals, which are integral to the concept of "regulation of mines". The fixation of rates of royalty under Section 9 read with the Second Schedule is also covered within the scope of "regulation of mines and mineral development."

138. Entry 54 of List I and Entry 23 of List II do not use the expression "minerals" simpliciter. The entries use the term "mineral development". In **Premium Granites** v. **State of Tamil Nadu**, a two judge Bench observed that the MMDR Act and the rules framed thereunder furnish the scope and purport of the word "mineral development."[199] In that case, it was held that the scientific exploitation of minerals without waste is a part of "mineral development" as envisaged by the MMDR Act and the rules. In **Quarry Owners Association** (supra) a two-Judge Bench defined the ambit of the expression "regulation of mines and mineral development", observing:

> "31. […] The word "regulation" may have a different meaning in different context but considering it in relation to the economic and social activities including the development and excavation of mines, ecological and environmental factors including States' contribution in developing, manning and controlling such activities, including parting with its wealth, viz. the minerals, the fixation of the rate of royalties would also be included within its meaning."

[198] Section 17, MMDR Act
[199] (1994) 2 SCC 691 [48]

139. In **Tata Iron & Steel Co. Ltd.** v. **Union of India**,[200] it was held that the concept of "mineral development" can include captive mining, an assessment of its requirement by different industries and equitable distribution of mining leases. **Tata Iron & Steel** (supra) was decided in the context of the unamended Section 8(3) of the MMDR Act which allowed the Central Government to renew mining leases "in the interests of mineral development."

140. As a concept, mineral development is a term of wide import. It encompasses exploitation of minerals, reduction of wastage in the beneficiation process, regulation of mining activities for ecological and environmental factors and equitable distribution of mineral resources and mining leases. Mineral development has been expressly recognized in Chapter VI of the MMDR Act. Section 18(1) mandates the Central Government to take all such steps as may be necessary by making rules for the conservation and systematic development of minerals in India and for the protection of the environment by preventing or controlling any pollution which may be caused by prospecting or mining operations. Section 18(2) indicates that the Central Government may make rules on matters pertaining *inter alia* to regulation of mining operations in any area; regulation of the excavation or collection of minerals from any mine; development of mineral resources in any area; regulation of arrangement of storage of minerals; and regulation of prospecting operations, disposal or discharge of waste slime or tailing arising from mining operations. In terms of Section 18, Parliament has framed the Mineral Conservation and Development Rules 2017 to provide a framework for conservation of minerals, systematic and scientific mining, development of minerals and protection of the environment.[201]

[200] (1996) 9 SCC 709 [64]
[201] Mineral Conservation and Development Rules 2017

141. The expression "mineral development" has also been understood under the MMDR Act in a comprehensive manner, to include all activities and transactions relating to the working of mines, extracting of minerals, their storage and disposal, as well as the conservation of the environment. Having established the meaning and scope of the subject-matter in Entry 54 of List I and Entry 23 of List II, we now analyze the inter-relationship between the two entries in greater detail.

ii. Analysis of Hingir-Rampur, M A Tulloch, and Baijnath Kedia

142. In **Hingir-Rampur Coal Co. Ltd.** v. **State of Orissa**,[202] writ petitions were filed before this Court challenging the Orissa Mining Areas Development Fund Act 1952[203] which levied cess on the petitioner's colliery. The petitioner argued that the cess levied under the Orissa Act was beyond the legislative competence of the State legislature because it was in reality a levy of excise duty on the coal produced. In the alternative, it was argued that the cess was relatable to Entry 23 of List II which would be ultra vires having regard to the provisions of Entry 54 of List I read with the MMRD Act 1948, which was the applicable legislation at the time. The respondent state sought to repel the petitioner's contention by arguing that the cess was a fee relatable to Entries 23 and 66 of List II whose validity is not affected by Entry 54 of List I read with the MMRD Act. Thus, this Court was called upon to decide two issues: (i) whether the impugned levy was in the nature of a fee relatable to Entries 23 and 66 of List II; and (ii) the legislative competence of the State legislature to impose the levy in view of Entry 54 of List I read with the MMRD Act.

[202] (1961) 2 SCR 537
[203] "Orissa Act"

143. The Orissa Act provided that the rate of the levy shall not exceed five percent of the valuation of minerals at the pit's mouth. The statute further provided that the proceeds of the cess recovered shall be utilized to meet the expenditure for providing amenities such as communications, water supply and electricity for the better development of the mining areas and improve the welfare of labour and persons residing or working in the mining areas. This Court analyzed the scheme of the Orissa Act to observe that it was enacted for the purpose of the development of mining areas in the State. It was held that the cess was in the nature of a fee because: (i) it had an element of quid pro quo; (ii) it was collected into a specific fund; (iii) its application was regulated by a statute and confined to its purposes; and (iv) there was a definite co-relationship between the impost and the purpose of the legislation which was to render service to the notified area.[204]

144. Having established that the cess was in the nature of a fee, the next issue before this Court was whether the State legislature had the competence to impose the levy in view of Entry 54 of List I read with the MMRD Act 1948. Justice P B Gajendragadkar (as the learned Chief Justice then was) writing for the majority, explained the inter-relationship between Entry 54 of List I and Entry 23 of List II in the following terms:

> "24. […] The jurisdiction of the State Legislature under Entry 23 is subject to the limitation imposed by the latter part of the said Entry. If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded. In other words, if a Central Act has been passed which contains a declaration by Parliament as required by

[204] Hingir-Rampur (supra) [19]

> Entry 54, and if the said declaration covers the field occupied by the impugned Act the impugned Act would be ultra vires, not because of any repugnance between the two statutes but because the State Legislature had no jurisdiction to pass the law. The limitation imposed by the latter part of Entry 23 is a limitation on the legislative competence of the State Legislature itself. This position is not in dispute."

145. This Court held that the test to determine the legislative competence of the state legislature in respect of a particular subject-matter relating to regulation of mines and mineral development is whether that matter is covered by the legislative declaration in the MMRD Act 1948. This Court examined the provisions of the MMRD Act 1948 which contained a legislative declaration under Section 2.[205] Section 6 of the MMRD Act 1948 empowered the Central Government to make rules for the conservation and development of minerals. Section 6(2) empowered Parliament to make rules in respect of several subject matters, including the levy and collection of royalties, fees or taxes in respect of minerals mined, quarried, excavated or collected. In this respect, the observations made by Justice Gajendragadkar are relevant and extracted below:

> "Section 6 of the Act, however, empowers the Central Government to make rules by notification in the Official Gazette for the conservation and development of minerals. Section 6(2) lays down several matters in respect of which rules can be framed by the Central Government. This power is, however, without prejudice to the generality of powers conferred on the Central Government by Section 6(1). Amongst the matters covered by Section 6(2) is the levy and collection of royalties, fees or taxes in respect of minerals mined, quarried, excavated or collected. It is true that no rules have in fact been framed by the Central Government in regard to the levy and collection of any fees; but, in

[205] Section 2, MMRD Act 1948. [It read: "2. Declaration as to expediency of control by Central Government:- It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation of mines and oilfields and the development of minerals to the extent hereinafter provided."]

> our opinion, that would not make any difference. If it is held that this Act contains the declaration referred to in Entry 23 there would be no difficulty in holding that the declaration covers the field of conservation and development of minerals, and the said field is indistinguishable from the field covered by the impugned Act. What Entry 23 provides is that the legislative competence of the State Legislature is subject to the provisions of List I with respect to regulation and development under the control of the Union, and Entry 54 in List I requires a declaration by Parliament by law that regulation and development of mines should be under the control of the Union in public interest. **Therefore, if a Central Act has been passed for the purpose of providing for the conservation and development of minerals, and if it contains the requisite declaration, then it would not be competent to the State Legislature to pass an Act in respect of the subject-matter covered by the said declaration. In order that the declaration should be effective it is not necessary that rules should be made or enforced;** all that this required is a declaration by Parliament that it is expedient in the public interest to take the regulation and development of mines under the control of the Union. **In such a case the test must be whether the legislative declaration covers the field or not. Judged by this test there can be no doubt that the field covered by the impugned Act is covered by the Central Act 53 of 1948."**
>
> (emphasis added)

146. The test laid down by this Court in **Hingir-Rampur** (supra) is whether the legislative declaration under a Parliamentary law enacted in pursuance of Entry 54 of List I covers the subject-matter. If the subject matter is covered by the legislative declaration, the legislative competence of the States with respect to that subject-matter is *pro* tanto denuded. Applying this test, it was held that the subject-matter of the levy of fees for conservation and development of minerals was covered by the MMRD Act 1948.

147. The next issue before this Court was whether the declaration contained in the MMRD Act was constitutionally valid in view of Entry 54 of List I. The MMRD Act 1948 was a pre-constitutional legislation enacted by the Dominion Legislature governed by the GOI Act 1935. It was held that even though the state legislation covered the same field as the MMRD Act, the legislative declaration made under the MMRD Act did not constitutionally amount to the requisite declaration by Parliament in terms of Entry 54 of List I.[206] Therefore, this Court concluded that the limitation imposed by Entry 54 of List I did not impair the legislative competence of the State to enact the legislation under Entry 23 read with Entry 66 of List II. In view of the conclusion reached, the majority opined that it was unnecessary to consider the validity of the Orissa Act in terms of Entry 50 of List II.[207]

148. Justice Wanchoo recorded his dissent from the opinion of the majority by holding that the cess in question was a duty of excise falling squarely within Entry 84 of List I,[208] and consequently, beyond the legislative competence of the State legislature. The learned Judge held that the cess was levied at a rate not exceeding five percent of the value of the minerals at the pit's mouth on all extracted minerals. Since all the extracted minerals were goods produced, a cess on the value of such extracted minerals was held to constitute excise duty.[209] Unlike the majority opinion, Justice Wanchoo dealt with the issue of the

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[206] Hingir-Rampur (supra) [35] ["35. […] We reach this position that the field covered by Act 53 of 1948 is substantially the same as the field covered by the impugned Act but the declaration made by Section 2 of the said Act does not constitutionally amount to the requisite declaration by Parliament, and so the limitation imposed by Entry 54 does not come into operation in the present case."]
[207] Hingir-Rampur (supra) [37]
[208] Entry 84, before the Constitution (One Hundred and First Amendment) Act 2016, read as follows:
"84. Duties of excise on tobacco and other goods manufactured or produced in India except –
(a) Alcoholic liquors for human consumption;
(b) Opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry."
[209] Hingir-Rampur (supra) [47]

legislative competence of the State legislature to impose the cess in view of Entry 50 of List II. The learned Judge held that the cess was not a tax on mineral rights, but rather a tax on minerals actually produced, and therefore not covered by Entry 50 of List II.

149. In **State of Orissa** v. **M A Tulloch**,[210] a Constitution Bench was concerned with the validity of the same Orissa Act which was under consideration in **Hingir-Rampur** (supra). The respondents challenged the demand for the payment of fees made by the State Government for the period from July 1957 to March 1958 under the Orissa Act for being ultra vires. It must be noted that the MMDR Act was brought into force as and from 1 June 1958. The Constitution Bench analyzed the relevant constitutional and statutory provisions, and precedent to reiterate the following principles of law:

(i) The power of the State to enact legislation on the subject matter of "mines and mineral development" under Entry 23 of List II is plenary and subject to the provisions of Entry 54 of List I;

(ii) Section 2 of the MMDR Act contains the requisite legislative declaration in terms of Entry 54 of List I. To the extent to which the Union Government has taken the regulation of mines and development of minerals under its control, so much was withdrawn from the ambit of the power of the State legislature under Entry 23 of List II. The legislation of the State enacted under Entry 23 of List II would, to the extent of that "control", be superseded or be rendered ineffective;[211]

[210] (1964) 4 SCR 461
[211] M A Tulloch (supra) [5]

(iii) The legislative power of the state remains intact beyond the "extent" of the MMDR Act. Therefore, the crucial enquiry has to be directed to ascertain the "extent" of the Parliamentary legislation;

(iv) Where a competent legislature with superior legislative powers expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be superseded on the ground of repugnance.[212] Section 18(1) evinces the Parliamentary intention to cover the entire field relating to conservation and development of minerals. Therefore, the fact that the Central Government has not framed any regulation along the lines of the Orissa Act was not relevant; and

(v) The declaration under Section 2 of MMDR Act has taken over the entire field of conservation and development of minerals. Resultantly, the particular subject matter would be subtracted from the scope and ambit of Entry 23 of List II and the State legislature would also lose the legislative competence to levy a fee under Entry 66 of List II.[213]

150. In **M A Tulloch** (supra), the Constitution Bench held that the legislative competence of the States to levy fees under Entry 66 of List II is also affected to the extent to which the subject-matter of regulation of mines and mineral development is taken over by the Parliamentary declaration under Entry 54 of List I.

151. The third major decision dealing with the inter-relationship between Entry 54 of List I and Entry 23 of List II is **Baijnath Kedia** v. **State of Bihar**.[214] In that case,

[212] M A Tulloch (supra) [14]
[213] M A Tulloch (supra) [15]
[214] (1969) 3 SCC 838

an amendment to the Bihar Land Reforms Act 1950 and the rules pertaining to the modification of the terms and conditions of leases of minor minerals were challenged. Having held that it was bound by **Hingir-Rampur** (supra) and **M A Tulloch** (supra), the issue before this Court was the extent to which the declaration by Parliament left any scope for the state legislature. The Court observed that by the legislative declaration under Section 2 read with Section 15, the whole of the field relating to minor minerals came within the jurisdiction of Parliament and no scope was left for the State legislature. Although Section 15 allowed the State legislature to make rules, it did not create a scope for legislation at the state level.[215] Consequently, it was held that the amendment to the Bihar Act was without jurisdiction. In **Hingir-Rampur** (supra) and **M A Tulloch** (supra), it was held that the whole field of conservation and development of minerals was covered by the MMDR Act. In **Baijnath Kedia** (supra), it was held that the field of minor minerals was covered by the central legislation, thereby depriving the state legislation of its plenary legislative power under Entry 23 of List II to that extent.

152. The Solicitor General has relied on the above decisions to submit that the consequence of the whole of the legislative field being occupied by Parliament under the MMDR Act is that the state legislatures possess only such powers as are expressly conferred on them by Parliament. The propositions put forth by the Solicitor General can be encapsulated as follows:

    a. **Hingir-Rampur** (supra) shows that the subject-matter of statutory levies pertaining to minerals is covered by the legislative declaration. Although

[215] Baijnath Kedia (supra) [21]

the MMDR Act does not contain a provision similar to Section 6 of the MMRD Act 1948, it provides for statutory levies such as royalty and dead-rent. Thus, Parliament has covered the subject-matter of statutory levies relating to mineral rights and the state legislature has no power to impose a levy in the form of taxes on mineral rights under Entry 50 of List II;

b. **M A Tulloch** (supra) held that a Parliamentary legislation enacted under Entry 54 of List I also impacts the independent legislative powers of States with respect to Entry 66 of List II. This reasoning will be applicable to Entry 50 of List II with greater force, more so, because this entry is expressly subject to any law made by Parliament relating to mineral development; and

c. In **Baijnath Kedia** (supra) there were no express provisions under the MMDR Act limiting the state legislature from enacting legislation relating to leases of minor minerals, but this Court held that such a limitation was implied. Similarly, the Parliamentary law, the MMDR Act, impliedly excludes the legislative competence of the state with respect to Entry 50 of List II.

153. The above arguments will be dealt with in the ensuing segment relating to the interpretation of Entry 50 of List II.

iii. Examination of the "extent" of the MMDR Act

154. The respondents submit that the MMDR Act is a complete code and occupies the **entire field** relating to regulation of mines and mineral development, leaving nothing for the state legislature under Entry 23 of List II. It was also submitted

that the scope of the MMDR Act and the rules made under it has to be given an exhaustive interpretation because they were enacted in the "public interest." The Solicitor General recounted the following public interest considerations underpinning the MMDR Act: (i) provision of national legal landscape for protection, exploration, and extraction of minerals; (ii) ushering a uniform structure of regulation and development of minerals; and (iii) ensuring sustained development of the mineral sector at the national level to ensure availability of domestic minerals to industries.

155. The MMDR Act and the Mineral Concession Rules 1960 comprise of a complete code, containing exhaustive provisions in respect of the grant and renewal of prospecting licenses and mining leases in lands belonging to government as well as lands belonging to private persons.[216] Section 2 of the MMDR Act declares that the Union is acting in public interest to take under its control the regulation of mines and development of minerals to the extent provided. In **State of Tamil Nadu** v. **Hind Stone**,[217] the Court observed that "[t]he public interest which induced Parliament to make the declaration contained in Section 2 of the Mines and Minerals (Regulation and Development) Act, 1957, has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals."

156. In **Bharat Coking Coal Ltd.** v. **State of Bihar**,[218] the issue before a two judge Bench was whether the State Government had legal authority to execute leases in favor of the respondents for collection of slurry on payment of royalty. This Court held that the state legislature lacked authority in law to regulate the

[216] State of Assam v. Om Prakash Mehta, (1973) 1 SCC 584 [12];
[217] (1981) 2 SCC 205 [6]
[218] (1990) 4 SCC 557

disposal of slurry. Section 18 of the MMDR Act was held to cover the field of the disposal of waste of a mine (including coal slurry), thereby denuding the legislative power of the state legislature with respect to that subject matter. It was further held that once the state legislature's power under Entry 23 of List II is denuded, the State Government ceases to have any executive authority in the matter relating to the regulation of mines and mineral development in view of Article 162 of the Constitution.[219] Thus, both the legislative and the executive powers of the State were held to be taken away to the extent to which the MMDR Act covered the subject matter dealing with regulation of mines and mineral development.[220]

157. This Court has to give credence to the public interest considerations underpinning the MMDR Act while interpreting its scope and ambit. The expression "public interest" occurring in both Entry 54 of List I and Section 2 of the MMDR Act indicates that the provisions of the legislation do not merely cover the interests of private individuals (such as owners of private property or holders of mining leases) relating to the regulation of mines and mineral development. The public interest underpinning the MMDR Act synonymizes with the collective welfare of the people and is informed by the dictates of the public trust doctrine.[221] At the same time, the underlying public interest has to be construed in view of the entire legislative scheme, purpose, and object of the enactment.[222]

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[219] Article 162, Constitution of India. [It reads:
162. Extent of executive power of State – Subject to the provision of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:
Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."]
[220] Sandur Manganese & Iron Ores Ltd v. State of Karnataka, (2010) 13 SCC 1 [39]
[221] Sayyed Ratanbhai Sayeed v. Shirdi Nagar Panchayat, (2016) 4 SCC 631
[222] Meerut Development Authority v. Association of Management Studies, (2009) 6 SCC 171 [67]

158. The latter part of Entry 23 of List II makes the entry "subject to the provisions of List I with respect to regulation and development under the control of the Union." Entry 54 of List I provide that Parliament can regulate mines and mineral development "to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest." The text of Entry 54 of List I indicates that besides declaring that it is taking under its control any subject relating to the regulation of mines and mineral development, Parliament has to specify the extent to which the Parliamentary regulation is deemed expedient in the public interest. The legislative domain of the States under Entry 23 of List II is excluded only to the extent of the field covered by the provisions of the MMDR Act. The expression "to the extent provided" refers to the subject matter or fields covered by the Parliamentary legislation.

159. During the proceedings of the Constituent Assembly pertaining to present Entry 23 of List II, Mr Brajeshwar Prasad moved a motion to move the entire field of "regulation of mines and mineral development" under the Union List. He reasoned that mines constitute a vital subject and should remain a subject under the Union List.[223] Consequently, a motion was moved to transfer Entry 23 of List II (which was draft Entry 28 of List II then) to the Union List. However, the amendment was negatived by the Assembly.[224] This indicates that the Constituent Assembly deemed it necessary that state legislatures must also have

[223] Constituent Assembly Debates, Volume IX, 898 (31st August 1949). [Mr. Brajeshwar Prasad explained his aim in introducing the motion in the following words: "My whole aim in moving this amendment is to make redundant entry 28, of List II. I am clear in my own mind that Mines constitute a vital subject as important as Defence, Foreign Affairs and Communications. I am of opinion that if the system of defence is going to be organized on sound line then Mines must remain a Central subject. I do not want to give the Provinces the power even to "regulate mines and oil fields and mineral development subject to the provisions of List I" as has been provided for in entry 28 of List II."]
[224] Constituent Assembly Debates, Volume IX, 898 (2nd September 1949)

necessary legislative powers with respect to the regulation of mines and mineral development. The legislative field of the states would stand abstracted once Parliament makes a declaration evincing an intent to takeover the regulation and development of mines and specifies the extent to which control of the field by the Union is deemed to be in the public interest.

160. The requirement of a legal declaration under Entry 54 of List I serves twofold purposes: first, it enables a clear demarcation of the subject matter under the control of Parliament and determines the extent of such control; and second, it enshrines the precept of the rule of law where the basis for trenching upon the legislative powers of the State has to be found in a law made by Parliament. The Parliamentary enactment through which legislative control is being assumed by the Union, to the exclusion of state legislatures, cannot be abstract, vague, and general. While Parliament has the power to denude the field given to the states under Entry 23 of List II by making a declaration in the law which it enacts pursuant to the field reserved by Entry 54 of List I, the law enacted by Parliament must specify the field of regulation and development which it has taken over, and the extent to which the control of the Union is deemed to be in the public interest.

161. The use of the expression "to the extent" under Entry 54 of List I carries the consequence that the Parliamentary legislation has to specify the subject matter or field over which it seeks to legislate. In **M A Tulloch** (supra), this Court held that the intention of the legislation to occupy a particular subject matter has to be gathered from the words of the provisions.[225] As a consequence, the coverage of the fields by Parliament has to be express. The ambit of the MMDR Act has to

[225] M A Tulloch (supra) [14]. [It reads: "14. […] In the present case, having regard to the terms of Section 18(1) it appears clear to us that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until the rules were framed, there was no inconsistency and no supersession, of the State Act."]

be determined from the express words used in the provisions and not by mere implications or inference. This legal principle has already been accepted by this Court.[226]

162. In **Ishwari Khetan Sugar Mills** v. **State of Uttar Pradesh**,[227] a Constitution Bench was called upon to interpret the ambit of Entry 52 of List I and Entry 24 of List II. The Industries (Development and Regulation) Act 1951[228] was enacted by Parliament to assume control over specified industries in pursuance of Entry 52 of List I. Section 2 of the IDR Act contained the legislative declaration to the effect that the Union shall take under its control the industries specified in Schedule I. The majority, speaking through Justice D A Desai, observed that the legislative declaration under the IDR Act has the effect of denying the legislative powers to the state legislature under Entry 24 of List II.[229] Therefore, it was held that the legislative declaration contained under Section 2 of the IDR Act has to be construed strictly. The Court held that the legislative competence of state legislature would be eroded only to the extent to which control was assumed by the Union in terms of the legislative declaration under the IDR Act. A legislative declaration which has the impact of denuding or depriving the legislative power of the state legislature has to be construed strictly.

163. The inter-relationship between Entry 54 of List I and Entry 23 of List II can be formulated as follows:

    (i) The state legislatures possess plenary legislative power in respect of regulation of mines and mineral development under Entry 23 of List II;

[226] Ishwari Khetan Sugar Mills v. State of Uttar Pradesh, (1980) 4 SCC 136; Rajasthan Roller Flour Mills Association v. State of Rajasthan, 1994 Supp (1) SCC 413 [14]
[227] (1980) 4 SCC 136
[228] "IDR Act"
[229] Ishwari Khetan Sugar Mills (supra) [11]

(ii) Entry 23 of List II is, however, subject to the operation of Entry 54 of List I;

(ii) The field under Entry 23 of List II is subordinated to the extent to which Parliament has brought under its control the regulation of mines and development of minerals under the MMDR Act;

(iii) The expression of the legislative intention to cover a particular field relating to mines and mineral development excludes or denudes the legislative powers of the State with respect to that particular field; and

(iv) Parliamentary intention to cover a particular field relating to the regulation of mines and mineral development and the extent to which control of the Union is regarded to be in the public interest has to be ascertained from the language of the statute.

Keeping these principles in mind, we now move on to analyzing the inter-relationship between Entry 54 of List I and Entry 50 of List II.

H. Inter-relationship between Entry 50 of List II and Entry 54 of List I

164. The respondents contend that the legislative declaration contained under Section 2 along with the other provisions of the MMDR Act serves as a “limitation” on the legislative powers of state legislatures to tax minerals under Entry 50 of List II. The main thrust of the argument of the respondents is that anything encompassed in a “law relating to mineral development” serves as a limitation on the field of taxation under Entry 50 of List II. Moreover, it was submitted that the MMDR Act leaves no legislative room for the state legislature in respect of the subject matter of mines and mineral development, including taxes on mineral rights. On the contrary, the petitioners submit that the MMDR Act can only have

the effect of abstracting the State's legislative field with respect to Entry 23 of List II. It was further contended that the MMDR Act does not contain any provision limiting the field of the states with respect to the taxation of mineral rights.

165. To recap, Entry 50 of List II reads thus:

> "Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development."

Entry 50 of List II has two elements: (i) the legislative field governing taxes on mineral rights is given exclusively to the states; (ii) the field given to the states is subject to any limitations imposed by Parliament by law relating to mineral development. Entry 50 of List II is a taxing entry. The limitations on the field created by Entry 50 of List II is however, contemplated to be created by a law which relates to mineral development. The legislative competence of Parliament to enact a "law relating to mineral development" can be traced to Entry 54 of List I, which is a general entry. Therefore, the taxing powers of the state with respect to mineral rights under Entry 50 of List II can be restricted by Parliament by its regulatory power under Entry 54 of List I.

166. To delve into the inter-relationship between Entry 54 of List I and Entry 50 of List II, we have to primarily address the following questions: (i) what is a tax on mineral rights; (ii) whether Entry 50 of List II is an exception to the general rule laid down in **M P V Sundararamier** (supra); (iii) what is the nature of the limitations envisaged by the Constitution on the taxing powers of the state; and (iv) whether the MMDR Act imposes limitations on the taxing powers of the state.

i. Taxes on mineral rights

a. Mineral rights duty

167. The expression “taxes on mineral rights” was originally used in the GOI Act 1935. The Constitution uses a similar expression. Therefore, it is important to understand the context in which the term “taxes on mineral rights” (in its myriad forms) came to occupy the discourse.

168. Under the law in England, landlords would receive royalties for exercising their mineral rights or assigning them to other persons or lessees.[230] However, in the latter part of the nineteenth century and the early twentieth century, it was recognized that landlords received the benefits of royalty often at the cost of the welfare of the miners. The Royal Commission on Mining Royalties narrated in its report of 1893 that:

> “[W]itnesses examined on behalf of the working miners expressed the opinion that royalties and wayleaves, where fixed in amount, are often so high that in depressed times, when coal falls greatly in price, the royalty owner continues to receive his full royalty, whilst the miner suffers from a reduction in wages, or a closing of mines; their efforts to avert any reduction sometimes taking the form of a strike.”[231]

To counter the appropriation of royalties by landowners, the lawmakers decided to levy tax on royalties received by them[232] with a view to increase revenue generation and enhance the welfare measures for miners.[233]

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[230] Lloyd George, ‘The Budget, The Land and The People: The New Land Value Taxes Explained and Illustrated’ (2nd edn, 1909) 48.
[231] Royal Commission on Mining Royalties, Final Report of the Royal Commission appointed to inquire into the subject of mining royalties (1893) 14.
[232] Lloyd George (n 230) 51
[233] Mr. Lloyd George (Hansard, Volume 11) 28 September 1909

169. The Parliament in England imposed a mineral rights duty by Finance Act 1910. Section 20 imposed a duty "on the rental value of all rights to work minerals and of all mineral way leaves" at the rate of "one shilling for every twenty shillings of that rental value." The rental value was calculated in the following manner: (i) where the right to work the minerals was the subject of a mining lease, the amount of rent paid in the last working year; (ii) where minerals were being worked by the proprietor, an amount fixed by the Commissioners of Inland Revenue as equivalent to rent; and (iii) in case of mineral wayleave, the amount of rent paid by the working lessee in the last working year. Lloyd George, the Chancellor of the Exchequer, stated while introducing the legislative proposal that the duty on mineral rights imposed "tax upon royalties and way-leaves actually received by the owners of those rights."[234] The Chancellor further clarified that the mineral rights duty was introduced as part of taxes on land.[235] It was in this context that the concept of taxes on mineral rights was introduced in England and was later entrenched in the colonial regime by the GOI Act 1935.

b. Meaning of the expression "mineral rights"

170. The Constitution does not define "mineral rights". The expression has not been defined in the MMDR Act or the rules framed under it. Though the expression "mineral rights" is used in Entry 50 of List II, it does not find mention in any of the other related legislative entries – Entry 54 of List I and Entry 23 of List II. The expression has to be given its ordinary and natural meaning by adopting an interpretative approach which eschews rigidity. Mineral rights are inextricably

[234] Hansard, Volume 11, 22 September 1909
[235] Hansard, Volume 35, 5 March 1912

connected to property. Any understanding of "mineral rights" must be prefaced on an understanding of the basics of property law.

171. In a regime of private property, the rules governing access to and control of resources are organized around the idea that resources are on the whole separate objects belonging to particular individuals.[236] These resources can comprise of immovable and movable property, both corporeal and incorporeal. In a social order based on private property, an owner's decision of the manner in which they put the resource to use is generally upheld by society as final.[237] A person who owns a resource has the right to determine its use. The ownership of a resource also precludes the claims of other persons or individuals with respect to that particular resource.[238]

172. In the context of land, it is well-established that the ownership of land includes the ownership of underlying minerals, unless the right to minerals has been expressly reserved by law.[239] Therefore, an owner of land has rights to the surface of the land and to sub-soil resources.[240] Surface rights are rights to the surface of the land and include the right to use land, construct buildings, install machinery and equipment, and plant trees or dig wells. Surface rights can also be sold or transferred to another person. The right to minerals entails the right to monetize mineral resources by either consuming them or selling them to third parties. The right to minerals emanates from the concept of the ownership of property.

[236] Jeremy Waldron, 'What is Private Property?' (1985) 5(3) Oxford Journal of Legal Studies 313, 327.
[237] Ibid, 327.
[238] James Y Stern, 'The Essential Structure of Property Law' (2017) 115(7) Michigan Law Review 1167, 1176.
[239] Thressiamma Jacob v. Geologist, Department of Mining & Geology, (2013) 9 SCC 725
[240] State of West Bengal v. Union of India, (1964) 1 SCR 371 [18]

173. Counsel have drawn attention to dictionary meanings attributed to "mineral rights". Black's Law Dictionary defines "mineral right" as "an interest in minerals in land, with or without ownership of the surface of the land; a right to take minerals or a right to receive royalty."[241]

174. Corpus Juris Secundum defines the term "mineral right" as follows:

> "It is the right or title to all, or to certain specified, minerals in a given tract. It is a broader term and is more inclusive than the term "oil and gas", and it has been held that, in the light of the surrounding facts and circumstances under which it is used, it may not be necessarily include the right to oil and gas."[242]

175. In **Pennsylvania Coal Co**. v. **Mahon**,[243] the US Supreme Court observed that the right to coal consists of the right to mine it. Entry 50 of List II uses the expression "mineral rights" in the plural. It hence envisages a bundle of rights associated with the ownership of minerals. The owner of minerals may transfer the rights to the minerals to another person. Once transferred, the lessee stands in the shoes of the owner/ lessor by acquiring his interest in the minerals, according to the terms and conditions of the agreement. Usually, the right to mine includes two related activities: (i) excavation of minerals; and (ii) removal or consumption of the extracted minerals. The process of excavating minerals generally entails the right to enter upon and occupy the land for the purpose of working the mines to extract minerals. The removal or consumption of minerals allows the lessee to monetize the extracted minerals.

176. The meaning of the expression "mineral rights" has been discussed in a few judicial decisions in India. In a decision of the Calcutta High Court rendered in

[241] Black's Law Dictionary (6th edn,1990) 995
[242] Corpus Juris Secundum (Volume 58) 15
[243] 260 US 393 (1922)

1905, it was held that grant of mineral rights "must be taken to carry as incident to it the power not only to go upon the land and work the minerals known to be underground but to go to the land and conduct the ordinary preliminary operations by boring or otherwise to ascertain (when it is not known) if there are minerals underground."[244] In **Tata Chemicals Ltd**. v. **State of Gujarat**,[245] the Gujarat Mineral Rights Tax Act 1985 imposed a tax on the mineral rights of holders of mining leases in respect of minerals specified in the Schedule.[246] A Division Bench of the Gujarat High Court, speaking through Justice A M Ahmadi (as the learned Chief Justice then was) repelled the challenge to the validity of the legislation. The Court drew a distinction between mining rights and mineral rights thus:

> "51. [a] mining right is a right to enter upon and occupy land for the purpose of working it with a view to obtaining the minerals deposited therein whereas a mineral right is a right or title to all or to certain specified minerals in a given tract. It is, therefore, clear that a person having a mining right is entitled to work the mine with a view to winning the minerals deposited therein but unless he is given a right to remove or consume the mineral, he cannot do so. It is the latter right which is known as the mineral right which the impugned legislation seeks to tax."

The Gujarat High Court held that a mining right is a right to enter upon and occupy land for the purpose of working. A mineral right is a right or title to certain specified minerals in a given tract. Therefore, the High Court followed the

[244] Kumar Ramessur Malia v. Ram Nath Bhattacharjee, 1905 SCC OnLine Cal 55
[245] 1988 SCC OnLine Guj 13
[246] Section 3, Gujarat Mineral Rights Tax Act 1985. Section 3 reads: "On and from the commencement of this Act, there shall be levied and collected a tax on mineral rights at such rates not exceeding the maximum specified in Column 2 of the Schedule against minerals specified in column 1 of that Schedule as the State Government may, from time to time by notification in the Official gazette, fix."

principle that a lessee acquires mineral rights if the lessor grants them the permission to remove minerals from the leased area.

177. In his dissenting opinion in **Kesoram** (supra), Justice S B Sinha sought to draw a distinction between "minerals" and "mineral rights" by observing that mineral rights "cannot be construed as mineral already extracted as contradistinguished from being capable of extraction or otherwise in a state or form when embedded in the earth."[247] The learned Judge observed that when a mineral is extracted, it may be a culmination of the right to deal in the mineral but the mineral rights would not include a right to dispatch extracted minerals. Justice Sinha observed that the right to receive royalty is also a mineral right. According to him mineral rights extend till the extraction of minerals from the earth and do not include the right to dispatch the extracted minerals. There is a fallacy in Justice Sinha's observations. Statutorily, royalty is a consideration by the lessee to the lessor for winning the minerals and removing them from the leased area. Section 9 of MMDR Act imposes royalty on removal or consumption of minerals by lessee. Royalty, is paid on *dispatch* of minerals. Thus, mineral rights do not culminate with the extraction of minerals, but include the right to dispatch the extracted minerals as well.

178. The Constitution is a living organic document and must be interpreted in that spirit.[248] Enumerated legislative powers ought to be interpreted with a wide and liberal spirit to ensure that the legislatures have the requisite authority to legislate and to allow the executive to govern. The expression "mineral rights" must be construed in this spirit to ensure that the taxing powers of the State under Entry

[247] Kesoram (supra) [400]
[248] Saurabh Chaudri v. Union of India, (2003) 11 SCC 146 [71]; Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 [95].

50 of List II are not unnecessarily curtailed. The natural meaning of the expression "mineral rights" will include the entire bundle of rights that follow ownership of minerals, including rights which can be transferred to a lessee through a mining lease. These rights will include the right to extract minerals by working the mines, winning the minerals, and monetizing the minerals obtained by removing or consuming them.

179. The breadth and scope of mineral rights has also been recognized under the MMDR Act. In a situation where the minerals vest with the State by operation of law, the right to those minerals also vests with the State. However, the State can assign or transfer its mineral rights by way of a mining lease to a lessee. This has been contemplated by the Mineral Concession Rules read with Form K. In Part I of Form K, the Government grants its mineral rights to the lessee, including liberties, powers, and privileges. However, it is important to note that the lessee is only granted rights in the minerals specified in Part I of Form K. The Government can reserve to itself the right to work the other minerals found in the same demised land or to grant a lease to a separate person to work and remove these other minerals.[249] Part II of Form K of the Mineral Concession Rules 1960 enumerates the liberties, powers, and privileges of the lessee. It provides that the lessee has the liberty and power at all times during the term of demise to enter upon the land demised and search, mine, bore, dig, drill, win, work, dress,

[249] Part IV, Form K, Mineral Concession Rules 1960. ["1. Liberty and power for the State Government, or to any lessee or persons authorized by it in that behalf to enter into and upon the said lands and to search for, win, work, dig, get, raise, dress, process, convert and carry away minerals other than the said minerals and any other substances and for those purposes to sink, drive, make, erect, construct, maintain and use such pits, shafts, inclines, drifts, levels and other lines, waterways, airways, water courses, drains, reservoirs, engines, machinery, plant, buildings, canals, tramways, railways, roadways, and other works and conveniences as may be deemed necessary or convenient.
Provided that in the exercise of such liberty and power no substantial hindrance or interference shall be caused to or with the liberties, powers and privileges of the lessee/lessees under these presents and that fair compensation (as may be mutually agreed upon or in the event of disagreement as may be decided by the State Government) shall be made to the lessee/ lessees for all loss or damage sustained by the lessee/ lessees by reason or in consequence of the exercise of such liberty and power."]

process, convert, carry away, and dispose of the minerals. Part II of Form K further provides that a lessee has liberty and power to use the demised land to sink pits,[250] use machinery equipment[251] construct buildings, roadways, and railways,[252] to beneficiate any ore produced from the lands and carry away such beneficiated ore,[253] and clear undergrowth and brushwood and utilize any trees or timber standing or found on the demised lands.

180. Having explained the scope of the expression “mineral rights”, the next issue pertains to the scope and ambit of “taxes on mineral rights.”

c. Taxes on mineral rights

181. The respondents have contended that the meaning of the term “taxes on mineral rights” must be derived from the related entries in List II, namely Entries 45 and 49. It was contended that since the incidence of the tax imposed in light of Entries 45 and 49 is on the owner of land, the incidence of tax on mineral rights is also on the owner of land, that is the private lessor. On the contrary, the petitioners have refuted the respondent’s submission on the ground that the tax under Entry 50 of List II can also be applied with respect to lessees who hold the land or building on lease from the Government.

182. Conceptually, a tax has four elements – (i) the nature of the tax which prescribes the taxable event attracting the levy; (ii) the person who is liable to pay tax; (iii) the rate at which the tax is paid; and (iv) the measure or value to which the rate will be applied for computing the liability.[254]

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[250] Form K, Part II, Rule 2, Mineral Concession Rules 1960
[251] Rule 3, Mineral Concession Rules 1960
[252] Rule 4, Mineral Concession Rules 1960
[253] Rule 8(a), Mineral Concession Rules 1960
[254] Govind Saran Ganga Saran v. CST, 1985 Supp SCC 205 [6]; Mathuram Agrawal v. State of M P, (1999) 8 SCC 667 [12]; Union of India v. Mohit Minerals (P) Ltd., (2022) 10 SCC 700 [97]

183. The subject matter of taxation has been exhaustively enunciated in the Union and State Lists in the Seventh Schedule of the Constitution.[255] The occurrence of the taxable event creates or attracts the liability to tax.[256] For example, **In re Sea Customs Act, S.20(2)**,[257] this Court held that in the case of excise duties, the taxable event is the manufacture of goods and the duty is not directly on the goods but the manufacture thereof. Thus, the activity of the manufacture of goods attracts the liability for the levy of excise duties.

184. The incidence of taxation pertains to the manner in which the burden of tax would fall on a person.[258] The incidence of tax was exemplified by the decision of this Court in **State of Karnataka** v. **Drive-In Enterprise**.[259] While dealing with the validity of an entertainment tax imposed by the State of Karnataka, it was held that since an entertainment necessarily requires a person who is entertained, the incidence of the tax is on the persons entertained. The incidence of tax is relatable to the person who bears the ultimate burden of the tax.

185. The subject matter of Entry 50 of List II is "taxes on mineral rights." As discussed in the above segment, 'mineral rights' is a comprehensive term to mean the bundle of rights with respect to minerals. The taxable event under Entry 50 of List II would relate to the exercise of mineral rights.

186. In his dissenting opinion in **Hingir-Rampur** (supra), Justice Wanchoo observed that taxes on mineral rights would mean taxes on the right to extract minerals and not taxes on the minerals actually extracted. He opined that a tax on mineral rights would be confined, for example, to taxes on leases of mineral rights and

[255] Chhotabhai Jethabhai Patel and Co. v. Union of India, 1962 Supp (2) SCR 1 [68]
[256] Goodyear India Ltd. v. State of Haryana, (1990) 2 SCC 71
[257] (1964) 3 SCR 787 [23]
[258] Godfrey Phillips India Ltd v. State of UP, (2005) 2 SCC 515 [47]
[259] (2001) 4 SCC 60 [13]

on premium or royalty for that. In the process, Justice Wanchoo differentiated between taxes on minerals produced and taxes on mineral rights. According to this view, the process of working mines to extract minerals has to necessarily precede the production of minerals. The process of working mines, according to the learned Judge, attracts liability under "taxes on mineral rights", while taxes on minerals extracted form part of taxes on goods produced, in the nature of duties of excise.

187. The working of a mine can be undertaken either by the owner or by another to whom the right to work the mine has been granted by a mining lease. In the latter case, the lessee has to pay royalty to the lessor as a consideration for removing or consuming the minerals from the leased area. The right to receive royalty is an integral part of the mineral rights of the lessor. However, as discussed in the segments above, royalty is not a tax. Therefore, royalty would not be comprehended within the meaning of the expression "taxes on mineral rights." The scope of taxes on mineral rights includes taxes on the right to extract minerals. Taxes on mineral rights also take within their fold other aspects relating to the exercise of mineral rights such as working the mines and dispatching minerals from the leased area. However, the legislature has to ensure that the exercise of the taxing powers relatable to the field under Entry 50 of List II does not foray into a duty of excise or a tax on the sale of minerals.

188. The taxable event with respect to taxes on mineral rights will be the exercise of mineral rights. The incidence of the tax on mineral rights depends upon who is exercising the right. We do not agree with the respondents that the incidence of a tax on mineral rights would necessarily have to be on the owner of the land. A tax under Entry 49 of List II is not only levied on the owner of the land, but also

an occupier.[260] Similarly, a tax on mineral rights could be levied on any person who has an interest in the minerals.

