India Cement Ltd. and Others Vs State Of Tamil Nadu and Others

Civil Appeal No.62 (N) of 1970 (From the Judgment and Order dated October 13, 1969 of the Madras High Court in W.A. No. 464 of 1967)

Court: Supreme Court of India

Date of Decision: Oct. 25, 1989

Acts Referred:
Constitution of India, 1950 â€" Article 245, 246, 265#Tamil Nadu Panchayats Act, 1958 â€" Section 115

Citation: AIR 1990 SC 85 : (1990) 2 GLR 764 : (1991) 188 ITR 690 : (1989) 4 JT 190 : (1989) 2 SCALE 953 : (1990) 1 SCC 12 : (1989) 1 SCR 692 Supp

Hon'ble Judges: E. S. Venkataramiah, C.J; Sabyasachi Mukherjee, J; S. Natarajan, J; Ranganath Misra, J; K. N. Singh, J; G. L. Oza, J; B. C. Ray, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

Sabyasachi Mukharji, J.

The question involved in these appeals, special leave petitions and writ petitions is, whether levy of cess on royalty is within the competence of the

State Legislature. In order to appreciate the question, it is necessary to refer to certain facts. Civil Appeal No. 62/79 is an appeal by special leave

from the judgment and order of the High Court of Madras, dated 13th October, 1969, in writ appeal No. 464/ 67. The appellant is a public

limited company incorporated under the Indian Companies Act, 1913. The Company at all relevant times, used to manufacture cement in its

factory at Talaiyuthu in Tirunelveli district, and at Sankaridrug in Salem district of Tamil Nadu. By G.O.Ms. No. 3668 dated 19th July, 1963, the

Govt. of Tamil Nadu sanctioned the grant to the appellant mining lease for limestone and kankar for a period of 20 years over an extent of 133.91

acres of land in the village of Chinnagoundanur in Sankaridrug Taluk of Salem district. Out of the extent of 133.91 acres comprised in the mining

lease, an extent of 126.14 acres was patta land and only the balance extent of 7.77 acres Govt. land. The lease deed was in accordance with the

Mineral Concession Rules, 1960. The rates of royalty, dead rent and surface rent, were as follow:-

Royalty :

Limestone

Government Lands ; Rs. 0.75 per tonne, but subject to a rebate of Rs. 0.38 per tonne to be given on limestone beneficiated by froth flotation

method.

Patta Lands: Rs. 0.38 per tonne but subject to a rebate of Rs. 0.19 per tonne to be given on limestone beneficiated by froth flotation method.

Kankar

Government Lands : Five per cent of the sale price at the pit"s mouth.

Patta Lands: 2 1 / 2% of the sale price at the pit"s mouth

Dead rent:

Government lands: Rs. 25 (Rupees twenty-five only) per hectare per annum.

Patta lands : Rs. 12/50 (Rupees twelve & naye paise fifty only) per hectare per annum.

Surface rent and water rate.: At such rate as the land revenue and cess assessable on the land are paid.

2. The appellant started mining operations soon after the execution of the lease deed and has ever since been paying the royalties, dead rents and

other amounts payable under the Deed.

3. u/s 115 of the Madras Panchayats Act (XXXV of 1958) (hereinafter called "the Act"), as amended by Madras Act XVIII of 1964 (hereinafter

called "the amended Act"), as royalty the appellant was required to pay local cess @ 45 paise per rupee. It may be mentioned that the said

imposition was with retrospective effect along with local cess surcharge u/s 116 of the Act. The contention of the appellant is and was, at all

relevant times, that cess on royalty cannot be levied. This is the common question which falls for consideration and requires determination in these

appeals and petitions.

4. To complete the narration of events, however, it has to be noted that the Collector sent a communication on 10th April, 1965, demanding cess

or royalty payable under the Act on minerals carried on during the period 1-7-1961 to 31-12-1964, and the petitioner was threatened of serious

consequences in case of default of payment on receipt of that communication. Thereafter, writ petition No. 1864/65 was filed in the High Court of

Madras. By the judgment delivered and order passed on 23rd February, 1967, a learned single Judge of the Madras High Court Justice Kailasam

dismissed the writ petition holding that the cess levied u/s 115 of the Act is a tax on land and, as such, falls under Entry 49 of the State List of the

Schedule VII of the Constitution, and was within the competence of the State legislature. Reliance was placed by the learned single Judge on the

decision of this Court in 288365 . He held that the cess levied u/s 115 was a tax on land, though fixed with reference to the land revenue. In regard

to Section 116 of the Act, the learned single Judge held that the maximum limit had been prescribed by the Government by rules framed under the

Act, and, therefore, there was. no arbitrariness about the levy.

