

(1999) 03 PAT CK 0017

In the Patna High Court

Case No : C.W.J.C. No's. 3795, 3113 of 1993 (R) , 178, 268, 269, 783, 1783, 1885, 2251, 2252 and 2915 of 1994 (R) and 966 of 1995 (R)

Central Coalfields Limited and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-03-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 2, 3

Citation : (1999) 3 BLJR 1808

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.A. Sharma, J.—By these writ petitions, the petitioners have challenged the validity of the Bihar Coal Mining Area Development Authority (Amendment) Act, 1992 (hereinafter referred to as the Amendment Act) and the rules framed thereunder, namely, the Bihar Mineral Area Development Authority (Land Use Tax) Rules, 1994 (hereinafter referred to as the Rules). The prayer seeking appropriate writ and/or order declaring Section 89 of the Bihar Coal Mining Area Development Authority Act, 1986 (hereinafter referred to as the Act) as amended by the Amendment Act as ultra vires is also there. Consequential and incidental relief seeking quashing of the demand notice, assessment order and the notice requiring filing of returns has also been claimed.

2. As the controversy involved in all these writ petitions is the same, it is not necessary to State the facts of each of these petitions excepting the writ petition, C.W.J.C. No 783 of 1994(R) (Central Coal Field Ltd. v. The State of Bihar and Ors.), which has been made the leading case from which necessary facts shall be stated if and when found necessary.

3. The Central Coal Field Limited (the petitioner in C.W.J.C. No. 783/ 94(R) is a Government company owning several collieries which were nationalised by and under the Coal Mines Nationalisation Act, 1973. It received a notice of demand

on 7-12-93 requiring it to pay the tax u/s 89 of the Act. It is at this stage that it has filed the writ petition seeking the relief mentioned hereinbefore.

4. The arguments on behalf of the petitioners have been made by Sri Dipankar Gupta, learned Sr. Counsel for the petitioner in C.W.J.C. No. 1885/94(R) (Steel Authority of India Limited v. The State of Bihar and Ors.) and Sri Biswaroop Gupta, learned Sr. Counsel representing the petitioner in C.W.J.C. No 783/94(R) (Central Coal Field Limited v. The State of Bihar and Ors.). The learned Counsel for other petitioners have adopted their arguments. The learned Advocate General has argued for the State of Bihar and Mr. Rakesh Dwivedi has appeared for and on behalf of the Mineral Area Development Authority.

5. The learned Counsel for the petitioners have raised two points/ submissions in support of the writ petitions, namely (i) the Act has been enacted for development of the Coal-Mining Areas in the State which is the field covered by the Central Act namely the Mines & Mineral (Development & Regulation) Act, 1957 (hereinafter referred to as M.M.R.D. Act) and the state, as such, has not legislative competence to pass such an Act and (ii) levy of tax u/s 89 of the Act is not on land but is on use of the land regarding which State Legislative has not power.

The learned Advocate-General and the learned Counsel for the Mineral Development Area Authority have defended the Act as well as the levy of tax u/s 89.

6. FIRST POINT/SUBMISSION

The object of the Act is "to provide for the growth and development of coal-mining areas in the State and for matters ancillary thereto." "Coal Mining Development Area" has been defined in Section 2 (4) of the Act as under:

2 (4) "Coal Mining Development Area" means any area declared to be a Coal Mining Development Area under Sub-section (1) of Section 3 of this Act;

Section 2 (10) defines land as follows:

2 (10) "Land" shall have the meaning as assigned to it in Section 3 of the Land Acquisition Act, 1894 (Act I of 1894) and includes benefit to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth ;

The definition of "Land" as contained in Section 3(a) of the Land Acquisition Act is also reproduced below:

3 (a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth ;

The definition of occupier and owner are contained in Section 2(14) and (16) respectively which are reproduced below:

2 (14) "Occupier" includes-

- (a) tenants;
- (b) an owner in occupation of, or otherwise using his land;
- (c) a rent-free tenant of any land;
- (d) a licensee in occupation of any land;
- (e) lessee of sub-lessee or any other person in occupation of land, and
- (f) any person, who is liable to pay to the owner rent, damage or any kind of payment for the use and occupation of any land.