189. The measure of tax is a matter of legislative policy. The legislature can select any measure of tax to compute liability, as long as it has a reasonable nexus with the nature of the tax. Hence, it is for the legislature to devise an appropriate measure of tax to compute the tax liability, provided the measure has a nexus with the nature of levy, that is a tax on mineral rights.

ii. The limitations on the taxing power of the State under Entry 50 of List II

190. Entry 50 of List II is unique because though it is a taxing entry, it is made subject to "any limitations imposed by Parliament by law relating to mineral development." Thus, the taxing power of the state is capable of being controlled by a non-fiscal enactment by Parliament relating to the development of minerals. This seems to recognize that a fiscal imposition in the nature of a tax on mineral rights by a state may impact on the development of minerals. That is why the former has been made subject to a law relatable to mineral development enacted by Parliament.

191. The common thread between Entry 54 of List I and Entries 23 and 50 of List II is the use of the phrase "mineral development". Entry 54 of List I and Entry 23 of List II deal with the same subject matter namely, of the regulation of mines and mineral development, where the latter is subordinated to the former to the extent to which Parliament brings the field under its control. In the above segments, we have analyzed the decisions of this Court in **Hingir-Rampur** (supra), **MA Tulloch**

[260] See Anant Mills Co. Ltd. v. State of Gujarat (1975) 2 SCC 175

(supra), and **Baijnath Kedia** (supra) where it was held that Entry 23 of List II is *pro tanto* excluded to the extent to which the Parliamentary legislation enacted in terms of Entry 54 of List I covers the field.

a. Entry 50 of List II does not constitute an exception to the Sundararamier principle

192. The position which was enunciated in **M P V Sundararamier** (supra) and accepted in **Jindal Stainless Ltd** (supra) is that the field of taxation is distinct from the general subjects of legislation in the Union and State lists of the Seventh Schedule. The issue which needs to be addressed is whether Entry 50 of List II is an exception to the position which has been laid down in **M P V Sundararamier** (supra) in view of the fact that the ambit of a taxing entry is sought to be restricted by a regulatory entry. A related issue is whether Parliament has the legislative competence to tax mineral rights under its residuary powers.

193. The decision in **Hoechst Pharmaceuticals** (supra) interpreted the relationship between Entry 54 of List II and Entry 92A of List I. Entry 54 of List II, before amendment, was subject to the provisions of Entry 92A of List I.[261] The entry was substituted by the Constitution (One Hundred and First Amendment) Act 2016. The Bihar Finance Act 1981 levied a surcharge on dealers. The law was made pursuant to the field of legislation in Entry 54 of List II. The Act prohibited dealers from collecting surcharge. It was contended that the prohibition on dealers recovering the surcharge was inconsistent with the Drug (Price Control) Order

[261] Entry 54 of List II, before substitution by the Constitution (One Hundred and First Amendment) Act 2016 read: "54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I)

1979 issued under the Essential Commodities Act, which allowed the manufacturer or producer of drugs to pass on the liability to pay sales tax. The Essential Commodities Act was enacted for the regulation, production, supply, distribution and pricing of essential commodities and is relatable to Entry 33 of List III.[262] One of the issues before this Court was whether the State power to tax the sale of goods under Entry 54 of List II could be encroached upon by a law made by Parliament with respect to one of the matters enumerated in List III.

194. This Court referred to **M P V Sundararamier** (supra) to reiterate that: (i) taxation is considered to be a distinct matter for purposes of legislative competence; (ii) the power to tax cannot be deduced from a general legislative entry; (iii) the taxing powers of the Union and the States are mutually exclusive without any overlap; and (iv) this is also evident from the fact that there is no taxing entry in List III. The Court held that a law made by Parliament under a general entry, that is, Entry 33 of List III, cannot intrude into the plenary power of the state legislature to levy taxes on the sale or purchase of goods under Entry 54 of List II. Further, it was held that the 1981 Act and the Control Order operated in separate and distinct fields without inconsistency or overlap.

195. The decision in **Hoechst Pharmaceuticals** (supra) is an authority for the following legal propositions: (i) the principle of federal supremacy will not apply where there is no direct conflict between the legislative powers of Union and States; (ii) Parliament cannot acquire legislative competence with respect to subject matters of taxation enumerated under List II under the guise of regulatory

[262] Entry 33, List III, Seventh Schedule, Constitution of India. (It reads:
["33. Trade and commerce in, and the production, supply and distribution of –
(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products; […]"]

entries; and (iii) since taxing entries are mutually exclusive, the principle of federal supremacy is not generally applicable with respect to taxing entries under Lists I and II.

196. Entry 54 of List I is a regulatory entry dealing with the regulation of mines and mineral development. The regulatory entries in Lists I and II of the Seventh Schedule are distinct from taxing entries. Though the power to levy taxes is an incident of sovereignty, it is subject to constitutional limitations. Giving an extended interpretation to general entries to include the power of taxation will grant arbitrary and unconstitutional authority to the Union and States. Since Entry 54 of List I is a general entry, it will not include the power of taxation.

197. The subject of Entry 54 of List I is "regulation of mines and mineral development". In contrast, the subject of Entry 50 of List II is "taxes on mineral rights". Each of these terms has a specific connotation. Whereas Entry 54 of List I encompass a broad subject matter covering the regulation of mines and mineral development, the taxing entry in Entry 50 of List II is confined to mineral rights. Entry 23 of List II also encompasses the "regulation of mines and mineral development" as a legislative field for the states. Since Entry 54 of List I also deals with the "regulation of mines and mineral development", the states' domain under Entry 23 of List II is subject to the limitations created by Entry 54 of List I. Despite the positioning of Entry 23 in List II, the Constitution has specifically enumerated the taxing field with respect to mineral rights in Entry 50 of List II. Taxation of mineral rights is hence, traceable to Entry 50 of List II. If the framers had intended that the field of taxing mineral rights would be subsumed in the general entry covering the regulation of mines and mineral development, namely, Entry 23 of List II, there would have been no reason to provide for a specific taxing entry on mineral

rights in Entry 50 of List II. Therefore, just as the field of taxing mineral rights does not fall under Entry 23 of List II, it does not fall under Entry 54 of List I which uses similar language and is not a taxing entry. While the imposition of taxes on mineral rights is a field entrusted to the State legislatures in List II, it is subject to a law enacted by Parliament on mineral development. While the imposition of taxes on mineral rights is a field exclusively entrusted to the State legislatures (and not to Parliament) in the State List, Parliament can while making provisions in a law relating to mineral development make provisions which ensure that the exercise of the taxing power by the states does not adversely affect the development of minerals. This power of Parliament to impose limitations or conditions which ensure that that the exercise of the taxing power of the states does not impede mineral development distinct from the power to tax mineral rights which is entrusted to the state legislatures.

198. If Parliament has no legislative competence to tax mineral rights under Entry 54 of List I, can it make use of its residuary powers to gain legislative competence? The answer has to be in in the negative. Article 246 exclusively empowers the state legislatures to make laws with respect to entries in List II, which includes taxes on mineral rights. Article 248 provides that the residuary powers of Parliament shall include the power of making any law imposing a tax not mentioned in either the State List or Concurrent List. Under Entry 97 of List I Parliament can make a law with respect to any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

199. During the debates in the Constituent Assembly, Dr. B R Ambedkar explained that the purpose of Entry 97 of List I is to include “anything not included in List II

or List III."[263] In **International Tourist Corporation** v. **State of Haryana**,[264] this Court held that it is necessary to establish the legislative incompetence of the State legislature before Parliament can claim exclusive legislative competence by resorting to the residuary power. A matter can be brought under Entry 97 only if it is not enumerated in List II or List III and in the case of a tax if it is not mentioned in List II. Importantly, it was also observed that the residuary powers of the Union cannot be interpreted so expansively as to whittle down the power of the State legislatures. A subject can be brought under Entry 97 of List I only if it is not enumerated in either List II or List III.[265]

200. In **Province of Madras** v. **Boddu Paidanna**,[266] Chief Justice Maurice Gwyer speaking for the Federal Court observed that "[i]t is natural enough, when considering the ambit of an express power in relation to an unspecified residuary power, to give a broad interpretation to the former at the expense of the latter." The enumeration of taxes on mineral rights in List II is a constitutional entrustment to the states. This Court is bound to abide by the constitutional distribution of legislative powers. The distribution also subserves the principles of fiscal federalism.

201. In **Mahalaxmi Fabric Mills** (supra),[267] the constitutional validity of Section 9(3) of the MMDR Act and a notification fixing new rates of royalty was in question. The Central Government sought to increase the rate of royalty to compensate the state, which had suffered financial losses as a result of the invalidation of the cess imposed by it by the decision in **India Cement** (supra). The notification was

[263] Constituent Assembly Debates, Volume 9 (1 September 1949)
[264] (1981) 2 SCC 318 [6-A]
[265] *See* All India Federation of Tax Practitioners v. Union of India, (2007) 7 SCC 527 [46]
[266] (1942) 4 FCR 90
[267] 1995 Supp (1) SCC 642

challenged before the High Court of Madhya Pradesh for excessively increasing the rates of royalty by 400 per cent to 2000 per cent as compared to the royalty fixed in 1981 on various varieties of coal. The High Court held that the notification was outside the purview of Section 9(3) of the MMDR Act. Against the decision of the High Court, appeals were filed before this Court. The main contention of the petitioners was that since royalty is a tax, as held in **India Cement** (supra), Entry 54 of List I is a general entry and did not empower Parliament to impose the tax.

202. This Court held that once Parliament enacts a law under Entry 54 of List I and occupies the field in connection with the regulation of mines and mineral development, the state legislature will lose legislative competence with respect to both Entries 23 and 50 of List II. Further, it was observed that since royalty is a tax, the legislative competence of Parliament to enact Section 9 of the MMDR Act could be traced to both Entries 54 and 97 of List I.[268]

203. The decision in **Mahalaxmi Fabric Mills** (supra) was followed by a two judge Bench in **Saurashtra Cement** (supra).[269] In **State of Orissa** v. **Mahanadi Coalfields Ltd**.,[270] a three judge Bench held that the MMDR Act has made exhaustive provisions for "all kinds of taxation on minerals and mineral rights – tax, royalty – fee – dead rent, etc." which denudes the state legislature of the power to enact any law or to impose any tax or other levy with reference to Entry 23 or Entry 50 of List II.

204. As discussed in the above segments, the field of tax on mineral rights vests with the state legislature. Parliament cannot impose a tax on mineral rights under

[268] Mahalaxmi Fabric (supra) [14]
[269] (2001) 1 SCC 91 [11]
[270] 1995 Supp (2) SCC 686.

Entry 54 of List I. Parliament cannot resort to its residuary powers to tax mineral rights when the subject matter is specifically enumerated in Entry 50 of the State List. The fixation of the rates of royalty under Section 9 can be validly traced to Entry 54 of List I because royalty is not a tax. The fixation of the rates of royalty falls with the regulatory powers of Parliament under Entry 54 of List I. The decisions in **Mahalaxmi Fabric Mills** (supra), **Saurashtra Cement** (supra), and **Mahanadi Coalfields** (supra) do not reflect the correct position of law.

205. Entry 50 of List II is not an exception to the **Sundararamier** principle which is that taxing entries are enumerated separately from the general entries in Lists I and II of the Seventh Schedule. The field of taxation cannot be derived from regulatory legislative entries and has to be derived from a specified taxing entry. This principle has now been well-entrenched in our constitutional jurisprudence.[271] A legislature has incidental and subsidiary powers with respect to a legislative entry. However, the power to tax is neither incidental nor subsidiary to the power to legislate on a particular matter in the nature of a regulatory entry.[272]

206. Entry 50 of List II is subordinated only to the extent of any limitations that may be imposed by Parliament by law relating to mineral development. Unless Parliament imposes a limitation, the plenary power of the state legislature to levy taxes on mineral rights is unaffected.

207. The question of an overlap between the taxing entry and general entry does not arise because Parliament cannot impose taxes on minerals under Entry 54 of List I. There is no direct conflict between the taxing powers of the States under

[271] Federation of Hotel & Restaurant Association of India v. Union of India, (1989) 3 SCC 634 [74]; State of Karnataka v. State of Meghalaya, (2023) 4 SCC 416 [66]
[272] State of Mysore v. D Cawasji and Co, (1970) 3 SCC 710 [8]

Entry 50 of List II and the regulatory powers of the Union. Resultantly, the principle of federal supremacy has no application in the instant case. Hence, while Entry 50 of List II is *sui generis*, it does not constitute an exception to the position of law laid down in **M P V Sundararamier** (supra).

b. Nature of "any limitation"

208. Having established that the state legislature has exclusive power to enact laws relating to taxes on mineral rights under Entry 50 of List II the next issue is to determine the nature of the limitations that Parliament can constitutionally impose on the exercise of the taxing powers of the states. To recap, the latter part of Entry 50 of List II has three elements: (i) any limitations; (ii) imposed by Parliament by law; and (iii) relating to mineral development. As held in above segments, the element of "law relating to mineral development" can be traced to Entry 54 of List I. Parliament has enacted the MMDR Act in pursuance of Article 246 read with Entry 54 of List I.

209. In respect to the first element, the petitioners have argued that Parliament has not expressly imposed any limitation under the MMDR Act on the taxing powers of the state under Entry 50 of List II. On the contrary, the respondents argue that the overall scheme of the MMDR Act in itself constitutes a limitation on the taxing powers of the state under Entry 50 of List II.

210. There is a significant distinction as regard the nature of the restraints imposable by Parliament on the legislative field of the states to regulate mines and the development of minerals, as contrasted with the Parliamentary restraints contemplated on the taxing power of the states over mineral rights. In relation to the former, this distinction emerges from the language of Entry 54 of List I and

Entry 23 of List II. As regards the latter, the language of Entry 50 of List II needs analysis for this purpose. We will take up the regulatory power of the states over mines and mineral development under Entry 23 of List II. Entry 23 of List II is expressly subject to the provisions of List I with respect to regulation and development under the control of the Union. The expression "subject to" indicates that the Constitution subordinates Entry 23 of List II to the entries in List I with respect to regulation and development under the control of the Union. In other words, where there is an entry in List I relating to regulation and development under the control of the Union, Entry 23 of the State list has to yield to it. Entry 54 of List I is one such entry, which envisages the regulation of mines and mineral development. Entry 54 of List I is conditioned by three requirements – (i) a declaration by Parliament by law; (ii) envisaging that control of the Union is expedient in the public interest; and (iii) an indication by Parliament in the law of the extent of the control by the Union. Once these three conditions are fulfilled, the field for the states is abstracted away to the extent that is envisaged in the Parliamentary law. The relationship between Entry 23 of List II and Entry 54 of List I is that the latter results in a denudation of the legislative field of the states to the extent envisaged by Parliament by law. The expression 'extent' leaves it entirely to Parliament to determine whether the extent of the control by the Union is to be total or partial. The denudation of the legislative field of the states follows such a declaration by Parliament and the extent would be determined by the provisions of the law (the MMDR Act) enacted by Parliament.

211. We may now contrast this with Entry 50 of List II. Entry 50 of List II gives the legislative field of taxing mineral rights to the states. But while doing so, it makes it subject to limitations imposed by Parliament by law relating to mineral

development. The words “subject to” appear in both Entry 23 and in Entry 50 of List II. They are words which indicate primacy of Parliament. But in Entry 50 of List II, the Constitution envisages that the field of taxing mineral rights which is given to the states will be subject to (i) limitations; (ii) imposed by a law of Parliament relating to mineral development. The expression “regulation of mines” does not find place in Entry 50 of List II (as it does in Entry 23 of List II). Moreover, the law by Parliament relating to mineral development may impose limitations. Entry 50 of List II does not result in the field of taxing mineral rights being conferred on Parliament. This is clear also because there is no specific entry in List I giving the field of taxing mineral rights to the Union. The field of taxing mineral rights is exclusive to the states and continues to remain with them but the field is subject to the limitations imposed by Parliamentary law relating to mineral development. Parliament can determine whether, and if so, how the taxing power of the states over mineral rights should be limited in order to ensure that it does not impede or retard mineral development. If Parliament does so and indicates the nature of the limitations, the states are bound to abide by them while exercising the taxing power over mineral rights. The authority to impose a tax on mineral rights remains with the states but is subject to the limitations envisaged by a law enacted by Parliament in relation to the development of minerals. Under Entry 23, the regulatory power of the State is denuded by Parliament, while in case of Entry 50 the legislative field assigned to the states to tax mineral rights is only limited.

212. The supremacy of Parliament is one of the fundamental features of the English legal system. Our constitutional democracy envisages the supremacy of the Constitution. The subjection of all constitutional authorities to the mandate of a

written Constitution is the fundamental feature of our Constitution.[273] This Court in **In re Powers, Privileges and Immunities of State legislature, Special Reference No. 1 of 1964**[274] observed that the supremacy of the Constitution is fundamental to the existence of the federal unit and of the member States as a protection against destruction or impairment of the delicate balance of power. The Constitution is the source of the legislative powers of both Union and the states. Any limitation on the exercise of plenary powers has to be situated within the Constitution and not beyond.

213. In **Umeg Singh** v. **State of Bombay**,[275] a Constitution Bench held that any limitation on the legislative power of the state legislature must be express:

> "13. […] The legislative competence of the State can only be circumscribed by express prohibition contained in the Constitution itself and unless and until there is any provision in the Constitution expressly prohibiting legislation on the subject either absolutely or conditionally, there is no fetter or limitation on the plenary powers which the State Legislature enjoys to legislate on the topics enumerated in the Lists 2 and 3 of the Seventh Schedule to the Constitution. […]"

> "14. The fetter or limitation upon the legislative power of the State Legislature which had plenary powers of legislation within the ambit of the legislative heads specified in the Lists 2 and 3 of the Seventh Schedule to the Constitution could only be imposed by the Constitution itself and not by any obligation which had been undertaken by either the Dominion Government or the Province of Bombay or even the State of Bombay. Under Article 246 the State Legislature was invested with the power to legislate on the topics enumerated in Lists 2 and 3 of the Seventh Schedule to the Constitution and this power was by virtue of Article 245(1) subject to the provisions of the Constitution. The Constitution itself

[273] Kalpana Mehta v. Union of India, (2018) 7 SCC 1 [218]
[274] (1965) 1 SCR 413 [39]
[275] (1955) 2 SCR 164

> laid down the fetters or limitations on this power e.g. in Article 303 or Article 286(2). But unless and until the court came to the conclusion that the Constitution itself had expressly prohibited legislation on the subject either absolutely or conditionally the power of the State Legislature to enact legislation within its legislative competence was plenary. Once the topic of legislation was comprised within any of the entries in the Lists 2 and 3 of the Seventh Schedule to the Constitution the fetter or limitation on such legislative power had to be found within the Constitution itself and if there was no such fetter or limitation to be found there the State Legislature had full competence to enact the impugned Act no matter whether such enactment was contrary to the guarantee given, or the obligation undertaken by the Dominion Government or the Province of Bombay or even the State of Bombay."

214. In **Firm Bansidhar Premsukhdas** v. **State of Rajasthan**,[276] this Court reiterated **Umeg Singh** (supra) by observing that the legislative competence of Parliament or of the State legislature can only be circumscribed by express prohibition contained in the Constitution. It was further observed that unless there is a provision in the Constitution expressly prohibiting legislation on the subject either absolutely or conditionally, there is no fetter or limitation on the plenary powers which the legislature is endowed with for legislating on the topics enumerated in the relevant Lists.

215. Any limitation on the plenary legislative powers of either the Union or the States with respect to a subject in the relevant Lists must be express and specified by the Constitution.

[276] 1966 Supp (SCR) 81 [7]

c. Scheme of the MMDR Act does not serve as "any limitation"

216. The Union has argued that (i) the MMDR Act occupies the entirety of the subject matter pertaining to mineral development, leaving no scope for the State legislatures to legislate under Entry 50 of List II; (ii) the MMDR Act abstracts the legislative powers of the States under Entry 50 of List II; (iii) the MMDR is a complete code with respect to the regulation of mines and mineral development and no part of the field is left for the States to legislate including on taxation of mineral rights.

217. The respondents have drawn our attention to the following architecture of the MMDR Act to press the point that the states have been deprived of legislative control in respect of mineral development:

a. Although the State Government is the owner of minerals, the MMDR Act defines the rights which can be created in those minerals. Section 4 provides that no person can undertake prospecting or mining operations except in accordance with the terms and conditions of the license or lease, as the case may be. The form of license and lease agreements is stipulated under the Mineral Concession Rules. The grant of mineral rights is governed by the terms and conditions laid down under Form K of the rules. The State Government cannot change or modify the terms of the prospecting license or mining lease. The proviso to Section 5(1) states that the State Government shall not grant any mineral concession except with the previous approval of the Central Government. Any mineral concession granted in contravention of

the provisions of the MMDR Act is void.[277] Moreover, Section 21 entails penal sanctions for contravention of Section 4;

b. The Central Government prescribes the fiscal exactions (such as royalty, dead rent, and surface rent) for the grant or creation of mineral rights. Section 9 empowers the Central Government to fix the rate of royalties. Section 25 deals with the recovery of unpaid rent, royalty and tax as arrears of land revenue; and

c. The MMDR Act governs all aspects relating to both major minerals and minor minerals. Under Section 13, the Central Government is empowered to make rules on all or any matter relating to the grant of mineral concessions. Although Sections 14 and 15 allow the State Government to make rules in respect of minor minerals, the field of minor minerals is covered by the MMDR Act leaving no scope for the state legislature to legislate. In case the Central Government undertakes prospecting or mining operations, Section 17(3) specifies the levies it is bound to pay. Further, the State Government cannot reserve any area under Section 17A without the approval of the Central Government. The Central Government is also empowered to issue directions to the State Government for the conservation of mineral resources or on any policy matter in the national interest. Section 18 empowers only the Central Government to take any measure necessary for mineral development.

218. Two issues have to be addressed: (i) whether the MMDR Act fulfils the requirement of “any limitation” under Entry 50 of List II; and (ii) whether the MMDR Act contains any provision limiting the taxing powers of the states under Entry 50 of List II.

[277] Section 19, MMDR Act

219. The MMDR Act lays down the means and processes by which the rights to mines and minerals may be exercised or granted by the owner of mineral rights. It is true that the MMDR Act largely denudes the states of their legislative powers with respect to regulation of mines and mineral development under Entry 23 of List II. However, the expression in Entry 50 of List II demonstrates that: (i) Parliament can limit the legislative power of the States to tax minerals; and (ii) the limitation has to be imposed "by law" relating to mineral development.

220. The MMDR Act has a centralizing tendency because the Central Government is tasked with important responsibilities such as setting out the terms and conditions of mining leases, fixing the rates of royalty and issuing guidelines to State Governments in respect of conservation of minerals. This drift towards the Central Government stems from the fact that the principal aim of the MMDR Act is development and conservation of minerals.[278] Minerals being a natural and scarce resource, their exploitation has to be scientific and judicious. The MMDR Act enumerates rules and regulations to ensure that the exploration, extraction, and exploitation of minerals follow standards of conservation and sustainability. The Indian State is the trustee of all natural resources, including minerals.[279] Therefore, it is a constitutional duty of the State to protect minerals and ensure their exploitation in public interest.

221. By authorizing the Central Government to lay down the terms of mining leases and grant approval to concessions, the MMDR Act seeks to ensure that there is uniformity in the terms for working of mines and extraction of minerals. Uniformity in the terms and conditions of mining leases, rates of royalty, and in the policy approach towards conservation of minerals reduces indiscriminate exploitation

[278] Hind Stone (supra) [10]
[279] *See* M C Mehta v. Kamal Nath, (1997) 1 SCC 388

of mineral resources and promotes mineral development. The fact that the State Government cannot alter the clauses in the mining lease cannot be understood to mean that all the powers of the State with respect to regulation of mines and mineral development as well as the power to tax mineral rights have been extinguished.

222. Entry 50 of List II provides that the legislative power of States to tax mineral rights is subject to any limitations imposed by Parliament by law relating to mineral development. A plain reading of the phrase makes it clear that the taxing power is subject to “any limitations” and not a “law relating to mineral development.” If the Constitution intended to restrict the taxing powers under Entry 50 of List II with respect to a parliamentary law, it would not have used the expression “any limitations.” It could have used phraseology such as for example, “Taxes on mineral rights subject to any law relating to mineral development made by Parliament.” Parliament has to ‘impose’ the limitations. That is, Parliament has to expressly specify the limitations by the authority of law. Thus, under Entry 50 of List II the taxing power of the State is subject to the extent that Parliament imposes any limitations “by law” relating to mineral development.

223. The phrase “by law” is also important because it indicates the manner in which Parliament can impose limitations. The expression “by law” means that the legislative power should be effectuated through the provisions of a statute. The purport of including the phrase “by law” in Entry 50 of List II is to indicate that Parliament has to specify the extent to which it is seeks to limit the taxing powers under Entry 50 of List II.

224. Parliament can impose limitations under Entry 50 of List II by means of statutory provisions. There is no specific provision in the MMDR Act which imposes

limitations on the power of the States to tax mineral rights. The scheme of the MMDR Act cannot by a process of stretched construction be read to limit the taxing powers of States under Entry 50 of List II.

225. The respondents have referred to Entry 54 of List I to contend that once Parliament enacts a law relating to mineral development, its consequences on the taxing powers of the state legislature under Entry 50 of List II can be implied. In this connection, reference was made to **Kesavananda Bharati** v. **State of Kerala**,[280] where it was held that powers and limitations could be implied from necessity or from the scheme of the Constitution. Moreover, reference was made to the decision in **Kalpana Mehta** v. **Union of India**,[281] to contend that the Constitution must be interpreted in a manner that leads to the discovery of "constitutional silences or abeyances." Therefore, it was contended that Entry 50 of List II contemplates an implicit denudation of legislative powers of States once a law relating to mineral development was enacted by Parliament under Entry 54 of List I.

226. The theory of implied limitations was adopted in **Kesavananda Bharati** (supra) to iterate that the basic structure doctrine serves as an implied limitation on the power of Parliament to amend the Constitution.[282] The power of Parliament to amend the Constitution was subjected to the basic structure doctrine. The doctrine of implied limitations is not applicable in the present case in view of the fact that Entry 50 of List II specifies the nature of the limitation and the manner in which it can be imposed. The implication that any law enacted by Parliament

[280] (1973) 4 SCC 225 [210]
[281] (2018) 7 SCC 1
[282] See I R Coelho v. State of Tamil Nadu (2007) 2 SCC 1

under Entry 54 of List I will impliedly denude the powers of the state legislature under Entry 50 of List II will usurp the taxing powers of the States.

227. The principle of constitutional silences has generally been used to step in where the Constitution is silent or where there is a legislative vacuum.[283] Entry 50 of List II is clear in its terms – a limitation can be imposed by Parliament by law relating to mineral development. In the face of an express constitutional provision, there is no scope for this Court to use this doctrine to limit the legislative powers of the State.

228. In **P Kannadasan** v. **State of Tamil Nadu**,[284] a two judge Bench held that Parliament has denuded the States of their power to levy taxes on minerals by making the declaration contained in Section 2 of the MMDR Act. It was further observed that State legislatures cannot levy any tax or cess on minerals so long as the declaration in Section 2 stands. The observations in **P Kannadasan** (supra) are contrary to the legislative scheme discussed above.

d. Section 9 does not serve as a limitation on the taxing powers of State

229. Having noticed that the scheme of the MMDR Act does not in itself serve as a limitation on the field of taxation under Entry 50 of List II, we now proceed to examine whether the statute contains any provision imposing “any limitations” on it. The respondents contend that Sections 9, 9A, 9B, and 9C expressly impose limitations as contemplated under Entry 50 of List II. We have held in the previous segments of this judgment that royalty is not in the nature of tax but a consideration which is paid to the proprietor for the extraction and removal of mineral under the terms of the mining lease. The MMDR Act empowers the

[283] Vishaka v. State of Rajasthan, (1997) 6 SCC 241; Anoop Baranwal v. Union of India; (2023) 6 SCC 161
[284] (1996) 5 SCC 670 [35]

Central Government to specify the rates of royalty under Section 9 read with the Second Schedule. These powers could be validly traced to Entry 54 of List I as they are comprehended within the regulation of mines.

230. Since royalty payable under Section 9 is not a tax on mineral rights, any limitation on the enhancement of the rates of royalty is not the imposition of a tax under Entry 50 of List II. While royalty flows from the exercise of proprietary rights, taxes flow from the sovereign's right to tax persons, objects and transactions. Section 9 does not expressly impose any limitations on the powers of the State to tax mineral rights. Section 9(3) limits the power of the Central Government to enhance royalty more than once in three years. This limitation does not govern taxes on mineral rights.

231. Dead rent under Section 9A is a price paid by the lessee to the lessor for not working the mines and is paid in alternative to royalty. The payments under Sections 9B and 9C are made as additional royalties and are used for specific purposes. Payment under Section 9B is made to the District Mineral Foundation constituted by the State Government. Similarly, payment under Section 9C is made to the trust created by the Central Government for funding the agencies specified in Section 4(1). The payments under Sections 9B and 9C do not amount to a tax on mineral rights. Sections 9, 9A, 9B, and 9C do not impose any limitations on the taxation powers of the state legislatures under Entry 50 of List II.

e. "Any limitation" can extend to prohibition

232. In **Jindal Stainless Steel** (supra), one of us (Justice D Y Chandrachud) observed that curtailment of legislative powers vested in the State may take

place through: (i) abstraction; (ii) eclipse; and (iii) limitations or restrictions.[285] The expression "any limitations" finds mention in Entry 50 of List II in the context of taxes on mineral rights. In its ordinary sense, the expression "limitation" means a restriction or containment.[286] The Constitution uses the word "limitations" in two provisions – Article 134(2) and Entry 50 of List II of the Seventh Schedule. Article 134 deals with the appellate jurisdiction of Supreme Court in criminal matters. Article 134(2) provides that Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

233. The use of the expression "any" before "limitations" under Entry 50 of List II indicates that the scope of the limitations is expansive and includes "all"[287] or "every"[288] limitation that could be imposed by Parliament by law relating to mineral development. The expression "any" has to be construed in its context, taking into consideration the scheme, purpose, and subject matter of the enactment,[289] or in this case, the scheme of distribution of legislative powers under the Constitution. The expression "any limitations" is indicative of the fact that Parliament has been provided with ample legislative freedom to conceive limitations or restrictions on the legislative powers of the State to tax minerals.

234. Apart from Entry 50 of List II, Entry 57 of List II is the other taxing entry in List II which is subordinate to another entry. It provides for taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars and

[285] Jindal Stainless Steel (supra) [626]
[286] Ramanatha Aiyar, Advanced Law Lexicon (Volume 3) 3254
[287] LDA v. M K Gupta, (1994) 1 SCC 243 [4]
[288] Raj Kumar Shivhare v. Directorate of Enforcement, (2010) 4 SCC 772 [24]
[289] Vivek Narayan Sharma v. Union of India, (2023) 3 SCC 1 [132]

is "subject to the provisions of Entry 35 of List III." Entry 35 of List III deals with mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.

235. In **State of Assam** v. **Labanya Probha Devi**,[290] a Constitution Bench of this Court explained the inter-relationship between Entry 57 of List II and Entry 35 of List III in the following terms:

> "11. […] The two entries deal with two different matters though allied ones – one deals with taxes on vehicles and the other with the principles on which such taxes are to be levied. When two entries in the Constitution, whether in the same List or different Lists, deal with two subjects, if possible, an attempt shall be made to harmonize them rather than to bring them into conflict. Taxes on vehicles in their ordinary meaning connote the liability to pay taxes at the rates at which the taxes are to be levied. On the other hand, the expression "principles of taxation" denotes rules of guidance in the matter of taxation. We, therefore, hold that the amending Acts do not come into conflict with the existing law in respect of any principles of taxation, but only deal with a subject-matter which is exclusively within the legislative competence of the State Legislature. In this view, there is no scope for the application of Article 254 of the Constitution."

236. In **Sharma Transport** v. **Government of AP**,[291] a three judge Bench held that the exercise of authority by Parliament under Entry 35 of List III will not deprive the State legislature of its exclusive legislative powers referable to Entry 57 of List II:

> "11. Power to levy taxes on vehicles, whether mechanically propelled or not vests solely in the State Legislature, though it may be open to Parliament to lay down the principles on which the taxes may be levied on mechanically propelled

[290] (1967) 3 SCR 611
[291] (2002) 2 SCC 188

> vehicles in the background of Entry 35 of List III. To put it differently, Parliament may lay down the guidelines for the levy of taxes on such vehicles, but the right to levy such taxes vests solely in the State Legislature. No principles admittedly have been formulated by Parliament. In that sense, the Government of India's communication dated 30-08-1993 does not in any sense violate the power of the State Legislature or its delegate to levy or exempt taxes from time to time."

237. Both Entries 50 and 57 of List II are subject to other legislative entries, but with a distinction: Entry 50 specifically uses the word "subject to any limitations" while Entry 57 uses the expression "subject to the provisions". Under Entry 50, Parliament can impose "any limitations" on the taxing powers of the State, while under Entry 57 read with Entry 35 of List III, Parliament can only prescribe the principles on the basis of which the State can levy taxes on mechanically propelled vehicles. Therefore, Parliament cannot impose any limitation on the field of taxation reserved to the States under Entry 57 of List II, but can lay down guidelines. In contrast, Entry 50 allows Parliament to impose any limitations on the field reserved to the State to tax mineral rights.

238. In **Jindal Stainless Steel** (supra), one of us (Dr Justice D Y Chandrachud) described the nature of the limitations which may be imposed to contain the legislative powers vested in the State:

> "626.3. The third source of constitutional containment on the legislative power of a State is in the form of limitations of which clause (3) of Article 286 provides an illustration. Under clause (3), Parliament provides the restrictions and conditions in regard to "the system of levy, rates and other incidents of tax" upon which a law enacted by a State providing for a tax on the nature specified in sub-clauses (a) and (b) is subject. Sub-clause (a) deals with tax on the sale or purchase of goods declared to be of special importance in inter-State trade or

> commerce by a law enacted by Parliament. Sub-clause (b) deals with a tax on the sale or purchase of goods failing under sub-clauses (b), (c) and (d) of Article 366(29-A). Among other things, a tax on contract for hire purchase and involving transfer of the right to use goods is subject to the restrictions and conditions which are provided by a law enacted by Parliament in regard to the system of levy, rates and other incidents of tax."

239. Before its omission, Article 286(3) empowered Parliament to specify by law restrictions and conditions on any law of a State levying tax on the sale or purchase of goods.[292] In **Rajasthan Rollers Flour Mills Association** v. **State of Rajasthan**,[293] a two-Judge Bench of this Court held that a limitation imposed by a law enacted under Article 286(3) is a restriction upon the plenary power of the State to levy tax on the sale/ purchase of goods and must be construed "strictly." It was further held that the restrictions imposed by Parliament upon the legislative power of the States must be specified by the law.[294]

240. In its textual sense, the verb 'to limit' means to restrict or constrain. The respondents submit that the word "any limitation" can be interpreted in a manner bestowing absolute authority on Parliament to limit the field of taxation of the state legislature under Entry 50 of List II. However, we need to understand the purport of the expression "limitations" not only in its literal sense, but also IN the constitutional sense.

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[292] Article 286(3) before omission read:
"(3) Any law of a State shall, in so far as it imposes, or authorizes the imposition of, -
(a) A tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or
(b) A tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366,
be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of tax as Parliament may by law specify."
[293] 1994 Supp (1) SCC 413 [14]
[294] Rajasthan Rollers Flour Mills Association (supra) [21]

241. The common thread running between Entry 54 of List I and Entries 23 and 50 of List II is mineral development. The concept of mineral development is closely associated with proper and sustainable exploitation and utilization of mineral resources. Mineral resources are important for the economic development of the nation, considering the fact that they are used as raw materials in many industries. The Constitution had this aspect in mind when it empowered Parliament to bring under its control regulation of mines and mineral development. The rationale was that the Central Government will ensure uniform regulatory standards for mineral operations, especially with respect to major minerals. Moreover, it was envisaged that the Central Government could take effective steps to ensure uniform standards of exploration and extraction of minerals with a view to ensuring their sustainability and conservation. The phrase "through a law relating to mineral development" appearing in Entry 50 of List II indicates that Parliament can limit the field of taxation only in the interests of mineral development. It was in this perspective that the Constitution empowered Parliament to impose "any limitations" on the legislative field of States to tax mineral rights through a law relating to mineral development.

242. The MMRD Act 1948 was in place when the Constituent Assembly was debating the incorporation of Entry 50 in List II. The framers of the Constitution were aware of the legislative history of the subject of mines and minerals and were aware as to how the Dominion Legislature had interpreted the legislative entries pertaining to regulation of mines and minerals and taxation of mineral rights under the GOI Act 1935.[295] The Constituent Assembly negatived the proposal to transfer the entirety of Entry 50 of List II to List I.[296] The Constitution did not or could not

[295] D K Trivedi (supra) [31]
[296] Constituent Assembly Debates (2nd September 1949)

visualize the effect of taxes on mineral rights on mineral development. Therefore, it left it to the legislative wisdom of Parliament to identify the taxes on mineral rights levied by States may impede mineral development. If Parliament considers that taxes on mineral rights indeed impede mineral development, it can adopt suitable legislative policies to impose limitations on the field of taxation.

243. The legislative subject entrusted to the States to tax mineral rights rests upon the necessity of raising revenues. As discussed in the above segments, Parliament does not possess the legislative field to tax mineral rights either under Entry 54 of List I, being a general entry, or under the residuary powers. The legislative domain to tax mineral rights vests with the State. The legislative power of Parliament to impose "any limitations" is traced to Article 246(1) read with Entry 54 of List I. Parliament can impose limitations, and not levy taxes on mineral rights itself. The subject of taxing mineral rights continues to remain with the States. This understanding also ensures that there is no overlap or conflict between the powers of Union and the taxing field of the States.

244. As held in **Jindal Stainless Steel** (supra),[297] the Constitution understands the expression "limitations" as restrictions, conditions,[298] or principles.[299] However, does the expression "any limitations" include the power to prohibit States from taxing mineral rights? We are of the opinion that the answer must be in the affirmative. Under Entry 50 of List II, the Constitution specifically uses the phrase "any limitations". The framers of the Constitution intended to empower Parliament to impose "all" and "every" possible limitation on the taxing powers of the State in the interests of mineral development, which may include even a

[297] Jindal Stainless Steel [626.3]
[298] Article 286(3) (omitted by Constitution (One Hundred and First Amendment) 2016
[299] Article 286(2), Constitution of India; Entry 35 of List II, Seventh Schedule, Constitution of India

"prohibition." It had become clear during the course of the hearings, that counsel on both sides largely agreed that Parliament can impose "any limitations" including prohibiting the State legislatures from taxing minerals.[300] The crux of the issue pertained to the manner in which Parliament can impose the limitations, which we have already considered in the above segments.

245. The overall scheme of Article 246 read with Entry 54 of List I and Entry 50 of List II makes it clear that Parliament, in the interests of mineral development, can impose "any limitations." The purport of the expression "any limitations" is wide enough to include the imposition of restrictions, conditions, principles, as well as prohibition. Parliament has the constitutional power to determine whether and if so the manner in which limitations may be imposed.

f. Impact of taxes on mineral rights on mineral development

246. The respondents have contended that any levy of taxes on mineral rights by the States under Entry 50 of List II will be against mineral development. Minerals are necessary for economic development. Proper extraction and utilization of mineral resources fulfils the needs of both the domestic industry as well as the demands of the international market.[301] The Constitution requires the State to discharge an active role in promoting the development of minerals by adopting a slew of regulatory measures both at the Union and State levels. In other words, the constitutional endeavor of development of minerals proceeds on the basis of co-operative federalism, where both the Union and the States have certain duties and responsibilities. These responsibilities take the form of development of infrastructure, facilitation of exploration and mining activities, conservation of

[300] Supreme Court of India, Record of Proceedings, Civil Appeal No. 4056-4064/1999 (14 March 2023) 54.
[301] National Mineral Policy 2019, 4

minerals, and collection of taxes and fees.[302] The National Mineral Policy 2019 recommends greater thrust on conservation of minerals, development of scientific methods of mining, human resource development, and protection of environment to meet the requirements of environmentally sustainable mining operations.

247. In India, mining activities are carried out by both the public and private sectors. The Government is required to raise revenues not only to meet the above-mentioned objectives, but also to fund public sector undertakings, such as Mineral Exploration Corporation of India. Additionally, mining activities cannot be carried out without the existence of public order or the lack of a functioning legal system to ensure adherence to contractual obligations. In **Jindal Stainless Steel** (supra), one of us (Dr Justice D Y Chandrachud) observed that every law which imposes a tax cannot be regarded as a hindrance to trade, commerce, and intercourse. It was observed:

> "631. […] Neither trade nor commerce can flourish amidst violence, unrest and social disorder. Taxes provide revenue for the State to sustain manifold activities which are geared to providing conditions of social order. The State provides infrastructure both tangible and intangible. Tax revenues form an essential part of the requirements necessary for the States to govern. Taxes are required by Article 265 to be imposed by a law enacted by Parliament or the State Legislatures. Without the power to raise revenues, the ability of the State to create conditions requisite for trade and commerce to exist would be denuded. Hence, as a matter of first principle it cannot be postulated that taxation in whatever form is a burden on trade, commerce and intercourse and that every tax necessarily hinders trade. Such a wide construction cannot be accepted simply because by raising revenues through means of taxation, the State provides a political and legal order based on

[302] ibid

> the rule of law where contractual transactions can be executed effectively. The extreme position that every law which imposes a tax is to be regarded as a hindrance to trade, commerce and intercourse is unsustainable."

248. It cannot be assumed that any tax levied by the State legislature under Entry 50 of List II will be *ipso facto* against mineral development. It is now a well-established principle that an increase in the rate of tax on a particular commodity cannot *per se* be said to impede free trade and commerce in that commodity.[303] In his dissenting opinion in **Kesoram** (supra), Justice Sinha observed that a tax on minerals rights, which is over and beyond what is provided under the MMDR Act, will lead to an increase in the price of the mineral commodity making it unremunerative. The learned Judge observed that this defeats the purpose of the MMDR Act. The Union of India in its affidavit submitted:

> "A non-harmonized fiscal regime, with varied levies across States, would result in a scenario where industries located in States with lesser mineral deposits would be forced to procure mineral raw materials at higher prices from States endowed with rich mineral deposits, placing the latter category of States at a significant economic advantage that would come at the cost of the national interest in maximizing economic development from the nation's mineral wealth […] Therefore a uniform levy of royalty prescribed by the Govt. of India under the MMDRA levels the playing field, thereby promoting the domestic industry across the nation in a manner which is equitable, while at the same time ensuring revenue generation for the States."