5. Sub-section (1) of Section 115 of the Act enjoins that there shall be levied in every panchayat development block, a local cess at the rate of 45

paise on every rupee of land revenue payable to the Govt. in respect of any land for every fasli. An Explanation to the said section was added and

deemed always to have been incorporated by the Tamil Nadu Panchayats (Amendment and Miscellaneous Provisions) Act, 1964 being Tamil

Nadu Act 18 of 1964, which provided as follows;-

[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 u/s 116, provided that land

revenue remitted shall not be deemed to be land revenue payable for the purpose of this section.]

6. Sub-section (2) of Section 115 of the Act provides that the local cess shall be deemed to be public revenue due on all the lands in respect of

which a person is liable to pay local cess and all the said lands, the buildings upon the said lands and their products shall be regarded as the

security for the local cess. Sub-sections (3), (4)(a), (b), (c) and (d) of Section 115 of the said Act deal with the application of the cess so collected

for various purposes mentioned therein. In the controversy before us, the said provisions need not be considered.

7. Section 116 of the Act is 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

u/s 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.

8. The words ""shall not exceed two rupees & fifty paise on every rupee of land revenue"" were substituted for the words ""shall be subject to such

maximum as may be prescribed"" by Section 3 of the Tamil Nadu Panchayats1 (2nd Amendment and Validation) Act, 1970, and these words were

substituted for the words ""shall not exceed one rupee and fifty paise on every rupee of land revenue"" by Section 2 of the Tamil Nadu Panchayats

(Amendment) Act, 1972.

9. There was an appeal from the said decision of the learned single Judge to the division bench of the High Court. The division bench by its

judgment and order dated 13th October, 1969, dismissed the writ appeal, and held that local cess authorised by Section 115 as aforesaid ""was

not land revenue but is a charge on the land itself and Section 115 merely quantified on the basis of the quantum of land revenue"". The division

bench held that the meaning of the Explanation added to Section 115 was that the cess is levied as a tax on land and is measured with reference to

land revenue, royalty, lease amount etc. as mentioned in the Explanation. The division bench also relied on the decision of this Court in 288365 ,

and further held that in the aforesaid view of the matter, it was not possible to accept the contention that Section 115 of the Act read with the

Explanation contravened in any manner Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957. By leave granted by this

Court on 12th January, 1970 the appeal has been filed.

10. The appellant is bound to pay royalty to the Govt. ''according to the rates provided in the Second Schedule to the said Act of 1957. Clause

(1) of Part VII of the lease document provides as follows:-

The lessee/ lessees shall pay the rent, water rate and royalties reserved by this lease at such times and in the manner provided in Parts V and VI of

these presents and shall also pay and discharge all taxes, rates, assessment and impositions whatsoever being in the nature of public demand which

shall from time to time be charged, assessed or imposed by the authority of the Central and State Government upon or in respect of the premises

and works of the lessee /lessees in common with other premises and work of a like nature except demands for land revenue.

11. As mentioned hereinbefore, there is an obligation of the lessee to pay rent and other charges mentioned in the said Clause, and all other Central

and State Government dues ""except demands for land revenue"". The question, therefore, which arises is, is cess on royalty a demand of land

revenue or additional royalty?

12. For the appellants and/or petitioners we have heard Mr. Nariman, Dr. Chitale and Mr. Salve, and for the intervenors, S/Sh''ri K.D. Prasad,

Rajendra Choudhary and Ms. Sita Vaidialingam have made their submissions. For the State of Tamil Nadu, Mr. Krishnamurthy Iyer and Mr. V.

Krishnamurty have made their submissions. We have had the advantage of the submissions made by learned Attorney General on behalf of Union

of India. The issues are common in the writ petitions as well as in the appeal and in the special leave petitions. The question involved in the appeals

and the writ petition is about the constitutional validity of Section 115(1) of the Act, in so far as it sought to levy as local cess @ 45 naya paise on

every rupee of the land revenue payable to the Government, the meaning of land revenue being artificially expanded by the explanation so as to

include royalty payable under the mining lease.

13. In this connection, it may be appropriate to refer to the Statement of Objects and Reasons for the amendment which stated, inter alia, as

follows :-

Under the Explanation to Section 115 of the Act ""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 but does not include any other cess or surcharge payable u/s 116. The Explanation

does not cover ""royalties"", lease amount or other sum payable to the Government in respect of land held direct from the Government on lease or

licence which were included in the definition of ""land revenue"" under the Madras District Boards Act, 1920. As under the Madras District Boards

Act, 1920, certain panchayat union councils continued to levy the cess and surcharge under the Madras Panchayats Act, 1958 also. It is

considered that the levy should be on the same basis as under the Madras District Boards Act, 1920. It is, therefore, proposed to include ""royalty,

lease amount and other sums payable to the Government"" in the definition of land revenue in the Explanation to Section 115 of the Act and also to

validate the levy and collection of the cess and surcharge made hitherto on the said basis.