2 (16) "Owner* means a mortgagee in possession, a person, who for the time being is receiving or is entitled to receive, or has received the rent or premium for any whether on his own account or on account of, or on behalf of or for the benefit of any other person or as an agent, trustee, guardian or receiver for any other person or for any religious or charitable institution or who would so receive the rent or premium if the land were let to tenant and includes the Head of a Government Department, General Manager of a Railway, the Secretary or other Principal Officer of a Local Authority, Statutory Authority or company in respect of properties under their respective control;

7. Section 3, which empowers the Government of the State to declare the Coal Mining Development Area is as follows:

3. Declaration of the Coal Mining Development Area and the Constitution of the Development Authority.-(1) The Government may, by notification in the Official Gazette, declare any coal mining area including such adjacent or contiguous areas in the State, to be a Coal Mining Development Area for the purpose of this Act.

(2) The above said notification shall define the limits of the area to which it relates.

(3) The Government may, by notification thereafter alter the limits of the area so as to include therein or exclude therefrom such areas as may be specified in the notification.

Section 5 provides for constitution of Coal Mining Area Development Authority. Section 8, which enumerates functions and powers of the Coal Mining Area Development Authority, is quoted below:

8. Functions and powers of the Coal Mining Area Development Authority,-(1) Subject to the provisions of this Act and the rules framed thereunder and any directions which the Government may issue in this regard, the functions of the Authority shall be and it shall have power to-

- (a) carry out a survey of the Coal Mining Development Area and prepare reports on the surveys so carried out;

- (b) prepare an exiting land use map and such other maps as may be necessary for the preparation of Development Plan;
- (c) prepare a development plan of the Coal Mining Development Area and to enforce and execute it;
- (d) guide, assist, advice, direct, supervise and co-ordinate development activities of all department and agencies operating within the Coal Mining Development Area;
- (e) suggest priorities to Government Department and other concerned development agencies with regard to development schemes undertaken by agencies operative within the Coal Mining Development Area;
- (f) undertake or cause to be undertaken execution of projects and schemes in the Coal Mining Development Area and supervise and co-ordinate the execution of projects and schemes by other agencies operating in the Coal Mining Development Area;
- (g) provide for the development of infrastructure facilities including roads, education, welfare of Scheduled Caste and Scheduled Tribe, water supply, electricity, drainage, etc.
- (h) take such steps as may be necessary to prevent the sinking of towns in the Coal Mining Development Area;
- (i) Bring back into an appropriate use of land under derelict mines ;
- (j) exercise environmental control and prevent pollution caused by or arising out of mining operations;
- (k) take such steps as may be necessary to prevent and to remove nuisance affecting public health;
- (l) regulate the disposal of sewage, rubbish and maintain public conveniences, drains, cess pools, etc. within the Coal Mining Development Area ;
- (m) assess and plan for the needs of the coal mining agencies and the people in the Coal Mining Development Area and provide community facilities, maintain sanitation, health and educational facilities and promote health, safety and welfare of the public in the area ;
- (n) take such steps as may be necessary and expedient to prevent the outbreak and spread of epidemic diseases and provide for the proper treatment of the sick, the establishment and maintenance of hospitals and dispensaries and the appointment of medical staff in the Coal Mining Development Area ; and
- (o) perform any other function which is supplemental, incidental or consequential to any of the function aforesaid or which may be prescribed.
- (la) For the purpose of performing, the functions mentioned in Sub-section (1), it

shall be lawful for any Officer of the Authority-

- (i) to enter in or upon any land to make survey and to take level of such land;
- (ii) to dig or bore into the sub-soil;
- (iii) to make levels and boundaries by planting marks and cutting trenches;
- (iv) to cut down and clear away any part of any standing crop, fence or jungle where the survey cannot be completed, levels cannot be taken and boundaries cannot be marked otherwise; (v) to examine works under construction and to ascertain the course of sewers, drains or other utilities.

(2) The Coal Mining Area Development Authority may exercise also such powers as may be necessary or expedient for the purpose of carrying out its functions under this Act.

Chapter IV (Sections 16 to 27) of the Act provides for preparation of development plan for coal mining development area, its approval by the Government and the matters connected therewith. Section 16, which provides for preparation of the development plan and specifies the subjects to be dealt with therein , insofar as it is relevant, is as under:

16. Development Plan.-(1) As soon as may be, after the declaration of the Coal Mining Development Area u/s 3, Authority shall, not later than two years of such declaration or within such time as the Government may from time to time extend and subject to such directions as may be issued by the Government, prepare and submit to the Government a Development Plan for whole of the Coal Mining Development Area or any of its parts.

(2) The Development Plan shall (a) define the various zones into which Coal Mining Development Area is to be divided for purposes of development and indicate the manner in which land in each zone is proposed to be developed and the stages by which any such development shall be carried out, (b) serve as a basic pattern of frame-work within which the development scheme are to be prepared.