It is true that uniformity of prices of mineral commodities ensures the objective of mineral development as envisaged under the MMDR Act. Levy of a tax on

[303] Vrajilal Manilal & Co. v. State of M P, 1986 Supp SCC 201 [20]; State of Kerala v. A B Abdul Kadir, (1969) 2 SCC 363 [9]; Jindal Stainless Steel (supra) [634].

mineral rights by the State legislatures may lead to an increase in the prices of the mineral commodity in India. There may arise a situation where a state having the highest reserves of a particular mineral decides to levy a high rate of tax on mineral rights. This may not only distort the market for that particular mineral, but have a cascading effect on allied industries. It is exactly to counteract any adverse impact on the development of minerals in India that the Constitution has empowered Parliament under Entry 50 of List II to impose limitations on the basis of which the State legislature can tax mineral rights. If this is the constitutional intendment, it is Parliament which has the responsibility to ensure that there is no adverse effect on development of mineral rights. The legislative powers granted to the State legislatures cannot be whittled down impliedly based on the presumption that all taxes on mineral rights imposed by the State will have adverse economic consequences on mineral development. The Constitution has with foresight visualized this and empowered Parliament to impose "any limitations" on the subject of taxing mineral rights under Entry 50 of List II.

249. It was contended by the respondents that States already have multiple revenue streams arising from the mining and minerals sector. They are: (i) royalty and dead rent payable under Section 9 and 9A of the MMDR Act respectively; (ii) contributions to the District Mineral Foundation under Section 9B; and (iii) auction premium received from successful bidders for mineral blocks for mines allocated under the Mineral (Auction) Rules 2015. The above levies are statutorily collected and the revenue flows to the State as part of the regime for mineral development in place under the MMDR Act. All of these levies, which are statutory in nature, cannot impliedly limit the legislative power of the state legislature to levy a tax on mineral rights. The States have a constitutional and

sovereign authority to exercise their taxing powers, within the bounds of the Constitution, to raise adequate revenues for the welfare of the people.

I. Scope of Entry 49

i. Land System in India

250. The issue is whether the State legislatures are competent to levy a tax on mineral-bearing land as a unit under Entry 49 of List II. A connected issue is whether mineral produce or royalty can be used as the measure to tax mineral-bearing lands.

251. The general rule in England was that the rights of an owner of land extended to everything in, on, or over land. The position has been explained in Megarry & Wade on *The Law of Real Property*[304]:

> "There is an ancient maxim: cujus est solum, ejus est usque ad coelum et ad inferos, meaning that the owner of the soil is presumed to own everything "up to the sky and down to the centre of the earth." It has been criticized, but it is a presumption that remains firmly part of English law "encapsulating, in simple language, a proposition of law which has commanded general acceptance." Above the surface, the development of powered flight has made it impossible to apply the presumption literally. An owner's rights in the airspace above the land extend only to such height as is necessary for the ordinary use and enjoyment of the land and structures upon it. As regards right beneath the surface, the maxim applies and the owner is presumed to own the minerals beneath. For practical purposes the rights downwards are unlimited."

> "An owner can divide the land horizontally or in any other way. He or she can dispose of minerals under the surface, or top floor of a building, so as to make them separate properties. But unless some contrary

[304] Megarry and Wade, The Law of Real Property (9th edn, Sweet and Maxwell)

> intention is shown a grant will normally pass the owner's whole interest in space above and below the land, so that, for example, a lease will give the tenant the right to the airspace above the land let."

The position under the common law in England is that the owner of land is entitled to all mines and minerals underlying the land which they own, subject to certain exceptions.[305]

252. The colonial regime in India followed a pattern at variance to that prevailing under English law on land ownership and mineral rights. Initially, the colonial state asserted that the soil belonged to the sovereign.[306] Acting on the view that it was the proprietor of the soil, the colonial state, under Lord Cornwallis as Governor-General, confirmed proprietary rights to soil, including mineral rights, to the zamindars by way of a permanent settlement in territories under British control in India. For instance, the Madras Permanent Settlement Regulation XXV of 1802 vested "the proprietary rights of the soil" in the zamindars and in their heirs and successors.[307] The regulations also allowed the zamindars to alienate or dispose of their proprietary rights in their zamindaris.[308] Colonial courts

[305] Megarry and Wade (supra). ["Although prima facie a tenant in fee simple is entitled to all mines and minerals under the land, this is subject to some exceptions. Thus at common law, as modified by statute, the Crown is entitled to all gold and silver mines; and under the Petroleum Act 1998 petroleum existing in its natural condition in strata is vested in the Crown. Licences for extraction (including fracking) can be granted under the Petroleum Act 1998. Under the Coal Act 1938 all interests in coal (except interests arising under a coal mining lease) were vested in the Coal Commission in return for compensation. These interests (including coal-mining leases) were vested subsequently in the National Coal Board, then in the British Coal Corporation, and finally, (following the privatization of coal industry) in the Coal Authority. That body has extensive powers to license coal-mining operations."]
[306] S Sundararaja Iyengar, Land Tenures in the Madras Presidency (1921) 25
[307] Section 2, Regulation XXV of 1802. [It read: 2. Assessment on all lands liable to revenue. Proprietary right vested in zamindars – In conformity to these principles, an assessment shall be fixed on all lands liable to pay revenue to the Government; and, in consequence of such assessment, the proprietary right of the soil shall become vested in the zamindars or other proprietors of land, and in their heirs and lawful successors for ever."]
[308] Section 8, Regulation XXV of 1802. [It read: 8. Proprietors of land may transfer proprietary right in whole or part of their zamindaries. Restrictions under which such transfer is to be made – Proprietors of land shall be at free liberty to transfer without the previous consent of the Government, or of any other authority, to whomever they may think proper, by sale, gift or otherwise, their proprietary right in the whole of in any part of their zamindaris; such transfers of land shall be valid and shall be respected by the Courts of Judicature and by the officers of the Government; provided they shall not be repugnant to the Muhammadan or to the Hindu laws, or to the regulations of the Government. But unless such sale, gift, or transfer shall have been regularly registered at the office of the Collector, and unless the public assessment shall have been previously determined and fixed on such separated portion of land by the Collector, such sale, gift, or transfer shall be of no legal force or effect, nor shall such transaction exempt a zamindar from the payment of any part of the public land-tax assessed on the entire zamindari

recognized that the zamindars were presumed to be the owners of mineral rights in the absence of evidence that they had parted with them.[309] Similarly, in the case of inam lands, it was held that the right of the inamdars to the sub-soil minerals was to be inferred from the express words of the grants.[310]

253. In 1813, the Court of Directors of the East India Company prohibited the government from introducing permanent settlements any further and ordered introduction of the ryotwari system in all unsettled lands in the provinces.[311] Thereafter, the colonial state introduced the ryotwari system of land settlement in India. Under it the ryots were treated as proprietors of land with attendant rights and liabilities such as payment of assessment directly to government.[312] The ryots were granted *pattas* which essentially served as evidence of the possession of the land. Thus, the pattadars used to hold lands on lease from the Government.

254. S Sundararaja Iyengar in his treatise on *Land Tenures in the Madras Presidency* noted that in 1882 the Government declared that it had no proprietary right in the soil.[313] The conclusions drawn by the revenue after full enquiry are instructive and are reproduced below:

> "(1) that the State cannot, without violating the rule and practice dating from time immemorial, assert in this Presidency an exclusive right to minerals in unoccupied lands, but that it is fully entitled to a share in such products as in any other produce of the land; (2) that subject to the payment of a stated

previously to such transfer, but the whole zamindari shall continue to be answerable for the total land-tax, in the same manner as if no such transaction had occurred."]

[309] See Durga Prasad Singh v. Braja Nath Bose, 1912 SCC Online PC 9.

[310] Secretary of State for India in Council v. Srinivasa Chariar, 1920 SCC OnLine PC 89; State of A P v. Duvvuru Balarami Reddy, 1962 SCC OnLine SC 182 [9]

[311] S Sundararaja Iyengar, Land Tenures in the Madras Presidency (1921) 120, 151

[312] Gopalan v. State of Madras, (1958) 2 MLJ 117; S Sundararaja Iyengar (supra) 153. ["The distinguishing feature of this system is that the state is brought into direct contact with the owner of the land and collects its revenues through its own servants without the intervention of an intermediate agent such the zemindar or farmer, and its object is the creation of peasant proprietors. All the income derived from extended cultivation goes to the state."]

[313] S Sundararaja Iyengar (supra) 28.

> proportion of the produce to meet the necessities of the administration, the proprietary right of the ryot in the soil of his holding is absolute and complete; (3) that he is able to able to mortgage, sell, devise or otherwise alienate the land; (4) that, on these principles, property has been changing hands from time immemorial, and for the Government to put forward a claim now, which has never been asserted and which does not rest in law, practice or precedent, would undoubtedly raise a feeling or distrust and discontent which would take long to allay; (5) that it would be straining the State's privileges to attach the condition of recognition of any exclusive right to minerals on the terms on which lands may be newly occupied, although in the interests of the general public, it may in particular instances be justifiable to do so, in view to the development of the ascertained mineral resources; and (6) that as regards the vast bulks of the land occupied or likely to be occupied for cultivation, such reservation would be absolutely objectless and would only have the effect of creating widespread distrust in the minds of the people."[314]

255. The Board of Revenue recognized the rights of zamindars to the minerals, through Standing Orders. The Standing Orders also governed the rights of the ryotwari pattadars with respect to minerals. For example, Resolution No. 277 of 1888[315] declared that the State "lays no claim to minerals" in estates held on sanads of permanent settlement, enfranchised inam lands, etc. Moreover, for ryotwari lands it was declared that the right of the State in minerals is limited "to share in the produce of the minerals worked, commuted in a money payment, if thought necessary, by Government, in like manner with and in addition to the land assessment." Thus, the colonial state did not claim subsoil rights with respect to lands held under permanent settlements, and only a limited right in

[314] ibid.
[315] *See* Dalmia Cement (Bharat) Ltd. v. State of TN, (2014) 2 SCC 279 [30]

lands held under ryotwari *pattas*. This system of law continued until Independence and even thereafter.

256. The regulation of mines and mineral development before Independence was governed by executive rules. In 1913, Rules for the grant by local governments of licences to prospect for minerals and of mining leases in British India were made by Resolution No. 7552-7581-121 dated 15 September 1913.[316] Under these Regulations, prospecting licenses[317] could only be granted with respect to minerals which were owned by the Government.[318] The rules also required the licencee to pay royalty at a rate specified in Schedule A of the Regulations. The Madras Mining Manual of 1929 contained rules regarding mining and quarrying applicable to the Madras Presidency. Chapter V of the Madras Mining Manual stated that the State's right to minerals varied according to the tenure on which the land was held. The Madras Mining Manual classified the land into three groups:

Group A – Lands in which the State claimed no right to minerals. These included: (a) estates held on sanads of permanent settlement; (b) land held on title-deeds issued under the Waste Land Rules before 7th October 1879 in which no reservation was made of the right of the State to minerals; and (c) lands held on inam tenure.

Group B – Lands in which the State claimed a share in minerals which included: (a) lands occupied for agricultural purposes under the ryotwari grants; (b) private

[316] "1913 Regulations"
[317] Rule 13, 1913 Rules. [It read: "13. A licence to prospect for minerals, called hereinafter a prospecting licence, shall confer on the licensee the sole right, subject to the conditions contained in the licence, to mine, quarry, bore, dig and search for, win, work and carry away any specified minerals or, in the event of no minerals being specified, all minerals lying, or being within, under or throughout the land specified in the licence."]
[318] Rule 14, 1913 Rules. [It read: "14. A prospecting licence shall be granted only in respect of land in which the mines or minerals are the property of the Government."]

janmam lands in Malabar and the Nilgiri; and (c) certain lands held under inam tenure.

Group C – Lands in which the State claimed full rights in minerals which included unreserved lands and forest lands reserved under the Madras Forest Act 1882.

257. The Dominion Legislature was aware of the above classification of land, which it loosely incorporated under the Mineral Concession Rules 1949 enacted under Section 5 of the MMRD Act. Chapter III and VI of the Mineral Concession Rules 1949 provided for the grant of prospecting licences and mining leases respectively in land in which the minerals belonged to Government. Chapter V dealt with the grant of mineral concessions by private persons. The Concession Rules of 1949 did not contain any provisions dealing with minerals, in respect of lands where the minerals were shared by both the Government and private persons by. The Mineral Concession Rules of 1949 left out lands occupied under ryotwari tenure from their purview.

258. The Mineral Concession Rules 1960 adopted the categorization of land as in the Madras Mining Manual, namely, lands in which minerals vested in government; lands in which minerals vested in a person other than government; and lands in which minerals vested partly in government and partly in private persons. The first category mostly pertained to situations where the land vested with the state by virtue of it being unoccupied or land legislation vesting title to minerals with the State Government. The second category pertained to situations where the State Government had not divested the landowner of their rights in the sub-soil minerals. The third category applied to intermediary tenures such as ryotwari lands where the minerals were shared by both the government and private persons.

259. In **Raja Anand Brahma Shah** v. **State of U P**,[319] a Constitution Bench accepted that the English system of ownership of lands applied in India, observing that the owner of the surface of land is entitled *ex jure* to everything beneath the land. It was further observed that a transfer of the right to the surface conveys the right to the minerals underneath unless there is an express or implied reservation in the grant of land. In **Thressiamma Jacob** v. **Geologist, Department of Mining and Geology**,[320] a three-Judge Bench of this Court had to determine whether the holder of jenmon rights owned the mineral wealth lying beneath the soil. The Court traced the history of land tenures in India to hold that the ownership of minerals normally follows the ownership of land, unless the owner is deprived of it by a valid legal process.

260. The legislative power of States to enact land legislation can be traced to Entry 18 of List II which empowers the State legislatures to legislate with respect to matters dealing with "land, that is to say, rights in or over land, land-tenures including the relation of landlord and tenant, and the collection of rents." Similarly, Entry 42 of List III deals with "acquisition and requisitioning of property."

261. After Independence, the State legislatures enacted land reform legislation divesting land owners of their sub-soil rights, including rights in the minerals. For instance, Section 48 of the Maharashtra Land Revenue Code 1966 declared that the right to all minerals found either on the surface or underground vest in the State Government which shall have all powers necessary for the proper enjoyment of such rights.[321]

[319] 1966 SCC OnLine SC 89 [13]
[320] (2013) 9 SCC 725
[321] Section 48, Maharashtra Land Revenue Code 1966

262. Many states also enacted laws divesting zamindars and inamdars of their proprietary rights. For example, the Uttar Pradesh Zamindari Abolition and Land Reforms Act 1950 vested all the rights of the proprietors in the sub-soil including mines and minerals with the State Government.[322] The Maharashtra Personal Inams Abolition Act 1953 abolished inam rights, but saved the rights of the inamdars and jagirdars to mines and minerals. In 1985, the State legislature enacted a law[323] vesting all the rights of inamdars and jagirdars to mines and minerals in the State Government. The law sets out the following reasons behind divesting the inamdars and jagirdars of their mineral rights:

> "WHEREAS, pursuant to the national policy of bringing the actual cultivator into direct relation with the Government, series of land tenure abolition laws for abolition of the intermediary rights, Jagirs and inam tenures have had been enacted, the rights of Inamdars and Jagirdars to mines and minerals have had been specifically saved, thereby allowing such existing rights to survive particularly where the inams are grants of soil;
>
> AND WHEREAS, the mines and minerals available in these inam lands are being exploited in the State by such Inamdars for individual gains without being liable to pay any royalty to the State Government and in a manner highly detrimental and prejudicial to public interest;
>
> AND WHEREAS, with a view to prevent such exploitation of mines and minerals for individual gains by a few Inamdars and also to prevent the huge loss of royalty by the State Government and to give effect to the policy of the State Government towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does

[322] Section 6, UP Zamindari Abolition and Land Reforms Act 1950
[323] Maharashtra Abolition of Subsisting Proprietary Rights to Mine and Minerals in Certain Lands Act 1985.

> not result in the concentration of wealth and means of production to the common detriment;"

The above extract from the Preamble to the statute indicates that the inamdars and jagirdars had title to the minerals granted to them under inam tenure until the State enacted a law to divest them of their mineral rights. Since the inamdars and jagirdars owned the minerals till 1985, they exploited them for their personal gain without paying royalty to the State Government. This also indicates that the rights to mines and minerals continued to remain vested in private landowners long after India gained Independence and the divesting of their mineral rights happened in this case by the operation of legislation enacted by the State.

263. The decision in **Thressiamma Jacob** (supra) held that the MMDR Act does not declare the proprietary rights of the state in mineral wealth, nor does it contain a provision for divesting the owner of a mine of proprietary rights.[324] Rights in minerals generally follow ownership of the land. The right of an owner of land extends to the sub-soil, including the minerals found underneath the soil, which continues until the State deprives the owner by a valid legal process. Importantly, Section 16(1)(b) of the MMDR Act also recognizes that the rights to minerals does not automatically vest in the State Government.[325]

264. Article 297 vests the proprietary rights in minerals within the territorial waters and the continental shelf in the Union Government. The provision reads:

> "297. Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union –

[324] Thressiamma Jacob (supra) [55]
[325] Section 16, MMDR Act.

> (1) All lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purpose of the Union.
>
> (2) All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union.
>
> (3) The limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zones, of India shall be such as may be specified, from time to time, by or under any law made by Parliament."

265. Parliament has enacted the Offshore Areas Mineral (Development and Regulation) Act 2002[326] to provide for development and regulation of mineral resources in the territorial waters, continental shelf, exclusive economic zone, and other maritime zones of India. Section 2 contains a legislative declaration to the effect that the Union is taking under its control the regulation of mines and mineral development in offshore areas to the extent provided under the statute. Similar to the MMDR Act, Chapter II of the OAMDR Act lays down general provisions for acquisition of operating rights in offshore areas. However, unlike the MMDR Act which empowers the State Government to grant mineral concessions,[327] the OAMDR Act mandates the Central Government to grant the operating rights.[328] This difference is a result of the fact that the subsoil minerals are statutorily vested in the States, while the Constitution mandates the vesting

[326] "OAMDR Act"
[327] Section 5, MMDR Act
[328] Section 6, OAMDR Act

of offshore minerals in the Union. Section 16 of the OAMDR Act deals with payment of royalty to the Central Government. The provision reads as follows:

> **"16. Royalty** – (1) A lessee shall pay royalty to the Central Government in respect of any mineral removed or consumed from the area covered under his production lease, at the rate for the time being specified in the First Schedule in respect of that mineral.
>
> (2) The Central Government may, by notification in the Official Gazette, amend the First Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification:
>
> Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years."

266. As held in the above segments, royalty is paid to the proprietor of the minerals for the exercise of mineral rights. Minerals found in offshore areas are constitutionally vested in the Central Government. Therefore, the Central Government can statutorily and contractually demand royalty from lessees for removal or consumption of such minerals. In comparison, subsoil minerals can either be legally vested in the States or continue to remain vested with private landowners. Resultantly, the payment of royalty under Section 9 of the MMDR Act is paid either to the State Government or private landowner, as the case may be.

267. Section 3 of the Haryana Minerals (Vesting of Rights) Act 1973 allowed the State Government to acquire the rights to minerals in any land. In **State of Haryana** v.

Chanan Mal,[329] where the validity of Section 3 was assailed, it was argued that the State legislative power to enact the legislation was curtailed by the operation of the MMDR Act. This Court noted that in Section 16(1)(b) of the MMDR Act Parliament has contemplated legislation by the States for vesting of lands containing mineral deposits in the State Government. The Court held that the MMDR Act deals with the regulation of rights to mining without intending to "trench upon powers of State legislatures under Entry 18 of List II read with Entry 42 of List III."[330] **Chanan Mal** (supra) lays down the principle that the decision of the States to acquire title to minerals does not fall foul of the MMDR Act because the latter does not control the ownership of minerals.

268. The above discussion leads to two conclusions. First, the owner of a land can be divested of sub-soil rights in minerals only through a valid process of law, which has generally taken the shape of land reform legislation enacted by State legislatures. Second, the MMDR Act does not vest the ownership of minerals or mineral rights in the State. It regulates the exercise of rights to minerals which may be owned either by Government, private persons, or by both the Government and private persons.

ii. Tax on land and buildings

269. Entry 42 of the Provincial Legislative List in the Government of India Act 1935, read as follows:

> "42. Taxes on lands and buildings, hearths and windows"

[329] (1977) 1 SCC 340
[330] Chanan Mal (supra) [38]

The Draft Constitution prepared by Shri B N Rau, the Constitutional Adviser adopted the above provision in draft Entry 43 of the Provincial Legislative List.[331] The Expert Committee on Financial Provisions suggested the deletion of the words "hearths and windows" from draft Entry 43 of the Provincial Legislative List on the ground that such taxes were not likely to be levied. The Committee observed that they would anyway be covered by the word "buildings."[332] The recommendation of the Expert Committee was accepted by the Drafting Committee.[333]

a. Principles governing 'taxes on lands and buildings'

270. The interpretation of the word "lands" has been considered by this Court in several decisions. In **Raja Jagannath Baksh Singh** v. **State of Uttar Pradesh**,[334] the provisions of the UP Large Land Holdings Tax Act 1957 were challenged for falling beyond the legislative competence of the State legislature. It was contended that the expression "lands" under Entry 49 of List II does not include agricultural land. Rejecting this contention, Justice P B Gajendragadkar (as the learned Chief Justice then was) speaking for the Constitution Bench held that the word "lands" is wide enough to include all lands, agricultural or otherwise. In **Anant Mills Co. Ltd.** v. **State of Gujarat**,[335] this Court held that the word "lands" includes not only the face of the earth, but everything under or over it, and has in its legal signification an indefinite extent upward and downward. The above decisions are authority for the proposition that the ambit of the word

[331] B Shiva Rao, 'The Framing of India's Constitution: A Study' (1966, Volume 3) 181
[332] B Shiva Rao (Volume 3) 269
[333] B Shiva Rao (Volume 3) 502
[334] (1963) 1 SCR 220
[335] (1975) 2 SCC 175

"lands" under Entry 49 of List II comprises: (i) all types of lands; and (ii) covers everything under or over land.

271. In **Ajoy Kumar Mukherjee** v. **Local Board of Barpeta**,[336] the constitutionality of an annual tax levied by local boards for the use of land for the purpose of holding markets was challenged before a Constitution Bench. Speaking for the Bench, Justice K N Wanchoo held that the tax was on land used for a market, and not on the market held on land. The Court held that the use to which the land is put can be taken into account while imposing a tax on the land within the meaning of Entry 49 of List II.[337] Further, it was observed that the incidence of tax was on the owner or occupier of the land, and not any other person who may come to the market to transact. In conclusion, it was held that the tax was a tax on land, though its incidence depended upon the use of the land as a market. In **Government of A P** v. **Hindustan Machine Tools Ltd**.,[338] it was held that the State legislature can tax buildings as a unit under Entry 49 of List II, but not the machinery and furniture contained in the building. In **Ahmedabad Municipal Corporation** v. **GTL Infrastructure Ltd**.,[339] this Court held that the word "buildings" has to be interpreted dynamically to extend to all ancillary and subsidiary matters. Consequently, it was held that the State legislature has the legislative power to tax mobile towers under Entry 49 of List II. The principle which emanates from the above decisions is that a tax levied on the activity or service rendered on or in connection with lands and buildings does not fall within the description of taxes on lands and buildings under Entry 49 of List II. However,

[336] (1965) 3 SCR 47
[337] Ajoy Kumar Mukherjee (supra) [4]; *See* Jalkal Vibhag Nagar Nigam v. Pradeshiya Industrial & Investment Corp, (2021) 20 SCC 657 [46]
[338] (1975) 2 SCC 274 [17]
[339] (2017) 3 SCC 545 [29]

the legislature may take into account the use of land or buildings for determining the incidence or measure of tax levied under Entry 49 of List II.

272. Further, it is now well-established that a levy of tax on lands and buildings is not concerned with the division of interest or ownership in the units of lands and buildings.[340] In **Sudhir Chandra Nawn** v. **WTO**,[341] a Constitution Bench which dealt with the constitutional validity of Wealth Tax Act 1957, explained the scope of Entry 49 of List II by observing that the tax on lands and buildings is directly imposed on lands and buildings or both as units, and bears a definite relation to it. The decision holds that the State legislature may adopt the annual or capital value of lands and buildings for determining the incidence of tax levied under Entry 49 of List II.

273. In **Second Gift Tax Officer, Mangalore** v. **D H Nazareth**,[342] this Court dealt with whether Parliament was competent to enact the Gift Tax Act under its residuary powers. In that case, the owner of a coffee plantation had made a gift of coffee plantations by a registered gift deed to his sons. The government demanded gift tax on the transfer of land title. It was contended that taxes on lands and buildings under Entry 49 of List II also cover taxes in respect of gift on lands and buildings. It was further submitted that since the legislative power of taxing gift of land is traceable to Entry 49 of List II, Parliament could not have taken recourse to its residuary powers. Chief Justice M Hidayatullah, speaking for the Constitution Bench, held that the impugned levy was not a tax directly imposed upon lands and buildings, but a tax upon the transmission of title by gift. The value of lands

[340] Assistant Commissioner of Urban Land Tax v. Buckingham and Carnatic Co. Ltd., (1969) 2 SCC 55; Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality, (1969) 2 SCC 283 [5]
[341] (1968) 69 ITR 897
[342] (1970) 1 SCC 749 [10]

and buildings was held to be a measure of the value of gifts. Therefore, it was held that Parliament was competent to enact the levy.

274. In **D G Gose and Co (Agents) Pvt Ltd** v. **State of Kerala**,[343] the validity of the Kerala Building Tax Act 1975 was challenged on the ground of being a tax on the capital value of the assets of an individual under Entry 86 of List I. The Constitution Bench held that a tax on buildings was a direct tax on the assessee's buildings as such, and was not a personal tax without reference to any particular property. It was further held that a State legislature while imposing a tax under Entry 49 of List II may decide how best to levy it.

275. In view of the above discussion, we can summarize[344] the following principles for a tax under Entry 49 of List II:

(i) The expression "lands" means all kinds of lands irrespective of the use to which the land is put;

(ii) The expression "lands" includes not only the surface but everything under and over the surface;

(iii) A tax on lands and buildings is a tax on lands and buildings as units;

(iv) The expression 'tax on lands and buildings as a unit' is used to distinguish composite taxes which involve imposition of tax cumulatively on all assets such as under Entry 86 of List I;

(v) The tax is not a tax on totality, that is, it is not a composite tax on the value of all lands and buildings;

(vi) The tax is not concerned with the division of interest in the building or land;

[343] (1980) 2 SCC 410
[344] *See* Union of India v. H S Dhillon, (1971) 2 SCC 779 [74]

(vii) A tax levied on the activity or service rendered on or in connection with lands and buildings does not fall within the description of taxes on lands and buildings under Entry 49 of List II;

(viii) The use to which the land is put does not affect the competence of the State legislature to tax it; and

(ix) The legislature may take into account the use of land for determining the measure of taxation under Entry 49 of List II.

a. States can impose tax on mineral bearing land

276. A state does not have to tax everything in order to tax something. The legislature has a wide discretion is selecting the persons or objects it wants to tax depending upon social, economic, and administrative considerations.[345] This discretion flows from the fact that a legislature which is competent to levy a tax must inevitably be given full freedom to determine "which articles should be taxed in what manner and at what rate."[346] The power to levy a tax includes ancillary powers such as the power to fix the rate, prescribe machinery for the recovery of tax, prevent tax evasion, appoint authorities for collecting taxes, and prescribe the procedure for determining the amount of taxes payable by any individual.[347] This Court has generally adopted the approach of giving wide latitude to the legislature in matters of tax and economic regulations,[348] provided the law is reasonable[349] and avoids clear and hostile discrimination against particular persons or classes.[350]

[345] East India Tobacco Company v. State of Andhra Pradesh, 1962 SCC OnLine SC 145; Hiralal Rattanlal v. State of U P, (1973) 1 SCC 216 [20].
[346] Khyerbari Tea Co. Ltd. v. State of Assam, (1964) 5 SCR 975 [44]
[347] Khyerbari Tea Co. Ltd. (supra) [19]; Union of India v. A Sanyasi Rao, (1996) 3 SCC 465 [16]
[348] R K Garg v. Union of India, (1981) 4 SCC 675 [8]
[349] Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 [343]
[350] Federation of Hotel & Restaurant Association of India v. Union of India, (1989) 3 SCC 634 [46]

277. The power to levy a tax on lands necessarily entails the power to classify lands sought to be taxed depending upon their use and productivity. A flat tax on all lands, irrespective of their use or productivity, may place an unequal burden on owners and occupiers of land. The need to provide a reasonable classification of lands for the purposes of the levy of taxes under Entry 49 of List II emanates from Article 265 of the Constitution which provides that the States shall not levy taxes except by "authority of law". The expression "law" appearing in Article 265 has been interpreted to mean a valid law which conforms to the other provisions of the Constitution, including Article 14.[351] Consequently, the legislature is competent to classify properties into categories and tax them differently. In adjudicating the validity of the taxing statutes, this Court has held that the power of the legislature to classify is of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways.[352]

278. The expression "lands" includes lands of every description. A land may be put to use for growing tea leaves or extracting minerals. But what Entry 49 of List II contemplates is the levy of tax on land as a unit, irrespective of the use to which it is put. Therefore, the State legislature is competent while designing the levy under Entry 49 of List II to tax lands which comprise of mines and quarries. In other words, mineral-bearing land also falls within the description of "lands" under Entry 49 of List II.

279. The State legislature has wide discretion to classify lands and levy taxes on them under Entry 49 of List II. This is also evident from the decision of this Court in **Spencer & Co.** v. **State of Mysore**,[353] where excess land appurtenant to a

[351] K T Moopil Nair v. State of Kerala, 1960 SCC OnLine SC 7 [7]
[352] Khandige Sham Bhat v. Agricultural Income Tax Officer Kasargod, 1962 SCC OnLine SC 15 [7]
[353] (1971) 2 SCC 217

building was treated as a separate class. This was challenged. Although land appurtenant to a building such as gardens or grounds were treated as part of the building, any such land which exceeded thrice the area of the building was treated as a separate class. Chief Justice S M Sikri, speaking for the Constitution Bench, held that the State legislature has the right to classify lands for the purpose of levying taxes:

> "13. […] It seems to us that in cities like Bangalore, where land is scarce, excessive use of land as gardens and grounds is not in the public interest and the Legislature can validly tax the excess land on a different and higher basis. It may in a particular case cause hardship but the Legislature cannot be denied the right to classify the lands in such a manner. Three times the area occupied by a building is not a small area and we are unable to hold that his figure is not reasonable."

280. In their natural state, minerals or ores are part of the earth and remain embedded there unless extracted. It is also established that "lands" include everything over and below the surface. Therefore, constitutionally speaking sub-soil minerals also form part of land. The subject of taxation in Entry 49 of List II is land as a unit. The subject of tax in Entry 50 of List II is the mineral rights. Hence, there is a distinction between the legislative field in in the two entries. Ultimately, however it must be borne in mind that both Entries 49 and 50 fall within List II and are hence within the domain of the State legislatures. If the tax is relatable to Entry 50 of List II, the tax on mineral rights must be consistent with any limitations which Parliament imposes in a law relating to mineral development. The interrelationship between Entry 50 of List II with List I, particularly Entry 54 of that list has been examined in an earlier segment.

281. The legislative competence of the States to tax lands under Entry 49 of List II will not be affected by the MMDR Act. In **Western Coalfields Ltd.** v. **Special Area Development Authority**,[354] the vires of a provision conferring powers on the Municipal Councils and Municipal Corporations to levy tax on lands and buildings was challenged. The provision was argued to be invalid because it allowed the municipalities to tax lands covered by coal mines, which were the subject of legislation by Parliament under the MMDR Act and the Coal Mines (Nationalisation) Act 1973[355]. Chief Justice Y V Chandrachud, speaking for the majority, rejected the contention on the ground that the tax on lands and buildings had "nothing to do with the development of mines" and, therefore, did not conflict with the power of the Central Government to regulate and develop mines under the Coal Mines Act.[356] In the context of the legislative declaration contained in Section 2 of the MMDR Act, the learned Chief Justice observed that though "on account of that declaration, the legislative field covered by Entry 23 List II may pass on to Parliament by virtue of Entry 54 List I, the competence of the State Government to enact laws for municipal administration will remain unaffected by that declaration." Significantly, the Court observed that the declaration in Section 2 of the MMDR Act does no result in the invalidation of every State legislation relating to mines and minerals.

282. The principle which emanates from **Western Coalfield Ltd** (supra) is that the legislative declaration under the MMDR Act will only affect the legislative power of the State with respect to Entry 23 of List II to the extent the Parliamentary legislation covers the subject-matter. The legislative powers of the State with

[354] (1982) 1 SCC 125
[355] "Coal Mines Act"
[356] Western Coalfields Ltd (supra) [28].

respect to other subjects under List II, including taxes on lands and buildings, will not be affected or controlled by the MMDR Act. Therefore, the legislative powers of the States to levy a tax falling under Entry 49 of List II remains unaffected.

iii. Measure of tax

283. Among its elements a tax has to provide for the charge of tax, the incidence of tax, the measure of the tax and will contain provisions in the nature of the machinery for assessment and recovery. In **Rai Ramkrishna** v. **State of Bihar**,[357] a Constitution Bench of this Court observed as follows:

> "12. […] The objects to be taxed so long as they happen to be within the legislative competence of the legislature can be taxed by the legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the legislature, […]"

284. It now a well-settled principle that the determination of the principles for assessing the amount of tax is within the legislative domain.[358] The quantification or measurement of liability is done on the basis of the procedures laid down by the competent legislature.[359] In situations where the legislature selects one method out of the many available for assessing tax, the courts should not strike down the levy on the ground that the legislature should have adopted another method unless the method is capricious, fanciful, arbitrary or clearly unjust.[360]

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[357] (1963) SCC OnLine SC 31
[358] S Kodar v. State of Kerala, (1974) 4 SCC 422 [10]
[359] Shaktikumar M Sancheti v. State of Maharashtra, (1995) 1 SCC 351 [3]
[360] Khandige Sham Bhat v. Agricultural Income Tax Officer, Kasargod, 1962 SCC OnLine SC 15 [10]

Although the liability may be quantified or measured in many ways, there is a clear distinction between the subject matter of a tax and the standard by which the amount of tax is measured.

285. The pith and substance or true nature and character of the legislation must be determined with reference to the legislative subject matter and the charging section.[361] The charging section levying a tax and defining the persons who are liable to pay the tax constitute the core of a taxing statute.[362] The distinction between the nature of tax and measure of tax can be gathered from the decision of this Court in **Sainik Motors, Jodhpur** v. **State of Rajasthan**.[363] In that case, the petitioners challenged the levy of taxes on passengers and goods by the State legislature. The charging section provided that the tax was "in respect of all passengers carried and goods transported by motor vehicles at such rate not exceeding one-eight of the value of the fare or freight." This Court held that the tax was on passengers and goods which could be traced to Entry 56 of List II of the Seventh Schedule. As regards the measure of the levy, it was held that that the measure was furnished by the amount of the fare and freight charged.

286. It is a settled position that the measure of tax is not a true test of the nature of tax.[364] The standard adopted as a measure of tax may be a relevant consideration in determining the nature of tax, but is not conclusive. In **Sir Byramjee Jeejeebhoy** v. **The Province of Bombay**,[365] the Bombay Provincial Legislature levied 'urban immovable property tax' at ten percent of the annual letting value of lands and buildings. The Bombay High Court upheld the validity

[361] Federation of Hotel & Restaurant Association of India v. Union of India, (1989) 3 SCC 634 [37]
[362] B Shama Rao v. Union Territory of Pondicherry, 1967 SCC OnLine SC 29
[363] (1962) 1 SCR 517
[364] R R Engineering Co. v. Zilla Parishad, Bareilly, (1980) 3 SCC 380 [16]
[365] 1942 SCC OnLine Bom 30

of the levy. Justice Broomfield observed that the power to impose taxes on lands and buildings meant the power to impose taxes on persons, owners, or occupiers as the case may be in respect of these properties. Justice Harilal Kania (as the learned Chief Justice then was) observed that the adoption of the annual letting value as the standard for fixing the tax rate did not necessarily make it a tax on income. The learned Judge further observed that the standard on which the tax is levied does not determine the nature of the tax.

287. In **Ralla Ram** v. **The Province of East Punjab**,[366] the issue that fell for consideration of the Federal Court was whether the provisions of the Punjab Urban Immoveable Property Tax Act 1940 were ultra vires the legislative powers of the Provincial Legislature. Section 3 of the legislation levied a tax on lands and buildings at a rate not exceeding twenty percent of the annual value. It was contended that the levy was in substance a tax on income since the measure adopted, that is the annual value of lands and buildings, was also used to calculate income from property. Justice Fazl Ali observed that annual value is not necessarily actual income, but only a standard by which income may be measured. The learned Judge analyzed the substance of the impugned levy to observe that the legislation used annual value merely for the purpose of determining the value of the property to be taxed. The Court observed that if a tax is levied on property, it would not be irrational to correlate it to the value of the property and to make some kind of annual value the basis of the tax without intending to tax income. The levy was held to be in pith and substance a tax on land and buildings even though the basis of the tax was similar to the one adopted to measure income.

[366] 1948 SCC OnLine FC 9

288. From the above discussion, we can derive the following principles: (i) the incidence of a tax on lands and buildings will likely be on the owner or occupier, as the case may be; (ii) the legislature may adopt a suitable measure for levying the tax on lands and buildings under Entry 49 of List II; and (iii) the measure adopted by legislature does not determine the nature of the tax.

289. In recent decades, this Court has held that there ought to be a "nexus" between the nature of tax and the measure of tax. In **Union of India** v. **Bombay Tyre International Ltd**.,[367] the issue before a three-Judge Bench of this Court was whether the value of an article for the purposes of excise duty must be determined exclusively with reference to the manufacturing cost and manufacturing profit of the manufacturer or the entire wholesale price[368] charged by the manufacturer. The assesses contended that only the measure of manufacturing cost and profit create a direct and immediate nexus between the levy and the manufacturing activity. It was further urged that the post-manufacturing expenses and profits ought to be necessarily excluded to preserve the nexus between the nature of tax and the assessment of tax. This Court traced the line of precedent on the measure of tax to observe that a broad standard of reference may be adopted for the purpose of determining the measure of the levy. It was held that any standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for the measure of the levy. In **CCE** v. **Grasim Industries Ltd**.,[369] a Constitution Bench reiterated that there must be a "reasonable nexus" between the nature of tax and

[367] (1984) 1 SCC 467 [14]
[368] The wholesale price actually charged by the manufacturer consisted of not merely the manufacturing costs and manufacturing profit but included, in addition, a whole range of expenses and an element of profit (conveniently referred to as "post-manufacturing expenses" and "post-manufacturing profit") arising between the completion of the manufacturing process and the point of sale by the manufacturer.
[369] (2018) 7 SCC 233

the measure of the levy. It was further observed that the measure cannot be controlled by the rigors of the nature of tax.

290. The discussion above indicates that the nexus between the measure and levy of tax need not be "direct and immediate". The nexus has to be "reasonable" and must have some relationship with the nature of levy. The reasonability of the nexus will largely depend upon the nature of the tax and the means available with the legislature to design the measure of the tax. Since the measure of the levy is a matter of legislative policy and convenience,[370] the reasonability of the nexus between the measure and tax has to be determined by the courts on a case-to-case basis. While doing so, the Court will bear in mind the fundamental principle that the legislature possesses a broad discretion in matters of fiscal levies.

a. Taxing mineral-bearing land

291. The tax on lands and buildings under Entry 49 of List II is often measured with respect to the income derived from the land or building sought to be taxed. The income derived from land or building is normally measured in terms of the annual value. Section 23 of the Income Tax Act provides that the annual value of property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year.[371] Thus, where a land or building is let, the valuation is based on the rent at which it is let.[372]

292. In **K T Moopil Nair** v. **State of Kerala**,[373] Chief Justice B P Sinha observed that a tax on land or land revenue is assessed on the actual or potential productivity

[370] Express Hotels (P) Ltd. v. State of Gujarat, (1989) 3 SCC 677 [25]
[371] Section 23, I T Act 1961
[372] Patel Gordhandas Hargovindas v. Municipal Commissioner, 1963 SCC OnLine SC 57 [10]
[373] 1960 SCC OnLine SC 7 [8]

of the land sought to be taxed. The decision noted that a tax has reference to the income actually made or which could have been made. Thus, the principle emanating from this decision is that a tax under Entry 49 of List II may be levied on the actual or potential productivity of the land. In **State of Kerala** v. **Haji K Kutty Naha**,[374] there was a challenge to the Kerala Buildings Act 1961 which levied tax on buildings in the state based on the floor area. This Court observed that the legislature did not take into consideration factors such as the class to which the building belonged, the nature of construction, the purpose for which it was used, its situation and capacity for profitable user and other relevant circumstances which had a bearing on matters of taxation. It was held that the statute was unconstitutional for treating dissimilar objects similarly. **Haji K Kutty Naha** (supra) recognized that a tax on lands and buildings must be measured by taking into consideration relevant factors related to the use of the lands or buildings.[375]

293. In **Spencer & Co**. (supra), the validity of a property tax assessed at 0.4 percent of the market value was challenged before this Court. It was urged that the levy of the property tax on vacant lands was unconstitutional because it was levied without any relation to the actual or potential income of the land. The Constitution Bench rejected the contention on the grounds that the market value of the land always bears a "definite relationship" to the actual or potential income being derived or derivable from the land.

294. The measure for taxing land may bear a reasonable relationship to the actual or potential productivity of land. Measures such as annual value or market value provide a proximate basis to measure the income derived from land. If the State

[374] (1969) 1 SCR 645
[375] Also *see* New Manek Chowk Spg. & Wvg. Mills v. Ahmedabad Municipality, 1967 SCC OnLine SC 116 [13]

legislature utilizes the income derived from the land as a measure to quantify a tax on land, it does not trench upon the legislative domain of Union to tax income. The income merely serves as the measure to calculate the levy of taxes on land.[376] Having looked at the general principles relating to the measure of tax on land, we now look at specific decisions pertaining to taxation of mineral-bearing land.

295. In **H R S Murthy** (supra), the validity of a land cess under the Madras District Boards Act 1920 was in issue. The cess was levied on the annual rent value of all occupied lands and the tax was measured on the basis of "two annas in the rupee of the annual rent value of all such lands in the district." In case of lands held directly from the Government, the annual rent value was defined as the assessment, lease amount, **royalty** or other sum payable to Government. Justice N Rajagopala Ayyangar, speaking for the Constitution Bench distinguished the decisions in **Hingir-Rampur** (supra) and **M A Tulloch** (supra) on the ground that the land cess: (i) was not concerned with the development of mines and minerals; (ii) was not collected for development of mining areas, but for the safety, health, convenience, and education of the inhabitants in the local area; and (iii) there was nothing in common between the impugned levy and the MMDR Act. Therefore, it was held that the operation of MMDR Act did not exclude the legislative competence of the State to levy the cess.