14. It is obvious that the said amendment Was intended to bring royalty within the Explanation and the definition of land revenue in Section 115 as

well as Section 116 of the Act, and was effected by the Gazette Notification of 2nd September, 1964 by Act No. 18 of 1964. In order to

appreciate the controversy, it has to be understood that in this case royalty was payable by the appellant which has prescribed under the tease

deed, the terms whereof have been noted hereinbefore. The royalty had been fixed under the statutory rules and protected under those rules. The

royalty was fixed under the Mines and Minerals (Regulation and Development) Act, 1957 which is a central Act by which the control of mines and

minerals had been taken over by the Central Government. It was an Act for the regulation of mines and development of minerals under the control

of Union of India. That Act was to provide for the regulation of mines and the development of minerals under the control of the Union of India.

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 Act provides as follows:-

9.(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.

(2 A) 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.

15. The Act was passed"by virtue of the power of the Parliament under entry 54 of list I of the 7th Schedule. Since the control of mines and the

development of minerals were taken over by Parliament, the question that arises here is whether the levy or the impost by the State Legislature

imposed in this case can be justified or sustained either under entry 49, 50 or 45 of list II of the 7th Schedule.

16. Courts of law are enjoined to gather the meaning of the Constitution from the language used and although one should interpret the words of the

Constitution on the same principles of interpretation as one applies to an ordinary law but these very principles of interpretation compel one to take

into account the nature and scope of the Act which requires interpretation. It has to be remembered that it is a Constitution that requires

interpretation. Constitution is the mechanism under which the laws are to be made and not merely an Act which declares what the law is to be. See

the observations of Justice Higgins in the Attorney General for the State of New South Wales v. The Brewery Employees union of New South

Wales (1908) 6 CLR 469 .

17. AIR 1939 1 (Federal Court) Chief Justice Gwyer of the Federal Court of India relied on the observations of Lord Wright in James v.

Commonwealth of Australia (1936) AC 578 and observed that a Constitution must not be construed in any narrow or pedantic sense, and that

construction most beneficial to the widest possible amplitude of its powers must be adopted. The learned Chief Justice emphasised that a broad

and liberal spirit should inspire those whose duty it is to interpret the Constitution, but they are not free to stretch or pervert the language of the

enactment in the interest of any legal or constitutional theory, or even for the purposes of supplying omissions or correcting supposed errOrs. A

Federal Court will not strengthen, but only derogate from, its position, if it seeks to do anything but declare the law; but it may rightly reflect that a

Constitution of a country is a living and organic thing, which of all instruments has the greatest claim to be construed ut res magis valeat quam

pereat, "It is better that it should live than that it should perish".

18. Certain rules have been evolved in this regard, and it is well settled now that the various entries in the three lists are not powers but fields of

legislation. The power to legislate is given by Article 246 and other articles of the Constitution. See the observations of this Court in 280271 . The

entries in the three lists of the Seventh Schedule to the Constitution are legislative heads or fields of legislation. These demarcate the area over

which appropriate legislature can operate. It is well settled that widest amplitude should be given to the language of these entries, but some of these

entries in different lists or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. Then, it is the duty of

the court to find out its true intent and purpose and to examine a particular legislation in its pith and substance to determine whether it fits in one or

the other of the lists. See the observations of this Court in 281101 , Union of India v. Harbhajan Singh Dhillon, (1972) 83 ITR 582 (SC) . The lists

are designed to define and delimit the respective areas of respective competence of the Union and the States. These neither impose any implied

restriction on the legislative power conferred by Article 246 of the Constitution, nor prescribe any duty to exercise that legislative power in any

particular manner. Hence, the language of the entries should be given widest scope, 282597 , to find out which of the meanings is fairly capable

because these set up machinery of the Govt. (Sic). Each general word should be held to extend to all ancillary or subsidiary matters which can

fairly and reasonably be comprehended in it. In interpreting an entry it would not be reasonable to import any limitation by comparing or

contrasting that entry with any other one in the same list. It is in this background that one has to examine the present controversy.

19. Here, we are concerned with cess on royalty. One can have an idea as to what cess is from the observations of Justice Hidaya-tullah, as the

learned Chief Justice then was, in 276607 , the learned Judge observed:

The word ''cess'' is used in Ireland and is still in use in India although the word rate has replaced it in England. It means a tax and is generally used

when the levy is for some special administrative expense which the name (health cess, education cess, road cess etc,) indicates. When levied as an

increment to an existing tax, the same matters not for the validity of the cess must be judged of in the same way as the validity of the tax to which it

is an increment.