(3) The Development Plan, shall, as far as may be necessary, indicate, define and provide for-

* * * *

(iii) Complete road and street pattern and traffic circulation pattern for present and future requirements ;

(iv) Major roads and street improvements ;

* * * *

(vii) Water-supply, drainage, sewerage, sewage disposal and other public utilities, amenities and services including electricity and gas ;

(viii) Proposals for flood control and prevention of water and air pollution control;

* * * *

(xv) Preservation of erosion, provision for afforestation or reformation, improvement and re-development, water front areas, rivers and lakes ;

(xvi) Proposals for irrigation and hydro-electric works and other sources of water-supply;

* * * *

Section 28 has laid down that use and development of land in the coal-mining development area has to be in conformity with the development plan. Chapter VI of the Act deals with development schemes to be prepared after development plan has been approved by the Government.

8. Sections 86, 87 and 88 deal with levy of development charge. Originally, Section 89 provided for levy of tonnage cess but after it was declared as ultra vires, new Section 89 has been substituted by the Amendment Act providing for levy of tax on use of land for other than agricultural and residential purposes. Section 90 deals with charges for water supply. Sub-section (1) of the said section is reproduced below:

90. Charges for Water Supply.-(1) The Authority shall cause mains to be laid down, and water to be brought to the boundary of every colliery situated in the area of supply paying the tonnage cess u/s 89 and shall provide at least one connection and may on the request and at the cost of the owner of any such colliery provide additional connections between its main and connection pipes laid down by or for any such colliery.

The tonnage cess has now been substituted by the tax under New Section 89.

9. The name of the Act, the preamble, the definition of land" which includes sub-soil, declaration of the Coal-Mining Development Area, constitution of the Coal-Mining Area Development Authority for coal mining development area, functions and powers of the Coal-Mining Area Development Authority, preparation of development plans and development schemes clearly establish that the Act has been enacted for and is concerned with the development of coal-mining area. Section 89, which is part of the overall scheme of the Act, has been substituted in place of old Section in order to raise funds for development of the coal-mining area. This is clear from Section 96 of the Act which requires that all funds received by the Coal Mining Development Authority shall be credited to its own fund and the said fund shall be applied to meet expenditure incurred by the Authority in performance of its functions under the Act. The relevant parts of Section 96 is reproduced below:

96. Fund of the Authority.-(1) The Authority shall have and maintain its own funds to which shall be credited-

(a) all money received by the Authority from the Government by way of grants, loans, advances, or otherwise ;

(b) all Development Charges or other charges or Costs, Fees received by the Authority under this Act or rules or Regulations thereunder

* * * *

(3) All amounts received by the Authority from any other source.

(4) the funds shall be applied towards meeting:

(a) the expenditure incurred in the performance of all functions under this Act;

(b) the expenditure for such other purposes as the Government may direct.

10. M.M.R.D. Act, which has been enacted by the Parliament, contains declaration in Section 2 to the effect "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 hereinafter provided". Section 13 of the said Act, which empowers the Central Government to make rules in respect of minerals, insofar as it is relevant, is reproduced below:

13. Power of Central Government to make rules in respect of minerals.-(1) The Central Government may, by notification in the official Gazettee, make rules for regulating the grant of prospecting licence and mining leases in respect of minerals and for purposes connected therewith.

(2) In particular, and without prejudice to the generality of the forgoing power such rules may provide for all or any of the following matter, namely:

* * * *

(i) the fixing and collection of fees for prospecting licences or mining leases, surface rent, security deposit, fines, other fees or charges and the time within which and the manner in which the dead rent or royalty shall be payable;

* * * *

(m) the construction, maintenance and use of road, power transmission licence, tramways, railways, aerial ropeways pipelines and the making of passages for water for mining purpose on any land comprised in a mining lease;

* * * *

(qq) the manner in which rehabilitation of flora and other vegetation such as trees, shrubs and the like-destroyed by reason of any prospecting or mining operations shall be made in the same area or in any other area selected by the Central Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the prospecting licence on mining leases;

Sub-section (1) of Section 18 being relevant is also reproduced below:

18. Mineral development.-(1) It shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations and for such purposes the Central Government may by notification in the official Gazette, make such rules as it thinks fit.