296. The petitioners argued in **H R S Murthy** (supra) that (i) the cess was payable only when the mining lessee paid royalty to the lessor; (ii) when no minerals were extracted, no royalty was payable; and (iii) the cess in effect was a tax on mineral rights. These contentions were rejected because: (i) the levy was in nature and

[376] Ahmedabad Municipal Corporation v. GTL Infrastructure Limited, (2017) 3 SCC 545 [19]

substance a tax on land; (ii) the levy had a remote relationship to mining and to the mineral won from the mine under a contract by which royalty was payable on the quantity of mineral extracted, which did not make it a tax on either the extraction of mineral or on the mineral rights; and (iii) the rent value of a land held under lease is calculated on the basis of the lease amount. In case of a land held under a mining lease, the rent value will include the surface rent, dead rent as well as the royalty payable by the lessee or occupier for the use of the property. The decision in **H R S Murthy** (supra) supports the position that royalty can be used as a measure to tax mineral bearing land.

297. The issue of taxing mineral bearing land under Entry 49 of List II also came up before this Court in **India Cement** (supra). To recap, in **India Cement** (supra) local cess levied by the State legislature was measured with respect to the land revenue payable to the Government. The definition of land revenue included royalty. Therefore, the issue before the seven-Judge Bench was whether the levy of cess on royalty was valid. Speaking for the majority, Justice Sabyasachi Mukharji observed that the cess was not on land but on royalty. The conclusion rested on the following reasons: (i) since royalty is income arising from land, it is not directly connected to the land; (ii) if royalty is the basis of taxation, no tax can be levied if no mining activities are carried on; and (iii) royalty cannot be used as a measure under Entry 49 of List II because it is exclusively relatable to Entry 50 of List II. Justice Mukharji held that **H R S Murthy** (supra) was “not a correct approach” to the issue. The decision in **India Cement** (supra) was followed by a three-Judge Bench in **Orissa Cement** (supra).

298. In **Orissa Cement** (supra), Section 5(1) of the Orissa Cess Act 1962 provided that the cess shall be assessed on the annual value of all lands calculated in the

manner as provided. Section 5(2) provided for the levy of cess in case of mineral bearing land thus:

> "5. (2) The rate per year at which such cess shall be levied shall be –
>
> In case of lands held for carrying on mining operations in relation to any minerals, such per centum of the annual value as the State Government may, by notification, specify from time to time in relation to such mineral;"

The "annual value" was defined in Section 7. And sub-section 3 provided that in case of lands held for carrying on mining operations, annual value shall be the royalty or as the case may be, the dead rent payable by the person carrying on mining operations to the government, or the Pit's mouth value wherever it has been determined.

299. Speaking for the three-Judge Bench, Justice S Ranganathan observed that there is a difference in principle between a tax on royalties derived from land and a tax on land measured by reference to the income derived from land. The Court observed that the levy was not measured by income derived by the assessee from land, as was the case with lands other than mineral lands, but by royalty paid in respect of the land by the assessee to the lessor. The Court relied on **India Cement** (supra) to hold that royalty cannot be used as a measure to tax mineral-bearing land:

> "33. […] But the question, what is it that is really being taxed by the legislature? So far as mineral-bearing lands are concerned, is the impact of the tax on the land or on royalties? The change in the scheme of taxation under Section 7 in 1976; the important and magnitude of the revenue by way of royalties received by the State; the charge of the

> cess as a percentage and, indeed, as multiples of the amount of royalty; and the mode and collection of the cess amount along with the royalties and as part thereof are circumstances which go to show that the legislation in this regard is with respect to royalty rather than with respect to land."

300. In **Federation of Mining Associations of Rajasthan** v. **State of Rajasthan**,[377] a three-Judge Bench relied on **India Cement** (supra) and **Orissa Cement** (supra) to declare that the State legislature did not have competence to a levy tax on mineral bearing land on the basis of the royalty derived from the land.

301. In the aftermath of the decision in **Orissa Cement** (supra), the State legislature of Orissa enacted the Orissa Rural Employment, Education and Production Act 1992 to increase the income of the State and compensate the loss faced by the exchequer. The legislation levied a cess on "all lands". Land was defined to mean "land of whatever description […] and includes all benefits to arise out of lands." In **Mahanadi Coalfields** (supra) this Court held that since 'minerals' are benefits arising out of land, the charging section imposed a tax on minerals.[378] The levy was held in substance to be on mineral rights under Entry 50 of List II. It was observed that since the MMDR Act provides for "all kinds of taxation on minerals and mineral rights," the State legislature was not competent to levy the tax under Entry 50 of List II.

302. The decisions rendered in above judgments, ranging from **India Cement** (supra) to **Mahanadi Coalfields** (supra), proceed on two premises: first, the MMDR Act, by providing for all levies with respect to taxation of minerals and mineral rights, completely excludes the legislative competence of the States to tax mineral-

[377] 1992 Supp (2) SCC 239 [5]
[378] Mahanadi Coalfield Ltd. (supra) [19]

bearing land; and second, royalty is not directly connected to land and cannot be used as a measure to tax mineral-bearing land. The first premise has been answered in the earlier segments of this judgment. The MMDR Act does not serve as a limitation on the legislative competence of the States to tax mineral rights under Entry 50 of List II. Moreover, as held in **Special Areas Development Authority** (supra), the MMDR Act does not impede the legislative competence of the States with respect to legislative entries under List II, including the power to levy taxes on mineral-bearing lands under Entry 49 of List II. The second assumption is also wrong for the reasons we will discuss in the ensuing segments.

b. Goodricke

303. Apart from income, the quantum of yield or produce of the lands may also be used to measure the amount of tax. In **Buxa Dooars Tea Co. Ltd.** v. **State of West Bengal**,[379] the levy of 'rural employment cess' on tea estates under the West Bengal Rural Employment and Production Act 1976 was challenged.[380] The measure of tax of the levy was based on the quantity of tea dispatched from the estate. The issue before a two-Judge Bench was whether the levy was in respect of tea estates or on the dispatch of tea. The Court held that the measure of the levy defined in terms of the weight of the tea dispatched from the estate had no nexus with the nature of the tax, that is, a tax on land estates. Therefore, it was held that what the legislation really contemplated was a levy on dispatches of tea.

[379] (1989) 3 SCC 211
[380] "1976 Act"

304. In view of **Buxa Dooars Tea** (supra), the State legislature enacted the West Bengal Taxation Laws (Second Amendment) Act 1989 to amend the Act of 1976. The amendment provided that the rural employment cess would be levied annually on a tea estate at a rate of twelve paise for each kilogram of green tea leaves produced at the estate. In comparison with the previous provision which measured the tax on the basis of the quantity of tea dispatched, the measure of the cess in the amended provision was the production of green leaves.

305. The amended provision was challenged before this Court in **Goodricke Group Ltd** v. **State of West Bengal**.[381] The primary issue before this Court was whether the impugned levy was a levy on lands within the meaning of Entry 49 of List II of the Seventh Schedule. Justice B P Jeevan Reddy, speaking for the three-Judge Bench, observed that the income or yield of a land or building can be taken as a measure of the tax on land and buildings. Hence, the measure of the tax based on the yield from the land was held to be valid:

> "20. […] In the case before us, the cess is no doubt calculated on the basis of the yield – for every kilogram of tea leaves produced in a tea estate, a particular cess is levied. But that is a well-accepted mode of levy of tax on land. The tax is upon the land – upon the "tea estate" which is classified as a separate category, as a separate unit, for the purpose of levy and assessment of the said cess quantified on the basis of the quantum of produce of the tea estate. It cannot be characterised as a tax on production for that reason. […]"

[381] 1995 Supp (1) SCC 707

306. In **Goodricke** (supra), the petitioners relied on **India Cement** (supra) and **Orissa Cement** (supra) to urge that there has to be a direct connection between the land and the levy. The two decisions were distinguished on the following rationale:

> "21. […] The basis of the judgment – and the ratio of the decision – in our respectful opinion is that it was case where the tax was measured not with reference to or on the basis of the income or yield of the land but with reference to the amount of royalty payable by the lessee to his lessor. It was for this reason that the tax was held to be not upon the land. Royalty is a matter of agreement between the lessor and the lessee; it may also be determined by a statutory provision. But royalty is not a produce of the land; royalty is not the income of the land nor is the royalty the yield of the land – and that is the distinction."

307. It is important to note the above observation to the effect that royalty is not the produce, income, or yield of the land. Royalty is paid by a lessee to the lessor as consideration for the exercise of mineral rights. However, does this preclude the State legislature from using royalty as a measure of taxes on mineral-bearing land? We will deal with this issue in greater detail in a later part of the judgment.

308. Another argument which was addressed in **Goodricke** (supra) was that no land cess can be levied if there is no yield from the tea estate. Justice Jeevan Reddy negatived this contention by observing that a tea estate will not yield produce if it is not properly tended and nurtured. However, an ordinary prudent owner or occupier of a tea estate would take care to properly nurture of the estate. When tax is measured on the basis of the quantum of production, there is a probability that the tax collected would vary depending upon the amount produced. However, the learned Judge observed that uniformity of taxation is not an essential condition. **Goodricke** (supra) adopted the standard of an ordinary prudent person to infer that the tea estate will generally be properly nurtured.

When the yield from land is used as a measure of the tax on land, the tax is essentially assessed on the actual or potential productivity of the land. The majority in **Kesoram** (supra) approved **Goodricke** (supra). We will deal with the relevance of the reasoning in **Goodricke** (supra) in the context of mineral-bearing land in the following segment.

309. The other issue in **Goodricke** (supra) was the effect of the declaration in Section 2 of the Tea Act 1953 on the competence of the State legislature to levy the land cess. Parliament had enacted the Tea Act in pursuance of Entry 52 of List I of the Seventh Schedule. Section 2 declares that the Union is taking under its control the tea industry in the public interest. Section 25 imposes a duty of excise on all tea produced in India at a rate not exceeding fifty paise per kilogram as the Central Government may notify.[382] The proviso to Section 25(1) empowers the Central Government to prescribe different rates of cess for different varieties or grades of tea. The issue was whether the levy under Section 25 (which is measured on the basis of the quantum of tea produced) denuded the State legislature of the competence to impose a cess on land adopting the same measure.

310. The Court observed that both the levies are different – while excise duty is on the produce of the land, land cess is a tax on land. Section 25 of the Tea Act

[382] Section 25, Tea Act 1953. [It reads:
"25. Imposition of cess on tea produced in India – (1) There shall be levied and collected as a cess for the purposes of this Act a duty of excise on all tea produced in India at such rate not exceeding fifty paise per kilogram as the Central Government may, by notification in the Official Gazette, fix:
Provided that different rates may be fixed for different varieties or grades of tea having regard to the location of, and the climatic conditions prevailing in, the tea estates or garden producing such varieties or grades of tea and any other circumstances applicable to such production.
(2) The duty of excise levied under sub-section (1) shall be in addition to the duty of excise leviable on tea under the Central Excises and Salt Act, 1944 (1 of 1944), or any other law for the time being in force.
(3) The provisions of the Central Excises and Salt Act, 1944 (1 of 1944), and the rules made thereunder, including those relating to refund and exemption from duty, shall, so far so may be, apply in relation to the levy and collection of the duty of excise under this section as they apply in relation to the levy and collection of the duty of excise on tea under the said Act."]

enacted by Parliament was held not to deprive the State legislature of its power to levy a tax on lands comprised in a tea estate. The declaration in Section 2 of the Tea Act was held not to affect the legislative competence of the State legislature to levy land cess since it did not seek to control the cultivation of tea but sought to tax tea estates. The land cess was construed not to be on the tea industry, but a cess on land comprised in tea estates.

311. The decision indicates that the field reserved to the States under Entry 49 of List II is to impose a tax on land as a unit, without seeking to control the activity or use taking place on the land which is taxed. Similarly, a tax on mineral-bearing land is a tax on the land as a unit; it does not seek to control the mining activity which takes place on the land. Therefore, there is no conflict between the taxing field of the States under Entry 49 of List II to levy a on tax mineral-bearing land and the power of Union to regulate mines and mineral development under the legislative head of Entry 54 of List I.

iv. Measure of tax on mineral-bearing land

a. Decoupling of minerals from land

312. The respondents contend that the value of minerals cannot be used as a measure of tax on land because minerals are effectively decoupled from mineral-bearing lands by land reform legislation enacted by the States. It was submitted that the decoupling occurred when the minerals were legally vested in the State. Consequently, it was submitted that since the right to minerals vests with the State, the value of minerals cannot be used as a measure to tax land. Another interesting point of submission on behalf of the respondents was that when the State transfers the mineral rights to the lessee under a mining lease, the lessee

acquires the right to the minerals only upon their extraction and payment of royalty.

313. The petitioners rebut the above submissions of the respondents by arguing that there is no provision under the MMDR Act providing for notional segregation of minerals from land. It was contended that the land and minerals remain legally and naturally intertwined until the minerals are extracted from the land in exercise of mineral rights. The decoupling occurs only when a lessee exercises their mining rights to work the mines and win the sub-soil minerals. Moreover, it was submitted that under a mining lease, the lessee is granted a lease of the demised area along with the mineral rights. The logical corollary to the petitioners' argument is that the lessee acquires the rights to the minerals at the signing of the mining lease and therefore, the value of minerals can be validly used as a measure for taxing mineral bearing land.

314. In view of the above submissions, the first issue that we need to address is whether a mining lease also comprises a lease of land along with the mineral rights. Section 3(ac) of the MMDR Act defines "leased area" to mean the area specified in the mining lease within which the mining operations can be undertaken and includes the non-mineralised area required and approved for activities falling under the definition of "mine". There are other provisions under the MMDR Act which also deal with mineral bearing land. Section 6 prescribes the maximum area with respect to which a mineral concession may be granted. Thus, determination and ascertainment of land area is the first step towards the grant of a mineral concession.[383] Section 9 fixes the rate of royalty in respect of

[383] See Kaviraj Basudevanand v. Mahant Harihar Gir, (1974) 2 SCC 514 [9]. [This Court held that the mining lease will have to conform to the provisions of Section 6 of the MMDR Act regarding the maximum area for which the mining leave will have effect.]

any mineral removed or consumed by the lessee or their agent from the leased area. Section 9-A envisages the payment of dead rent “for all the areas included in the instrument of lease.” Thus, dead rent is relatable to the area specified in the mining lease. Section 11(10) requires the holder of a composite licence to submit a report to the State Government specifying the area required for mining lease and the State Government shall grant mining lease for such area. The above provisions indicate that the leased area forms an integral part of a mining lease. However, the position becomes clearer when we look at the provisions of the Mineral Concession Rules.

315. Rule 31 of the Mineral Concession Rules requires a mining lease to be executed in terms of Form K or in a form as near thereto as circumstances of each case may require. The preamble to Form K grants and demises unto the lessee all “those the mines beds/veins seams” with respect to the specified mineral situated lying and being in or under the lands referred to in Part I. Part I details the area of the lease and its description. The mining lease makes it evident that the demise is for the minerals and not the area of land in which the minerals are found. There may arise situations where the lands may be owned by private individuals, but the minerals are vested in the State. To remedy such situations, Rule 72 of the Mineral Concession Rules mandates the holder of a mining lease to pay annual compensation to the occupier of the surface rights. The provision states that in case of agricultural land, the amount of annual compensation shall be worked out on the basis of the average annual net income from the cultivation of similar land for the previous three years. In case of non-agricultural land, the amount of annual compensation shall be worked out on the basis of the average annual letting value.

316. Under the scheme of the MMDR Act, the mining lease holder is required to obtain the surface rights where the land is not owned by them. For instance, Rule 22 of the Mineral Concession Rules deals with the applications for grant of mining leases. Rule 22(3)(h) requires the applicant for grant of mineral rights to submit a statement in writing stating that they have obtained surface rights over the area or have obtained the consent of the owner for starting mining operations in case the lessee is not the owner.[384] A similar pre-condition has been laid down with respect to the grant of a prospecting licence.[385] Further, Rule 27(1)(t) requires the mining lessee to pay to the occupier of the surface of the land such compensation as may become payable under the Mineral Concession Rules. Importantly, Rule 36 states that the boundaries of the area covered by a mining lease shall run vertically downwards below the surface towards the centre of the earth. Thus, the sub-soil activities are spatially restricted by the surface area.

317. The government can acquire surface rights for public purposes, including mining, and lease it to the lessee. The acquisition of surface rights by the Government takes place in accordance with the land acquisition legislations. For example, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 empowers the Government to acquire land in any area for any public purpose.[386] In case the owner is a private person, the surface right could be granted to the mining lessee by virtue of a separate lease deed.

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[384] Rule 22(3)(h), Mineral Concession Rules 1960. It reads: "(h) a statement in writing that the applicant has, where the land is not owned by him, obtained surface rights over the area or has obtained the consent of the owner for starting mining operation.
Provided further that the consent of the owner for starting mining operations in the area or part thereof may be furnished after the execution of the lease deed but before entry into the said area;
Provided also that no further consent would be required in the case of renewal where consent has already been obtained during grant of the lease."

[385] Rule 9(2)(g), Mineral Concession Rules 1960.

[386] See Sections 11 and 12, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.

The rights to the surface will generally be concomitant with the rights to the minerals.

318. The issue of severance between surface rights and mineral rights came up before a Constitution Bench of this Court in **Burrakur Coal Co. Ltd**. v. **Union of India**[387] in the context of the Coal Bearing Areas (Acquisition and Development) Act 1957.[388] The Coal Bearing Areas Act was enacted by Parliament to establish public control over the coal mining industry and its development by providing for the acquisition by the State of unworked land containing or likely to contain coal deposits or of rights in or over such land. Section 4 allows the Central Government to issue a preliminary notification giving notice of its intention to prospect for coal with respect to a particular land in any locality. Once the notification is issued under Section 4, any prospecting licence or mining lease with respect to that land ceases to have effect. Sections 7 and 9 empower the Central Government to acquire whole or part of any lands in which coal is obtainable. On the publication of the declaration of acquisition under Section 9, the land or the rights in or over the land vest absolutely in the Central Government free from all encumbrances.[389] Section 13 pertains to the grant of compensation for cessation of prospecting licenses and acquisition of mining leases by the Central Government under Section 4. Thus, under the Coal Bearing Areas Act, the Central Government acquires the surface rights to the coal bearing lands.

319. In **Burrakur Coal** (supra), the petitioners challenged a notification issued by the Central Government under Section 4 of the Coal Bearing Area Act for violation

[387] AIR 1961 SC 954
[388] "Coal Bearing Areas Act"
[389] Section 10, Coal Bearing Areas (Acquisition and Development) Act 1957

of fundamental rights. The main thrust of the petitioner's submissions was that a notification under Section 4 cannot be issued with respect to mines which have been 'worked' by the lessees. The petitioners also contended that since Section 13 does not provide for compensation for minerals lying underground, Parliament could not have enacted the law for acquiring the mines which are being worked or already worked in the past. Speaking for the Bench, Justice J R Mudholkar addressed the petitioner's contentions as follows:

> "17. […] According to Mr. Das if we have understood him right, when a person has acquired land either as an owner or as a lessee carrying with it the right to win minerals and has opened in that land mines which he worked for sometime, there takes place a severance between the right to the surface and right to the minerals and that consequently such person will thereafter be holding the minerals as a separate tenement, that is, something apart from the land demised and this separate tenement cannot be acquired under the terms of the present Act or, if it can be so acquired, it has to be specifically compensated for. Reference to the several provisions of the Act and in particular to those of Section 13 indicates, according to the learned counsel, the limited scope of the Act. **It is difficult to appreciate the contention that merely because the owner or lessee of a land had opened mines on that land, a severance is effected between the surface and the underground minerals. It may be that a trespasser by adverse possession for the statutory period can acquire rights to underground minerals. It may also be that if that happens the surface rights would become severed from the mineral rights as a result of which the minerals underground would form a separate tenements. It is, however, difficult to see how the owner or the lessee of land who has right to win minerals can effect such severance between the mineral rights and surface rights by opening and operating the mines of that land. For, even while he is carrying on mining operations he continues to enjoy the surface rights also. We cannot, therefore, accept the contention that there was any severance of the**

mineral rights and surface rights in either of these two cases."

(emphasis added)

320. A mining lease contemplated under the MMDR Act relates to the mining rights and mineral rights. It does not grant surface rights to the mining lessee. However, surface rights are essential to begin any mining operations. In fact, obtaining of the surface rights by a mining lessee over the area where mining operations will be conducted is a prerequisite condition for grant of both a prospecting licence as well as a mining lease. The lessee requires access to the surface rights to effectively exercise their mining rights and privileges enumerated under Part II of Form K. Moreover, as held in **Burrakur Coal** (supra), the mining lessee requires enjoyment of surface rights to effectively carry out the mining operations. There cannot be any severance between the two during the continuance of the mining operations.

321. The more important question is when do the mineral rights transfer to the lessee? Since Independence, State legislatures have enacted a spate of land reform laws vesting the right to mines and minerals in the State Government.[390] Through the instrument of a mining lease, the State Government transfers its rights in the sub-soil minerals to the lessee for the period of the lease. The nature of the leasehold rights accruing to the lessee can be determined on the basis of the Transfer of Property Act. A right to carry on mining operations in land to extract a specified mineral and to remove and appropriate that mineral is a "right to enjoy immoveable property" within the meaning of Section 105 of the Transfer of

[390] Gujarat Land Revenue Code 1879, Section 69A; Madhya Pradesh Land Revenue Code 1959, Section 247; Chhattisgarh Land Revenue Code 1959, Section 247, Goa, Daman and Diu Land Revenue Code 1968, Section 36.

Property Act.[391] In case of a mining lease, the property can be enjoyed by working the mine as indicated in Section 108 of the Transfer of Property Act.

322. Section 110 of the Transfer of Property of Act deals with the exclusion of the day on which the term of the lease commences. It provides that where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. It further provides that in situations where the lease does not mention the day of commencement, the time limited by the lease commences from the day of the making of the lease. The model mining lease under Form K specifies the day from which the mineral rights are granted and demised unto the lessee. Thus, the transfer of right to enjoy the property under a mining lease commences from the specified day of commencement. Resultantly, the rights and interests in the minerals specified in the mining lease are transferred from the State Government to the lessee on the specified day of the commencement of the lease deed.

323. Once the interest in the minerals is transferred under a mining lease, the lessee acquires the right to work the mine and win the minerals. It is through this process of working the mine and winning of minerals that minerals are extracted or obtained from the earth irrespective of whether such activity is carried out on the surface or in the bowels of the earth.[392] Although the title to minerals vests in the State Government, the mining lease transfers the interest in the mineral from the State Government to the mining lessee. During the whole process, the minerals continue to remain embedded in the earth, either over or above. Thus, there is no decoupling of minerals from land. It is well established that tax on land can also be imposed on an occupier. When a mining lease is granted, the lease

[391] Sri Tarkeshwar Sio Thakur Jiu (supra) [37]
[392] Sri Tarkeshwar Sio Thakur Jiu (supra) [15]

holder necessarily has to occupy the surface rights of the area specified in the lease. Resultantly, the leaseholder has rights to both the minerals and surface during the subsistence of the mining lease.

324. We do not agree with the respondent's submission that the mineral rights are transferred from the State to the mining lessee only upon the extraction of minerals. Once the lease deed is signed, the interest in the minerals is transferred from the State Government (in case the minerals vest in the State Government) to the lessee. The interest of the lessee in the minerals continues until the determination of the lease deed. It is only upon the exercise of mineral rights by the lessee, that is removal or consumption of minerals, that the lessee is required to pay royalty. Thus, the transfer of interest in the minerals is distinct from the exercise of the mineral rights. In view of the above discussion, it is clear that minerals are "decoupled" from land only upon the exercise of mineral rights by the lessee.

b. Minerals as measure of tax on land

325. Entry 49 of List II enumerates taxes on lands and buildings in the legislative field of the State legislatures. As mentioned in the above segments, the word "lands" is a comprehensive term which includes mineral bearing land. If the State can tax mineral bearing land, the concomitant issue pertains to the measure of the tax. One of the arguments which directly or indirectly flows from the respondents is that since royalty is measured on the basis of the quantity of minerals produced or mineral value, the State cannot be allowed to use minerals produced as the measure to tax mineral-bearing land.

326. To understand the practice of valuation of mineral-bearing land, a reference to the English law is useful. In England, a rate has been historically assessed on the occupier of lands for beneficial occupation. Rating is a tax on the occupation of lands and is levied on the basis of the value of the occupation of the hereditament (the single unit of rateable property).[393] The standard or the measure is the means of finding out the value of the occupation for the purposes of assessment.[394] The rateable value of hereditaments is statutorily determined as the amount equal to the rent at which it is estimated that the hereditament might reasonably be expected to let from year to year. The object is to ascertain the rent which might reasonably be expected for the hereditament on a statutory basis.[395] In case of mineral hereditaments, royalty payment constitutes evidence of rental value for rating purposes.[396] Mineral royalties are regarded as rents for the purpose of assessing mineral hereditaments.

327. Royalty is not a tax but a statutory consideration payable by the lessee to the lessor for the exercise of mineral rights. The specification of rates of royalty with respect to major minerals under the MMDR Act limits the powers of the State Government in terms of Entry 54 of List I read with Entry 23 of List II. However, Entry 49 of List II is not restricted or subjected in its operation by any other entry – the State legislature can tax any lands including mineral bearing lands. If the Constitution does not impose any express limitations on the taxing powers of the State to tax mineral bearing lands, it would not be constitutionally permissible for the Court to read in an implied restriction. The power of taxation is plenary and exclusive. The division of legislative powers between the Union and States

[393] Peter Brown and Patrick Bond, 'Rating Valuation: Principles and Practice) (3rd edn, Elsevier) 13.
[394] Assessment Committee of the Metropolitan Borough of Poplar v. Roberts, [1922] 2 AC 93
[395] Peter Brown and Patrick Bond (supra n 393) 284.
[396] Section 5, Non-Domestic Rating (Miscellaneous Provisions) Regulations 1989.

represents the essence of fiscal federalism. Reading any implied limitation or restriction on the legislative power of the State legislature to tax mineral bearing land under Entry 49 of List II will be against the grain of the Constitution.

328. After the decision in **Goodricke** (supra) in particular, it is now well established that the income or yield of land can be adopted as a measure of tax. The assessment of tax on land depends upon the actual or potential productivity of the land sought to be taxed. In case of tea estates, the productivity is measured on the basis of the quantity of tea leaves produced. As a corollary, the productivity of mineral bearing land can be measured on the basis of the minerals produced.[397] In **Goodricke** (supra), this Court observed that royalty is a matter of agreement between the lessor and the lessee or determined by a statutory provision. Further, it was observed that "royalty is not the produce of the land; royalty is not the income of the land nor is the royalty yield of the land." In this segment, we analyze whether royalty could be used as a measure to tax mineral-bearing land.

329. The rates of royalty are generally calculated on per tonnage basis or ad valorem basis on the basis of the laid down formula. In case of the former, royalty is determined on the basis of the following formula –

Royalty = quantity of mineral removed or dispatched * specified rate of royalty in rupees

[397] Union of India v. Pramod Gupta, (2005) 12 SCC 1 [75]. [In this case, Justice S B Sinha, writing for a two-Judge Bench, observed that "[m]ineral bearing land, thus, contain mineral as the product of nature."]

The formula for calculation of royalty on minerals on ad valorem basis is as follows:

Royalty = sale price of mineral (grade wise and State-wise) published by the Indian Bureau of Mines * Rate of royalty (in percentage) * total quantity of mineral grade produced or dispatched

330. The above formula shows that royalty is calculated on the basis of the quantity of minerals extracted or removed.[398] The yield from mineral bearing land is nothing but the quantity of mineral produced. Royalty is *per se* not the yield from a mineral bearing land, but the yield (mineral produced) is the important factor in determination of the rate of royalty. Moreover, royalty can be considered as an income if it is paid to a private landowner.[399] In case the minerals are vested in the State, the royalty is paid to the State Government, and hence assumes the form of non-tax revenues. Therefore, royalty is relatable to the yield of the mineral-bearing land as well as the income in case the minerals vest in a private person. To this extent, we clarify the reasoning of this Court in **Goodricke** (supra).

331. In **India Cement** (supra), it was held that royalty cannot be a measure for tax on land because it is indirectly connected with land.[400] In our opinion, this holding is not correct in view of the fact that royalty is directly relatable to the yield of the mineral bearing land. Royalty is calculated on the basis of the output of the mineral produced. Since the yield of the land is directly connected to the land, a rate fixed on the basis of the yield cannot be said to be indirectly connected to

[398] Indian Bureau of Mines, 'Mineral Royalties' (2011) 4.
[399] H M Seervai, Constitutional Law of India, Volume 3 (4th edn.) 2468.
[400] India Cement (supra) [23]

the land. Similarly, **Orissa Cement** (supra) held that since royalty is not an income derived from land, it cannot be used to measure the tax on land.[401] Royalty may not be an income in all aspects, but it is directly relatable to the yield of the land. The yield can be adopted as the basis for levy of tax on land. The decision in **Orissa Cement** (supra) has followed a narrow approach to the concept of royalty. Therefore, we hold that the yield of a mineral bearing land, either in terms of the quantity of mineral produced, or in terms of the rates of royalty, can be used as a measure to tax the mineral bearing land under Entry 49 of List II.

332. The next submission of the respondents is that a tax measured on the basis of the minerals produced or mineral value is covered by Entry 50 of List II and not under Entry 49 of List II. It is a settled principle of law that Entry 49 of List II contemplates a levy of tax on lands and buildings as units. Once the legislature classifies a particular category of land as a separate unit for the purposes of the levy of tax on land, the yield comprised in such unit can validly constitute the basis for the levy and assessment.[402] Resultantly, if the State legislature has classified mineral bearing land as a separate unit for the purposes of levy of tax on land, the minerals produced or any other measure directly connected to the minerals produced can be used as a measure to quantify the tax.

333. In **Assistant Commissioner of Urban Land Tax** v. **Buckingham and Carnatic Co. Ltd**,[403] the Madras Urban Land Tax Act 1966 levied a tax on urban land on the basis of the market value of the land. One of the contentions of the assesses was that the legislation was in substance a tax on the capital value of the assets

[401] Orissa Cement (supra) [30]
[402] Goodricke Group Ltd. (supra) [32]
[403] (1969) 2 SCC 55

under Entry 86 of List I and hence beyond the legislative competence of the State legislature. The Court held that Entry 86 of List I does not prohibit the State legislature from taxing capital value of lands and buildings under Entry 49 of List II. It was further held that: (i) the tax under Entry 86 of List I proceeds on the principle of aggregation of assets and is imposed on the totality of the value of all assets bearing no definable relationship to lands and buildings which may or may not form a component of the total assets of the assessee; and (ii) Entry 49 of List II contemplates a levy which is a tax directly on lands and buildings as units. The Court held:

> "4. […] For the purpose of levying tax under Entry 49, List II the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not make the fields of legislation under two entries overlapping. The two taxes are entirely different in their basic concept and fall on different subject-matters."

Thus, a measure which is relatable to another taxing entry in List I or List II can also be used as a measure to tax lands under Entry 49 of List II, provided there is a reasonable nexus between the measure and the levy. The mere fact that the legislature uses mineral rights or mineral produced as a measure of taxation under Entry 49 of List II does not give such tax the color of taxes on mineral rights or mineral produced. It still continues to remain a tax on mineral-bearing land as a unit.

334. It is true that the rate of royalties will vary with the output of minerals. In such a situation, it might be argued, there is a possibility that if royalty is a measure of tax on land, no tax can be levied if no mining activities is carried on. As discussed

in the above segments, royalty is directly related to the mineral output and is an indicator of the actual productivity of a mineral bearing land. It is ordinarily expected that a prudent holder of a mining lease will exercise their mineral rights to the fullest extend in accordance with the terms and conditions of the mining lease. The machinery selected by the legislature to assess the tax cannot determine the true nature of the tax. The issue of selecting the appropriate measure of tax is a matter of fiscal policy.[404] Sometimes, the method selected by the legislature to measure a tax may be imperfect, but that does not imply unconstitutionality.

335. It was further contended that since Entry 50 of List II is a special entry, the use of minerals produced or mineral value as a measure of tax under Entry 49 of List II will lead to overlap between the two entries. The issue for consideration is whether the limitations imposed by Parliament in a law relating to mineral development, which bears on the legislative field under Entry 50 of List II would also impact the field reserved to the State legislature under Entry 49 of List II.

336. The respondents have relied on a three-Judge Bench decision in **State of Bihar** v. **Indian Aluminium Company**,[405] to strongly contend that a tax on lands cannot include tax on removal or excavation of land. In that case, the State Government levied a tax called the Bihar Restoration and Improvement of Degraded Forest Land Tax on excavational activities. The amount of tax was relatable to the extent to which the land was 'voided'. The impugned legislation defined "void" to mean any area of leftover forest land from where soil, mineral or rock or anything being fastened with the earth has been removed for non-forest purpose, transported or dumped at a place other than the place from where

[404] P M Ashwathanarayana Setty v. State of Karnataka, 1989 Supp (1) SCC 696 [84]
[405] (1997) 8 SCC 360

the same was taken. This Court relied on **Orissa Cement** (supra) and **Mahanadi Coalfields** (supra) to hold that the tax was outside the ambit of Entry 49 of List II. It was held:

> "15. Applying the ratio of the aforesaid decisions to the facts of the present case we find that the position is no different. Entry 49 of List II has been interpreted to mean the levy of tax directly on land as a unit. The land has been regarded as meaning the land on surface and also below the surface. **Therefore, in order that a tax can be levied under Entry 49 of List II it is essential that 'land' as a unit must exist on which the tax is imposed. In the instant case the tax is, in effect, being levied not on land but on the absence of land.** The levy is on the void which has been created. The forest land which is being used is not subjected to tax. The Schedule to the Act itself shows that the assessment of tax is on excavation and use of forest land for non-forest purpose. The Schedule further says that the rate of tax to be levied, in the case of mining or excavation varies with the extent of the land voided. In case the land has been rehabilitated no tax is to be levied. **The tax is levied in effect on the activity of the removal or excavation of land. In other words the tax is squarely on the activity of mining because it is under the mining lease that mechanized and non-mechanized excavation as well as underground excavation takes place and this is what is referred to in column 1 of the Schedule to the Act while determining the amount of tax leviable. Levy in other words is on the activity of removal of earth and not on the land itself and is, therefore, outside the ambit of Entry 49 of List II**."
>
> (emphasis added)

337. The tax in **Indian Aluminium Company** (supra), was held not to be a tax on land, but a tax on the absence of land. It was further observed that since the levy was not a tax on land, **Goodricke** (supra) had no application because in that case the levy was on tea estates as a unit.

338. The true nature of a tax has to be gathered from the charging section. In **Indian Aluminium Company** (supra), the charging section provided that the tax was levied "for mechanical and biological reclamation of forest land and for rehabilitation so that the land is reclaimed as far as possible." Importantly, the provision further provided that "every occupier responsible for creating void/ voids by indulging in any developmental activities including mining" shall be liable to pay the tax. The charging section clearly indicates that the object of the levy was to tax the activity by the occupier of "creating void/voids". The measure of the tax, therefore, was based on the area of the land voided. It was not a tax on lands as a unit. Thus, this Court held that the levy was not a tax on land under Entry 49 of List II, but rather on the activity of extraction. However, this decision is not relevant for our purposes because the true nature of the levy in that case did not pertain to taxes on lands.

339. Both the entries 49 and 50 of List II deal with distinct subject matters. Both the entries operate in different fields without any overlap. The fact that mineral value or mineral produced is used as a measure under Entry 50 of List II does not preclude the legislature from using the same measure for taxing mineral bearing land under Entry 49 of List II. As Justice Ayyangar observed in **H R S Murthy** (supra), using royalty as a measure of tax on lands "does not stamp it as a tax on either the extraction of the mineral or on the mineral right." The doctrine of *generalia specialibus non derogant* has no application in the instant case because Entries 49 and 50 of List II operate in different fields. Though Parliament can limit the taxing field entrusted to the State under Entry 50 of List II through a law relating to mineral development, the limitation operates on the field of taxing mineral rights. Such a limitation cannot operate on Entry 49 of List II because

there is no specific stipulation under the Constitution to that effect. The nature of taxes under both the entries, that is Entries 49 and 50 of List II, are distinct. The Constitution envisages the imposition of limitations by Parliament on the legislative field of the state of taxes on mineral rights, and not taxes on lands.

340. There may arise situations where two taxes levied under different legislative entries may be based on the same measure. In **Federation of Hotel & Restaurant Association of India** v. **Union of India**,[406] it was held that the fact that two different taxes use the same measure does not make them identical.

341. In view of the above discussion, we conclude that mineral value or mineral produce could be used as a measure of the tax on land under Entry 49 of List II. The fact that Entry 50 of List II pertains to taxes on mineral rights would not preclude the State legislature to use the measure of mineral value or mineral produce under Entry 49 of List II. The State legislature has legislative discretion to determine the appropriate measure for the purposes of quantifying taxes, so long as there is a reasonable nexus between the measure and the nature of the tax. The measure does not determine the nature of the tax. The words “lands” under Entry 49 of List II includes mineral bearing land. The mineral produce is the yield from a mineral bearing land. Since royalty is determined on the basis of the mineral produce, royalty can also be used as a measure to determine the tax on royalty. The fact that the State legislature uses mineral produce or royalty as a measure does not overlap with Entry 50 of List II.

[406] (1989) 3 SCC 634

J. Conclusions

342. In view of the above discussion, we answer the questions formulated in the reference in terms of the following conclusions:

a. Royalty is not a tax. Royalty is a contractual consideration paid by the mining lessee to the lessor for enjoyment of mineral rights. The liability to pay royalty arises out of the contractual conditions of the mining lease. The payments made to the Government cannot be deemed to be a tax merely because the statute provides for their recovery as arrears;

b. Entry 50 of List II does not constitute an exception to the position of law laid down in **M P V Sundararamier** (supra). The legislative power to tax mineral rights vests with the State legislatures. Parliament does not have legislative competence to tax mineral rights under Entry 54 of List I, it being a general entry. Since the power to tax mineral rights is enumerated in Entry 50 of List II, Parliament cannot use its residuary powers with respect to that subject-matter;

c. Entry 50 of List II envisages that Parliament can impose “any limitations” on the legislative field created by that entry under a law relating to mineral development. The MMDR Act as it stands has not imposed any limitations as envisaged in Entry 50 of List II;

d. The scope of the expression “any limitations” under Entry 50 of List II is wide enough to include the imposition of restrictions, conditions, principles, as well as a prohibition;

e. The State legislatures have legislative competence under Article 246 read with Entry 49 of List II to tax lands which comprise of mines and quarries. Mineral-bearing land falls within the description of "lands" under Entry 49 of List II;

f. The yield of mineral bearing land, in terms of the quantity of mineral produced or the royalty, can be used as a measure to tax the land under Entry 49 of List II. The decision in **Goodricke** (supra) is clarified to this extent;

g. Entries 49 and 50 of List II deal with distinct subject matters and operate in different fields. Mineral value or mineral produce can be used as a measure to impose a tax on lands under Entry 49 of List II;

h. The "limitations" imposed by Parliament in a law relating to mineral development with respect to Entry 50 of List II do not operate on Entry 49 of List II because there is no specific stipulation under the Constitution to that effect; and

i. The decisions in **India Cement** (supra), **Orissa Cement** (supra), **Federation of Mining Associations of Rajasthan** (supra), **Mahalaxmi Fabric Mills** (supra), **Saurashtra Cement** (supra), **Mahanadi Coalfields** (supra), and **P Kannadasan** (supra) are overruled to the extent of the observations made in the present case.

343. The Registry is directed to take administrative directions from Hon'ble Chief Justice of India for placing the matters before an appropriate Bench.

.....CJI
[Dr Dhananjaya Y Chandrachud]

.....J
[Hrishikesh Roy]

.....J
[Abhay S Oka]

.....J
[J B Pardiwala]

.....J
[Manoj Misra]

.....J
[Ujjal Bhuyan]

.....J
[Satish Chandra Sharma]

.....J
[Augustine George Masih]

New Delhi;
July 25, 2024

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NOS.4056-4064 OF 1999

MINERAL AREA DEVELOPMENT AUTHORITY & ANOTHER ...APPELLANTS

VERSUS

STEEL AUTHORITY OF INDIA & ANOTHER ETC. ...RESPONDENTS

WITH

CIVIL APPEAL NO.7937 OF 2019

WRIT PETITION (CIVIL) NO.512 OF 2018

CIVIL APPEAL NO.7938 OF 2019

CIVIL APPEAL NO.7936 OF 2019

CIVIL APPEAL NO.6221 OF 2008

CIVIL APPEAL NO.5250 OF 2019

WRIT PETITION (CIVIL) NO.729 OF 2019

WRIT PETITION (CIVIL) NO.1029 OF 2019

SPECIAL LEAVE PETITION (CIVIL) NO.16028 OF 2021

CIVIL APPEAL NO.4286 OF 2023

CIVIL APPEAL NO.5682 OF 2007

CIVIL APPEAL NO.1295 OF 2008

CIVIL APPEAL NO.874 OF 2013

CIVIL APPEAL NOS.8269-8271 OF 2013

CIVIL APPEAL NO.8268 OF 2013

CIVIL APPEAL NO.8267 OF 2013

CIVIL APPEAL NO.6135 OF 2013

CIVIL APPEAL NO.8272 OF 2013

CIVIL APPEAL NO.9458 OF 2013

SPECIAL LEAVE PETITION (CIVIL) NO.18600 OF 2013

CIVIL APPEAL NO.4332 OF 2013

CIVIL APPEAL NO.5329 OF 2002

CIVIL APPEAL NO.4993 OF 2006

CIVIL APPEAL NO.8273 OF 2013

CIVIL APPEAL NO.8274 OF 2013

CIVIL APPEAL NO.3869 OF 2014

CIVIL APPEAL NO.2632 OF 2013

CIVIL APPEAL NO.14685 OF 2015

CIVIL APPEAL NO.6784 OF 2014

WRIT PETITION (CIVIL) NO.376 OF 2015

CIVIL APPEAL NO.10082 OF 2016

CIVIL APPEAL NO.886 OF 2017

CIVIL APPEAL NO.4588 OF 2017

CIVIL APPEAL NO.205 OF 2017

CIVIL APPEAL NOS.5728-5729 OF 2018

CIVIL APPEAL NOS.4722-4724 OF 1999

CIVIL APPEAL NO.5333 OF 2002

CIVIL APPEAL NOS.5335-5336 OF 2002

CIVIL APPEAL NO.5332 OF 2002

CIVIL APPEAL NO.1352 OF 2005

CIVIL APPEAL NO.1883 OF 2006

TRANSFER PETITION (CIVIL) NO.722 OF 2006

CIVIL APPEAL NO.4745 OF 2006

CIVIL APPEAL NO.4990 OF 2006

CIVIL APPEAL NO.5599 OF 2006

CIVIL APPEAL NO.5649 OF 2006

CIVIL APPEAL NO.378 OF 2007

CIVIL APPEAL NO.665 OF 2007

CIVIL APPEAL NO.1180 OF 2007

TRANSFER PETITION (CIVIL) NO.481 OF 2007

TRANSFER PETITION (CIVIL) NO.906 OF 2007

CIVIL APPEAL NO.3401 OF 2008

CIVIL APPEAL NO.3400 OF 2008

CIVIL APPEAL NO.3402 OF 2008

CIVIL APPEAL NO.8311 OF 2011

CIVIL APPEAL NO.4293 OF 2012

CIVIL APPEAL NO.2055 OF 2009

TRANSFER PETITION (CIVIL) NO.951 OF 2006

CIVIL APPEAL NO.4991 OF 2006

CIVIL APPEAL NO.4992 OF 2006

SPECIAL LEAVE PETITION (CIVIL) NO.763 OF 2007

SPECIAL LEAVE PETITION (CIVIL) NO.15900 OF 2007

CIVIL APPEAL NO.3403 OF 2008

CIVIL APPEAL NO.98 OF 2009

TRANSFER PETITION (CIVIL) NO.613 OF 2009

TRANSFER PETITION (CIVIL) NO.626 OF 2009

CIVIL APPEAL NO.4479 OF 2010

CIVIL APPEAL NO.4478 OF 2010

CIVIL APPEAL NO.3643 OF 2011

CIVIL APPEAL NOS.4710-4721 OF 1999

CIVIL APPEAL NO.2174 OF 2009

CIVIL APPEAL NO.6497 OF 2008

CIVIL APPEAL NO.6498 OF 2008

CIVIL APPEAL NO.6137 OF 2008

CIVIL APPEAL NO.7397 OF 2008

CIVIL APPEAL NO.96 OF 2009

CIVIL APPEAL NO.6499 OF 2008

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SPECIAL LEAVE PETITION (CIVIL) NO.26160 OF 2008

J U D G M E N T

NAGARATHNA, J.