20. The said observations were made in the dissenting judgment, but there was no dissent on this aspect of the matter. Relying on the aforesaid

observations, Mr. Nariman appearing for the appellant and the petitioners suggested that the impugned levy in this case is nothing but a tax on

royalty and is therefore ultra vires the State legislature. Mr. Krishnamurthy Iyer appearing for the State of Tamil Nadu submitted that the cess in

question in the instant case is a levy in respect of land for every fasli. He urged that the words ""a local cess at the rate oi''45 naya paise on every

rupee of land revenue payable"" qualify the words ""land revenue"". These words were only intended, according to Mr. Krishnamurthy Iyer, to mean

cess payable. It is, however, not possible to accept this submission in view of the obligation indicated by the language of the provisions. Cess is not

on land, but on royalty which is included in the : definition of'' land revenue''. None of the three lists of the 7th Schedule of the Constitution permits

or authorises a State to impose tax on royalty. This levy has been sought to be justified under entry 45 of list II of the 7th Schedule. Entry 45 deals

with land revenue, which is a well-known concept and has existed in India before the Constitution came into force. In N.R. Reddy ans Ors. v.

State of A.P. (1965) 2 LT 297, Jaganmohan Reddy, J. as the learned Judge then was, of the Andhra Pradesh High Court, while sitting in a division

bench observed that no land revenue Act existed in the composite State of Madras nor had the ryotwari system ever been established by

legislative enactment. The learned Judge at p. 306 of the report observed that in the earlier days, sovereigns had in'' exercise of their prerogative

right claimed a share of the produce of all cultivated land'' known as ''Rajabhagam'' or by any of the various other names, and had fixed their share

or its commuted money value from time to time, according to their will and pleasure. The learned Judge noted that as long as the share of the

sovereign was being paid, the sovereign had no right to the possession of the lands, and the proprietorship of these lands was vested in the

occupier, who could not be removed because another offered more. The right of the sovereign to a share in the produce as observed by the Govt.

of Madras in 1856 ""is not rent which consists of all surplus produce after paying the cost of cultivation and the profits of agricultural stock but land

revenue only which ought, if possible, to be so lightly assessed as to leave a surplus or rent to the occupier, when he in fact lets the land to others

or retains it in his own hands."" It was noted that the amount of tax that was levied before the Mohamedan Rule, amounted to I/8th, I/6th or I/12th

according to Manu depending on the differences in the soil and the labour necessary to cultivate it, and it even went up to I/4th part, in times of

urgent necessity, as of war or invasion. The later commentators, Yajnavalkya, Apastamba, Gautama, Baudhayana and Narada, have all asserted

not only the right but the extent of the share. When the British came to India they followed not only the precedent of the previous Mohamedan

Rulers who also claimed enormous land revenue, with this difference that what the Mohamedan Rulers claimed they could never fully realise, but

what the British Rulers claimed they realised with vigour. It is not necessary to refer in detail how land revenue developed in India after the advent

of the British Rule. There was an appeal from the said decision of the High Court of Andhra Pradesh and this Court dismissed the appeal in

280663 .

21. It is, however, clear that over a period of centuries, land revenue in India has acquired a connotative meaning of share in the produce of land to

which the King or the Govt. is entitled to receive. It was contended on behalf of the appellants that the impugned measure being a tax, not on share

of the produce of the land but on royalty; royalty being the return received from the produce of the land revenue was payable for winning minerals

from the land. In the premises it was contended that it cannot be attributable to entry 45 of list II of the 7th Schedule, being not a land revenue. It

has, however, to be borne in mind that Explanation to Section 115(I) was added and there was an amendment as we have noted before. That very

Explanation makes a distinction between land revenue as such and royalty which by amendment is deemed to be land revenue. It is, therefore,

recognised by the very force of that Explanation and the amendment thereto that the expression "royalty" in Sections 115 and 116 of the Act

cannot mean land revenue properly called or conventionally known, which is separate and distinct from royalty.

22. It was also contended on behalf of the respondent State of Tamil Nadu by Mr. Krishnamurthy Iyer that it could also be justified under entry 49

of list II of the 7th Schedule as taxes on lands and buildings. This, however, cannot be accepted. In this connection, reference may be made to the

decision of this Court in 286652 it was indicated that the expression "lands" in entry 49 is wide enough to include agricultural land as well as non-

agricultural land. Gajendragadkar, J. as the learned Chief Justice then was, observed that the cardinal rule of interpreting the words used by the

Constitution in conferring legislative power was that these must receive the most liberal construction and if they are words of wide amplitude the

construction must accord with it. If general word was used, it must be so construed so as to extend to all ancillary or subsidiary matters that can

reasonably be included in it. So construed, there could not be any doubt that the word "land" in entry 49, list II of the 7th Schedule includes all

land whether agricultural or non-agricultural. Hence, since the impugned Act imposed tax on land and building which was within the competence of

the State Legislature and its validity was beyond challenge but the Court observed that as there was entry 46 in list II. which refers to taxes on

agricultural income, it is clear that agricultural income is not included in entry 49. If the State Legislature purports to impose a tax on agricultural

income it would not be referable to entry 49, Mr. Krishnamurthy Iyer relied on the said principle. But in the instant case, royalty being that which is

payable on the extraction from the land and cess being an additional charge on that royalty cannot, by the parity of the same reasoning, be