11. M.M.R.D. Act deals with the provides for both mineral development and mineral area development. It also provides for taxation on minerals and mineral rights. In this connection, reference may be made to M/s. Orissa Cement Ltd. and Others Vs. State of Orissa and others, , wherein the Apex Court has laid down as follows:

54. ...These observations establish on the one hand that the distinction sought to be made between mineral development and mineral area development is not a real one as the two types of development are inextricably and integrally interconnected and, on the other, that, fees of the nature we are concerned with squarely fall within the scope of the provisions of the Central Act. The object of Section 9 of the Central Act cannot be ignored. The terms of Section 13 of the Central Act extracted earlier empower the Union to frame rules in regard to matters concerning roads and environment. Section 18(1) empowers the Central Government to take all such steps as may be necessary for the conservation and development of minerals in India and for protection of environment. These, in the very nature of things, cannot mean such amenities only in the miens but take in also the areas leading to and all around the mines. The development of mineral areas is implicit in them. Section 25 implicitly authorises the levy of rent, royalty, taxes and fees under the Act and the Rules. The scope of the powers thus conferred is very wide. Read as a whole, the purpose of the Union Control envisaged by Entry 54 and the M.M.R. D. Act, 1957, is to provide for proper development of mines and mineral areas and also to bring about a uniformity all over the country in regard to the minerals specified in Schedule-I in the matter of royalties and, consequently prices. Sri Bobde, who appears for certain Central Government undertakings points out that the prices of their exports are fixed and cannot be escalated with the enhancement of the royalties and, that, if different royalties were to be charged in different States, their working would become impossible. There appears to be force in this submission. As pointed out in India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others, , the Central Act bars an enhancement of the royalty directly or indirectly, except by the Union and in the manner specified by the 1957 Act, and this is exactly what the impugned Act does. We have, therefore, come to the conclusion that the validity of the impugned Act cannot be upheld by reference to Entry 23 or Entry 50 of List II.

In State of Orissa v. Mahanandi Coalfields Limited 1995 Suppl. (2) SCC 686, the same view has been reiterated.

12. It is well settled that the State Legislature can neither make law regulating and/or providing for development of coal-mining area, nor can it enact a provision subjecting coal-mining area to tax, royalty, etc. In *State of Orissa v. Mahanandi Coalfields Limited* 1995 Suppl. (2) SCC 686, imposition of tax on coal-bearing land and mineral-bearing land by the Orissa Rural Employment, Education and Production Act, 1992, was declared ultra vires on the ground that Orissa Act has dealt with the subject which is covered by M.M.R.D. Act. The relevant extract from the said Apex Court decision is Reproduced below:

20. ...A perusal of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act 67 of 1957), Sections 2, 3(a) and 3(d), Sections 9 and 9-A and Second and Third Schedules to the Act, quoted in para 3 (supra) will clearly point out that taxation on mineral and mineral rights, viz., any tax, royalty, fee or rent, are provided in the said Act. In particular, Section 9-A provides payment of dead rent as provided therein by the holder of a mining lease to the State Government at the rates specified in the Third Schedule to the Act. And the proviso thereto states that in cases where the holder of the mining lease is to pay royalty u/s 9, he shall be liable to pay either royalty u/s 9 or the dead rent, as provided u/s 9-A, whichever is greater. Section 9-A enables the Central Government to enhance or reduce dead rent by amending the Third Schedule. The Second and the Third Schedules provide varying rates for different minerals including coal. Since exhaustive provisions as also the Parliamentary declaration, contemplated by List-I Entry 54, have been made in the Mines and Minerals (Regulation and Development) Act, 1957, regarding all kinds of taxation on minerals and mineral right-tax, royalty-fee dead rent, etc. the State Legislature is denuded or deprived of the power to enact any law or to impose any tax or other levy with reference to List-II, Entry 23 or List-II, Entry 50. We have already held that levy of tax under Orissa Act 36 of 1992 is in substance on minerals and mineral right, which has nothing to do with surface characteristic of the land. In this view of the matter, the levy of tax, on mineral-bearing lands and coal-bearing lands, u/s 3 read with Section 2(a)(i) and Section 2(d) of the Act is beyond the competence of the State Legislature and is ultra vires.

Earlier in *Orissa Cement Limited v. State of Orissa* (supra) the Apex Court has taken the same view, the relevant extract of which has already been reproduced, hereinbefore.

13. It is clear that the Act covers and deals with the same matter which is covered and dealt with by M.M.R.D. Act. Section 89 is the part of the overall scheme of the Act and it has been enacted in order to generate funds to meet the expenditure incurred by the Authority in the performance of functions under the Act. That apart as mentioned above, it is not open to State Legislature to tax coal mining land. The Act has, thus, trespassed into forbidden territory and, therefore, it must suffer.

14. SECOND POINT/SUBMISSION

Section 89 as substituted by the Amendment Act is as follows ;

89. 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 used 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 Re 1.50 per square metre 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.