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I have perused the comprehensive opinion authored by Hon'ble the Chief Justice of India Dr Dhananjaya Y Chandrachud on the questions referred to this nine-judge Bench. I respectfully dissent with the said opinion and express my reasons therefor.

1.1 The sum and substance of all the questions referred to this Bench could be crystallised to the short point for consideration, namely, whether royalty as envisaged under Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short "MMDR Act, 1957") is a tax or an exaction. At this stage itself, it must be made clear that the concept of royalty is being considered from the perspective of Section 9 of the MMDR Act, 1957 and not from any other context. My short answer is that viewed from the statutory framework of the MMDR Act, 1957 passed by the Parliament on the strength of Entry 54 – List I of the Seventh Schedule of the Constitution of India and having regard to Section 2 of the said Act, royalty is in the nature of a "tax" or an "exaction". Further, Section 9 of the MMDR Act, 1957 is a limitation within the

meaning of Entry 50 – List II of the Seventh Schedule of the Constitution and the States have no legislative competence to levy any other tax, impost or fee on the exercise of mineral rights. Entry 49 – List II is also not applicable to mineral bearing lands. Therefore, ***India Cement Limited vs. State of Tamil Nadu, (1990) 1 SCC 12 : AIR 1990 SC 85, ("India Cement")***, has been correctly decided by a seven-judge Bench of this Court and that the majority judgment in ***State of West Bengal vs. Kesoram Industries Limited, (2004) 10 SCC 201 ("Kesoram"),*** is incorrect and therefore, ought to be overruled. I propose to discuss in detail the reasons for the aforesaid view.

2. The genesis of this controversy insofar as the reference to the nine-judge Bench is concerned, emanates from the judgment of the seven-judge Bench of this Court in ***India Cement***. The said judgment authored by Sabyasachi Mukharji, J. (as His Lordship then was) held that royalty is a tax and therefore, any levy of a tax/cess on royalty is impermissible in law, having regard to the constitutional framework, particularly the relevant Entries of List I and II of the Seventh Schedule to

the Constitution of India. The said dictum of the seven-judge Bench was doubted in ***Kesoram,*** by a majority of the five-judge Bench (Sinha, J. dissenting). The majority judgment was penned by Lahoti, J. (as His Lordship then was). Consequently, the judgment of a two-judge Bench in ***State of Madhya Pradesh vs. Mahalaxmi Fabric Mills Ltd., 1995 Supp (1) SCC 642 ("Mahalaxmi Fabric Mills")*** following ***India Cement*** was overruled and it was observed that the matter required consideration by a larger Bench.

3. A similar view was expressed by a three-judge Bench in ***Mineral Area Development Authority vs. Steel Authority of India, (2011) 4 SCC 450***, ***("Mineral Area Development Authority")*** wherein this Court was of the view that the matter has to be considered by a Bench of nine Judges and hence, the following questions of law were raised:

> "1. Whether "royalty" determined under Sections 9/15(3) of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957, as amended) is in the nature of tax?
>
> 2. Can the State Legislature while levying a tax on land under List II Entry 49 of the Seventh Schedule of the Constitution adopt a measure of tax based on the value of the produce of land? If yes, then would the constitutional

position be any different insofar as the tax on land is imposed on mining land on account of List II Entry 50 and its interrelation with List I Entry 54?

3. What is the meaning of the expression "Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development" within the meaning of Schedule VII List II Entry 50 of the Constitution of India? Does the Mines and Minerals (Development and Regulation) Act, 1957 contain any provision which operates as a limitation on the field of legislation prescribed in List II Entry 50 of the Seventh Schedule of the Constitution of India? In particular, whether Section 9 of the aforementioned Act denudes or limits the scope of List II Entry 50?

4. What is the true nature of royalty/dead rent payable on minerals produced/mined/extracted from mines?

5. Whether the majority decision in *State of W.B.* v. *Kesoram Industries Ltd.* [(2004) 10 SCC 201] could be read as departing from the law laid down in the *seven-Judge Bench* decision in *India Cement Ltd.* v. *State of T.N.* [(1990) 1 SCC 12] ?

6. Whether "taxes on lands and buildings" in List II Entry 49 of the Seventh Schedule to the Constitution contemplate a tax levied directly on the land as a unit having definite relationship with the land?

7. What is the scope of the expression "taxes on mineral rights" in List II Entry 50 of the Seventh Schedule to the Constitution?

8. Whether the expression "subject to any limitations imposed by Parliament by law relating to mineral development" in List II Entry 50 refers to the subject-matter in List I Entry 54 of the Seventh Schedule to the Constitution?

9. Whether List II Entry 50 read with List I Entry 54 of the Seventh Schedule to the Constitution constitute an exception to the general scheme of entries relating to taxation being distinct from other entries in all the three

> Lists of the Seventh Schedule to the Constitution as enunciated in *M.P.V. Sundararamier & Co.* v. *State of A.P.* [AIR 1958 SC 468 : 1958 SCR 1422] [AIR p. 494 : SCR at p. 1481 (bottom)]?
>
> 10. Whether in view of the declaration under Section 2 of the Mines and Minerals (Development and Regulation) Act, 1957 made in terms of List I Entry 54 of the Seventh Schedule to the Constitution and the provisions of the said Act, the State Legislature is denuded of its power under List II Entry 23 and/or List II Entry 50?
>
> 11. What is the effect of the expression "… subject to any limitations imposed by Parliament by law relating to mineral development" on the taxing power of the State Legislature in List II Entry 50, particularly in view of its uniqueness in the sense that it is the only entry in all the entries in the three Lists (Lists I, II and III) where the taxing power of the State Legislature has been subjected to "any limitations imposed by Parliament by law relating to mineral development"?."

That is how the questions have been placed for consideration of this nine-judge Bench.

4. His Lordship, the Chief Justice of India, while holding that royalty is not a tax, has overruled the following dicta of this Court: ***(i) India Cement; (ii) Orissa Cement Limited vs. State of Orissa, 1991 Supp (1) SCC 430 ("Orissa Cement"); (iii) Mahalaxmi Fabric Mills; (iv) Saurashtra Cement & Chemicals Industries Ltd. vs. Union of India***, ***(2001) 1 SCC 91***, ***("Saurashtra Cement"),*** and ***(v) State of Orissa vs.***

Mahanadi Coalfields Ltd., 1995 Supp. (2) SCC 686 ("Mahanadi Coalfields"). While coming to the aforesaid conclusion, three significant judgments of this Court in ***Hingir-Rampur Coal Co. Ltd. vs. State of Orissa, (1961) 2 SCR 537 ("Hingir-Rampur"); State of Orissa vs. M.A. Tulloch, (1964) 4 SCR 461 ("M.A. Tulloch")*** and ***Baijnath Kedia vs. State of Bihar, (1969) 3 SCC 838 ("Baijnath Kedia")*** have been discussed.

5. Since the Entries under discussion are in their respective Lists of the Seventh Schedule of the Constitution, it would be unnecessary to refer to them as being part of "the Seventh Schedule of the Constitution" in the following discussion.

6. On enumerating the questions for opinion of this nine-judge Bench, five issues have been encapsulated in paragraph 5 of the judgment of the learned Chief Justice of India which read as under:

> "5. During the course of the hearing, counsel for the petitioners and respondents agreed that the main questions that fall for determination by this Court could be reframed in the following terms:

a. What is the true nature of royalty determined under Section 9 read with Section 15(1) of the MMDR Act? Whether royalty is in the nature of tax.

b. What is the scope of Entry 50 of List II of the Seventh Schedule? What is the ambit of the limitations imposable by Parliament in exercise of its legislative powers under Entry 54 of List I? Does Section 9, or any other provision of the MMDR Act, contain any limitation with respect to the field in Entry 50 of List II?

c. Whether the expression "subject to any limitations imposed by Parliament by law relating to mineral development" in Entry 50 of List II *pro tanto* subjects the entry to Entry 54 List I, which is a non-taxing general entry? Consequently, is there any departure from the general scheme of distribution of legislative powers as enunciated in ***M.P.V. Sundararamier*** (supra)?

d. What is the scope of Entry 49 of List II and whether it covers a tax which involves a measure based on the value of the produce of land? Would the constitutional position be any different *qua* mining land on account of Entry 50 of List II read with Entry 54 of List I?

e. Whether Entry 50 of List II is a specific entry in relation to Entry 49 of List II, and would consequently subtract mining land from the scope of Entry 49 of List II?"

7. As the learned Chief Justice has recorded the submissions of the respective parties in detail, I need not be repetitive except highlighting the fact that the learned senior counsel and counsel for the appellants have contended that "royalty is not a

tax" while the learned senior counsel and counsel for the respondents including the Attorney General and Solicitor General for the Union of India have submitted that "royalty is a tax or an exaction" and therefore, the States are denuded of their power to levy any other levy, impost, tax or cess on royalty. Therefore, the question which arises is, whether, payment made for exercise of mineral rights being royalty, is a tax or an exaction.

Constitutional Framework:

8. Article 265 of the Constitution mandates that no tax shall be levied or collected except by authority of law. Article 366 is a definition clause and it states that in the Constitution, unless the context otherwise requires, the expressions mentioned therein have the meanings thereby respectively assigned to them. For the purpose of this case, Article 366(28) is relevant and the same reads as under:

> "(28) "taxation" includes the imposition of any tax or impost, whether general or local or special and "tax" shall be construed accordingly."

The aforesaid definition of 'taxation' is not exhaustive but inclusive in nature to include not only any tax in the usual understanding of the said expression or tax *stricto senso* but also any levy akin to a tax. There can be no cavil to the proposition that before any tax or impost could be levied or collected, it must have the authority of law *vide* Article 265.

8.1 Article 246 of the Constitution deals with distribution of legislative powers between the Parliament and State Legislatures. It reads as under:

> **"246. Subject-matter of laws made by Parliament and by the Legislatures of States.—**(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the "Union List").
>
> (2) Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
>
> (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').
>
> (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a

> State notwithstanding that such matter is a matter enumerated in the State List."

With regard to the allocation of subjects under the three Lists, it may be useful to refer to the Devolution rules drawn under the Government of India Act, 1919 and thereafter, to the Government of India Act, 1935 which are the precursors to the distribution of legislative powers between the Union and the States as per the three Lists of the Seventh Schedule. Some of the salient aspects concerning the distribution of the legislative powers between Parliament and State Legislature as per the three Lists in the backdrop of provisions could be alluded to. Article 246 of the Constitution deals with the distribution of legislative powers between the Union and the States. The said Article has to be read along with the three Lists, namely, the Union List, the State List and the Concurrent List. The taxing powers of the Union as well as the States are also demarcated as separate Entries in the Union List as well as the State List i.e. List I and List II respectively. The Entries in the Lists are fields of legislative powers conferred under Article 246 of the Constitution. In other words, the Entries define the areas of

legislative competence of the Union and the State Legislature. (*vide:* ***State of Karnataka vs. State of Meghalaya, (2023) 4 SCC 416 para 56), ("State of Karnataka").***

8.2 The legislative power to impose a tax or impost can be traced to either List I - Union List or List II - State List. List III - Concurrent List which gives powers to both Union as well as the States to legislate does not contain any taxation Entry. Entry 47 - List III states that fees in respect of any of the matters in that List but not including fees taken in any Court could be levied and collected by an authority of law either by the Union or the State Legislature. Similarly, Entry 66 - List II states that fees in respect of any of the matters in List II but not including fees taken in any Court could be collected by the State Legislature. In a similar vein, Entry 96 - List I gives power to levy fee in respect of subjects enumerated in List I but not including fees taken in any Court. It is nobody's case that royalty is a fee and therefore no further discussion on that aspect is necessary. However, the conundrum to be unravelled by this nine-judge Bench is, whether royalty is a tax or a levy

akin to a tax or an exaction in the context of exercise of mineral rights.

8.3 In order to understand the foundation of this controversy, it is necessary to consider Article 246 of the Constitution and the relevant Entries of the two Lists *vis-à-vis* regulation of mines and mineral development, as the controversy has arisen in this particular context, which can be usefully extracted as under:

> **"List I – Union List**
>
> > **Entry 54** : Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
>
> **List II – State List**
>
> > **Entry 23** : Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
> >
> > xxx xxx xxx
> >
> > **Entry 49** : Taxes on lands and buildings.
> >
> > **Entry 50** : Taxes on mineral rights subject to any limitation imposed by Parliament by law relating to mineral development."

Interpretation of Legislative Entries:

8.4 On the aspect of interpretation of legislative Entries in the three Lists, the following principles are apposite as discussed in ***State of Karnataka.***

8.4.1 The power to legislate which is dealt with under Article 246 has to be read in conjunction with the Entries in the three Lists which define the respective areas of legislative competence of the Union and State Legislatures. While interpreting these Entries, they should not be viewed in a narrow or myopic manner but by giving the widest scope to their meaning, particularly, when the *vires* of a provision of a statue is assailed. In such circumstances, a liberal construction must be given to the Entry by looking at the substance of the legislation and not its mere form. However, while interpreting the Entries in the case of an apparent conflict, every attempt must be made by the Court to harmonise or reconcile them. Where there is an apparent overlapping between two Entries, the doctrine of pith and substance is applied to find out the true character of the enactment and the Entry within which it would fall. The

doctrine of pith and substance, in short, means, if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, the same cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature. Also, in a situation where there is overlapping, the doctrine has to be applied to determine to which Entry, a piece of legislation could be related. In order to examine the true character of enactment or a provision thereof, due regard must be had to the enactment as a whole and to its scope and objects. It is said that the question of invasion into another legislative territory has to be determined by substance and not by degree.

8.4.2 In case of any conflict between Entries in List I and List II, the power of Parliament to legislate under List I will supersede when, on an interpretation, the two powers cannot be reconciled. But if a legislation in pith and substance falls within any of the Entries of List II, the State Legislature's competence cannot be questioned on the ground that the field

is covered by Union list or the Concurrent list *vide* ***Prafulla Kumar Mukherjee vs. Bank of Commerce, Khulna, AIR 1947 P.C. 60 ("Prafulla Kumar Mukherjee")***. According to the pith and substance rule, if a law is in its pith and substance within the competence of the Legislature which has made it, it will not be invalid because it incidentally touches upon the subject lying within the competence of another Legislature *vide* ***State of Bombay vs. FN Balsara, AIR 1951 SC 318 ("FN Balsara").***

8.4.3 Once the legislation is found to be 'with respect to' the legislative Entry in question, unless there are other constitutional prohibitions, the power would be unfettered. It would also extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in that topic or category of legislation (*vide* ***United Provinces vs. Atiqa Begum, AIR 1941 FC 16 ("Atiqa Begum")).***

8.4.4 Another important aspect while construing the Entries in the respective Lists is that every attempt should be made to harmonise the contents of the Entries so that interpretation of

one Entry should not render the entire content of another Entry nugatory (*vide* ***Calcutta Gas Company vs. State of West Bengal, AIR 1962 SC 1044 ("Calcutta Gas Company")***. This is especially so when some of the Entries in a different List or in the same List may overlap or may appear to be in direct conflict with each other. In such a situation, a duty is cast on the Court to reconcile the Entries and bring about a harmonious construction. Thus, an effort must be made to give effect to both Entries and thereby arrive at a reconciliation or harmonious construction of the same. In other words, a construction which would reduce one of the Entries nugatory or a dead letter, is not to be followed.

8.4.5 The sequitur to the aforesaid discussion is that if the Legislature passes a law which is beyond its legislative competence, it is a nullity *ab-initio*. The Legislation is rendered null and void for want of jurisdiction or legislative competence *vide* ***RMDC vs Union of India, AIR 1957 SC 628 ("RMDC")***.

8.4.6 In short, the Entries in the different Lists should be read together without giving a narrow meaning to any of them.

The powers of the Union and the State Legislatures are expressed in precise and definite terms. Hence, there can be no broader interpretation given to one Entry than to the other. Even where an Entry is worded in wide terms, it cannot be so interpreted as to negate or override another Entry or make another Entry meaningless. In case of an apparent conflict between different Entries, it is the duty of the Court to reconcile them in the first instance. In case of an apparent overlapping between two Entries, the doctrine of pith and substance has to be applied to find out the true nature of a legislation and the Entry within which it would fall. Where one Entry is made "subject to" another Entry, all that it means is that out of the scope of the former Entry, a field of legislation covered by the latter Entry has been reserved to be specially dealt with by the appropriate legislature. When one item is general and another specific, the latter will exclude the former on a subject of legislation. If, however, they cannot be fairly reconciled, the power enumerated in List II must give way to List I.

8.4.7 On a close perusal of the Entries in the three Lists, it is discerned that the Constitution has divided the topics of legislation into the following three broad categories:

(*i*) Entries enabling laws to be made;
(*ii*) Entries enabling taxes to be imposed; and
(*iii*) Entries enabling fees and stamp duties to be collected.

Thus, the Entries on levy of taxes are specifically mentioned. Therefore, as such, there cannot be a conflict of taxation power of the Union and the State. Thus, in substance the taxing power can be derived only from a specific taxing Entry in an appropriate List. Such a power has to be determined by the nature of the tax and not the measure or machinery set up by the statute.

8.5 Entry 54 - List I read with Entry 23 - List II deals with regulation of mines and mineral development. Since both the Entries deal with regulation of mines and mineral development and they are in List I and List II, Entry 23 - List II expressly states that any regulation of mines and mineral development is subject to the provisions of List I with respect to regulation and

development under the control of the Union (i.e. Entry 54 - List I).

8.6 However, what is pertinent to be considered in this case is, Entry 50 - List II in juxtaposition with Entry 54 - List I. As already noted, Entry 50 - List II is a taxation Entry which empowers a State Legislature to impose tax on mineral rights. However, this power of the State Government is not an absolute power inasmuch as Entry 50 - List II itself states that the power of the State Legislature to impose tax on mineral right is "subject to any limitations imposed by Parliament by law relating to mineral development". In other words, if there is any limitation imposed by the Parliament by law relating to mineral development then that would have an impact on the legislative competence of the State Legislature to impose a tax on mineral rights. The key expressions of Entry 50 - List II are "taxes on mineral rights" and "subject to any limitations imposed by the Parliament by any law on mineral development". Thus, the Parliament can impose any limitation on the State's right to impose a tax on mineral rights by way of a law relating to

mineral development. Thus, while Entry 50 - List II speaks of taxes on mineral rights and is a taxation Entry empowering States to impose taxes on mineral rights, the same is not unbridled or absolute but is subject to any limitation to be imposed by Parliament by law relating to mineral development. In other words, if Parliament intends to regulate mineral development in the country, it can do so by a law made as per Entry 54 - List I and to that extent the taxation Entry in Entry 50 - List II could be limited and the State's right to impose a tax on mineral rights by a law would be affected. Thus, a taxation Entry in Entry 50 - List II can be affected by Entry 54 - List I in the interest of mineral development by Parliament imposing a limitation on the State's right to tax mineral rights. In other words, if the Union has by a law taken control of, *inter alia,* mineral development with the Parliament passing a law, then the State's power to impose any tax on mineral rights would, to that extent, be denuded, if the Parliamentary or Central law creates a limitation to impose such a tax, if it relates to mineral

development. It is in the above backdrop that the controversy must be considered.

8.7 Exercise of mineral rights have to be consistent with mineral development in the country, which would embrace, *inter alia,* uniformity in mineral development throughout the country having regard to several factors which would otherwise come in the way of such development. Hence, the framers of the Constitution introduced Entry 50 - List I enabling a limitation being imposed on Entry 50 - List II although that is a taxation Entry giving powers to the States to impose taxes on mineral rights. It is subject to any limitation imposed by Parliament under Entry 54 - List I.

8.8 The golden thread which runs through Entry 54 - List I and Entry 23 - List II is that the Entries deal with regulation of mines and mineral development. Thus, any aspect of regulation of mines and mineral development taken under the control of the Union by a declaration made by the Parliament by a law, denudes the State Legislature of its legislative competence to pass any law to that extent. If a Parliamentary law such as

MMDR Act, 1957 is enacted and deals with certain aspects of mineral development, to that extent the State Legislature would be denuded of its competence to pass any law on the said aspect. The legislative competence vested with the State Legislature is, therefore, not an absolute one but is subject to a Parliamentary law enacted as per Entry 54 - List I dealing with mineral development.

9. The precise question before this Court being, whether, imposition of royalty envisaged under Section 9 of the MMDR Act 1957, which is a parliamentary legislation passed by virtue of Entry 54 - List I, acts as a limitation imposed by Parliament by law relating to mineral development and therefore, the State Legislature is denuded of its powers to impose any other tax or impost on mineral rights. Whether royalty, which is paid by a lessee to a lessor i.e. the State while exercising mineral rights is a limitation imposed on State's power to impose any other impost, cess or tax on exercise of mineral rights while undertaking a mining operation and extracting minerals by a lessee, is the precise question to be answered in the context of

the constitutional framework, the parliamentary law, namely, the MMDR Act, 1957 and the judgments of this Court.

Scheme of the MMDR Act, 1957:

10. Having analysed the relevant constitutional Entries which have a bearing on the controversy, it is necessary to refer to the scheme of and salient provisions of the MMDR Act, 1957 which has been enacted by Parliament pursuant to Entry 54 - List I. This is apparent on a reading of Section 2 of the said Act which reads as under:

> "**2. Declaration as to the expediency of Union control,—** It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

The expression in Entry 54 - List I "to the extent to which" is also significant inasmuch as Section 2 of the MMDR Act, 1957 also uses the expression "to the extent hereinafter provided". The two expressions have the same content and are consistent with each other.

10.1 The MMDR Act, 1957 which is a successor to MMRD Act, 1948, can be briefly considered by referring to various provisions of the Act. The Preamble of the MMDR Act, 1957 states that the Act is to provide "for the development and regulation of mines and minerals under the control of the Union". Earlier, it read as "for regulation of mines and the development of minerals" but by Section 2 (Act 38 of 1999), the above amendment was made.

10.2 The relevant provisions of the MMDR Act, 1957 could be adverted to at this stage. The expression 'minerals' in Section 3(a)(d) includes all minerals except mineral oils. Section 3(e) defines 'minor minerals' to mean 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. 'Notified minerals' is defined under Section 3(ea) to mean any mineral specified in the Fourth Schedule, such as, bauxite, iron ore, limestone, manganese ore. Further, 'mineral concession' is defined in Section 3(ae) of the

said Act to mean either a reconnaissance permit, prospecting licence, mining lease, composite licence or a combination of any of these and the expression "concession" shall be construed accordingly. Section 3(c) defines "mining lease" to mean a lease granted for the purpose of undertaking mining operations and includes a sub-lease granted for such purpose. Section 3(d) defines "mining operations" to mean any operation undertaken for the purpose of winning any mineral. Section 3(h) defines "prospecting operations" to mean any operations undertaken for the purpose of exploring, locating or proving mineral deposits. Section 3(ha) defines "reconnaissance operations" to mean any operation undertaken for preliminary prospecting of a mineral through regional, aerial, geophysical or geochemical surveys and geological mapping, but does not include pitting, trenching, drilling (except drilling of boreholes on a grid specified from time to time by the Central Government) or sub-surface excavation.

10.3 It is observed that the MMDR Act, 1957 specifies the twin purposes of the Act, namely, (1) the regulation of mines,

and (2) the development of minerals, both under the control of the Union. Sections 4 to 10 of the Central Act form a group headed 'General Restrictions on Undertaking Prospecting and Mining Operations' and relate to the rules and regulations under which prospecting licences and mining leases might be granted; the period for which they may be granted or renewed; the royalties and fees that would be payable on them etc. The next group of Sections, namely, Sections 10 to 12 deal with the procedure for obtaining prospecting licences or mining leases in respect of land in which minerals vest in the Government. Sections 13 to 17 are grouped under a caption which reads - "Rules for regulating the grant of Prospecting Licences and Mining Leases". Section 13 empowers the Central Government, by notification, to make rules for regulating the grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith. Sub-section (2) specifies in particular the matters for which such rules may provide and among them is (i) the fixing and collection of fees for mineral concession, surface rent, security deposit, fines, other fees or

charges and (ii) the time within which and the manner in which the dead rent or royalty shall be payable, and rules regarding prospecting licences and mining leases.

10.4 Section 18 deals with the mineral development. Section 18(1) states that it shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and development of minerals in India and for that purpose the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit. Section 18(2) talks of rules providing for the development of mineral resources in any area. Section 25 provides for the recovery of any rent, royalty, tax or other sum due to the Government under this Act or the rules made thereunder and that they are to be recovered in the same manner as arrears of land revenue.

10.5 Section 9 of the MMDR Act, 1957 with which we are concerned deals with royalty while Section 9A deals with dead rent. The said provisions can be usefully extracted as under:

"**9. Royalties in respect of mining leases.**—(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, 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 after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after the commencement of this 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.

(2A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972 shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.

(3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years.

9A. Dead rent to be paid by the lessee.—(1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall notwithstanding anything contained in the instrument of lease or in any other law for the lime being in force, pay to the State Government, every year, dead rent at such rate, as may be

specified, for the time being, in the Third Schedule, for all the areas included in the instrument of lease:

Provided that where the holder of such mining lease becomes liable, under section 9, to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty, or the dead rent in respect of that area, whichever is greater.

(2) The Central Government may, by notification in the Official Gazette, amend the Third Schedule so as to enhance or reduce the rate at which the dead rent shall be payable in respect of any area covered by a mining lease and such enhancement or reduction shall take effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of the dead rent in respect of any such area more than once during any period of three years."

Section 9 speaks of royalty to be paid by a holder of a mining lease while Section 9A deals with dead rent to be paid by a lessee. Dead rent is payable by a lessee, when the lessee - a holder of a mining lease, becomes liable to pay under Section 9 royalty of any mineral removed or consumed by him. The holder of a mining lease conducts mining operations for the purpose of winning any mineral. Thus, a mining operation is an exercise of a mineral right and therefore, is covered under the provisions of the MMDR Act, 1957 and particularly having regard to Section 2 thereof, as a declaration has been made by

the Union to take under its control the regulation of the mines and minerals development, which is expedient in public interest. Reconnaissance, prospecting operations or mining operations are all aspects which are taken under the control of the Union, in view of the declaration under Section 2 of the MMDR Act, 1957.

10.5.1 For the exercise of mineral rights, royalty has to be paid by the holder of the mining lease in terms of Section 9 or dead rent in terms of Section 9A of the said Act, as per the conditions mentioned therein. Royalty is paid in exercise of a mineral right as a consideration for conducting a mining operation, which is undertaken for the purpose of winning any mineral. A mining lease is granted only for the purpose of undertaking a mining operation. Therefore, royalty has to be paid by the holder of a mining lease to the lessor who executes the lease deed i.e. the State Government. For this reason, Section 25 states that any rent, royalty, tax, fee or other sum due to the Government under the Act or the Rules made thereunder or under the terms and conditions of any mineral

concession shall be recovered in the same manner as arrears of land revenue.

10.6 By way of abundant caution, Section 25 of the said Act uses the expression "rent, royalty, tax, fee or other sum" due to the Government under the provisions of the said Act.

Section 25 of the said Act reads as under:

> **"25. Recovery of certain sums as arrears of land revenue.—** (1) Any rent, royally, tax, fee or other sum due to the Government under this Act or the rules made thereunder or under the terms and conditions of any mineral concession may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as an arrear of land revenue.
>
> (2) Any rent, royalty, tax, fee or other sum due to the Government either under this Act or any rule made thereunder or under the terms and conditions of any mineral concession may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as if it were an arrear of land revenue and every such sum which becomes due to the Government after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, together with the interest due thereon shall be a first charge on the assets of the holder of the mineral concession, as the case may be."

10.7 Under the scheme of the Act, royalty shall be payable in respect of mining leases. The statutory basis for the same may

be found in Section 9 of the Act, which prescribes that royalty shall be payable by holders of mining lease, whether such lease be granted before or after commencement of the Act. The event that triggers payment of royalty is the removal and/or consumption of mineral. The rates of royalty are prescribed under the second schedule to the Act and are generally expressed as a percentage of the average sale price of the respective mineral, and the same is to be paid on *ad valorem* basis. It is clarified at this juncture that the payment of royalty in respect of mining leases, shall be notwithstanding any stipulation contained under the instrument of lease or any other law in force at the time of execution of the lease.

10.8 Section 9A of the Act provides that the holder of a mining lease shall pay dead rent to the State Government, annually, at such rate specified in the third schedule to the Act. Dead rent is to be paid for such area included in the instrument of lease. However, since the holder of a mining lease is also liable to pay royalty under Section 9 of the Act, it is clarified under Section 9A that the liability shall be limited to

either dead rent or royalty, whichever is greater. Since royalty is payable on *ad valorem* basis, the holder of a mining lease would be liable to pay the same only depending on the value of the mineral won/removed/consumed. That is, when mining activity is not conducted, liability of royalty would be nil. However, dead rent is payable for such area covered under the instrument of lease, on an annual basis, regardless of whether any mining activity is undertaken on such land. The Third Schedule to the Act prescribes the dead rent payable per hectare, per annum. The amount of dead rent payable also depends upon the nature of the minerals available on the land in question - medium value minerals, high value minerals or precious metals and stones. The Act also prescribes the manner in which rent and royalty payable, may be recovered. Section 25 of the Act provides that any sum due to the Government under the provisions of the Act, including rent and royalty, may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as arrears of land revenue.

10.8.1 Section 13(1) of the Act enables the Central Government to make rules for regulating the grant of mineral concession in respect of minerals and for purposes connected therewith. Without prejudice to the generality of the power prescribed under Section 13(1), Section 13(2) lists the specific subjects that may be regulated by framing Rules. Section 13(2)(e) enables the Central Government to make rules to prescribe the authority by which mineral concession *in respect of land in which the minerals vest in the Government* may be granted. Section 13(2)(f) on the other hand, relates to the rule making power to prescribe the procedure for obtaining a mineral concession *in respect of any land in which the minerals vest in a person other than the Government*, and the terms on which and conditions subject to which such a permit, license or lease may be granted or renewed.

10.8.2 In exercise of the rule-making power under Section 13 of the Act, the Central Government has enacted the Mineral Concession Rules, 1960, to provide, *inter-alia,* for the procedure for obtaining mineral concessions in respect of various

categories of lands, the terms on which and conditions subject to which such a permit, license or lease may be granted or renewed.

10.8.3 Chapter IV of the Rules governs all matters connected with grant of mining leases in respect of land in which minerals vest in the Government. Applications for mining lease is to be made to the State Government in the manner prescribed under Rule 22. Rule 22(4) prescribes the manner in which the State Government is to act upon receipt of an application for grant of mining license. First, the State Government is required to take a decision as to the precise area for the said purpose and communicate such decision to the applicant. On receipt of communication from the State Government of the precise area to be granted, the applicant shall submit a mining plan within a period of six months or such other period as may be allowed by the State Government, to the Central Government for its approval. Thereafter, the applicant shall submit the mining plan, duly approved by the Central Government or by an officer duly authorised by the

Central Government, to the State Government to grant mining lease over that area. The procedure for approval of mining plans, by the Central or State Government, as the case may be, has been detailed under Rule 22BB.

10.8.4 Rule 31 provides that where, on an application for the grant of a mining lease, an order has been made for the grant of such lease, a lease deed in Form K is required to be executed by the State Government within six months of the order granting lease. The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, also refuse, in the manner specified under Rule 26, to grant a mining lease over whole or part of the area applied for.

10.8.5 Rule 27 prescribes the general conditions to which mining leases, in respect of land in which minerals vest in the Government, shall be subject to. The relevant portion of said Rule is extracted hereinunder for easy reference:

"**27. Conditions :-** (1) Every mining lease shall be subject to the following conditions :-

xxx xxx xxx

(c) the lessee shall pay, for every year, except the first year of the lease, such yearly dead rent at the rates specified in the Third Schedule of the Act and if the lease permits the working of more than one mineral in the same area the State Government shall not charge separate dead rent in respect of each mineral:

Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral whichever be higher in amount but not both;

(d) the lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent and water rate at such rate, not exceeding the land revenue, water and cesses assessable on the land, as may be specified by the state Government in the lease;

xxx xxx xxx

(t) the lessee shall pay to the occupier of the surface of the land such compensation as may become payable under these rules;

(u) the lessee shall comply with the Mineral Conservation and Development Rules framed under section 18;"

10.8.6 While the aforesaid provisions contained in Chapter IV relate to mining leases in respect of land in which minerals vest in the Government, Chapter V prescribes the procedure for obtaining a mining lease in respect of land in which minerals vest exclusively in a person other than the Government. Rule 45 pronounces the conditions of a mining lease. It is pertinent

to note that the said provision adopts the conditions prescribed under clauses (b) to (l) and (p) to (u) of sub-rule (1) of Rule 27 which relate to mining leases in respect of land in which minerals vest in the Government, and makes the said conditions applicable to mining leases in respect of land in which minerals vest exclusively in a person other than the Government, with the modification that in clauses (c) and (d) for the words "State Government" the word "lessor" shall be substituted. Further, in addition to the aforesaid conditions that are statutorily prescribed, Rule 45 (iii) permits the parties to set down and mutually agree upon such other conditions in the instrument of lease, so long as such additional conditions are not inconsistent with the provisions of the Act and the Rules. Rule 45 (iv) enjoins upon the lessor, the duty to give notice to the lessee requiring him to pay royalty due under Section 9 of the Act, on failure of the lessee to remit the same as required. Should the lessee not act upon such notice and duly make the payment of royalty within sixty days from the

date of receipt of notice, the lessor shall be bound to determine the lease.

10.8.7 Chapter VI pertains to grant of mining leases in respect of land in which the minerals vest partly in the Government and partly in private persons. Rule 53 provides that the provisions of Chapter IV shall apply to mining leases in respect of minerals which vest partly in the Government and partly in a private person as they apply in relation to the grant of prospecting licences and mining leases in respect of minerals which vest exclusively in the Government. The proviso to Rule 53 clarifies that the dead rent and royalty payable in respect of mineral which partly vest in the Government and partly in a private person shall be shared by the Government and by that person in proportion to the shares they have in the minerals.

10.8.8 The pertinent provisions prescribing the liability of a lessee to pay royalty and dead rent in respect of mining leases over different categories of lands as described under Chapters

IV, V and VI of the Rules, have been summarised and presented in the following tabular statement:

Sl. No.	***Category of land over which mining lease is granted:***	***Procedure for grant of lease and Conditions of mining lease prescribed under:***	***Liability to pay Royalty and Dead Rent prescribed under:***
1.	Mining lease in respect of land in which minerals vest in the Government	Chapter IV of the Rules: Rule 27 - Conditions	**Royalty:** Section 9 of the Act, r/w Second Schedule to the Act which prescribes the rate of royalty; Rule 27 (1) (c) and the proviso thereto; Part V of Form K of the Rules; **Dead Rent:** Section 9A of the Act, r/w Third Schedule to the Act which prescribes the amount of dead rent payable per hectare of land; Rule 27 (1) (c) and the proviso thereto; Part V of Form K of the Rules.

Sl. No.	***Category of land over which mining lease is granted:***	***Procedure for grant of lease and Conditions of mining lease prescribed under:***	***Liability to pay Royalty and Dead Rent prescribed under:***
			Surface rent: Payable in terms of Rule 27(1)(d), at the rate specified by the State Government in the lease.
2.	Mining lease in respect of land in which minerals vest exclusively in a person other than the Government	Chapter V of the Rules: Rule 45- Conditions of mining lease [Conditions stipulated under Rule 27 have been adopted with modification to substitute 'State Government' as appearing under Rule 27(1)(c) and (d) with the word 'lessor'.] In addition to the conditions statutorily prescribed,	**Royalty and Dead rent:** Royalty and dead rent are payable in terms of Section 9 and 9A of the Act, respectively, read with Rule 27 (1) (c) of the Rules. **Surface rent:** Payable in terms of Rule 27(1)(d), as substituted in terms of Rule 45, at the rate specified by the lessor in the lease.

Sl. No.	***Category of land over which mining lease is granted:***	***Procedure for grant of lease and Conditions of mining lease prescribed under:***	***Liability to pay Royalty and Dead Rent prescribed under:***
		Rule 45 (iii) permits the parties to set down and mutually agree upon such other conditions in the instrument of lease, so long as such additional conditions are not inconsistent with the provisions of the Act and the Rules.	
3.	Mining leases in respect of land in which the minerals vest partly in the Government and partly in private persons	Chapter VI of the Rules: The procedure and conditions prescribed under Chapter IV to apply *mutatis mutandis*	**<u>Royalty and Dead rent:</u>** Royalty and dead rent are payable in terms of Section 9 and 9A of the Act, respectively, read with Rule 27 (1) (c) of the Rules.

10.9 Section 9 of the MMDR Act, 1957 categorically deals with royalty. It has to be read with the Second Schedule which deals with rates of royalty in respect of minerals listed therein. Therefore, there can be no cavil that royalty is an aspect within the scope and ambit of the Parliamentary law which is intended to take under the control of the Union by a declaration (*vide* Section 2 of the said Act) *vis-à-vis* regulation of the mines and mineral development which is declared to be expedient in the public interest. When the imposition of royalty on a mining lease in terms of lease-deed as envisaged in Form-K of the MMDR Act, 1957 is considered in light of Entry 54 - List I read with Section 2 of the MMDR Act, 1957, it is clear that royalty is a matter coming under the control of the Union. If payment of royalty, which is a consideration for exercise of mineral rights is expressly covered under Section 9 of the MMDR Act, 1957, can the same be a basis for any other exaction by a State either by imposing another tax/cess based on royalty or by imposing any other tax on mineral bearing land? This is the question which has fallen for consideration in several cases before this Court as

well as before several High Courts. As noted above, royalty is a consideration imposed by a lessor on a lessee of a mining lease for the grant of the mining lease, which in sum and substance is a requisite consideration for exercise of a mineral right. Royalty and dead rent as envisaged under the scheme of Sections 9 and 9A of the MMDR Act, 1957 have been imposed by the Parliament in the interest of mineral development in the country. The fact that under Sections 9 as well as 9A, payment of royalty and dead rent as respectively envisaged as per the conditions stated in the said Sections, would clearly indicate that having regard to development of any particular mineral, the rate of royalty has been fixed under the Second Schedule to the MMDR Act, 1957. Therefore, it is in the interest of mineral development that a lessor is bound to collect royalty and dead rent from a lessee in terms of what is envisaged in Sections 9 and 9A read with Second Schedule to the Act. The payment of royalty is to the lessor which is the State which executes the lease deed in terms of the Form K of Mineral Concession Rules, 1960. Thus, having regard to the statutory scheme envisaged

under Sections 9 and 9A of the Act read with the Second Schedule to the MMDR Act, 1957, any exercise of mineral right by a lessee is subject to the payment of royalty to the State Government. The exaction of royalty is, therefore, statutory in nature.

10.10 In ***Govind Saran Ganga Saran vs. Commissioner of Sales Tax, (1985) Supp SCC 205 ("Govind Saran Ganga Saran"),*** the components which enter into the concept of tax were discussed by this Court in paragraph 6 which reads as under:

> "6. The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity."

The four components could be understood as:

(i) the character of the tax which is determined by its nature which prescribes the taxable event attracting the levy;

(ii) a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax;

(iii) rate at which the tax is imposed; and

(iv) the measure or value to which the tax will be applied for computing the taxing liability.

If the aforesaid components are applied to the present case, it is clear that –

(i) Section 9 of the MMDR Act, 1957 deals with payment of royalty in respect of any mineral removed or consumed;

(ii) by a holder of mining lease who is obliged to pay the royalty;

(iii) at the rate specified in the Second Schedule to MMDR Act, 1957; and

(iv) a percentage of the average sale price on *ad valorem* basis.

For instance, in respect of Iron Ore : (CLO, lumps, fines and concentrates all grades) fifteen per cent of average sale price on *ad valorem* basis.

Although, Section 9 of the MMDR Act, 1957 is not worded in the manner a charging section in a taxation statute is normally worded, nevertheless, its import must be understood in the sense of it being a taxation provision. For the aforesaid reasons, I hold that royalty is the nature of a tax or an exaction.

I now move on to the judgments of this Court as well as High Courts on the nature of exaction in the form of royalty under the provisions of the MMDR Act, 1957 as the controversy centres around various decisions of this Court and certain High Courts.