considered to be a tax on land. But since it was not a tax on land and there is no entry like entry 46 in the instant situation like the position before

this Court in the aforesaid decision, enabling the State to impose tax on royalty in the instant situation, the State was incompetent to impose such a

tax. There is a clear distinction between tax directly on land and tax on income arising from land. The aforesaid decision confirmed the above

position. In 287449 , this Court after referring to the several decisions observed that entry 49 of list II of the 7th Schedule only permitted levy of

tax on land and building. It did not permit the levy of tax on machinery contents in or situated on the building even though the machinery was there

for the use of the building for a particular purpose. Rule 7(2) of the Bombay Municipal Corporation Rules was held to be accordingly ultra vires in

that case. In 282491 this Court had occasion to consider this and upheld the validity of the Wealth Tax Act, 1957 on the ground that it fell within

entry 86 of list I and not entry 49 of list II. Construing the said entry, this Court 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. Entry 49 of list II was held to be more general in nature

than entry 86, list I, which was held to be more specific in nature and it is well settled that in the event of conflict between entry 86, list I and entry

49 of list II, entry 86 prevails as per Article 246 of the Constitution.

23. In 280126 , this Court reiterated the principles laid down in 282491 and held that entry 49 of list II was confined to a tax that was directly on

land as a unit. In 274302 it was held that a tax on the gift of land is not a tax imposed directly on land but only on a particular user, namely, the

transfer of land by way of gift. In Union of India v. Harbhajan Singh Dhillon, (1972) 83 ITR 582 (SC) , this Court approved the principle laid

down in S.C. Nawn''s case as well as Nazareth''s case (supra). In 268623 this Court made a distinction between the levy on-income from house

property which would be an income tax, and the levy on house property itself which would be referable to entry 49 list II. It is, therefore, not

possible to accept Mr. Krishnamurthy Iyer''s submission and that a cess on royalty cannot possibly be said to be a tax or an impost on land. Mr.

Nariman is right that royalty which is indirectly connected with land cannot be said to be a tax directly on land as a unit. In this connection,

reference may be made to the differentiation made to the different types of taxes for instance, one being professional tax and entertainment tax. In

the 277394 , it was held that an entertainment tax is dependent upon whether there would or would not be a show in a cinema house. If there is no

show, there is no tax. It cannot be a tax on profession or calling, profession tax does not depend on the exercise of one''s profession but only

concerns itself with the right to practice. It appears that in the instant case also no tax can be levied or is leviable under the impugned Act if no

mining activities are carried on. Hence, it is manifest that it is not related to land as a unit which is the only method of valuation of land under entry

49 of list II, but is relatable to minerals extracted. Royalty is payable on a proportion of the minerals extracted. It may be mentioned that the Act

does not use dead rent as a basis on which land is to be valued. Hence, there cannot be any doubt that the impugned legislation in its pith and

substance is a tax on royalty and not a tax on land.

24. On behalf of the State of Tamil Nadu, learned Counsel Mr. Krishnamurthy Iyer sought to urge that it can also be sustained under entry 50, list

II. Entry 50 of list II of the 7th Schedule deals with taxes on mineral rights subject to limitation imposed by Parliament relating to mineral

development. Entry 23 of list II deals with 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 and entry 54 in list I deals with regulation of mines and minerals under the control of Union

declared by the parliament by law to be expedient in public interest. Even though minerals are part of the State list they are treated separately, and

therefore the principle that the specific excludes the general must be applied. See the observations of 281812 , where it was held that land in entry

49 of list II cannot possibly include minerals.

25. In this connection, learned Attorney General appearing for the Union of India submitted before us that in order to sustain the levy, the power of

the State Legislature has to be found within one or more of the entries of list II of the 7th Schedule. The levy in question has to be either a tax or a

fee or an impost. If it is neither a tax nor. a fee then it should be under one of the general entries under list II. The expression'' land'' according to its

legal significance has an indefinite extent both upward and downwards,, the surface of the soil and would include not only the face of the earth but

everything under it or over it. See the observations in 286794 . The minerals which are under the earth can in certain circumstances fall under the

expression ''land1 but as tax on mineral rights is expressly covered by entry 50 of list II, if it is brought under the head taxes under entry 49 of list

II, it would render entry 50 of list II redundant. Learned Attorney General is right in contending that entries should not be so construed as to make

any one entry redundant. It was further argued that even in pith and substance the tax fell to entry 50 of list II, it would be controlled by a

legislation under entry 54 of list I.

26. On the other hand, learned Attorney General submitted that if it be held to be a fee, then the source of power of the State Legislature is under

entry 66 read with entry 23 of list II. Here also 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, to the extent such legislation makes provisions will denude the State

Legislature of its power to override the provision under entry 50 of list 11.1 n view of the Parliamentary legislation under entry 54, list I and the

declaration made u/s 2 and provisions of Section 9 of the Act, the State Legislature would be overridden to that extent. Section 2 declares that it is

expedient in the public interest that Union should take under its control the regulation of mines and the development of minerals to the extent

provided therein. In this connection, reference may be made to the decision of this Court in the 281134 . See also the observations in 282248 and

273620 .

27. Our attention was drawn to the decision of the division bench judgment of the High Court of Mysore in M/s. Laxminarayana Mining Co.,

Bangalore v. Taluk Dev. Board AIR 1972 Mys 299. There speaking for the court, one of us, Venkataramiah J. of the Mysore High Court, as the

learned Chief Justice then was, observed that a combined reading of entries 23 and 50 in list II and entry 54 of list I, establishes that as long as the

Parliament does not make any law in exercise of its power under entry 54, the powers of the State Legislature in entries 23 & 50 would be

exercisable by the State Legislature. But when once the Parliament makes a declaration by law that it is expedient in the public interest to make

regulation of mines and minerals development under the control of the Union, to the extent to which such regulation and development is undertaken

by the law made by the Parliament, the power of the State Legislature under entries 23 & 50 of list II are denuded. There the court was concerned

with the Mysore Village Panchayats & Local Boards Act, 1959. Thus, it was held that it could not, therefore, be said that even after passing of the

Central Act, the State Legislature by enacting S. W3 of the Act intended to confer power on the Taluk Board to levy tax on the mining activities

carried on by the persons holding mineral concessions. It followed that the levy of tax on mining by the Board as per the impugned notification was

unauthorised and liable to be set aside. At p. 306 of the said report, it was held that royalty u/s 9 of the Mines and Minerals Act was really a tax.

28. To the similar effects are the observations of the High Court of Patna in 902009 Mr. Krishnamurthy Iyer, however, referred to the decision of

this Court in 288365 . There under the terms of a mining case the lessee worked the mines and" won iron ores in a tract of land in a village in

Chittor district and bound himself to pay a dead rent if he used the leased land for the extraction of iron ore, to pay a royalty on iron ore if it were

used for extraction of iron and in addition to pay a surface rent in respect of the surface area occupied or used. In the said decision the legislative

competence of Sections 78 & 79 of the Madras District Boards Act was upheld by which land cess was made payable on the basis of royalty.

This Court proceeded on the basis that other cess related to land and would therefore be covered by entry 49 of list II. It was held that land cess

paid on royalty has a direct relation to the land and only a remote relation with mining. This, with respect, seems to be not a correct approach. It

was further observed that it was not necessary to consider the meaning of the expression "tax on mineral right" following under entry 50 of list II in

as much as according to this Court, Parliament has not made any tax on mineral rights. This is not a correct basis.

29. In 288365 : 288365 of the report, it was observed by this Court as follows :-

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. No doubt, in a sense, but in -a very remote sense, it has relationship to mining as also to the mineral

won from the mine under a contract by which royalty is payable on the quantity of mineral extracted. But that does not stamp it as a tax on either

the extraction of the mineral or on the mineral right. It is 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. Our attention was not invited to the provision of any

such law created by Parliament. In the context of Sections 78 and 79 and the scheme of those provisions it is clear that the land cess is in truth a

tax on lands"" within entry 49 of the State list.

30. It seems, therefore, that attention of the Court was not invited to the provisions of Mines and Minerals (Regulation and Development) Act,

1957 and Section 9 thereof. Section 9(3) of the Act in terms states that royalties payable under the 2nd Schedule of the Act shall not be enhanced

more than once during a period of 4 years. It is, therefore, a clear bar on the State Legislature taxing royalty so as to in effect amend 2nd Schedule

of the Central Act. In the premises, it cannot be right to say that tax on royalty can be a tax on land, and even if it is a tax, if it falls within entry 50

will be ultra vires the State legislative power in view of Section 9(3) of the Central Act. In 281134 , Wanchoo J. in his dissenting judgment has

stated that a tax on mineral rights being different from a duty of excise, pertains only to a tax that is leviable for the grant of the right to extract

minerals, and is not a tax on minerals as well. On that basis, a tax on royalty would not be a tax on mineral rights and would therefore in any event

be outside the competence of the State Legislature.

31. The Rajasthan, Punjab, Gujarat and Orissa High Courts have held that royalty is not a tax. See 319713 Dr. S.S. Sharma v. State of Pb. AIR

1969 Pun 79 , 707381 , 417159 .

32. It was contended by Mr. Krishnamurty Iyer that the State has a right to tax minerals. It was further contended that if tax is levied, it will not be

irrational to correlate it to the value of the property and to make some kind of annual value basis of tax without intending to tax the income. In view

of the provisions of the Act, as noted hereinbefore, this submission cannot be accepted. Mr. Krishnamurthy Iyer also further sought to urge that in

entry 50 of list II, there is no limitation to the taxing power of the State. In view of the principles mentioned hereinbefore and the expressed

provisions of Section 9(2) of the Mines & Minerals (Regulation & Development) Act, 1957, this submission cannot be accepted. This Held is fully

covered by the central legislation.