Hingir-Rampur:

11. In ***Hingir-Rampur***, a Constitution Bench of this Court presided over by P.B. Gajendragadkar, J. was considering the validity of the Orissa Mining Areas Development Fund Act, 1952 (hereinafter referred to as, "Act of 1952"). In December,

1952, the State of Orissa passed the Act of 1952. In pursuance of the rule-making power conferred on it by the impugned Act, respondent No.1 purported to make the rules called the Orissa Mining Areas Development Act Rules, 1955 (hereinafter referred to as, "1955 Rules"). The liability for the payment of cess under the impugned Act was notified against the first petitioner's Rampur colliery therein. Since a demand was made for the payment of cess, there was a challenge made to the same by filing the writ petition under Article 32 of the Constitution before this Court. According to the petitioners, cess levied under the impugned Act was not a fee but in substance a levy in the nature of a duty of excise on the coal produced at the first petitioner's Rampur Colliery, and as such was beyond the legislative competence of the Orissa legislature. Alternatively, it was urged that even if the levy imposed by the impugned Act is a fee relative to Entries 23 and 66 - List II, it would nevertheless be *ultra vires* having regard to the provisions of Entry 54 - List I read with Central Act 53 of 1948 (MMRD Act, 1948). According to the respondent-the State of Orissa, the levy imposed by the

impugned Act was a fee relatable to Entries 23 and 66 - List II and its validity was not affected either by Entry 54 read with Act 53 of 1948 or by Entry 52 read with Act 65 of 1951. In the alternative, it was contended that if the said levy is held to be a tax and not a fee, it would be a tax relatable to Entry 50 - List II and as such the legislative competence of the State legislature to impose the same cannot be successfully challenged.

11.1 The scheme of the impugned Act was considered in paragraph 15 of the judgment and it was observed by this Court that the object of the Act was for the purpose of development of mining areas in the State. That the method in which the fee is recovered is a matter of convenience that by itself cannot fix upon the levy the character of duty of excise though the method in which an impost is levied may be relevant in determining its character, its significance and effect. Therefore, it was observed that under the impugned Act, the mere fact that the levy imposed by the impugned Act had adopted the method of determining the rate of the levy with reference to the minerals produced by the mines would not by

itself make the levy a duty of excise. The method thus adopted may be relevant in considering the character of the impost but its effect must be weighed along with and in the light of the other relevant circumstances; where an impugned statute passed by a State legislature is relatable to an Entry in List II, it is not permissible to challenge its *vires* only on the ground that the method adopted by it for the recovery of the impost can be and is generally adopted in levying a duty of excise. Therefore, it was held that cess in question was neither a tax nor a duty of excise but a fee.

11.2 If the cess was held to be a fee relatable to Entries 23 and 66 - List II, its validity was still open to challenge because the legislative competence of the State Legislature under Entry 23 is subject to the provisions of List I with respect to regulation and development under the control of the Union.

11.3 According to this Court, on a combined reading of two Entries, namely, Entry 23 - List II and Entry 54 - List I, what emerged was that the jurisdiction of the State legislature under Entry 23 - List II is subject to the limitation imposed by the

latter part of the said Entry. If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded. In other words, if a Central Act has been passed which contains a declaration by Parliament as required by Entry 54 - List I, and if the said declaration covers the field occupied by the impugned Act, the impugned Act would be *ultra vires*, not because of any repugnance between the two statutes but because the State legislature had no jurisdiction to pass the law. The limitation imposed by Entry 23 - List II is a limitation on the legislative competence of the State legislature itself and this position was not in dispute. It was urged that the field covered by the impugned Act was already covered by the Mines and Minerals (Regulation and Development) Act, 1948, (53 of 1948) and in view of the declaration made by Section 2 of the Act, the impugned Act was *ultra vires*. Section 2 of the said Act contained a declaration as to the expediency and control by the Central Government. This Court opined that if it was held

that this Act contained the declaration referred to in Entry 23 - List II, there would be no difficulty in holding that the declaration covered the field of conservation and development of minerals and the said field is indistinguishable from the field covered by the impugned Act. What Entry 23 - List II, provides is that the legislative competence of the State Legislature is subject to the provisions of List I with respect to regulation and development under the control of the Union, and Entry 54 - List I requires a declaration by Parliament by law that regulation and development of mines should be under the control of the Union in public interest, then it would not be competent of the State legislature to pass an Act in respect of the subject-matter covered by the said declaration. In such a case, the test must be whether the legislative declaration covers the field or not. It was observed that field covered by the impugned Act was covered by the Central Act 53 of 1948.

11.4 Wanchoo, J. (as His Lordship then was) gave a separate opinion in the said case by stating that cess levied on all extracted minerals from any mine in any mining area at a rate

not exceeding five per centum of the value of the minerals at the pit's mouth by the Orissa State legislature under Section 4 of the Act of 1952 (Act 27 of 1952) was a fee properly so called and not a duty of excise.

11.5 The next contention considered by Wanchoo, J. was that if the cess is not justified as a fee, it is a tax under Item 50 of List II. Item 50 List II provides for taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development. The question was as to what are taxes on mineral rights. It was held by Wanchoo, J. that taxes on mineral rights would be confined to taxes on leases of mineral rights and on premium or royalty. Taxes on such premium and royalty would be taxes on mineral rights while taxes on the minerals actually extracted would be duties of excise. Consequently, the writ petition was dismissed.

M.A. Tulloch:

12. In ***M.A. Tulloch***, also before a Constitution Bench, the question was with regard to the validity of the imposition of the Orissa Mining Areas Development Fund Act, 1952 (Orissa Act

27 of 1952) and cancellation of the notices of demand issued. The High Court had allowed the petition of the respondents therein by observing that the Orissa Act had been rendered ineffective or suppressed by a Central Act, namely, MMDR Act, 1957, w.e.f. 01.06.1958. Considering Entry 23 - List II and Entry 54 - List I, the High Court held that the Orissa Act ceased to be operative by reason of the withdrawal of legislative competence by force of the Entry in the State List being subject to the Parliamentary declaration and the law enacted by Parliament. Therefore, w.e.f. 01.06.1958 the Orissa Act was deemed to be non-existent as there was lack of power to enforce and realise the demands for the payment of the fee at the time when the demands were issued and were sought to be enforced. The correctness of this judgment was considered by a Constitution Bench of this Court.

12.1 It was observed that to the extent to which the Union Government had taken under “its control” “the regulation and development of minerals” so much was withdrawn from the ambit of the power of the State legislature under Entry 23 - List

II and the legislation of the State which had rested on the existence of power under that Entry would, to the extent of that "control", be superseded or be rendered ineffective. This was because there was a denudation of State legislative power by the declaration which Parliament was empowered to make and had made (*vide* Section 2 of MMDR Act, 1957). It was observed that the States would lose legislative competence only to the "extent to which regulation and development under the control of the Union had been declared by Parliament to be expedient in the public interest". The crucial enquiry had therefore to be directed to ascertain this "**extent**" for, beyond it, the legislative power of the State remained unimpaired.

12.2 Thus, the scheme of Orissa Act, which was a 1952 Act, was considered in juxtaposition of the MMDR Act, 1957, also called as 'Central Act'. The question considered was "whether the extent of control and regulation" provided by the Central Act took within its fold the area or the subject covered by the Orissa Act. The test was if the entire field of mineral development was taken over by the Central Act that would

include the provision of amenities to workmen employed in the mines which was necessary in order to stimulate or maintain the working of mines. The test was, therefore, if under power confirmed by Section 18(1) of the Central Government had made rules providing for the amenities for which provision was made by the Orissa Act and if the Central Government had imposed a fee to defray the expenses of the provision of these amenities, would such rules be held to be *ultra vires* the Central Act, particularly, when taken in conjunction with the matters for which rules could be made under Section 13 to which reference has been made.

12.3 The Court observed that in ***Hingir-Rampur*** case, the Orissa Act was a post-Constitution enactment (1952 Act), whereas the Central Act of 1948 was a pre-Constitution law and under Entry 54 - List I "Parliament" had not made the requisite declaration. The previously existing Central law was held not to be within the terms of Entry 54 - List I and therefore, the State enactment was held to continue to be operative. But later when the Central law i.e. MMDR Act, 1957

contains the requisite declaration by the Union Parliament under Entry 54 - List I and that Act covers the same field as the Act of 1948 (Central Act) in regard to mines and mineral development, it was observed that unless there were any material differences between the scope and ambit of the Central Act 53 of 1948 and that of the Act of 1957, the matter was concluded. Consequently, the writ petition was dismissed.

Baijnath Kedia:

13. A Constitution Bench of this Court had the occasion to consider the provisions of the MMDR Act, 1957 in light of the Bihar Land Reforms Act and the amendment thereto. In ***Baijnath Kedia***, it was the contention that amendment of Section 10 of the Bihar Land Reforms Act was *ultra vires* the Constitution and that Rule 20(2) did not legally entitle recovery of the dead rent, royalty, etc. as mentioned in the Schedules to the Bihar Minor Mineral Concession Rules, 1964. The dispute arose on account of the appellants therein receiving letters to the effect that in view of the amendment to Section 10 of the Bihar Land Reforms Act, 1950 and all leases for minor minerals

having stood statutorily substituted by the corresponding terms and conditions by the Bihar Minor Mineral Concession Rules, 1964, the rent and royalty etc. in respect of minor minerals in the State (irrespective of the date on which the lease was granted) were to be paid as per the aforesaid Rules with effect from 27.10.1964. The appellant therein denied their liability to pay. The State of Bihar submitted that the terms of the original lease having being validly altered by the operation of the second proviso to Section 10(2) of the Bihar Land Reforms Act, 1950 in addition to Section 10A of the said Act, the State Government was entitled to collect dead rent, royalty etc. from the lessees who had been granted lease so long as there was a lease subsisting on the date of the commencement of the amendment.

13.1 M. Hidayatullah, C.J. speaking for the Bench traced the history of the legislation on the subject of mines and minerals by referring to Entry 36 of the Federal Legislative - List I and Entry 23 of the Provincial Legislative - List II of the Seventh Schedule of the Government of India Act, 1935 and also made

reference to Entry 54 - List I - Union List, Entry 23 – List II - State List. That the Mines and Minerals (Regulation and Development) Act, 1948, ("MMRD Act, 1948") had a declaration under Section 2 to the same effect as the declaration under Section 2 of the MMDR Act, 1957. This Court held that once the MMDR Act, 1957 was enacted by the Parliament, the Union had taken all the powers to itself and had authorised the State Government to make Rules for the regulation of leases. By the declaration and the enactment of Section 15 of the MMDR Act, 1957, the whole of the field relating to minor minerals came within the jurisdiction of Parliament and no scope was left for the enactment of the second proviso to Section 10(2) in the Bihar Land Reforms Act. The enactment of the proviso was, therefore, without jurisdiction. Consequently, the appeals were allowed and the State of Bihar was restrained from enforcing the second proviso to Section 10(2) added to the Bihar Land Reforms (Amendment) Act, 1964.

HRS Murthy:

14. ***HRS Murthy vs. Collector of Chittoor, AIR 1965 SC 177 ("HRS Murthy")*** is also a decision of the Constitution Bench. In this case, the validity of notices of demand for the payment of land cess under the Madras District Boards Act, 1920 ('Madras Act', for short) and the legality of the procedure for the recovery of the amount of the said cess was questioned. The impugned notices made a demand also for education cess which was merely a proportion of the land-cess.

14.1 In the year 1953, the appellant's father therein had obtained a mining lease from the Government of Madras under which he was permitted to work and win iron ore in a tract of land in a village in Chittoor district. On separation of State of Andhra from State of Madras a demand was made upon the father of the appellant therein for the payment of land cess calculated in accordance with the provisions of Sections 78 and 79 of the aforesaid Act. The notices issued were questioned before the Madras High Court and thereafter by way of a Special Leave Petition the matter was heard by this Court along

with a Writ Petition also filed by the very same appellant. One of the contentions raised was with regard to the meaning of the expression royalty under Section 79(1) of the Madras Act. Did it include the royalty payable under a mining lease on the ore won by the lessee? On the meaning of the word, royalty, it was contended that the said expression under Section 79(1) of the Madras Act was something other than the return to the lessor or licensor and it connotes the payment made for the materials or minerals won from the land. The expression royalty under Section 79(1) of the said Act did not signify royalty as commonly understood but was confined to the rent payable for beneficial use of the surface of the land. This contention was rejected and it was observed that royalty which follows the expression lease-amount is something other than the return to the lessor or licensor for the use of the land surface and represents, as it normally connotes, the payment made for the materials or minerals won from the land.

14.2 The judgments in ***Hingir-Rampur*** and ***M.A. Tulloch*** were considered. It was observed that the power to impose the

cess was not available after the Central Acts of 1948 and 1957 came into force. It was contended that since the cess was payable only in the event of the mining lessee winning the mineral and no royalty was paid when no minerals were extracted, it was in effect a tax on the minerals won and, therefore, on mineral rights. However, this argument was not accepted. It was observed that when a question arises as to the precise head of legislative power under which a taxing statute has been passed, the subject for enquiry is, what in truth and substance, is the nature of the tax. It was observed that, no doubt, cess has a remote connection to the mineral won but that does not stamp it as a tax on either the extraction of minerals or on the mineral rights. The Court found it unnecessary for the purpose of this case to examine the question, as to what exactly is a tax on mineral rights seeing that such a tax is not leviable by Parliament but only by the State and the sole limitation on the State's power to levy the tax is that it must not interfere with a law made by Parliament as regards mineral development. It was observed that there was

no law enacted by Parliament which was contrary to the State power to levy the tax and in effect the cess under Sections 78 and 79 of the Madras Act was a "tax on lands" within Entry 49 - List II. In the circumstances, it was observed that the cess was lawfully imposed upon land and hence, the appeals and writ petitions were dismissed.

14.3 This Court, in ***India Cement*** held at para 34 that royalty is a tax and did not approve the dictum in ***HRS Murthy***. It is the above conclusion which was doubted by a five-judge Bench in ***Kesoram*** and other cases which has led to the constitution of this nine-judge Bench in order to consider the correctness of the aforesaid verdicts. Therefore, it is necessary to consider the facts and the reasoning in ***India Cement***.

India Cement:

15. In ***India Cement***, Section 115 of Madras Panchayats Act, 1958 as amended by the Madras Act, 1964 came up for consideration. The demand of a local cess on royalty on exercise of a mineral right was questioned. The appellant therein was engaged in mining operations and on execution of the lease

deed had paid royalties, dead rents and other amounts payable on the said deed. The imposition of the local cess was with retrospective effect along with local cess surcharge under Section 116 of the aforesaid Act. The contention of the appellant therein was that the cess on royalty could not be levied. According to the seven-judge Bench, the question which fell for consideration and determination was whether cess on royalty could be a valid levy imposed by the State of Tamil Nadu.

15.1 Under Section 115(1) of the amended Act a local cess at the rate of 45 paisa on every rupee of land revenue payable to the Government in respect of any land for every fasli was envisaged. An Explanation to the said Section was added and was deemed always to have been incorporated by the Tamil Nadu Panchayats (Amendment and Miscellaneous Provisions) Act, 1964 (Amending Act) which provided as under:

> "**Explanation**- In this section and in Section 116, "land revenue" means public revenue due on land and includes water cess payable to the Government for water supplied or used for the irrigation of land, royalty, lease amount or other sum payable to the Government in respect of land

> held direct from the government on lease or licence, but does not include any other cess or the surcharge payable under Section 116, provided that land revenue remitted shall not be deemed to be land revenue payable for the purpose of this section."
>
> (emphasis by me)

Sub-section 2 of Section 115 of the amended Act provided that the local cess shall be deemed to be a public revenue due on all the lands in respect of which a person is liable to pay local cess and all the buildings upon the said land and their products shall be regarded as security for the local cess. Section 116 of the amended Act reads as follows:

> "116. Every panchayat union council may levy on every person liable to pay land revenue to the government in respect of any land in the panchayat union a local cess surcharge at such rate as may be considered suitable as an addition to the local cess levied in the panchayat development block under Section 115 provided that the rate of local cess surcharge so levied shall not exceed two rupees and fifty paise on every rupee of land revenue payable in respect of such land."
>
> (emphasis by me)

15.2 A writ petition was filed in the Madras High Court by the appellant therein, which was dismissed by a learned Single Judge holding that cess levied under Section 115 of the amended Act was a tax on land and as such, fell under Entry

49 - List II-State List and was within the competence of the State legislature. Reliance was placed on a decision of this Court in ***HRS Murthy***. Against the order of the learned Single Judge, a writ appeal was filed before the Division Bench of the High Court, which was also dismissed by holding that local cess authorised by Section 115 of the amended Act "was not land revenue but is a charge on the land itself and Section 115 merely qualified the basis of quantum of the land revenue." The Division Bench of the Madras High Court held that the meaning of the Explanation added to Section 115 was that the cess was levied as a tax on land and was measured with reference to land revenue which also meant, royalty, lease amount etc., as mentioned in the Explanation. The Division Bench of the High Court also relied on the decision of this Court in ***HRS Murthy*** and held that it was not possible to accept the contention of the appellant therein that Section 115 of the said Act read with the Explanation contravened in any manner Section 9 of the MMDR Act, 1957.

15.3 In the said case, this Court at the outset observed that under the Second Schedule of the MMDR Act, 1957 rates have been provided with regard to the payments of royalty to the Government under the lease deed. Thus, there was an obligation on the lessee to pay rent and other charges mentioned under the clauses of the lease deed and all other Central and State Government dues "except demands for land revenue". The question which was framed by the seven-judge Bench of this Court was whether cess on royalty was a demand of land revenue or additional royalty.

15.4 As already noted, the aforesaid Explanation added to Section 115 of the said Act by virtue of the Amended Act was to include "royalty, lease amount and other sums payable to the government" in the definition of "land revenue" and also to validate the levy and collection of the cess and surcharge by giving the Explanation a retrospective effect. As a result, the said amendment was intended to bring royalty payable on a mining lease as per Section 9 of the MMDR Act, 1957 within the

Explanation which was the definition of "land revenue" applicable to Section 115 as well as Section 116 of the said Act.

15.5 This Court noted that the appellant, India Cement Limited, was paying royalty which was prescribed under the lease deed as fixed under MMDR Act, 1957 and as per the Rules made thereunder, the same being a Parliamentary Act by which the control of mines and minerals has been taken over by the Union. That the MMDR Act, 1957 is an Act for the regulation of mines and development of the minerals under the control of the Union of India. It was noted that Section 2 of the Act declares that it is expedient in the public interest that the Union of India should take under its control the regulation of mines and the development of the minerals to the extent provided in the Act. Section 9 of the MMDR Act, 1957 deals with payment of royalty in respect of mining leases. This Court observed that the MMDR Act, 1957 was passed by virtue of the power of the Parliament under Entry 54 - List I. Since the control of mines and the development of minerals were taken over by Parliament, the question whether the impugned levy or the impost by the State

Legislature, under the provision of the State Legislation referred to above, could be justified or sustained either under Entries 49, 50 or 45 - List II was considered. In paragraph 19 of ***India Cement***, this Court considered ***Guruswamy & Co., vs. State of Mysore, AIR 1967 SC 1512, ("Guruswamy")*** to indicate what a cess is. On analysing Sections 115 and 116 of the Madras legislation referred to above, this Court observed that the expression royalty in the Explanation could not be included in the definition of "land revenue" properly called or conventionally known, which is separate and distinct from royalty.

15.6 Reference was also made to the Judgments of the Mysore High Court in ***M/s Laxminarayana Mining Co., Bangalore vs. Taluk Development Board, AIR 1972 Mys 299 ("Laxminarayana Mining Co.")*** and Patna High Court in ***Laddu Mal vs. The State of Bihar, AIR 1965 Pat 491, ("Laddu Mal")*** and the Judgment of this Court in ***HRS Murthy.*** It was observed that in the latter case attention of this Court was not invited to the provisions of MMDR Act, 1957 and

Section 9 thereof and the Second Schedule to the said Act. Under the above provisions, there was a clear bar on the State legislature taxing royalty payable under Section 9 of the said Act so as to in effect amend the Second Schedule of the said Act. Therefore, it was held that tax on royalty can be a tax on land or called land revenue. Even if it is a tax, which falls within Entry 50 - List II it will be *ultra vires* the State legislative power in view of Section 9(3) read with Section 2 of MMDR Act, 1957, which is a Parliamentary law. In the above legislative background, this Court held that royalty was a tax or "land revenue" under the Explanation clause referred to above, which could not be the basis for levy of cess as, by that, cess on royalty payable would not be in consonance with what is stipulated under Section 9(3) of the MMDR Act, 1957 but would exceed the amount so stipulated which would not be within the legislative competence to levy in view of Section 2 of MMDR Act, 1957 read with Entry 50 - List I.

15.7 This Court further referred to the judgments of Rajasthan, Punjab, Gujarat and Orissa High Courts, which had

held that royalty is not a tax, namely, ***Bherulal vs. State of Rajasthan, AIR 1956 Rajasthan 161, ("Bherulal")***; ***Dr. Shanti Saroop vs. State of Punjab, AIR 1969 P & H 79, ("Dr. Shanti Saroop"); Saurashtra Cement and Chemical Industries Ltd. Ranavav vs. Union of India, AIR 1979 Guj 180 ("Saurashtra Cement and Chemical Industries");*** and ***Laxmi Narayan Agarwalla vs. State of Orissa, AIR 1983 Ori 210, ("Laxmi Narayan Agarwalla")*** but did not find it necessary to discuss the same in the view it was taking and having regard to there being no discussion of the constitutional provisions in the aforesaid cases.

15.8 The contention of the State of Tamil Nadu in ***India Cement*** was that the State has a right to tax minerals and that in Entry 50 - List II, there was no limitation to the taxing power of the State. This was not accepted and it was held that in view of Section 9(2) of the MMDR Act, 1957 the field was fully covered by the said Act which is a Central legislation. In paragraph 33, it was further observed that royalty is directly relatable only to the minerals extracted and on the principle

that the general provision is excluded by the special one, royalty would be relatable to Entry 50 - List II and not Entry 49 - List II. That as the field is covered by the Central legislation i.e. the MMDR Act, 1957, the impugned provisions of the State legislation cannot be upheld. Ultimately in paragraph 34 of the Judgment of this Court, it is observed as under:

> "**34.** In the aforesaid view of the matter, we are of the opinion that royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State legislature because Section 9 of the Central Act covers the field and the State legislature is denuded of its competence under Entry 23 of List II. In any event, we are of the opinion that cess on royalty cannot be sustained under Entry 49 of List II as being a tax on land. Royalty on mineral rights is not a tax on land but a payment for the user of land."

A reading of paragraph 34 would indicate as follows:

(i) Cess on royalty being a tax on royalty, is beyond the competence of the State legislature because Section 9 of the Central Act ie., MMDR Act, 1957, covers the field.

(ii) As a result, the State Legislature is denuded of its competence under Entry 50 - List II to impose any

cess on royalty which is collected under Section 9 of the MMDR Act, 1957.

(iii) Cess on royalty cannot be sustained under Entry 49 - List II as being a tax on land.

(iv) Royalty on mineral rights is not a tax on land but a payment for the user of land.

(v) However, under the Tamil Nadu legislation, royalty paid under the provisions of MMDR Act, 1957 was construed to be "land revenue" on which cess was levied, which was beyond the competence of the State Government as royalty is paid by a holder of a mining lease under the MMDR Act, 1957, a Central Act as a tax.

(vi) Thus, royalty is a tax.

15.9 The aforesaid conclusion was so arrived, *inter alia*, because the Explanation to Section 115 of the aforesaid amended Tamil Nadu Act defined 'land revenue' to include royalty, lease amount or any other sum payable to the Government in respect of land held direct from the Government

on lease or licence. Local cess on every rupee of "land revenue" was payable as per the above definition which meant royalty. This meant that on royalty payable on mining leases in respect of mineral bearing lands in the State of Tamil Nadu, which was included in the definition of land revenue, a further local cess was payable. Therefore, payment of royalty on a mining activity in exercise of a mineral right was construed to be "land revenue" and the basis for imposing a local cess. The payment of cess was in addition to payment of royalty under the provisions of the MMDR Act, 1957, which is a Central enactment. Thereby the payment to be made by a holder of a mining lease was a local cess to be paid under the Tamil Nadu Act in addition to royalty being paid under the MMDR Act, 1957. Moreover, under Section 116 of the Tamil Nadu Act, a Panchayat Union Council could also levy a local cess surcharge on every person liable to pay land revenue to the State Government in respect of any land in the Panchayat Union. The levy of local cess and local cess surcharge on the payment of royalty by a holder of a mining lease would inevitably increase

the price of minerals extracted in the State of Tamil Nadu over and above what is otherwise the price that could be fixed which would include, *inter alia*, only the royalty charges. Therefore, the increase in the price of a particular mineral extracted in the Tamil Nadu by virtue of the local cess and surcharge on local cess would not be in the interest of mineral development as it would lead to price escalation in the State of Tamil Nadu. This is not in the interest of mineral development as this would lead to every State imposing local cesses/imposts/tax on the minerals extracted in the respective States over and above royalty payable under the MMDR Act, 1957 which is a structured levy in the form of a tax to be determined only by the Central Government in order to maintain uniformity in the price of a mineral extracted throughout the country. But if over and above payment of royalty by a holder of a mining lease, local cesses and surcharges are also imposed based on the royalty paid, it would be contrary to Entry 54 - List I and the declaration made under Section 2 of the MMDR Act, 1957 and

the scheme of the said Act which envisages only payment of royalty on the minerals extracted.

15.10 Further, royalty could not be the basis for levy of cess construed as "land revenue" by the Tamil Nadu Act as this would make royalty a tax on land and cess on royalty would make it a tax which a State is not permitted to levy on mineral bearing land in view of Section 9 of the MMDR Act, 1957. Having regard to the provisions of MMDR Act, 1957, it was held that royalty is a tax. The same cannot be included within the definition of "land revenue" which itself is a tax which a State cannot make as the basis for imposing a cess or a surcharge on cess. Therefore, in paragraph 34 of the Judgment in ***India Cement***, the seven-judge Bench of this Court held that royalty is a tax and therefore cess on royalty being a tax on royalty was beyond the competence of the State legislature. This was having regard to the scheme of MMDR Act, 1957 and the Rules made thereunder as discussed above. Further, Entry 49 - List II could not be relied upon by the State Government to impose a cess on royalty by treating it as a land revenue and as a tax on land.

This was because payment of royalty was under Section 9 of the MMDR Act, 1957 as a tax on exercise of mineral rights. Hence, it was observed in paragraph 34 itself that "Royalty on mineral rights is not a tax on land but a payment for the use of land." It is in the above legal framework of the Tamil Nadu Act and the Entries in List I and List II and having regard to the object and scheme of MMDR Act, 1957 and the Rules made thereunder that the conclusion in paragraph 34 was arrived at. Ultimately, it was held that the levy of cess and surcharge on cess on the royalty payable was *ultra vires* the power of the State Legislature. As a result, the appeals filed by the appellant in ***India Cement***, were allowed.

As already noted, reference was made in detail to two decisions of the Patna and Mysore High Courts in arriving at the above conclusion by this Court which could be discussed at this stage.

Laddu Mal:

16. In ***Laddu Mal***, notices issued to the brick-layers by the Assistant Mining Officer, Purnea, Bihar calling upon them to

pay royalty were assailed. The petitions challenged the notices mainly on the ground that what were being used by them for manufacture of bricks, which were minor minerals and therefore, the Bihar State Government had no authority in law to impose any royalty in respect of minor minerals. In the said case, the High Court considered the definition of "taxation" under Article 366(28) of the Constitution of India to include the imposition of any tax or impost and observed that the expression royalty is used in a secondary sense to signify that part of the reddendum which is variable and depends upon the quantity of minerals taken out. It is a payment made to the land owner by the lessee of the mine, in return of the privilege of working which is different from rent. Royalty is a levy in proportion to the minerals worked. Royalty is an impost by the Government and was in the nature of tax because it was a compulsory exaction recoverable, in the event of non-payment, as if it was arrears of land revenue. That royalty on mines and minerals is not a fee but a levy which is in the nature of a tax. Article 265 of the Constitution provides that no tax shall be

levied or collected except by authority of law and the State Government had no authority to impose and demand royalty for mines and minerals.

16.1 With reference to Entry 54 - List I and Entry 23 - List II, it was observed that the area of operation of the two Entries has been kept separate and distinct. Anything beyond what is declared by Parliament to be expedient in the public interest to be kept under the control of the Union, will be under the legislative ambit of the State in regard to mines and mineral development in the State. The MMDR Act, 1957 is an enactment of the Parliament for the regulation of mines and the development of minerals under the control of the Union. Referring to various provisions of the MMDR Act, 1957 such as Section 3(a) which defines “minerals” to include all minerals except mineral oils; “mining lease” in Section 3(c) and ”mining operations” in Section 3(d) and the definition of ‘minor minerals” in Section 3(e) of the said Act, it was observed that Section 2 of the said Act declared that it was expedient in public interest that the Union should take under its control the regulation of

mines and the development of minerals to the extent provided. Further, on a reading of Sections 4 to 13 of the said Act, it was clear that the Parliament gave control of all mines and minerals except mineral oil, to the Union Government. However, in Sections 14 and 15, an exception was carved with regard to minor minerals. Therefore, Entry 54 - List I gave the power to the Union Government to regulate all mines and development in minerals except oils thereby leaving no area for legislation in that respect to the State Legislature. That, insofar as 'minor minerals' are concerned, the State Governments were authorised to make rules for regulation of grant of prospective licenses and mining leases and for purposes connected therewith and it is also a delegated authority given to the State Government and not the State Legislature.

16.2 Taking into consideration Entry 50 - List II, which deals with taxes on mineral rights subject to any limitation imposed by the Parliament by law relating to mineral development, it was observed that in view of the limitation imposed by the Parliament under the MMDR Act, 1957, it was doubtful if any

legislative competency has been left for the State Legislature to impose any tax on mineral rights. Discussing Section 9 of the MMDR Act, 1957, it was observed that the same mandates payment of royalty by the holder of a mining lease in respect of any mineral removed by him after the commencement of the Act at a rate specified in the Second Schedule thereof. The Union Government had been empowered to enhance or reduce such rate, subject to certain conditions. That the Parliament had given power to the Union Government to modify the rates of royalty for all minerals except for minor minerals in respect of which the matter was left to the States. Insofar as minor minerals are concerned, imposition of royalty was within the power of the State Government by way of rules. Also, rules made by the State Government prior to the enforcement of the MMDR Act, 1957 continued to be operative till fresh rules were enforced, being the Bihar Minor Mineral Concession Rules, 1984. It was reasoned that, Entry 54 - List I uses the expression "mines and minerals" which includes (i) regulation of mines and (ii) mineral development. Therefore, widest possible meaning

should be given to the said expression considering the question in the context of the Bihar Minor Minerals Concession Rules, 1954 and the impugned notices demanding royalty. Consequently, the notices issued by the Assistant Mining Officer calling upon the petitioners to pay royalty on account of brick-earth were quashed.

Laxminarayana Mining Co.:

17. Reference was made to the judgment of the Mysore High Court in ***Laxminarayana Mining Co.*** authored by Venkataramiah, J. (as His Lordship then was), in ***India Cement***. In the said case it was observed that on a combined reading of Entries 23 and 50 - List II and Entry 54 - List I it established that as long as the Parliament did not make any law in exercise of its power under Entry 54 - List I the powers of the State Legislature in Entries 23 and 50 - List II would be exercisable by the State Legislature. But once the Parliament makes a declaration by law that it is expedient in the public interest to make regulation of mines and development of minerals under the control of the Union, to the extent to which

such declaration is made, such regulation and development is undertaken by law made by Parliament and the powers of the State Legislature under Entries 23 and 50 - List II are denuded.

17.1 In this case, the Mysore Village Panchayats and Local Boards Act, 1959, ('State Act', for short) by enacting Sections 143 and 144 intended to confer power on the Taluk Board to levy a licence fee on the mining of manganese ore, iron ore etc carried on by persons holding mineral concessions i.e. on the activity of mining.

17.2 By Notification issued under the aforesaid provisions, persons engaged in mining of manganese iron ore, etc. with the help of machinery or without the help of machinery, as the case may have been, under Entries 62 and 63 of the Schedule to the aforesaid State Act had to pay a licence fee. Aggrieved by the notices of demand and the Notification issued under Sections 143 and 144 of the aforesaid State Act, the petitioners therein had filed the writ petition seeking quashing of the notices of demand and the Notification in so far as they levied licence fee

under the aforesaid provisions. Further, Sections 143 and 144 of the State Act provided for regulation of certain trades and the relevant part of Schedule II of the State Act, on the basis of which the impugned Notification was issued which provided for the levy of a licence fee on any purpose or the doing in the course of any industrial process, which, in the opinion of the Taluk Board, was likely to be dangerous to human life, or health or property or was likely to create or cause a nuisance.

The following three main contentions were urged by the petitioners therein: -

(i) that the State Legislature could not have made a law authorising the imposition of the impugned levy after the Mines and Minerals (Regulations and Development) Act, 1957 (Central Act LXVII of 1957) came into force;

(ii) that the Notification in so far as it levied licence fee on the mining activities carried on by the petitioners therein was outside the scope of Sections 143 and 144 of the State Act; and

(iii) that the licence fee in question which was in the nature of a tax and could not have been levied because Sections 143 and 144 of the State Act did not confer power on the Taluk Development Board to levy a tax.

17.3 The respondent-State of Mysore had sought to contend that the demand notices as well as the Notification were rightly issued and that the licence fee demanded by the them was in the nature of a tax and that the Taluk Development Board had the competence to levy the same as the State Legislature was authorised by Entry 23 - List II to make law with respect to regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union. It was further contended that Entry 50 – List II of the same list authorised the State Legislature to levy tax on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

17.4 After referring to the scheme of the MMDR Act, 1957 as well as the Mineral Concession Rules, 1960, the High Court

reasoned that the State enactment was passed in the year 1959 whereas the MMDR Act, 1957 was passed in the year 1957. Section 143 of the State Act dealt with regulation of certain trades. The notification issued under Sections 143 and 144 of the aforesaid State Act had mandated that the owner or occupier of a place for the purpose of mining of manganese ore or iron ore etc. with the help of machinery or without the help of machinery had to pay a licence fee for the use of such place. Relying upon ***Hingir-Rampur*** and ***M.A. Tulloch***, and distinguishing ***HRS Murthy***, it was observed that this Court had in unequivocal terms had held that in respect of matters dealt with by the Central Act, i.e. MMDR Act, 1957, the State Legislature had no authority to make any law.

17.5 It was also observed that this Court in ***Hingir-Rampur*** or in ***HRS Murthy*** did not decide the question as to what meaning should be given to the expression 'tax on mineral rights' appearing in Entry 50 – List II. It was further reasoned in paragraphs 17 and 18 as under:

"**17.** Entry 50 in List II which authorises the levy of tax on mineral rights is subject to limitations imposed by Parliament by law relating to mineral development made in exercise of its power under Entry 54 of List I. It was contended on behalf of the respondents that in the instant case the tax was not on mineral rights, but on the activity of mining carried on in certain areas. We find it difficult to accept the said contention. As observed by the Supreme Court in *State of Orissa* v. *M.A. Tulloch*, AIR 1964 SC 1284 by making a declaration under Section 2 and enacting Section 18 of the Central Act, the intention of the Parliament to cover the entire field of mineral development including tax on mineral rights is made clear. The levy of royalty under Section 9 of the Central Act and the provision for making rules with regard to the fixation and collection of dead rent, fines and fees or other charges and the collection of royalties on prospecting licence and mining lease and the provisions of Section 25 of the Central Act authorising the recovery of any tax payable under the Central Act as arrear of land revenue, clearly shows that the Parliament intended that the power to legislate with regard to taxation on mineral rights also should be assumed by it to the exclusion of the State Legislatures. The expression 'royalty' is used differently in different contexts. Sometimes it is used as equivalent to a tax also and in some other cases it is used as representing the amount payable by a lessee in respect of minerals removed by the lessee even though the lessor is not the sovereign Government we are of the opinion that the expression 'royalty' in Section 9 which requires payment of royalty to the State Government as prescribed in the II Schedule connotes the levy of a tax. Vide *Laddu Mal* v. *The State of Bihar*, AIR 1965 Pat 491. It is a levy falling outside the scope of Entry 84 in List I which provides for levy of excise duty by Parliament but within the scope of the expression 'tax on mineral rights' within the meaning of that expression in Entry 50 of List II. To us it appears the expression 'tax on mineral rights' includes within its scope the royalty payable on minerals extracted.

> Mineral rights and mining activity carried on in exercise of those mineral rights appear to us to be indistinguishable in the above context. That appears to be the true intendment of the declaration contained in Section 2 of the Central Act and that it is so enacted in order to see that throughout the 'Indian Union, the rents, royalties and other taxes payable in respect of mining and minerals are uniform. It may be recalled here that in *Hingir Rampur Coal Company's case*, AIR 1961 SC 459 the Supreme Court has stated that the scope of the Central Act is wider than the scope of the Central Act LIII of 1948 which by Section 6(2) provided for making rules regarding levy and collection of royalties fees or taxes on minerals mined, quarried or excavated (vide paragraph 24 of the judgment).
>
> **18.** We are, therefore, of the opinion that by the enactment of the Central Act, the State Legislature lost its legislative power under Entries 23 and 50 of List II to the extent indicated in the Central Act. Hence, we cannot accept the contentions of the respondents that even after the passing of the Central Act, the State Legislature by enacting Section 143 of the State Act intended to confer power on the respondents to levy tax on the mining activities carried on by persons holding mineral concessions. It follows that levy of tax on mining by respondents as Per the impugned notification is Unauthorised and is liable to be set aside. ... ... What is however liable to be set aside is the notification issued by respondent 1 in exercise of its power under Section 143 of the State Act to the extent it levies a tax on mining of manganese or iron ore."

The Mysore High Court held that royalty under Section 9 of the MMDR Act, 1957 is in the nature of a tax. Therefore, the levy of a licence fee on mining activity by the Taluk Board as per the impugned notification issued under the aforesaid

provision was unauthorised and was set aside as there was no power vested under Entry 50 – List II after the enforcement of MMDR Act, 1957. This was because Section 9 was a limitation imposed by Parliament on Entry 50 – List II.

17.6 This judgment is instructive inasmuch as it put into perspective what was required to be decided, i.e. whether royalty is a tax within the scope and meaning of Section 9 and other relevant provisions of the MMDR Act, 1957 and not from any other perspective.

Orissa Cement:

18. Subsequent to the judgment in ***India Cement***, the validity of the levy of a cess, based on the royalty derived from mining lands, by the States of Bihar, Orissa and Madhya Pradesh was challenged in ***Orissa Cement*** in the respective appeals filed by the State. On discussing the legislative Entries and earlier decisions of this Court and having regard to Section 2 of the MMDR Act, 1957 and the various State enactments under which cess on royalty was sought to be levied, this Court raised two questions as under:

> "(1) Can the cess be considered as "land revenue" under Entry 45 or as a "tax on land" under Entry 49 or as a "tax on mineral rights" under Entry 50 of the State List?
>
> (2) If the answer to question (1) is in the negative, can the cess be considered to be a fee pertaining to the field covered by Entry 23 of the State List or has the State been denuded of the legislative competence under this Entry because of Parliament having enacted the MMRD Act, 1957?"

After a detailed discussion, in paragraph 37 of ***Orissa Cement,*** it was observed by this Court that if royalty were to be regarded as a tax, it can perhaps be described properly as a tax on mineral rights and has to conform to the requirements of Entry 50 - List II. If the cess is taken as a tax, then, unless it can be described as land revenue or a tax on land or a tax on mining rights, it cannot be upheld under Entry 45, 49 or 50 - List II. It was further observed that the question whether royalty is a tax or not does not assist much in furnishing an answer to the two questions posed in the case.

18.1 Considering the Scheme of the MMDR Act, 1957 and the Rules made thereunder, it was opined that levy of tax had to be struck down insofar as the Bihar Act was concerned. As far as the Madhya Pradesh Act was concerned, the levy of cess

was not on land in general but only on land held in connection with mineral rights, which, in the State of Madhya Pradesh is principally in regard to coal and limestone. Reiterating that cess is not referrable either under Entry 49 or 50 - List II, the State's petition was dismissed. It was held that the State legislature had no competence to impose the cess. The same reasoning was also applied insofar as the levy of cess in the State of Orissa was concerned.

Mahalaxmi Fabric Mills:

19. In ***Mahalaxmi Fabric Mills***, two questions fell for consideration in the said appeals – *firstly,* whether Section 9(3) of the MMDR Act, 1957 was *ultra vires* the Constitution; and, *secondly,* whether the notification dated 01.08.1991 issued by the Central Government under Section 9(3) of the Act was *ultra vires*, illegal and inoperative in law. This Court followed the earlier dicta in ***India Cement*** as well as ***Orissa Cement*** and was observed that the contention of the Central Government that prices of minerals for exports were fixed and could not be escalated with the enhancement of the royalties by different

States as their working would become impossible. Therefore, the Parliament had placed an embargo on enhancement of the royalty directly or indirectly except by the Union and in the manner specified under the MMDR Act, 1957. In paragraph 20 of the judgment, it was observed that enhancing uniformly the rates of royalty for the entire country even though minerals might be extracted from different States is necessary for having a uniform pattern of price of minerals and that has a direct linkage with the development of minerals. Further, regulating the rates of royalty on extraction of minerals also has an important role to play in opening up new mining areas for winning minerals. In this connection, Section 18 of the Act which deals with mineral development was referred to and it was observed that fixation of royalty rates is in the realm of development of minerals as envisaged by Section 18 of the MMDR Act, 1957 and the contrary submission to the above was not accepted.

19.1 Referring to the definition clause which defines, *inter alia,* 'minerals and minding operations', it was observed that

'mining operation' means any operation undertaken for the purpose of winning any mineral. It was obvious that development of mineral as envisaged by Section 18 of the MMDR Act, 1957 and even by Entry 50 - List II necessarily would mean extraction of mineral from the earth or from the crust of the earth by mining operations. Therefore, the term development of minerals has a direct linkage with mining operation. Without that, minerals cannot develop by themselves. Therefore, it was held that regulation of mines and development of minerals are interconnected concepts. This was because minerals hidden in the earth by themselves cannot yield profit to anyone and they become minerals only when they are brought out on the surface of the earth by mining operations. Therefore, imposition of royalty is in the context of development of minerals on a uniform pattern throughout the country. It was further observed that the original writ petitioners had failed to show how the enhanced rate of royalty as per the impugned notification had become unreasonable or

confiscatory in nature. Consequently, the appeals were dismissed.