33. In any event, 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 entries 23 & 50 of list II, and not entry 49 of list II. But as the fee is covered by the central power under entry

23 or entries 50 of list II, the impugned legislation cannot be upheld. Our attention was drawn to a judgment of the High Court of Madhya Pradesh

in Misc. Petn. No. 410/83 - M/s. Hiralal Rameshwar Prasad v. The State of Madhya Pradesh, which was delivered on 28th March, 1986 1986

MPLJ 514 by a Division Bench of the High Court J.S. Verma, Acting Chief Justice, as his Lordship then was, held that development cess by

Section 9 of the Madhya Pradesh Karadhan Adhini-yam, 1982 is ultra vires. It is not necessary in the view taken by us, and further in view that the

said decision is under appeal in this Court, to examine it in detail.

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.

35. Mr. Krishnamurthy Iyer, however, submitted that in any event, the decision in 288365 was the decision of the Constitution Bench of this

Court. Cess has been realised on that basis for the organisation of village and town panchayats and comprehensive programme of measures had

been framed under the National Extension Service Scheme to which our attention was drawn. Mr. Krishnamurthy Iyer further submitted that the

Directive Principle of State Policy embodied in the Constitution enjoined that the State should take steps to organise village panchayats and endow

them with power and authority as may be necessary to enable them to function as units of self-Government and as the amounts have been realised

on that basis, if at all, we should declare the said cess on royalty to be ultra vires prospectively. In other words, the amounts that have been

collected by virtue of the said provisions should not be declared to be illegal retrospectively and the State made liable to refund the same. We see

good deal of substance in this submission. After all, there was a decision of this Court in H.R.S. Murthy''s case (supra)'' and amounts have been

collected on the basis that the said decision was the correct position. We are, therefore, of the opinion that we will be justified in declaring the levy

of the said cess to be ultra vires the power of the State legislature prospectively only.

36. In that view of the matter, the appeals must, therefore, be allowed and the writ petitions also succeed to the extent indicated above. We

declare that the said cess by the Act u/s 115 is ultra vires and the respondent State of Tamil Nadu is restrained from enforcing the same any

further. But the respondents will not be liable for any refund of cess already paid or collected. The appeals are disposed of accordingly. The

special leave petitions and writ petitions are also disposed of in those terms. In the facts and the circumstances of the case, the parties will pay and

bear their own costs.

G.L. OZA, J. (Concurring)

37. While I agree with the conclusions reached by my learned brother Hon" Mukharji, J. 1 have my own reasons for the same. The main argument

in favour of this levy imposed by the State legislature is on the basis of Entry 49 in List II of the Seventh Schedule conferring jurisdiction on the

State Legislature. The question therefore to be determined is whether the jurisdiction of the State Legislature under Item 49 of List II could be so

exercised to impose a cess on the royalty prescribed u/s 9 of the Mines and Minerals (Regulation and Development) Act, 1957.

38. The entries which are relevant for the purpose of determining this questions are:

Entry 54 List I reads:

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.

Entry 23 List II reads:

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.

Entry 49 List II reads:

Taxes on lands and buildings.

Entry 50 List II reads;

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

The language of Entries 23 and 50 in List II clearly subjects the authority or jurisdiction on the State Legislature to any enactment made by the

Parliament. Entry 23 talks of regulation and Entry 50 talks of taxes on mineral rights. It therefore could not be disputed that if the cess imposed u/s

115 of the Madras Village Panchayat Act is a cess or tax on mineral rights then that jurisdiction could be exercised by the State Legislature subject

to the law enacted by the Parliament. The Parliament in Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957 has fixed

the limits of royalty on the mining rights. It was therefore contended on behalf of the State that in fact what is imposed u/s 115 is not a cess on the

mining rights or on royalty but is a tax on land which clearly falls within the authority of the State Legislature in Entry 49 of List II.

39. Section 9 of the Mines and Minerals (Regulation and Development) Act reads:

9.(I) 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.

It is clear that by this Act along with Schedule limits on royalty has been fixed and the authority has been given to parliament alone to vary it and

that too not more than once in a period of three years. Admittedly royalty is not based on the area of land under mining but per unit of minerals

extracted. Section 115 of the Madras Village Panchayat Act reads as under:

(1) There shall not be levied in every panchayat development block, a local cess at the rate of 45 naye paise on every rupee of land revenue

payable to Government in respect of any land for every fasli.

Explanation: In this Section and in Section 116, "land revenue1 means public revenue due on land and includes water-cases 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 u/s 116, provided that land

revenue remitted shall not be deemed to be land revenue for the purpose of this Section.