Mahanadi Coalfields:

20. The main controversy in this case was with regard to levy of tax under the Orissa Rural Employment, Education and Production Act, 1992, on coal-bearing lands. The Division Bench of the High Court of Orissa held that the State Legislature did not have the competence to levy the tax on coal-bearing lands and had struck down Section 3(2)(c) of the said Act as well as the Schedule appended to the said Act. The High Court took the view that the levy was hit by Section 9-A of the MMDR Act, 1957 and was also discriminatory and hit by Article 14 of the Constitution. On discussing the earlier judgments of this Court in light of the constitutional Entries in Lists I and II and the Scheme of the MMDR Act, 1957 as well as the combined effect of the proposed levy, the civil appeals were disposed of by concurring with the conclusions of the High Court of Orissa to the effect that the State had no legislative competence to levy the cess under the aforesaid Act of 1992.

Saurashtra Cement.:

21. In this case, the interesting question was regarding the constitutional validity of Section 9(3) of the MMDR Act, 1957, *inter alia*, on the ground that the levy of royalty on minerals is a tax and the Union Legislature did not have the power under Entry 54 - List I to enact such a law which denudes the right of the State Legislature to levy tax on minerals right under Entry 50 - List II. The Gujarat High Court followed the dicta in ***India Cement*** and ***Mahalaxmi Fabric Mills*** and disposed of the writ petitions.

Goodricke:

22. In ***Goodricke Group Ltd. vs. State of West Bengal, 1995 Supp. (1) SCC 707 ("Goodricke"),*** the validity of the levy of education cess and rural employment cess created by the West Bengal Taxation Laws (Second Amendment) Act, 1989 was called in question by way of writ petitions preferred by several tea estates in West Bengal. The first question considered was, whether, the impugned levy was a levy upon the lands within the meaning of Entry 49 - List II. In this case, the judgment of

this Court in ***India Cement*** was considered and it was observed that what was of crucial relevance in ***India Cement*** was that the levy of cess was not upon the land or upon its yield (or its income) but upon the royalty amount payable to the lessor, which was included within the definition of "land revenue" under the Madras Panchayats Act. The question in ***India Cement***, therefore, arose whether such cess levied with reference to or calculated on the basis of amount of royalty can be called a tax on land. It was held that it could not be so. It was pointed out that the royalty varies according to the particular mineral quarried in a given year and if no mineral was quarried, no royalty would be payable. However, the basis of the judgment was that it was a case where tax was measured not with reference to or on the basis of the income or yield of the land but with reference to the amount of royalty payable by the lessee to his lessor. It was for this reason that the cess was held to be not upon the land. Royalty is a matter of agreement between the lessor and the lessee. It may also be determined by a statutory provision. But royalty is not the produce of the land;

royalty is not the income of the land nor is royalty the yield of the land and that is the distinction. In ***India Cement***, the petitioners' contention was that the impugned measure being a tax not on the share of the produce of the land but on "royalty" payable, the levy of cess was bad. This contention was upheld. It was held that cess on royalty cannot be sustained under Entry 49 - List II as being a tax on land. It was observed that the cess impugned in ***India Cement*** was "*an additional charge on royalty*" which was impermissible as it was not a tax on land but an impost on royalty paid for exercising mineral rights.

22.1 The aforesaid reasoning in ***India Cement*** was therefore distinguished in ***Goodricke.*** Similarly, ***Orissa Cement*** was also distinguished. It was observed that the levy should not be an indirect levy on land like the one in ***India Cement*** wherein it was on the royalty but not on land itself. However, levy on land quantified on the basis of its yield could be treated as direct levy upon the land. Therefore, in ***Goodricke,*** it was observed that the mere fact that the tax was measured with reference to

the yield of the land did not make it any the less tax upon the land directly and within the scope of Entry 49 - List II.

22.2 In my view, the aforesaid distinction brought out in ***Goodricke*** between the levy of cess on royalty and levy of cess on yield from land, clearly indicates that in ***India Cement,*** the cess was struck down as not coming within the scope and ambit of Entry 49 - List II as the cess was not on land directly. Cess was on a payment of royalty by a lessee conducting a mining operation which is not a cess directly on the land but on exercising a mineral right which aspect was under the control of the Union by virtue of the MMDR Act, 1957.

22.3 However, in ***Goodricke,*** it was observed that tax imposed on land measured with reference to or on the basis of its yield, is certainly a tax directly on the land. Apart from income, yield or produce, there can perhaps be no other basis for levy. Merely, because a tax on land or building is imposed with reference to its income or yield, it does not cease to be a tax on land or building. The income or yield of the land/building is taken merely as a measure of the tax; it does

not alter the nature or character of the levy. It remains a tax on land or building. The aforesaid reasoning would not apply to the present case. The payment of royalty on exercise of mineral right is itself a tax and the royalty being considered as a measure for the purpose of payment of tax on land within the scope and ambit of Entry 49 – List II would not arise in view of there being a separate Entry 50 – List II.

22.4 Moreover, in ***Goodricke***, what was considered was Entry 52 – List I and not Entry 54 – List I. Entry 50 – List I which is subjected to Entry 54 – List I and the same being a unique Entry, would not apply while considering Entry 49 – List II in the context of Entry 52 – List I. This is because Entry 52 – List I does not impose any limitation on Entry 49 – List II and if the tax on exercise of mineral right squarely falls within the ambit of Entry 50 – List II then the limitation in the context of Entry 54 – List I would have to be borne in mind before the State can embark upon levying any further tax on the basis of royalty as a measure.

22.5 Having noted this *sui generis* relationship above, I may observe the difficulty in drawing any further analogy between ***Goodricke*** and the instant case. Every facet concerning minerals, whether it be taxation, regulation, or development, is without an *iota* of doubt an important question of national concern for, it has ramifications on the stability of national economy, environmental degradation, labour laws, rights of tribal communities, etc. That the aforesaid sentiment was shared and acted upon by our Constitutional framers is explicit *vide* insertion of a unique and special apparatus in the Constitution through Entry 54 - List I, Entry 23 – List II and Entry 50 – List II. In my opinion, it would be incongruous with the constitutional intent to hold that the conscious provision for Union supremacy through the insertion of aforesaid apparatus, specifically through insertion of Entry 50 – List II, denudes the States' power to use mineral rights or royalty levied upon them as a measure to tax land. To do so would simply render Entry 50 – List II nugatory.

22.6 The contention that land cannot be decoupled from mineral rights is attractive at first blush. But, on closer examination, this proposition goes against the cardinal rule of interpreting Entries in the Lists. It is settled law that there must be a reasonable nexus between the nature of tax and the measure of tax. In ***India Cement***, this Court had noted that royalty is only indirectly connected with land and cannot be said to be a tax directly on land as a unit. In my opinion, this finding requires no second look. The contention that royalty can be used a measure to tax land under Entry 49 – List II would, in my opinion, inevitably lead to conflation with the nature of tax that is reserved for Entry 50 – List II subject to any limitations imposed by Parliament by law relating to mineral development.

Kesoram:

23. The dictum in ***India Cement*** by a seven-judge Bench and subsequent decisions which followed it was doubted by a majority of a five-judge Bench of this Court in ***Kesoram***. It would be useful to highlight the relevant portions of the said

judgment as the real controversy stems from this Judgment. In the said case, three sets of matters arose from West Bengal, which, for the sake of convenience, were called as (A) "coal matters" (B) "tea matters" and (C) "brick earth matters". The other set of matters which arose from the State of Uttar Pradesh was (D) "minor mineral matters".

23.1 In the coal matters, the constitutional validity of the amendment made to the Cess Act, 1880 and West Bengal Rural Employment and Production Act, 1976 by which the expression "coal-bearing land" was defined to mean holding or holdings of land having one or more seams of coal comprising the area of a coal mine, given effect to from 01.04.1992, was successfully impugned before the High Court. Therefore, the State of West Bengal had filed the appeal before this Court. The High Court had placed reliance on the judgments of this Court in ***India Cement*** and ***Orissa Cement*** wherein the levy of cess impugned therein was struck down as unconstitutional. The Calcutta High Court had held that the levy was without legislative competence of the State and hence, was liable to be struck down. The High

Court had also concluded that the Cess cannot be said to be on land so as to be covered by Entry 49 - List II.

23.2 A similar cess was levied by the State Legislature of Orissa as the Orissa Rural Employment, Education and Production Act, 1992 on land-bearing coal and other minerals. A challenge to the constitutional validity of such cess was successfully laid before this Court and the Section 3(2)(c) of the Orissa legislation was struck down as unconstitutional as *ultra vires* the competence of the State Legislature in ***Mahanadi Coalfields.***

23.3 Insofar as the cases arising from the Allahabad High Court concerning constitutional validity of a cess on mineral rights levied under Section 35 of the Uttar Pradesh Special Area Development Authorities Act, 1986 read with Rule 3 of Shakti Nagar Special Area Development Authority (Cess on Mineral Rights) Rules, 1997 ("the SADA Act" and "the SADA Cess Rules", respectively), the challenge was to the imposition of cess on mineral rights at such rates as may be prescribed, subject to any limitations imposed by Parliament by law relating to

mineral development. The SADA Cess Rules as well as Section 35 of the SADA Act were challenged on the ground that MMDR Act, 1957 having been enacted, containing a declaration under Section 2 thereof as contemplated by Entry 54 - List I and the Act being applicable to the State of Uttar Pradesh as well, the State legislature was denuded of its power to enact the impugned law and levy impugned cess. It was contended that the impugned cess would have the impact of adding to the royalty already being paid and thereby increase the same, which was *ultra vires* the power of the State Government as that power could only be exercised by the Central Government. The Allahabad High Court held that SADA Act and SADA Rules and the levy of cess thereunder was within the competence of the State Legislature with reference to Entry 50 - List II. Since this Court, through a three-judge Bench, had noted a conflict of decisions, the matters were placed before Hon'ble the Chief Justice for appropriate directions. Thereafter, the matters were listed before a five-Judge Constitution Bench.

23.4 The Constitution Bench in ***Kesoram*** noted the question of constitutional significance centring around Entries 52, 54 and 97 - List I and Entries 23, 49, 50 and 66 - List II, as also the extent and purport of the residuary power of legislation vested in the Union of India. In Paragraph 52 of the judgment, this Court noted the questions which arose in ***India Cement*** and encapsulated the ratio of the said judgment.

23.5 In ***India Cement***, the judgment of the Mysore High Court in ***Laxminarayana Mining Co.*** was cited with approval. As already noted, the Mysore High Court had struck down as violative of the MMDR Act, 1957 imposition of a licence fee on mining manganese, iron ore, etc., under a State legislation by issuance of a notification. In ***Kesoram,*** while considering the ratio of the judgment of the Division Bench of the Mysore High Court in ***Laxminarayana Mining Co.,*** which had held that, licence fee was a step trenching upon the field of regulation and mineral development, was liable to be struck down on that ground alone, in paragraph 55, observed as under:

> **"55.** In our view, the decision by the Mysore High Court cannot be read so widely as laying down the law that the Union's power to regulate and control results in depriving the States of their power to levy tax or fee within their legislative competence without trenching upon the field of regulation and control. There is a distinction between power to regulate and control and power to tax, the two being distinct and that difference has not been kept in view by the Mysore High Court."

In substance, this Court observed that Union's power to regulate and control is distinct from the State's power to levy tax and the distinction between the two had not been borne in mind by the Mysore High Court which aspect shall be discussed later.

23.6 Moving further in paragraph 56, this Court in ***Kesoram*** observed as under:

> ***"(A diversion from the main issue) Royalty, if tax?***
>
> **56.** We would like to avail this opportunity for pointing out an error, attributable either to the stenographer's devil or to sheer inadvertence, having crept into the majority judgment in *India Cement Ltd. case* [(1990) 1 SCC 12 : 1989 Supp (1) SCR 692 : AIR 1990 SC 85] . The error is apparent and only needs a careful reading to detect. We feel constrained — rather duty-bound — to say so, lest a reading of the judgment containing such an error — just an error of one word — should continue to cause the likely embarrassment and have adverse effect on the subsequent judicial pronouncements which would follow *India Cement Ltd. case* [(1990) 1 SCC 12 : 1989 Supp (1) SCR 692 : AIR 1990 SC 85] , feeling bound and rightly, by the said judgment

having the force of pronouncement by a seven-Judge Bench. Para 34 of the Report reads as under: (SCC p. 30)

> "*34*. In the aforesaid view of the matter, we are of the opinion that *royalty is a tax*, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature because Section 9 of the Central Act covers the field and the State Legislature is denuded of its competence under Entry 23 of List II. In any event, we are of the opinion that cess on royalty cannot be sustained under Entry 49 of List II as being a tax on land. *Royalty on mineral rights is not a tax on land* but a payment for the user of land."

23.7 In paragraph 57, this Court made its inferences on what was observed by the seven-judge Bench of this Court in paragraph 34 (extracted above) of ***India Cement*** as under:

> **"57.** In the first sentence the word "royalty" occurring in the expression "royalty is a tax", is clearly an error. What the majority wished to say, and has in fact said, is "cess on royalty is a tax". The correct words to be printed in the judgment should have been "cess on royalty" in place of "royalty" only. The words "cess on" appear to have been inadvertently or erroneously omitted while typing the text of the judgment. This is clear from reading the judgment in its entirety. Vide paras 22 and 31, which precede para 34 abovesaid, Their Lordships have held that "royalty" is not a tax. Even the last line of para 34 records "royalty on mineral rights is not a tax on land but a payment for the user of land". The very first sentence of the para records in quick succession "… as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature…." What Their Lordships have intended to record is "… that cess on royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature …". That makes correct and sensible reading. A doubtful expression occurring in a

> judgment, apparently by mistake or inadvertence, ought to be read by assuming that the Court had intended to say only that which is correct according to the settled position of law, and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied or necessarily read in the context, also having regard to what has been said a little before and a little after. No learned Judge would consciously author a judgment which is self-inconsistent or incorporates passages repugnant to each other. Vide para 22, Their Lordships have clearly held that there is no entry in List II which enables the State to impose a tax on royalty and, therefore, the State was incompetent to impose such a tax (cess). The cess which has an incidence of an additional charge on royalty and not a tax on land, cannot apparently be justified as falling under Entry 49 in List II."
>
> (underlining by me)

23.8 Thereafter, this Court discussed the meaning and content of the expression royalty from various dictionaries and other authorities and referred to the judgments of the High Courts of Orissa, Punjab and Haryana, and Gujarat High Court and in paragraph 64 observed as under:

> **"64.** We need not further multiply the authorities. Suffice it to say that until the pronouncement in *India Cement* [(1990) 1 SCC 12 : 1989 Supp (1) SCR 692 : AIR 1990 SC 85] nobody doubted the correctness of "royalty" not being a tax."
>
> (underlining by me)

And ultimately in paragraph 69, it was inferred as under:

> **"69.** In *India Cement* [(1990) 1 SCC 12 : 1989 Supp (1) SCR 692 : AIR 1990 SC 85] (vide para 31, SCC) decisions of four High Courts holding "royalty is not tax" have been noted without any adverse comment. Rather, the view seems to have been noted with tacit approval. Earlier (vide para 21, SCC) the connotative meaning of royalty being "share in the produce of land" has been noted. But for the first sentence (in para 34, SCC) which we find to be an apparent error, nowhere else has the majority judgment held royalty to be a tax."
>
> (underlining by me)

23.9 The inference being that there is an apparent error in holding that "royalty to be a tax", whereas "royalty is not a tax". However, the above inference loses sight of the fact that in paragraph 34 of the ***India Cement*** it has been observed that ***"Royalty on mineral rights is not a tax on land, but a payment for the user of the land"***. This has been held to be a contradiction in ***Kesoram***. However, what was actually meant in ***India Cement*** was that royalty is a tax on mineral rights. The majority in ***Kesoram*** thereafter noted how the matter was dealt with in ***Mahalaxmi Fabrics Mills*** and ***Saurashtra Cement*** and made observations therein, as noted in paragraph 70 of the judgment. Ultimately, in paragraph 71, it was

observed that ***royalty is not a tax*** **and** ***royalty cannot be a tax*** and that even in ***India Cement*** it was **not** the finding of the Court that royalty is a tax.

23.10 With regard to decisions post ***India Cement***, the majority expressed its dissent with that part of the judgment in ***Mahalaxmi Fabrics Mills***, which stated that there was "no typographical error" in ***India Cement***. The reasoning in ***Mahanadi Coalfields*** was also not subscribed to in ***Kesoram*** and it was held that the said case was not correctly decided inasmuch as they applied ***India Cement*** and ***Orissa Cement*** and therefore, it was over-ruled.

23.11 With great respect to the majority in ***Kesoram***, the aforesaid strong observations were in fact premised on a "typographical error" in para 34 of the judgment in ***India Cement*** when there was none. The entire reasoning in paragraph 57 of ***Kesoram*** extracted above proceeded on the basis that a typographical error was inadvertently or erroneously committed while typing the correct text of the

judgment and therefore, what was a "sensible reading" was supplied by the majority to make an omission or error, namely, "*cess on royalty" instead of "royalty"* only.

23.12 With respect, I find that the aforesaid understanding by the majority in ***Kesoram*** is incorrect, a departure from all precedents right from the judgment of this Court in ***Hingir-Rampur*** and contrary to the scheme of Entry 54 – List I and Entry 50 – List II and the architecture of the MMDR Act, 1957 enacted pursuant to Entry 54 - List I and particularly, having regard to Section 2 of the said Act. Therefore, there was no necessity to doubt the proposition that royalty is a tax. On a non-appreciation of what exactly the import of the judgment in the ***India Cement*** was, this doubt expressed by the majority in ***Kesoram*** has ultimately led to the constitution of this nine-judge Bench to answer eleven points for reference which, in my view, was wholly unnecessary. This aspect would become more clear if the judgment of this Court in ***P. Kannadasan vs. State of Tamil Nadu, (1996) 5 SCC 670 ("Kannadasan")*** is perused which is discussed later.

23.13 By contrast, Sinha J., in his dissenting opinion in ***Kesoram*** at paragraph 309, has appreciated the controversy in the following words:

> **"309.** The decisions of the Privy Council in *Governor General in Council* v. *Province of Madras* [1945 FCR 179 : AIR 1945 PC 98] on the question of interpretation as regards conflicting legislative entries in general and tax entries in particular may not be apposite in the instant case inasmuch as herein we are concerned with only one question, namely, whether the field of taxation of mines and minerals which are extracted and cease to be a part of the surface, is wholly covered or not. One of the principles for reconciling conflicting tax entries is to ascertain as to whether a person, thing or activity is the subject-matter of tax and the amount of the tax to be levied. The question which has to be answered on the basis of the aforementioned principle is, is it a tax on land or tax on mineral. If having regard to the nature of tax and keeping in view the history of the legislation to the effect that the State of West Bengal has all along been trying to impose tax on minerals as opposed to tax on land, is taken into consideration, it will be noticed that endeavours have been made to continue to impose "cess" on mineral and mineral rights in the garb of "land tax"."
>
> (underlining by me)

23.14 Therefore, the pith and substance of the controversy being, *whether in the garb of imposition of impugned land tax on the strength of Entry 49 - List II, the State has the power to impose cess on royalty, or, in other words, cess on mineral and mineral rights* was rightly identified. This is because royalty is a

payment for the exercise of mineral rights and not a tax on land and if cess is levied on royalty, then the same is an imposition on the exercise of mineral rights, which is covered under Section 9 of the MMDR Act, 1957. It is in the aforesaid context that Sinha, J. also referred to Section 25 of the MMDR Act, 1957 which states that any rent, royalty, tax, fee or other impost under the said Act or the Rules made thereunder can be recovered as arrears of land revenue. Therefore, in paragraph 321, it was opined by Sinha, J. as under:

> **"321.** Section 25 of the MMRD Act, 1957 by necessary implication refers to the taxing power of Parliament. Imposition of taxes on mineral rights would affect the development of mines and minerals. Parliament's authority to regulate and control mineral development would be seriously impaired and affected if it is held that the matter relating to imposition of tax on minerals is also vested in the State. The vires of Sections 9 and 9-A of the 1957 Act has not been questioned. In fact, they have been held to be intra vires in *State of M.P.* v. *Mahalaxmi Fabric Mills Ltd.* [1995 Supp (1) SCC 642] , *Saurashtra Cement and Chemical Industries Ltd.* v. *Union of India* [(2001) 1 SCC 91] and *South Eastern Coalfields Ltd.* [(2003) 8 SCC 648 : (2003) 7 Supreme 539] Unless power to levy compulsory impost is held to be ultra vires the Constitution, it cannot be held that Parliament has encroached upon the States' power of taxation."
>
> (underlining by me)

The aforesaid observations are significant in light of the history of legislation as regards regulation of mines and development of minerals and the logical corollary would be that in the field of levy of tax, fee or other charges, the Parliament by virtue of Section 9 read with Section 25 of the MMDR Act, 1957 has covered the field of legislation which act as a limitation on the State's power under Entry 23 - List II of the Constitution. Therefore, Sinha, J. rightly observed that once it is held that the entire field of mines and minerals is covered by the MMDR Act, 1957 the impugned levy by way of cess on coal-bearing land is nothing but an imposition of tax on exercise of mineral rights which is barred having regard to the field being covered by the provisions of the MMDR Act, 1957.

24. What is of significance is that in ***India Cement***, the seven-judge Bench of this Court considered the judgments of the Patna High Court in ***Laddu Mal*** and that of the Mysore High Court in ***Laxminarayana Mining Co.*** and approved the same. However, there was a reference made to four other judgments of the High Courts of Punjab and Haryana, Gujarat,

Orissa and Rajasthan. The criticism by the majority in ***Kesoram*** is that there was no discussion on those judgments in ***India Cement***. The reasons for there being no necessity for discussion of the said judgments are not far to see. The judgments of the Patna and Mysore High Courts considered at length the concept of royalty in the context of the constitutional Entries in Lists I and II, as discussed above and in light of the declaration made in Section 2 and the scheme of the MMDR Act, 1957. It was observed by the Patna and Mysore High Courts that having regard to the constitutional scheme *vis-à-vis* the legislative fields, in the context of making laws on mineral rights and mineral development and Section 2 of the MMDR Act, 1957 payment of royalty on a mining lease being covered under the Parliamentary Act, i.e. MMDR Act, 1957, the same acted as a limitation imposed by the Parliament by law relating to mineral development on the States' competence to also tax on exercise of mineral rights by levying a cess or any other impost on royalty. Therefore, by a logical deduction, it was held that royalty is a tax within the meaning of Entry 50 - List II.

Consequently, any cess on royalty or any other impost on royalty or royalty being a basis for a further tax or impost being levied by a State Government was impermissible. In other words, the MMDR Act 1957 insofar as and to the extent dealt with the aspect of royalty being payable by a holder of a mining lease imposed a limitation on the States' right to levy any other impost/tax on mineral rights as royalty was payable for exercise of mineral rights resulting from a mining operation and extraction of minerals. It was in this context that it was reasoned that royalty is a tax. Also, royalty could not be a basis for levy of any other tax on mineral bearing land as land revenue.

24.1 On the other hand, the judgments of four other High Courts, namely, Punjab and Haryana, Orissa, Rajasthan and Gujarat did not consider the controversy from the perspective of the constitutional Entries and Section 2 of the MMDR Act, 1957. The said judgments proceeded on the dictionary meaning of 'royalty' under various types of transactions under which royalty has to be paid and concluded that royalty was

not an impost or tax, which approach was also adopted by the majority in ***Kesoram***. Thereby, Entry 54 - List I and Entry 50 - List II as well as Section 2 of the MMDR Act, 1957 was given a complete go-by while arriving at such a conclusion. Consequently, the said judgments and also the majority in ***Kesoram*** concluded that the States have the legislative competence to tax mineral rights or make royalty a basis for any other exaction such as cess etc. This was contrary to the view expressed in ***India Cement*** by this Court. Therefore, it was unnecessary for the seven-judge Bench in ***India Cement*** to have discussed the judgments of the High Courts of Punjab and Haryana, Gujarat, Orissa and Rajasthan referred to above. In fact, in my view, the judgments of the aforesaid High Courts were impliedly overruled in ***India Cement***, which aspect has not been noticed by the majority in ***Kesoram.***

25. Insofar as the judgment of this Court in the case of ***Mahalaxmi Fabric Mills*** is concerned, the said judgment followed ***India Cement***. However, it was overruled in ***Kesoram***. So also, the judgments in ***Saurashtra Cement*** and other

cases. Reference was made to ***Mahanadi Coalfields*** wherein the levy by the State Legislature was a tax of Rs.32/- per thousand acre on coal-bearing lands. The attack on the legislation was that the provision was one on mineral lands and mineral rights and the Parliament had enacted the MMDR Act, 1957 and the field was entirely covered and the State Legislature was incompetent to levy the tax. The three-judge Bench concluded that the charging Section of the impugned Act imposed a tax on the minerals also and was not confined to a levy on land or surface characteristic of the land. This was because non-mineral-bearing lands and non-coal-bearing lands were left out of the levy. The levy was struck down as the levy was not a tax on land, but on minerals and mineral rights.

Kannadasan:

26. In this context, it is significant to refer to another judgment of this Court in ***Kannadasan*** wherein this Court, by following the observations in ***India Cement*** and ***Orissa Cement***, held that the States are denuded of the power to levy any tax on minerals and therefore, the State enactments were

declared to be lacking in legislative competence as in the aforesaid cases, insofar as they pertained to levy of tax/cess on royalty paid on minerals extracted. It was observed that the denudation of the States' powers was not partial but total and the States cannot levy any tax on mining and minerals, so long as the declaration in Section 2 of the MMDR Act, 1957 stands. Once the denudation is total, there is no occasion or necessity for any further declaration of denudation, or for that matter, for repeated declarations of denudation. ***Kannadasan*** was partially overruled by a three-judge Bench in ***District Mining Officer vs. Tata Iron and Steel Company, (2001) 7 SCC 358 ("Tata Iron and Steel")***, but on a different question which I shall also advert to later.

26.1 However, what is relevant for the purposes of this reference could be discussed in the first instance. In ***Kannadasan,*** the appellants therein had challenged the validity of the Cess and Other Taxes on Minerals (Validation) Act, 1992 ("Validation Act" for short) enacted by Parliament. The High Court had rejected the writ petitions. The background

of the said Act was that in ***India Cement***, this Court had held that (i) the levy could not be sustained under and with reference to Entry 49 - List II as a tax on land; (ii) the levy was a levy on minerals and was relatable to Entries 23 and 50 - List II; (iii) that on account of the declaration made by Parliament contained in Section 2 of the MMDR Act, 1957, the State Legislatures had been denuded of the power to levy tax on minerals. That regulation of mines and mineral development takes within its purview the levy of tax on minerals. This Court held that Sections 9 and 9A of the MMDR Act, 1957 provides for levy of royalty/dead rent on minerals. The State Legislatures cannot, therefore, impose any tax on minerals or exercise of mineral rights and ***HRS Murthy*** was wrongly decided. Having so declared, this Court in ***India Cement***, however, directed that the said decision shall only have a prospective effect. This was for the reason that the States had been levying and collecting the cesses on the basis of the decision of this Court in ***HRS Murthy***. The decision in ***India Cement*** was rendered on 25.10.1989.

26.2 Thereafter, a three-judge Bench in ***Orissa Cement*** declared identical levies imposed by the States of Orissa, Bihar and Madhya Pradesh as being lacking in legislative competence. The Bench again directed that the said decision shall be operative prospectively with effect from the date of the said judgment i.e., 04.04.1991 in the case of State of Bihar, with effect from 22.12.1989 in the case of State of Orissa and with effect from 28.03.1989 in the case of State of Madhya Pradesh. In view of the States not having the competence to make the said levies, the Union had to step in and promulgated the Cess and other Taxes on Mineral (Validation) Ordinance, 1992 on 15.02.1992 and thereafter replaced it by a Parliamentary enactment called the Cess and other Taxes on Minerals (Validation) Act, 1992 with effect from 04.04.1992. The Act was enforced in order to validate the imposition and collection of cesses and certain other taxes on minerals under certain State laws. The Act was deemed to come into force on 04.04.1991. Under the said Act, a person could claim refund of any cess or tax paid by him in excess of the amount due from him under

any such State law. The Schedule to Section 2 named the Acts of various States which were validated. For immediate reference, Section 2 of the Validation Act is extracted as under:

> **"2. Validation of certain State laws and actions taken and things done thereunder. -** (1) The laws specified in the Schedule to this Act shall be, and shall be deemed always to have been, as valid as if the provisions contained therein relating to cesses or other taxes on minerals had been enacted by Parliament and such provisions shall be deemed to have remained in force up to the 4th day of April, 1991.
>
> (2) Notwithstanding any judgment, decree or order of any court, all actions taken, things done, rules made, notifications issued or purported to have been taken, done, made or issued and cesses or other taxes on minerals realised under any such laws shall be deemed to have been validly taken, done, made, issued or realised, as the case may be, as if this section had been in force at all material times when such actions were taken, things were done, rules were made, notifications were issued, or cesses or other taxes were realised, and no suit or other proceeding shall be maintained or continued in any court for the refund of the cesses or other taxes realised under any such laws.
>
> (3) For the removal of doubts, it is hereby declared that nothing in sub-section *(2)* shall be construed as preventing any person from claiming refund of any cess or tax paid by him in excess of the amount due from him under any such laws."

Section 2 was the validation clause stating that the laws specified in the Schedule to the Act shall be, and shall be deemed always to have been, as valid as if the provisions

contained therein relating to cesses or other taxes on minerals had been enacted by Parliament and such provisions shall be deemed to have remained in force up to 04.04.1991. The Act was deemed to have come into force on 15.02.1992, which was the date on which the Ordinance was promulgated by the President. According to this Court, the Parliament adopted the device of legislation by incorporation as a result of which all the relevant provisions of the Scheduled Acts (State Acts) were deemed to have been enacted by Parliament and read into Section 2(1) of the Validation Act. As a corollary, all the taxes which were set aside by this Court and the High Courts were deemed to be the taxes/levies of the Parliament itself. This was on the clear understanding that the power of Parliament to levy such taxes was not in dispute and States had no power to levy such cesses or taxes. This was also on the acceptance of the judgment in ***India Cement.*** The provisions of the Act were declared to be in force up to 04.04.1991 though the law was enforced from 04.04.1992, which was unique by itself.

26.3 The validity of the Validation Act was questioned before this Court on several counts by the private parties and defended by the Union of India. This Court observed that the object and purpose of enacting the MMDR Act, 1957 was to bring about, *inter alia*, a uniformity in taxes and royalties throughout the country in the interest of mineral development in the country for which only the Union or the Central Government could impose a levy such as royalty or any other tax. There is not a precondition to a law made by Parliament under Entry 54 - List I nor is there a limitation upon Parliament's power. If Parliament has enunciated the principle, it can also create an exception thereto in appropriate circumstances or to meet an exigency. The Validation Act was in order to meet such an exigency. The said Act was both an addition to as well as an exception to Section 9 of the MMDR Act, 1957. With regard to Section 9 of the MMDR Act, 1957, it was reasoned that in light of the decisions of this Court in ***India Cement*** and ***Orissa Cement,*** the States were totally denuded of the power to levy any taxes on minerals. The

denudation of the State is not partial; it is total insofar as the levy of any tax or cess on mineral is concerned. So long as the declaration in Section 2 stands, it is unnecessary to have a fresh declaration to be made by Parliament whenever the Union increases the rate of royalties.

26.4 It was further observed that what was sought to be levied under the impugned enactment was a tax/cess and not a fee and therefore, the Parliament was not bound to utilize the taxes realized under the impugned Act, i.e., the Validation Act, only for the purpose of regulation of mines and mineral development. That even in the matter of fees, it is not necessary that an element of *quid pro quo* should be established in each and every case as fees can be both regulatory and compensatory and that in the case of regulatory fees, the element of *quid pro quo* is totally irrelevant *vide* ***Corporation of Calcutta vs. Liberty Cinema, AIR 1965 SC 1107, ("Liberty Cinema")***.

26.5 It was further observed that the Validation Act though a temporary statute did not have an expiry date, in the sense it was deemed to come into force on 15.02.1992 and validated all imposts up to 04.04.1991 and not thereafter. By this, it didn't mean that the statute itself expired on 04.04.1991 as it was deemed to come into force on a later date, i.e. on 15.02.1992. The Validation Act was also not a temporary statute. It was observed that the duration of the levy validated under the Act and the life of the Act are two different things which are not necessarily coextensive. The Validation Act would remain in force till Parliament chooses to repeal it. Therefore, the argument that the Validation Act being a temporary statute was not effective from 04.04.1991, was rejected by this Court. It was observed that levies were validated by the Validation Act notwithstanding the cessation of levy after 04.04.1991 and the machinery created to recover and refund the said cesses/taxes was kept alive.

26.6 The judgment of this Court in ***Kannadasan*** is a clear indication of the fact that it was the Parliament, by enacting a

legislation in the year 1992 in the form of a Validation Act which had to step in to support the States for validation of the States' incompetent levies, namely, cesses or taxes on royalty which had been set aside over decades by this Court. This legislation was also in the interest of mineral development and in exercise of powers and relatable to Entry 54 - List I. But for the Validation Act enacted by the Parliament, the levies being declared invalid by this Court as well as the High Courts, it was the bounden duty of the States to have refunded the levies collected in the form of cesses or surcharge on cesses on royalties as directed by this Court which would have been a drain on the States' exchequers. Realising the financial predicament in which the States were, the Parliament, in exercise of its unitary powers and as the Union of the States, came to rescue all the States by passing the Validation Act so that till 04.04.1991, by a fiction the States' levies in the form of cesses or other taxes on royalty were validated as if the State laws were enacted by Parliament itself. Therefore, all judgments which had struck down the levies imposed by the State on

mineral rights discussed above if had directed to refund the levies collected by them would now not have been necessary. Further, all such State levies being validated, arrears till 04.04.1991 could be collected by the States. Such an Act was passed by way of an abundant caution as in certain other judgments of this Court, there could be directions to refund the taxes or levies collected and attended complications on the refund of the said incompetent levies or in order to collect the arrears till 04.04.1991. These aspects constrained the Parliament to pass the Validation Act. In the circumstances, the appeals and the writ petitions were dismissed.

26.7 The judgment in ***Kannadasan*** clearly established the fact that the Parliament has supremacy over the regulation of mines and development of minerals in view of Entry 54 - List I read with Section 2 and the other provisions of MMDR Act, 1957, as Entry 23 – List II is also subject to Entry 54 – List I. That levying of a uniform impost in the form of royalty and dead rent imposed under Sections 9 and 9A of the MMDR Act, 1957 throughout the length and breadth of the country, insofar as a

particular mineral is concerned, without letting any State to impose any other levy over and above royalty is in the interest of mineral development. Thus, Sections 9 and 9A are an embargo and a limitation on the power of the State to impose any tax on exercise of mineral rights. This is because royalty is paid on exercise of mineral rights. It is a statutory exaction under the MMDR Act, 1957 and is compulsory for every holder of a mining lease to pay royalty to the State Government which executes the lease deed in the status of a lessor. Payment of royalty being compulsory by the holder of a mining lease, it makes it a tax as the rate of royalty is fixed by the Central Government as per Section 9 of the MMDR Act, 1957 and as notified in the Second Schedule to the aforesaid Act. Thus, royalty being a tax could be collected as arrears of land revenue in the event of non-payment. Such being the construction and interpretation of the provisions of MMDR Act, 1957 in light of the Entries in the Lists, royalty as a compulsory exaction has met all the parameters of a tax and hence the provisions regarding collection of royalty under the MMDR Act, 1957

and the Rules made thereunder acted as a limitation under Entry 50 – List II. Hence, the States are denuded of their power to impose a cess or any other levy on royalty or define it as a land revenue which could be imposed by the States under Entry 49 – List II. Such State levies on royalty is against the interest of mineral development in the country and therefore the State levies on the basis of royalty was struck down by this Court and certain High Courts. The validation Act also established the fact that the Parliament by passing such an Act did so in the interest of mineral development in the country and to save the States from losing the revenue collection made though under incompetent levies prior to 04.04.1991. Therefore, the States were not required to refund the illegal levies collected by them and continued to collect the same till 04.04.1991. The sustaining of the Validation Act by this Court is also significant. Thus, as a result of the Validation Act, the decades' old controversy between States' attempts to levy taxes on royalty and the High Courts and this Court striking down the same by holding that it was the Parliament

only which could do so by a law, brought down the curtains on the said controversy till its revival in ***Kesoram***.

26.8 Justice Jeevan Reddy speaking for the Bench in ***Kannadasan*** cleared any lurking doubts about States having any power to levy any cess, tax or other impost on exercise of mineral rights; it was only the Parliament which could impose such a levy either by way of royalty or in any other form.

26.9 Thereafter, in ***Tata Iron and Steel***, the controversy arose from the Patna High Court, in the context of the Validation Act, 1992 wherein it was held that the said Act did not authorise recovery of any tax or cess after 04.04.1991, even if the liability was incurred under the validated laws before 04.04.1991 and consequently, it restrained the State of Bihar from taking any steps to realise such demands. However, by then this Court in ***Kannadasan*** had upheld the right of the State to demand and collect levies which were collectable up to 04.04.1991. The decision of the Patna High Court to the extent

it restrained the State from realising the demand was challenged before this Court by the State of Bihar.

26.10 The matter was considered by a three-judge Bench as ***Kannadasan*** was decided by a two-judge Bench. It was observed that the Validation Act had validated the levy of taxes by eleven States upto 04.04.1991. That the Validation Act fictionally held that the Parliament had in fact imposed the cess and other taxes on minerals by keeping those provisions of State Act, which had been struck-down, alive till 04.04.1991. Although, Parliament never in fact re-enacted the eleven Acts mentioned in the Schedule to the Validation Act but it merely provided legislative competence for those Acts which related to cesses or taxes on minerals. This was done owing to the judgments of this Court in ***India Cement*** and ***Orrisa Cement*** that had led the to a situation that required a Validation Act to save the State from refunding the incompetent levies already collected. This was to allay the apprehension of the State Government that the incompetent levies already collected would have to be refunded. Therefore, Parliament, being also of the

same opinion, through a legislative device of providing legislative competence in respect of the certain provisions of the States' laws and by validating the levies which could be collected up to 04.04.1991 i.e. the date on which this Court delivered the judgment in ***Orissa Cement*** case, had enacted the Validation Act.

26.11 The controversy, however, revolved on the expression "imposition and collection" under Section 2(1) of the Validation Act. Whether it related to only imposition and collection already made under certain State laws or conferred further right of imposition and collection of cesses on the minerals extracted upto 04.04.1991. In ***Kannadasan*** this Court had interpreted the provisions to the effect that the Validation Act would confer a right on the State Government to make fresh levy and collection of dues which were collectable upto 04.04.1991. This interpretation was, however, not accepted by three-judge Bench. It was observed that the Validation Act could not be construed to confer a right to make a levy or collection of the cess and taxes on the minerals which were collected upto

04.04.1991, as was held in ***Kannadasan***. It merely validated the collections already made so that the State will not be burdened with the liability of refunding the amount, already collected under void law. Therefore, the contrary view expressed in ***Kannadasan*** was held to be not correct.

26.12 With reference to Article 265 of the Constitution, it was observed that the State laws which stood expired on various dates prior to 04.04.1991 and on 04.04.1991 did not authorise imposition and collection of taxes and cess on minerals after 04.04.1991 in respect of minerals extracted till 04.04.1991, on which the cess was collectable. It was observed that object of the Validation Act was only to confer the life to void statutes by fictional re-enactment and granting legislative competence for limited purpose so that the State would not be called upon to refund the cess already collected under such void law. Thus, the void laws never existed after 04.04.1991 and consequently, there was no right with the State to make any levy or collection of the cess, which was collectable up to 04.04.1991. Only past actions had been sought to be validated,

that too, by a fictional enactment of the State laws by Parliament, keeping it alive till 04.04.1991. Even if imposition of levy had been made but not collected, the same could not be collected after 04.04.1991 as the Validation Act had not provided any provision permitting State to levy or collection after 04.04.1991. Therefore, it was held that the States cannot be conferred a right to levy or collection after 04.04.1991. Therefore, to that extent ***Kannadasan***'s observations were not approved.

26.13 The overruling of certain observations made in ***Kannadasan*** by the three-judge Bench in ***Tata Iron and Steel*** does not touch upon the question whether imposition of cess and other taxes on the basis of royalty or in addition to royalty by a State legislature is competent. The judgment in ***Tata Iron and Steel*** on the other hand proceeds on the premise that ***India Cement*** and ***Orissa Cement*** were rightly decided. The Validation Act had been passed by the Parliament and there being a confusion with regard to the actual collection of the levies by the States on or after 04.04.1991 and in

Kannadasan, this Court having held that it could be so in the form of arrears and dues, to that extent, disapproved ***Kannadasan.***

26.14 I do not find any inconsistency between the judgments in ***Kannadasan*** and ***Tata Iron and Steel*** on the questions of whether royalty is a tax and whether the States had no competency to levy any tax on exercise of mineral rights. On the other hand, what is common to both ***Kannadasan*** and ***Tata Iron and Steel*** is the fact that they proceeded on the basis that this Court, having set aside the incompetent levies imposed by the States and the Parliament, coming forward to support the States *vis-à-vis* their apprehension regarding refund to be made on the basis of the principle of unjust enrichment, enacted the Validation Act. The challenge to the said Act otherwise failed in ***Kannadasan***. The contention of the assessee was only with regard to levies to be collected up to 04.04.1991 under the Validation Act and not after that date. This aspect was answered by the three-judge Bench in ***Tata Iron and Steel*** by holding that the Validation Act was in fact a temporary statute

which neither gave the State the right to levy any taxes or cesses etc. which were struck-down by this Court as being incompetent nor could the States collect arrears of such taxes/cesses after 04.04.1991.

26.15 In view of the aforesaid judicial and legislative history, can this Court once again confer powers on the States to levy taxes, etc. on the exercise of mineral rights in addition to royalty by way of a cess or a surcharge on cess or independently on the basis of royalty as a measure for imposing such taxes? The majority judgment in ***Kesoram*** has attempted to do that. This is by holding that royalty imposed under Section 9 of MMDR Act, 1957 is not a tax and therefore, the States can levy taxes on minerals rights either under Entry 50 or Entry 49 – List II.

Thus, the legal quagmire has not ended but continued.

27. In my view, the majority judgment in ***Kesoram*** is liable to be overruled for holding that royalty is not a tax for the following reasons:

Firstly, because the doubt expressed in the said judgment by the majority was premised on a "typographical error" in paragraph 34 of the main judgment in ***India Cement*** by failing to appreciate the entire reasoning of the seven-judge Bench. It also failed to notice that in the case of ***India Cement***, Oza, J. penned a separate but concurring opinion and arrived at a conclusion that royalty is in the nature of a tax by separate reasoning. The majority in ***Kesoram*** did not find any "typographical error" in Oza, J.'s opinion.