(2) The local cess payable under this Sub-section (1) shall be deemed to be public revenue due on the lands in respect of which a person is liable

to pay local cess and all the said lands, the buildings upon the said lands and their products shall be regarded as the security for the local cess,

(3) The provisions of the Madras Revenue Recovery Act, 1864 (Madras Act II of 1864) shall apply to the payment arid recovery of the local cess

payable under this Act just as they apply to the payment and recovery of the revenue upon the lands in respect of which the local cess under this

Act is payable.

(4)(a) Out of the process of the local cess so collected in every panchayat development block, a sum representing four-ninths of the proceeds shall

be credited to the Panchayat Union (Education) Fund.

(b) Out of the proceeds of the local cess collected in every panchayat town in a panchayat development block, a sum representing two-ninths of

the said proceeds shall be credited to the town panchayat fund.

(c) Out of the balance of the local cess credited in the panchayat development block, such percentage as the panchayat union council may fix shall

be credited to the village panchayat fund, and the percentage shall be fixed so as to secure as nearly as may be that the total income derived by all

the village panchayats in the panchayat union does not fall short of an amount calculated at 20 naye paise for each individual of the village

population in the panchayat union.

(d) The balance of the proceeds of the local cess collected in the panchayat development block shall be credited to the funds of the panchayat

union council.

The explanation to Sub-clause (I) is the subject matter of controversy in this case. Sub-clause (I) provides for levy of 45 naye paise for every

rupee of land revenue payable to the Government in the explanation a fiction is created thereby even the royalty payable have been included within

the definition of ""land revenue"" As it provides ""royalty, lease amount or any other sum payable to the Government in respect of land."" This phrase-

logy has been incorporated by an amendment in 1964 by the Madras Village Panchayat Amendment Act, 1964 Section 13 wherein the

explanation to Section 115 was substituted and substituted retrospectively wherein this royalty has also been included in the definition of ''land

revenue'' and it is on this ground that it was mainly contended that land revenue being a tax on land is within the authority of the State Legislature

under Item 49 of List II and therefore the cess which is a tax on land revenue itself or an imposition on the land revenue and hence could not be

anything else but a tax falling within the ambit of tax on land as provided by Entry 49 List II and it was therefore contended that it would not fall

within the ambit of Entry SO List 11 as if it falls within the ambit of Entry 50 of List II, it would be beyond the authority of the State Legislature as

by passing Mines and Minerals (Regulation and Development) Act, ''1957 the Parliament has denuded the State Legislature of its authority to levy

any tax on mining rights.

40. Whether royalty is a tax or not is not very material for the purpose of determination of this question in this case. It is admitted that royalty is

charged on the basis of per unit of minerals extracted. It is no doubt true that mineral is extracted from the land and is available, but it could only be

extracted if there are three things :-

1) Land from which mineral could be extracted.

2) Capital for providing machinery, instruments and other requirements.

3) Labour.

It is therefore clear that unit of charge of royalty is not only land but land + Labour + Capital. It is therefore clear that if royalty is a tax or an

imposition of a levy, it is not on land alone but it is a levy or a tax on mineral (land), labour and capital employed in extraction of the mineral. It

therefore is clear that royalty if imposed by the Parliament it could only be a tax not only on land but on these three things stated above.

41. It is not in dispute that the cess which the Madras Village Panchayat Act proposes to levy is nothing but an additional tax and originally it was

levied only on land revenue, apparently land revenue would fall within the scope of Entry 49 but it could not be doubted that royalty which is a levy

or tax on the extracted mineral is not a tax or a levy on land alone and if cess is charged on the royalty it could not be said to be a levy or tax on

land and therefore it could not be upheld as imposed in exercise of jurisdiction under Entry 49 List II by the State Legislature.

42. Thus it is clear that by introducing this explanation to Section 115 Clause (1) widening the meaning of words ''land revenue'' for the purposes

of Sections 115 and 116. When the Legislature included Royalty, it went beyond its jurisdiction under Entry 49 List II and therefore clearly is

without the authority of law. But this also may lead to an interesting situation. This cess levied u/s 115 of the Madras Village Panchayat Act is

levied for purposes indicated in the scheme of the Act and it was intended to be levied on all the lands falling within the area but as this cess on

royalty is without the authority the result will be that the cess is levied so far as lands other than the lands in which mines are situated are concerned

but lands where mines are situated this levy of cess is not in accordance with that law. This anomaly could have averted if the Legislature in this

explanation had used words "surface rent" in place of royalty. Even if the lands where mines are situated and which are subject to licence and

mining leases even for those lands there is a charge on the basis of the surface of the land which is sometimes described as surface rent or

sometimes also as ''dead rent''. It could not be doubted that if such a surface rent or dead rent is a charge or an imposition on the land only and

therefore will clearly fall within the purview of Entry 49. List II and if a cess is levied on that it will also be justified as tax on land falling within the

purview of Entry 49 and it will also be uniform as this cess would be levied in respect of the lands- irrespective of the fact as to whether the land is

one where a mine is situated or land which is only used for other purposes for which land revenue is chargeable.