Secondly, the majority in ***Kesoram*** came to the conclusion that royalty is not a tax based on the definition of royalty in dictionary meanings, etc. without reference to the constitutional Entries, particularly, Entry 50 - List II being limited by Entry 54 - List I and a Parliamentary law MMDR Act, 1957 being made under the latter Entry and the declaration made in Section 2 thereof. In this regard, it would be useful to refer to the observations of this Court in ***State of***

Orissa vs. Titaghur Paper Mills Company Limited, 1985 Supp. SCC 280 ("Titaghur Paper Mills"), wherein this Court discussed the scope and ambit of the expression royalty and it was observed that while understanding the meaning of an expression, the dictionary meaning of a word cannot be looked at where that word has been statutorily defined or judicially interpreted (in light of the constitutional Entries in the Lists). Where there is no such definition or interpretation, the Court may take the aid of dictionaries to ascertain the meaning of a word in common parlance, bearing in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word in several contexts. The Court has therefore to select the particular meaning which would be relevant to the context in which it has to interpret that word.

Thirdly, the judgment in the ***India Cement*** was doubted even in the absence of their being a conflict of

the judgment with any other seven-judge Bench decision. No doubt, at the Highest Court, one cannot really be bogged down by the Bench strength nor does the doctrine of *stare decisis* would apply strictly to this Court when a judgment of a larger Bench is questioned by a Bench of similar or smaller strength. But for that, there must be present a flagrant violation of law, a patent error or a blatantly erroneous approach in the matter so as to enable a Bench of a similar or smaller strength to doubt the correctness or otherwise of the decision of a larger Bench. There could also be a situation where a judgment is *per incuriam* or the doctrine of *sub silentio* would apply.

For instance, a two-judge Bench of this Court doubted the correctness of a five-judge Bench decision in ***A.R. Antulay vs. R.S. Naik, 1986 Supp SCC 510 ("A.R. Antulay")*** which led to the constitution of a seven-judge Bench by Hon'ble the Chief Justice of India. By a majority of 5:2, the seven-judge Bench in

the aforesaid case answered the questions raised by the two-judge Bench and thereby set aside the judgment of the five-judge Bench. The circumstances as, they occurred in the case of ***A.R. Antulay*** did not present themselves in ***Kesoram*** so as to doubt ***India Cement.***

Fourthly, in my view, the opinion of the majority in the ***Kesoram*** is *per incuriam* as it failed to follow the dictum in ***India Cement*** on the basis of a "typographical error" in paragraph 34 thereof where there was none. Judgments of larger Benches cannot be questioned by smaller Benches on the basis of an imagined "typographical error"! The entire judgment must be read and understood including its under currents before negating it for what it stands. A judgment of a Court of law is not a piece of legislation but one pregnant with reasoning and it becomes the duty of a succeeding Bench considering a precedent to be cautious in opining something contrary on the premise of a "typographical error" in a judgment of a

larger Bench by failing to understand the import of the reasoning.

Fifthly, ***Kesoram*** also failed to note that the Parliament enacted the Validation Act, 1992 on the definite premise that the States did not have the legislative competence to levy the impugned levies which were rightfully set aside by this Court in a series of judgments starting from ***Hingir-Rampur***.

Sixthly, I may observe that the Validation Act, 1992 clearly established that the dicta of this Court in ***India Cement, Orissa Cement*** and other cases which followed the said judgment are correct and were accepted by the Parliament which acted on it by passing the Validation Act.

Seventhly, in ***Kannadasan***, the validity of the Validation Act, 1992 was upheld. This clearly established the fact that the State's levies which were quashed and set aside by this Court in ***India Cement***

and other cases were not relatable to Entry 49 - List II. If that was so, then Parliament could not have enacted the Validation Act, 1992 as only States can levy taxes on lands and buildings under the Entry 49 – List II.

Eighthly, the actual basis for the majority in ***Kesoram*** doubting the judgment in ***India Cement*** is on the premise that there is a distinction between the power to regulate and control and the power to tax, the two being distinct and different. It was held that the taxation Entry i.e. Entry 50 – List II could not be controlled by Entry 54 – List I which is a regulatory Entry which is meant for regulation for mines and mineral development under the control of the Union. That may be so in the case of many other Entries, however, Entry 50 – List II is unique inasmuch as the taxation Entry namely, the power to impose taxes on mineral rights is itself subject to any limitations imposed by Parliament by law relating to mineral development. In the context of mineral development,

limitations could be imposed by Parliament by law *vis-à-vis* the power to impose taxes on mineral rights which is evident on a reading of Entry 50 – List II. The reason being, exercise of mineral rights is related to mineral development which is a subject under Entry 54 – List I. This coalescing of the subjects in Entry 50 – List II with Entry 54 – List I has not been noticed whereas in ***India Cement*** as well as in ***Laddu Mal*** and in ***Laxminarayana Mining Co.,*** this aspect has been the foundation of the reasoning.

28. In view of the aforesaid discussion, I differ from the judgment of Hon'ble the Chief Justice of India, and hold that ***India Cement, Orissa Cement, Mahalaxmi Fabric Mills, Saurashtra Cement, Mahanadi Coalfields, Kannadasan*** excluding to the extent overruled in ***Tata Iron and Steel,*** and ***Tata Iron and Steel*** have been correctly decided and therefore, are binding precedent and cannot be overruled.

Entries 49 and 50 – List II:

29. The second aspect of this case which also requires consideration is with regard to interplay of Entries 49 and 50 - List II in the context of mineral bearing lands.

30. In the judgment proposed by Hon'ble the Chief Justice of India, it has been concluded as under:

> "e. The State legislatures have legislative competence under Article 246 read with Entry 49 of List II to tax lands which comprise of mines and quarries. Mineral-bearing land falls within the description of "lands" under Entry 49 of List II;
>
> f. The yield of mineral bearing land, in terms of the quantity of mineral produced or the royalty, can be used as a measure to tax the land under Entry 49 of List II. The decision in ***Goodricke (supra)*** is clarified to this extent;
>
> g. Entries 49 and 50 of List II deal with distinct subject matters and operate in different fields. Mineral value or mineral produce can be used as a measure to impose a tax on lands under Entry 49 of List II; and
>
> h. The "limitations" imposed by Parliament in a law relating to mineral development with respect to Entry 50 of List II does not operate on Entry 49 of List II because there is no specific stipulation under the Constitution to that effect."

31. In ***India Cement,*** the State of Tamil Nadu mainly contended that impugned levy, namely, imposition of cess on royalty under Entry 49 - List II as taxes on lands and buildings

and therefore defining "land revenue", as including royalty on mineral bearing land in exercise of mineral rights by the holder of a mining lease was justifiable. In this regard, reference was made by the State of Tamil Nadu to ***Raja Jagannath Baksh Singh vs. State of U.P., (1963) 1 SCR 220 ("Raja Jagannath Baksh Singh"),*** wherein it was indicated that the expression "lands" in Entry 49 - List II is wide enough to include agricultural as well as non-agricultural land. But this contention was repelled by this Court by observing that 'royalty' being that which is payable on the extraction of minerals from land and 'cess' being an additional charge on the basis of royalty cannot be considered to be a tax on mineral land under Entry 49 – List II. It was observed that there was a clear distinction between tax directly on land and tax on income arising from land such as from minerals extracted from the land.

31.1 In fact, this Court in ***New Manek Chowk Spinning & Weaving Mills Co. Ltd. vs. Municipal Corporation of the City of Ahmedabad, (1967) 2 SCR 679 ("New Manek Chowk***

Spinning & Weaving Mills"), had observed that Entry 49 - List II only permitted levy of tax on lands and buildings and not on machinery contents in or situated on the buildings even though the machinery was there for the use of the buildings for a particular purpose. Also construing the said Entry, this Court in ***Sudhir Chandra Nawn vs. Wealth Tax Officer, Calcutta, (1969) 1 SCR 108 ("Nawn")***, observed that Entry 49 - List II contemplated a levy on land as a unit and the levy must be directly imposed on land and must bear a definite relationship to it. The aforesaid decision was affirmed in ***Assistant Commissioner of Urban Land Tax vs. The Buckingham & Carnatic Co. Ltd., (1970) 1 SCR 268 ("The Buckingham & Carnatic Co.").*** Similarly, in ***Second Gift Tax Officer, Mangalore vs. D.H. Nazareth, (1971) 1 SCR 195 ("D.H. Nazareth"),*** it was held that a tax on the gift of land is not a tax imposed directly on land but only for a particular act, namely, the transfer of land by way of gift. In ***Union of India vs. Harbhajan Singh Dhillon, (1971) 2 SCC 779***

("Harbhajan Singh Dhillon"), the aforesaid two decisions were approved.

31.2 Further, it was observed in ***India Cement*** that royalty which is indirectly connected with land cannot be said to be tax directly on land as a unit. The cess impugned could not be levied if there was no mining activity carried on as no royalty was payable as payment of cess was on royalty. Hence, it was manifest that cess on royalty was not relatable to land as a unit which is the only method of valuation of land under Entry 49 - List II but was relatable to minerals extracted, i.e. royalty was payable on a proportion of the minerals extracted based on the rate fixed under the Second Schedule to MMDR Act, 1957. Therefore, the impugned cess on royalty was held in pith and substance to be a tax on royalty and not a tax on land. Hence, royalty could not be included within the definition of "land revenue" for the purpose of imposition of a cess on land revenue, which means cess on royalty, when royalty is itself a tax paid by a holder of mining lease for exercise of his mineral rights, which is in the interest of mineral development.

31.3 It was further observed in ***India Cement*** that Entry 23 - List II deals with regulation of mines and mineral development subject to the provisions of List I, i.e. Entry 54 - List I. Even though the subject mineral rights are part of the State List, taxes on mineral rights are treated separately and hence, the principle that the specific excluded the general must be applied. Therefore, it was observed that the word "lands" in Entry 49 - List II cannot include mineral bearing lands. In this connection, it was further observed that the extent to which regulation of mines and mineral development under the control of the Union is declared by Parliament by law to be expedient in the public interest (Entry 54 – List I), must be noted as, to that extent, denuding the State Legislation of its power under Entry 50 - List II. It was further observed that in view of the Parliamentary legislation under Entry 54 - List I, namely, the MMDR Act, 1957, and the declaration made under Section 2 and the provisions of Section 9 thereof, the State's power would be overridden to that extent.

31.4 Further, in ***India Cement***, reliance was placed by State of Tamil Nadu on the judgment of this Court on ***HRS Murthy*** wherein it was observed that land cess paid on royalty has a direct relation to the land and only a remote relation with mining. This was held to be an incorrect approach in the matter by the seven-judge Bench in ***India Cement***. In paragraph 30 of ***India Cement,*** it was further clarified that in ***HRS Murthy,*** attention of this Court was not invited to the provisions of Section 9 of the MMDR Act. It was also observed that Section 9(3) of the MMDR Act, 1957 in terms states that royalties payable under the Second Schedule of the said Act shall not be enhanced more than once during a period of three years. Therefore, this created a clear bar on the State Legislatures taxing royalty in any manner so as to in effect amend Second Schedule of the MMDR Act as additional taxes on royalty imposed by the States would vary the tax structure from State to State leading to variance in the price of a particular mineral in the country which is not in the interest of mineral development. Therefore, it was observed that tax on

royalty cannot be a tax on land. This is *ultra vires* the State legislative power particularly in view of Section 9(3) of the MMDR Act, 1957. It was also observed in ***India Cement*** that under Section 9 of the MMDR Act, 1957 the field was fully covered by the Central legislation and that royalty is directly relatable only to the minerals extracted. Hence, royalty was found relatable only to Entry 50 - List II and not Entry 49 - List II. As the field is covered by the MMDR Act, 1957, Entries 23 and 50 - List II will be subject to the declaration made under Section 2 of the MMDR Act, 1957 which has been enacted as per Entry 54 - List I.

32. In view of the above, the reasoning in the proposed judgment of the learned Chief Justice of India, in paragraph 339 that *"though Parliament can limit the taxing field entrusted to the State under Entry 50 - List II through a law relating to mineral development, the limitation operates on the field of taxing mineral rights. Such a limitation cannot operate on Entry 49 - List II because there is no specific stipulation under the Constitution to that effect. The nature of taxes under both the Entries, that is*

Entries 49 and 50 - List II, are distinct. The Constitution envisages the imposition of limitations by Parliament on the legislative field of the state of taxes on mineral rights, and not taxes on lands … Therefore, we are of the opinion that the doctrine of generalia specialibus non derogant has no application in the instant case because Entries 49 and 50 of List operate in different fields" in my view is contrary to what has been reasoned by the seven-judge Bench in ***India Cement*** and also the scheme of Entry 54 - List I and Entries 23 and 50 - List II as well as the object, intent and scheme of Parliament in making a declaration under Section 2 of the MMDR Act, 1957. Further, the Validation Act passed by the Parliament on the strength of Entry 54 – List I would have been wholly unnecessary if Entry 49 – List II was applicable to mineral bearing lands.

33. In view of what has been discussed above, in my view, Entry 49 - List II is an Entry of the widest amplitude. Taxes on lands and buildings would include taxes on agricultural land, non-agricultural land, etc. But insofar as mineral-bearing land

is concerned, there cannot be a tax on such land *per se* to be levied by the State Legislature as well as tax on mineral rights exercised on such land which is based on the value of the minerals produced under a Central Act. The reasons for saying so are as follows:

(i) *Firstly,* royalty as a tax on the value of the minerals extracted is paid by the lessee or the person who would exercise mineral rights to the State or lessor, as the case may be, under the provisions of MMDR Act, 1957 which is a Parliamentary law. Whereas, a tax or cess on land is paid by the owner or the occupier of the land as the case may be as per particular statute or by an agreement between the owner and the occupier.

(ii) *Secondly,* on a reading of the lease-deed executed in terms of Form-K appended to the Mineral Concession Rules, 1960, which are Central Rules, in light of Section 9 of the MMDR Act, 1957 and the Second Schedule thereof, it is clear that the

lessee is under an obligation to pay royalty to the Government on the mineral extracted which is in exercise of his mining rights as per the provisions of MMDR Act, 1957, which is a Parliamentary legislation enacted in terms of Entry 54 - List I for regulation of mines and mineral development uniformly throughout the country.

(iii) *Thirdly,* the royalty is paid as a tax as a tax in respect of minerals removed or consumed by the holder of a mining lease from the leased area at the rate for the time being specified in the Second Schedule to MMDR Act, 1957 in respect of that mineral. There is no payment of royalty on the basis of a private negotiation between the lessor or lessee. The rate at which royalty has to be paid is prescribed in the Second Schedule of the MMDR Act, 1957 mineral wise. Only the Central Government by notification in the official gazette can amend the Second Schedule so as to enhance

or reduce the rate at which the royalty shall be payable in respect of any mineral with effect from the date as may be specified in the notification. Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years. This power is reserved only with the Central Government, which is in the interest of mineral development in a uniform manner throughout the country.

(iv) *Fourthly,* there is no value that can be attached to a mineral bearing land so as to impose tax on such land minus the minerals. Insofar as extraction of minerals is concerned, being an exercise of a mineral right, royalty is payable by a holder of a mining lease and when no mining activity is carried on, dead rent is payable by such a person. Thus, royalty being a tax or an exaction, there cannot be another tax imposed by the State under Entry 49 -

List II on such mineral bearing land. Such land is valuable because of the mining activity that is carried thereon and the minerals are extracted. Such land is not the same as agricultural or non-agricultural land or land on which buildings are constructed that is subjected to tax under Entry 49 - List II by a State Government.

(v) *Fifthly,* to reiterate, when the value of minerals extracted is the basis of payment of royalty under the scheme of the MMDR Act, 1957, which is a Parliamentary legislation, such land cannot be construed to be falling within the scope and ambit of Entry 49 - List II also so as to be subjected to a tax imposed by the State. In other words, there cannot be a tax on mineral bearing land twice over by the State Government: one, under Entry 49 - List II as land *per se* and another, under Entry 50 - List II which is subject to any limitation being made by Parliament by law i.e. MMDR Act, 1957

made pursuant to Entry 50 - List I and more particularly, Section 2 read with Section 9 of the said Act. If, for instance, Section 9 of the MMDR Act, 1957 is repealed and the Parliament leaves it to the wisdom of State legislatures to impose royalty, then, there cannot be a duplication of taxes on mineral bearing land: one under Entry 49 - List II and another under Entry 50 - List II. A tax on mineral bearing land cannot fall under two Entries of the same List. Taxation Entries are mutually exclusive from each other in a particular List, the State List – List II in the instant case, unless they are made subject to an Entry in another List i.e., Union List - List I as in the instant case, Entry 50 - List II is subject to Entry 54 - List I.

34. In view of the aforesaid discussion, I also observe that mineral value or mineral produce cannot be used as a measure to tax mineral bearing land under Entry 49 - List II; also, the

word “lands” under Entry 49 - List II cannot include mineral bearing land as well. This would amount to “double taxation” so to say imposed by two different Legislatures: one, by the State Legislature on the mineral bearing land under Entry 49 - List II and again for conducting a mining operation which is for exercise of a mineral right under Section 9 of MMDR Act, 1957, which is a Parliamentary law also paid to the State Government. This is impermissible having regard to the constitutional intent and scheme of Entries in the Lists. Therefore, royalty cannot also be a measure to impose tax on mineral bearing land. Hence, the State Legislature using royalty on mineral produce as a measure to impose a cess under Entry 49 - List II on mineral bearing land would indeed overlap Entry 50 - List II. This is because minerals are extracted by virtue of mining activity which is in exercise of a mineral right and taxes on mineral rights are envisaged under Entry 50 – List II subject to any limitation imposed by the Parliament. Therefore, Entry 50 - List II would have to be viewed distinctly from Entry 49 - List II. If so viewed, it becomes subject to Parliamentary law in

the form of MMDR Act, 1957 and the rules made thereunder which would be a limitation on the power of the State to tax under Entry 50 – List II. Hence to get over the rigour of Entry 50 – List II, the States cannot resort to Entry 49 – List II.

Effect of Overruling India Cement:

35. A survey of cases on the aspect as to whether royalty is a tax or not would reveal that ***Hingir-Rampur, M.A. Tulloch, Baijnath Kedia, India Cement*** and the two judgments of Patna High Court and Mysore High Court have clearly held that royalty is a tax coming within the scope and ambit of Article 366(28) of the Constitution. There are other judgments which have followed ***India Cement.*** This is having regard to the interpretation of the Entries namely, Entry 50 – List II in light of Entry 54 – List I and the declaration made in Section 2 of the MMDR Act, 1957 and the scheme of the provisions of the said Act. On the other hand, in ***HRS Murthy*** and ***Kesoram,*** it has been held by this Court that royalty is not a tax.

35.1 What is significant is between ***India Cement*** and the cases that have followed the said dictum and ***Kesoram*** is the

judgment of this Court in ***Kannadasan*** which marks a watershed in the entire controversy and in fact had put a closure to the same. The circumstance which led to the Parliament enacting the Validation Act was to validate all the incompetent levies imposed in the form of cesses and surcharge on cesses, licence fee, etc. on royalty which had been set aside by this Court. Parliament was constrained to enact the Validation Act having regard to Entry 54 – List I and Section 2 of the MMDR Act, 1957. This significant aspect has not been appreciated by the majority in ***Kesoram***. Instead the judgment in ***Kesoram*** proceeded on an imagined "typographical error" in paragraph 34 of ***India Cement*** without appreciating the reasoning therein for holding that royalty is a tax.

35.2 Apart from questioning the verdict of a larger Bench on the premise that there was a "typographical error", the majority in ***Kesoram*** lost sight of the implication and the adverse impact that its view would have on mineral development in the country. If royalty is not held to be a tax and the same being covered under the provisions of the MMDR Act, 1957, it would

imply that despite Entry 54 – List I and the declaration made in Section 2 of the MMDR Act, 1957 and Section 9, 9A and other provisions thereof, taxes on mineral rights could be imposed by the States over and above payment of royalty on a holder of a mining lease. This would also mean that the limitation that the Parliament has made by law on the taxing power of a State explicitly stated in Entry 50 – List II would be given a go by. This would further imply that despite such a Parliamentary limitation, the States could pass laws imposing taxes, cesses, surcharge on cess, etc. on the basis of royalty which is in addition to payment of royalty. Further, that such levies could also be imposed under Entry 49 – List II thereby making Entry 50 – List II redundant is not acceptable. As a sequitur, this would result in mineral development in the country in an uneven and haphazard manner and increase competition between the States and engage them into what has been termed by Louise Tillin in a 'race to the bottom' in a nationally sensitive market. There would be unhealthy competition between the States to derive additional revenue and consequently, the steep,

uncoordinated and uneven increase in cost of minerals would result in the purchasers of such minerals coffing up huge monies, or even worse, would subject the national market being exploited for arbitrage. The steep increase in prices of minerals would result in a hike in prices of all industrial and other products dependent on minerals as a raw material or for other infrastructural purposes. As a result, the overall economy of the country would be affected adversely which may result in certain entities or even non-extracting States resorting to importing minerals which would hamper foreign exchange reserves of the country. There would lead to a breakdown of the federal system envisaged under the Constitution in the context of mineral development and exercise of mineral rights. It could also lead to a slump in mining activity in States which have mineral deposits owing to huge levies that have to be met by holders of mining licences. Further, another impact of this would be a unhealthy competition to obtain mining leases in States which have the mineral deposits and who do not wish to impose any other levy apart from royalty. It is, therefore,

necessary to realise why the framers of the Constitution took a clue from the Government of India Act, 1935 in order to distribute the legislative powers between the Union and the State List insofar as regulation of mines and minerals is concerned.

35.3 At this juncture, I must also observe the overruling the judgment in ***India Cement*** would mean that all judgments which are akin to the ratio of ***India Cement*** whether prior to or subsequent thereto, stand overruled irrespective of whether they are the judgments of the High Courts or this Court. Consequently, all States would once again start levying taxes on mineral rights under Entry 49 - List II and thereby bypass Entry 50 - List II so as to not be bound by any limitation that the Parliament had imposed by law on the power of the States to levy taxes on mineral rights. The circle would come around when Parliament would have to again step in to bring about a uniformity in the prices of minerals and in the interest of mineral development so as to curb the States from imposing levies, taxes, etc. on mineral rights. Why should that happen

again? There would then be legal uncertainty which would cause adverse economic consequences including on mineral development in India. For the above reason also, the majority judgment in ***Kesoram*** is not a good law and ought to be overruled to the extent that it holds that royalty is not a tax.

Federalism in India:

36. According to Louise Tillin, in her article *"Building a National Economy : Origins of Centralized Federalism in India"* published by the Oxford University Press in 2021, India's post-colonial Constitution introduced a new approach to federalism which has departed from the principle that federal and regional governments should each have independence in their own sphere of authority. According to Tillin, "the distinctive elements of Indian federalism were shaped at their foundations by the desire to boost industrial development and lay the foundation for a national welfare state in a post-colonial future by preventing the consolidation of "race to the bottom" dynamics arising from unregulated inter-provincial economic competition." According to her, Indian federalism was

influenced by emerging debates taking place within India and in the international fora established alongside the League of Nations after the First World War, about the regulation of economic competition and the development of the twentieth century welfare State. According to her, the distinctive element of Indian federalism is the combination of a strong Centre and a substantial sphere of shared Centre-State jurisdiction. This thinking was shaped by nationalist politicians, industrialists, and labour leaders in the decades prior to India's Independence and the significant political and economic factors that influenced the constitutional design of federalism in India.

36.1 According to certain scholars, India's founding fathers opted for Parliamentary supremacy with a strong centre to prevent further secessionist movements. That, Jawaharlal Nehru's preference was for a centralized model of federalism was to hold together the fledgling Union and concerted efforts to foster a national, civic identity rather than parochial identification with local or linguistic identities. Therefore, the Constitution uses the word "Union" instead of "Federation".

36.2 Nehru, who was the Chairman of the Union Powers Committee of the Constituent Assembly, was of the view that *"it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere."* (*Nehru cited in M.P. Jain, Nehru and the Indian Federalism, Journal of the Indian law Institute, Vol.19, No.4, 1977, p.408*).

36.3 The Government of India Act, 1935 was the first comprehensive blueprint for legislative division of power in India between federal, provincial and concurrent spheres which resolved residuary powers to rest with the Federal Government. Though there are apparent similarities between the Government of India Act, 1935 and the Indian Constitution, yet factors, such as, regulation of economic competition and the development of twentieth century welfare States guided the constitutional blueprint for a model of federalism in which

provincial initiative should not preclude national coordination, particularly, in the fields of socio-economic spheres.

36.4 According to Tillin, "in the case of India, political economy considerations intersect with the accommodation of diversity in shaping the resulting forms of federalism". The question of a desirable balance between Central and the State Governments has to be viewed in the context of the country continuing to confront the need to promote economic growth while upholding and expanding social rights.

Sarkaria Commission Report on Centre-State Relations:

37. Resolved to study and reform the existing arrangements between the Union and the States in an evolving socio-economic scenario, the Ministry of Home Affairs *vide* Order dated 09.06.1983 constituted a Commission under the Chairmanship of Justice R.S. Sarkaria with Shri B. Sivaraman and Dr. S.R. Sen having due regard to the framework of the Constitution. At this stage, reference to Section 5, Chapter II – Legislative Relations of the Report of the Sarkaria Commission ("Sarkaria Commission Report") may be of assistance:

"2.5.21 In every Constitutional system having two levels of government with demarcated jurisdiction, contents respecting power are inevitable. A law passed by a State legislature on a matter assigned to it under the Constitution though otherwise valid, may impinge upon the competence of the Union or vice versa. Simultaneous operation side-by-side of two inconsistent laws, each of equal validity, will be an absurdity. The rule of Federal Supremacy is a technique to avoid such absurdity, resolve conflicts and ensure harmony between the Union and State laws. This principle, therefore, is indispensable for the successful functioning of any federal or quasi-federal Constitution. It is indeed the kingpin of the federal; system. "Draw it out, the entire system falls to pieces"

2.5.22 If the principles of Union Supremacy are excluded from Articles 246 and 254, it is not difficult to imagine its deleterious results. There will be every possibility of our two-tier political system being stultified by internecine strife, legal chaos and confusion caused by a host of conflicting laws, much to the bewilderment of the common citizen. Integrated legislative policy and uniformity on basic issues of common Union-State concern will be stymied. The federal principle of unity in diversity will be very much a casualty. The extreme proposal that the power of Parliament to legislate on a Concurrent topic should be subject to the prior concurrence of the States, would, in effect, invert the principle of Union Supremacy and convert it into one of State Supremacy in the Concurrent sphere. The very object of putting certain matters in the Concurrent List is to enable the Union Legislature to ensure uniformity in laws on their main aspects throughout the country. The proposal in question will, in effect, frustrate that object. The State Legislatures because of their territorially limited jurisdictions, are inherently incapable of ensuring such uniformity. It is only the Union, whose legislative jurisdiction extends throughout the territory of India, which can perform this pre-eminent role. The argument that the States should have legislative paramountcy over the Union is basically unsound. It involves a negation of the elementary truth that the 'whole' is greater than the 'part'."

(emphasis supplied)

As the paragraphs extracted above elucidate, the Commission was of the firm view that the principles of Union Supremacy cannot be undermined from Articles 246 and 254. While the immediate paragraph is concerned with legislative actions taken under the List III - Concurrent List, they provide us a beneficial lens to both the importance of Union supremacy in matters that demand national uniformity and the Commission's following discussion on "Mines and Minerals" in Chapter XIII.

37.1 As the extract hereunder reflects, the Commission noted that the tug-of-interpretation between Centre and States was causing adverse impact on prices of petroleum which is necessarily not in the interest of national conformity and uniformity. It reads as under:

> *"13.5.10 .....We are informed by the government of India that one State has levied mineral rights tax, approximately 300 percent of royalty on coal and lime-stone and 100 percent of royalty on other minerals. The Union Government, while conceding the States rights under Entries 49 and 50 (subject to such limitation as may be imposed by Parliament), has pointed out the need for the States to exercise restraint on imposition of such levies, so as not to affect uniformity or competitiveness.....*
>
> *xxx*

> *13.5.12 The controversy, is therefore, not of legal interpretation of their respective jurisdiction, but one of evolving an understanding in regard to the extent to which these sources of revenue can be exploited keeping in view the overall national interest. Such issues can best be sorted out through consultation and consensus. We are of the view that the NEDC proposed by us will be the best forum for this purpose. It is, however, quite clear that the issues are inter-linked. Mutual trust and confidence can be built up only if, on the one hand, the Union Government promptly revises royalty rates at reasonable intervals and on the other, the States abstain from arbitrary action in levy of cesses, etc. Parochial considerations must yield to the larger interests of the nation in such matters."*

However, till the above situation is achieved constitutional courts would have to adjudicate by way of judicial review.

37.2 One has to also appreciate the pragmatic solution-oriented approach coupled with the acknowledgment that the subject matter of this *lis*-taxation on minerals-which are natural resources, should be exploited for the development of the country as a whole. Therefore, it is only Union legislation which can ensure the same successfully. The Report further states as under:

> *"13.5.15 Exploitation of mineral resources will continue to increase. There is general agreement that minerals are national resources and they should be exploited and developed for the benefit of the country as a whole. Only Union legislation can ensure such regulation and*

> *development of minerals. The States have been given an unrestricted field in respect of 'minor minerals' which have little all-India implications. There is, however, need for periodic review of the First Schedule to the MMRD Act, in consultation with the States, say after every three years, as there is a possibility that a particular mineral, not included in the Schedule, may become a matter of national concern or vice versa. Any amendment of the Act should normally be preceded by consultation in the NEDC."*
>
> *(emphasis supplied)*

38. However, the controversy in this case would demonstrate how a State with substantial mineral reserves manages, regulates and taxes its resources without hurting the national interest and the development of the country in the context of mineral development. It is with the above background that the distribution of legislative powers between the Union and the States were thought of in a manner that would give an upper hand to Parliamentary supremacy, so to say, over the legislative power of the State. Therefore, the respective Entries in Lists I and II, namely, the Union List and the State List respectively, have been so drafted in order to ensure that there is overall mineral development in the country as a whole, rather than particular States possessing the mineral wealth acting contrary

to the overall welfare of the country and against the economic interest of the other States.

39. In view of the aforesaid discussion, I find that the learned Attorney General is right in contending that the MMDR Act, 1957 contemplates all manner of levies, charges, impost or demands that could be provided for having a nexus with mineral rights. Therefore, the Act itself has to be construed as a limitation on the power of the States to demand or impose levies to the extent to which is stated in the Act. Although, Entry 50 – List II is a taxing Entry, it will be subject to the limitations enacted by the Parliament by law under Entry 54 – List I. The answer to the question raised by learned Solicitor General, whether the States can impose levies under Entry 50 – List II over and above the amount of royalty received by them under the MMDR Act, 1957, is in the negative. The submission that Entry 50 – List II is *sui generis* because it is the only legislative Entry which limits the taxing powers of the State legislatures by reference to a general law, is a correct submission made by Sri Harish Salve, learned senior counsel.

Therefore, the expression "mineral development" found in Entry 50 – List II has to be traced to the entire architecture of the MMDR Act, 1957 which serves as limitation of the taxing power of the State legislature under Entry 50 – List II. To read it otherwise would lead to destruction of the federal balance, as rightly contended by Sri Salve. Further, tax on mineral right would also include royalty as envisaged under Section 9 and the other Sections of the MMDR Act, 1957 which is in the nature of sovereign exaction and every holder of mining lease is bound to pay royalty in terms of Section 9 read with Second Schedule to the said Act. In that sense, royalty is in the nature of a tax on mineral rights which has to be compulsorily paid by the holder of a mining lease irrespective of who the owner of the mineral bearing land is.

39.1 Also the MMDR Act, 1957 and the Rules made thereunder is a complete Code on the regulation of mineral development and royalty paid by a holder of a mining lease is in the nature of a tax paid on mineral rights, the State legislature cannot, on the basis of royalty paid, levy any other tax, cess or

surcharge on cess. The States can only levy tax on sale of mineral as per Entry 54 – List II which is not a tax on mineral rights, as rightly contended by Sri Datar, learned senior counsel. Moreover, Entry 50 – List II is a recognition of parliamentary superiority *via* imposition of a limitation, as rightly argued by Dr. Singhvi, learned senior counsel.

39.2 Consequently, the contention of learned senior counsel Sri Rakesh Dwivedi for the appellants-States to the effect that value of the minerals could be used as a measure to tax mineral bearing land under Entry 49 – List II cannot be accepted. It is also not right to contend that the Parliament has only fixed the amount of royalty payable under Section 9 which cannot be a limitation on the taxing power of the State legislature under Entry 50 – List II. Moreover, the expression "any limitation" used in Entry 50 – List II can be construed to mean even a prohibition apart from a restriction.

Conclusions:

40. What follows are my answers to the conclusions reached on the issues raised in the judgment of Hon'ble the Chief Justice of India, which read as under:

Question	Issues	My Conclusions
a.	What is the true nature of royalty determined under Section 9 read with Section 15(1) of the MMDR Act? Whether royalty is in the nature of tax?	The true nature of royalty determined under Section 9 read with Section 15(1) of the MMDR Act, 1957 is that it is in the nature of a tax coming within the scope and ambit of Article 366(28) of the Constitution which defines taxation to include the imposition of any tax or impost, whether general or local or special and the word "tax" is to be construed accordingly.
b.	What is the scope of Entry 50 - List II of the Seventh Schedule? What is the ambit of the limitations imposable by Parliament in exercise of its legislative powers under Entry 54 - List I? Does Section 9, or any other provision of the MMDR Act, contain any limitation with respect	Entry 50 - List II of the Seventh Schedule is, no doubt, a taxation Entry which deals with taxes on mineral rights. But this Entry is subject to any limitations imposed by Parliament by law relating to mineral development. The use of the word "any" means the limitation could be in any form

Question	Issues	My Conclusions
	to the field in Entry 50 - List II?	which can be imposed only by the Parliament by law relating to mineral development. In view of the use of the expression "any limitations", it must be given the widest possible meaning to include a limitation in the form of Sections 9 and 9A, 25 or any other provision of the MMDR Act, 1957 and Rules made thereunder which act as a limitation to Entry 50 - List II.
c.	Whether the expression "subject to any limitations imposed by Parliament by law relating to mineral development" in Entry 50 - List II *pro tanto* subjects the Entry to Entry 54 - List I, which is a non-taxing general Entry? Consequently, is there any departure from the general scheme of distribution of legislative powers as enunciated in ***MPV Sundararamier*** (supra)?	The expression "subject to any limitations imposed by Parliament by law relating to mineral development" in Entry 50 - List II *pro tanto* subjects the Entry to Entry 54 - List I. The use of the expression "any limitations" would mean that the taxing Entry would be subject to a non-taxing or general Entry such as in Entry 54 - List I which could also be termed as a regulatory Entry. Consequently, there is a departure from the general scheme of distribution of legislative

Question	Issues	My Conclusions
		powers as enumerated in ***MPV Sundararamier*** insofar as Entry 50 - List II read with Entry 54 - List I is concerned which is unique to Entry 50 – List II. This is having regard to the significance of Entry 54 – List I which also overrides Entry 23 – List II.
d.	What is the scope of Entry 49 - List II and whether it covers a tax which involves a measure based on the value of the produce of land? Would the constitutional position be any different *qua* mining land on account of Entry 50 - List II read with Entry 54 - List I?	Entry 49 - List II deals with taxation of lands and buildings. It does not cover taxes on mineral bearing lands. The constitutional position is different *qua* mineral bearing lands on account of Entry 50 - List II read with Entry 54 - List I and Section 2 of the MMDR Act, 1957. Consequently, any imposition on the basis of royalty by a State Legislature or involving royalty as a measure of the value of the minerals extracted from the land is impermissible.
e.	Whether Entry 50 - List II is a specific Entry in relation to Entry 49 - List II, and would consequently subtract	Yes, Entry 50 - List II is a specific Entry in relation to Entry 49 - List II and would consequently subtract mining lands

Question	Issues	My Conclusions
	mining land from the scope of Entry 49 - List II?"	from the scope of Entry 49 - List II. This is particularly so having regard to Entry 50 - List II to be read with Entry 54 - List I and Section 2 of the MMDR Act, 1957.

41. Consequently, the following conclusions are arrived at by me:

a. I hold that royalty is in the nature of a tax or an exaction. It is not merely a contractual payment but a statutory levy under Section 9 of the Act (Section 9A relating to dead rent). The liability to pay royalty does not arise purely out of the contractual conditions of a binding lease. The payment of royalty to the Government is a tax in view of Entry 50 - List II being subject to any limitations imposed by Parliament by law in the context of Entry 54 - List I read with Section 2 of the MMDR Act, 1957.

b. Entry 50 - List II is an exception to the position of law laid down in ***MPV Sundararamier vs. State of Andhra Pradesh, AIR 1958 SC 468 ("MPV Sundararamier").*** Moreover, in the said case, the scope and ambit as well the implication of Entry 54 – List I on Entry 50 - List II was not considered at all. Therefore, the principle stated in ***MPV Sundararamier*** is foreign to the instant case and the ratio of the said decision does not apply to the present case. No doubt, the legislative power to tax mineral rights vests with the State legislature but Parliament, though may not have an express power to tax mineral rights under Entry 54 - List I, it being a general Entry, Parliament can, nevertheless on the strength of Entry 54 - List I read with Section 2 of the MMDR Act, 1957, impose any limitation on the power of the States to tax mineral rights under Entry 50 - List II. Sections 9 and 9A of the MMDR Act, 1957 are two such instances of

limitations imposed by the Parliament on the taxing power of the State under Entry 50 - List II. This is a unique Entry and must be given its true and complete meaning and while interpreting the same one cannot be swayed by the principles laid down in ***MPV Sundararamier*** as the same do not apply in the instant case. At the cost of repetition, it is stated that Entry 50 - List II never came for consideration in the aforesaid case.

c. Parliament is not using its residuary power with respect to imposing any limitation on the taxing power of the State under Entry 50 – List II. In fact, even the Validation Act, 1992 enacted by Parliament was upheld having regard to Entry 54 - List I read with Section 2 of the MMDR Act, 1957 and not Entry 97 - List I.

d. Entry 50 - List II envisages that Parliament can impose “any limitations” on the legislative field

created by that Entry under a law relating to mineral development. The MMDR Act, 1957 has imposed the limitations as envisaged in Entry 50 - List II in Sections 9, 9A and 25, etc. on the strength of Entry 54 – List I.

e. I, however, concur with the learned Chief Justice that the scope of the expression "any limitations" under Entry 50 - List II is wide enough to include the imposition of restriction, conditions, principles as well as a prohibition by Parliament by law.

f. The State legislatures have legislative competence under Article 246 read with Entry 49 - List II to tax lands and buildings but not lands which comprise of mines and quarries or have mineral deposits as mineral bearing lands do not fall within the description of lands (under Entry 49 - List II). Similarly, States can tax such mineral bearing lands which are not covered within the scope of

MMDR Act, 1957 i.e., minor minerals, under Entry 50 – List II and not under Entry 49 – List II as tax on exercise of mineral rights. Thus, mineral bearing lands cannot be taxed under Entry 49 – List II.

g. Further, the yield of mineral bearing lands, in terms of quantity of mineral produced or royalty paid cannot also be used as a measure to tax such lands under Entry 49 - List II. In my view, the decision in ***Goodricke*** does not apply to the present case and hence does not require any clarification.

h. Entries 49 and 50 - List II, no doubt, operate in different fields. Entry 49 - List II deals with taxes on lands and buildings but Entry 50 - List II deals with taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development. There is no constitutional

limitation on the competence of the State legislature to tax lands and buildings. However, the State's competence to tax mineral rights is subject to any limitations imposed by the Parliament by law relating to mineral development. Entry 49 - List II and Entry 50 - List II are distinct and operate in distinct ways. Entry 49 - List II does not apply to mineral bearing lands as such lands are taxed in the form of royalty or dead rent in the context of exercise of mineral rights. Exercise of mineral rights is the basis for payment of royalty or dead rent. Consequently, value of mineral produced cannot be used as a measure to once again impose a tax on mineral bearing land under Entry 49 - List II. If so, Entry 50 – List II would be rendered redundant.

i. As Entry 49 - List II does not apply to mineral bearing land, the limitations imposed by Parliament by law relating to mineral development

with respect to Entry 50 - List II would restrict the power of the State legislature to impose tax on mineral rights under the latter Entry. Thus, the power of the State legislature to impose tax under Entry 50 - List II is subject to the Parliament imposing any limitation by law relating to mineral development.

42. In view of the above discussion, the eleven questions referred to this Bench are accordingly answered. In particular, I hold that:

(i) Sections 9, 9A and 25 of the MMDR Act, 1957 denude or limit the scope of Entry 50 - List II;

(ii) the majority decision in ***Kesoram*** is a serious departure from the law laid down by the seven-judge Bench in ***India Cement*** which was wholly unwarranted and therefore, in my view, the said majority judgment is liable to be overruled and is overruled to the extent of holding that royalty is not a tax;

(iii) taxes on lands and buildings under Entry 49 - List II contemplates a tax levied directly on the land as a unit having a defined relationship with the land and does not include mineral bearing lands within its scope;

(iv) in view of the declaration under Section 2 of the MMDR Act, 1957 made in terms of Entry 54 - List I and to the extent of the provisions of the said Act, the State legislature is denuded of its powers under Enry 50 - List II; and

(v) Entry 50 - List II is a unique Entry because it is the only taxation Entry in Lists I and II where the taxing power of a State legislature has been subjected to "any limitations imposed by Parliament by law relating to mineral development". The dictum in ***MPV Sundararamier*** has not discussed on Entry 50 – List II and hence the said decision has no bearing as such on the

present controversy. The conclusion that 'royalty' is a 'tax' is the only exception to the position of law laid down in ***MPV Sundararamier***. Of course, the scope of expression "any limitations" in Entry 50 - List II is wide enough to include the imposition of restrictions, conditions, principles as well as a prohibition.

43. In the result, in my view, the judgments in ***India Cement, Orissa Cement, Mahalaxmi Fabric Mills, Saurasthra Cement, Mahanadi Coalfields, Kannadasan*** excluding to the extent overruled in ***Tata Iron and Steel,*** and ***Tata Iron and Steel*** are correct and therefore are binding precedent and cannot be overruled. On the other hand, the majority judgment in ***Kesoram***, is overruled to the extent it holds that royalty is not a tax.

44. The Registry is directed to place these matters before Hon'ble the Chief Justice of India for directions on listing the matters before the appropriate Bench.

I must place on record my sincere appreciation to the learned Attorney General, learned Solicitor General and their teams, learned senior counsel appearing for the respective parties, learned instructing counsel and learned counsel for the respective parties for their valuable assistance to this Bench.

.....J.
(B.V. NAGARATHNA)

New Delhi;
July 25, 2024.