15. The submission of the learned Counsel for the petitioners is that the Section 89 imposes tax on "use of land" and not on land. The learned Advocate-General and the learned Counsel for the Mineral Development Area Authority, on the other hand, submitted that it is a case of tax on land which is covered by Entry 49 of List-II of 7th Schedule of the Constitution.

16. What constitutes "tax on land" has been settled by the Apex Court in series of its decisions. It is sufficient to refer to the latest decisions in *State of Bihar and others Vs. Indian Aluminum Company and others*, , which contains the summary of law on the subject laid down by the Apex Court in various cases. In the said case, the Apex Court held that "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". In that case, the Apex Court declared that the Bihar Forest Restoration and Improvement of Degraded Forest Land Tax is ultra vires on the ground that it is a tax "on use of various land and not on the forest land as such".

17. The caption of Section 89 states that levy of tax is "on use of land for other than agricultural and residential purposes". Sub-section (1) of the said Section says that the Authority shall levy tax "on land being used" for mining, commercial and industrial purposes. It means that tax can be imposed only when land is used for any of the above three purposes. The tax is, thus, dependent on use of the land. If there is no use of the land, there is no tax. In *India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others*, , levy of cess on royalty on mineral rights was declared bad on the ground that it is not a tax on land. In this connection, the Apex Court observed as follows:

23. ...In the *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment*, , 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 practise. 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....

It is, therefore, clear the the tax is not on land as a unit and it is not covered by Entry 49 of List-II of 7th. Schedule of the Constitution. The State Legislature has no power to enact such a provision.

18. That apart, the Authority u/s 89 of the Act can levy tax "subject to the provisions of this Act and rules framed thereunder". The State Government has framed Rules in 1994 which have provided for filing of returns by assessee, assessment of his tax and payment of the same by him. The "assessee" has been defined in Rule 2(h) as under:

2(h) "Assessee"-means any person, group of persons company, the Central or the State Government, Local or corporate Body or undertakings using land for other than Agricultural or residential purposes," The assessee is, thus, a person who uses land for other than agricultural and residential purposes. The assessee, therefore, may or may not be the owner of the land. When tax imposed is not on owner but on the person who uses the land, it cannot be said to be a "tax on land". In this regard, the Apex Court in *State of Bihar and Ors. v. Indian Aluminium Company and Ors.* (supra) has laid down as under:

18. One of the facets of tax being levied on land is that the primary responsibility of the payment of tax is on the owner of the land. In the instant case, the levy is not on the general ownership of the land but is on the person who uses it and who may or may not be the owner. The primary liability is on the use by the occupier and if the occupier and the owner are two different persons the liability would be that of the occupier alone and not of the owner.

19. The learned Advocate General and the learned Counsel for the Mineral Development Area Authority have submitted that the State Legislature by enacting Section 89 has not subjected use of land to tax but it has imposed tax on such land which is being used for mining, commercial and industrial purposes. They say that the expression "being used" has been employed as a mechanism to select the land for taxation. According to the learned Counsel, expression "land being used" is an indicator showing the subject of taxation. Their further submission is that as the rate of tax has been fixed by the proviso at the flat rate of Re. 1.50 per square metre and the tax has been treated at par with the "holding tax" under the Bihar & Orissa Municipal Act, it is directly connected with the land and is squarely covered by the Entry 49 of List-II of the 7th. Schedule of the Constitution. It has also been submitted that the caption of section 89, which states that levy of tax is on use of land, is due to ill-drafting and is, therefore,

liable to be ignored. It is not possible to accede to the said submissions.

20. As mentioned before, the Act deals with the development of coal mining area only. The question of selection of land for taxation, therefore, does not arise. Even the coal mining area is not liable to be taxed unless it is used for one of the three purposes mentioned in Section 89. The taxing event is the use of land. Merely because the proviso has laid down measure of tax at flat rate and has excluded the land which has been subjected to holding tax from purview of Section 89, the nature of tax which is clear from the caption as well as Sub-section (1) of the said section, cannot be changed. It is also not a case where caption of the section is inconsistent with the main provisions. According to the caption, levy of tax is "on use of land for other than agricultural and residential purposes". After excluding the said two purposes, what is left is the mining, commercial and industrial purposes, which have been mentioned in Section (1).

21. That apart as observed while dealing with the first point it is not pen to the State Legislature to enact any law subjecting coal-mining land and mineral-bearing land to tax, royalty, etc. Even if it is presumed that Section 89 imposes tax on land, which, in the instant case, is the coal mining land with which the Act is concerned, the same cannot be sustained because the State Legislature has no power to impose tax on such land. For this reason also, Section 89 has to go.

22. Goodricke Group Ltd. and Others Vs. State of W.B. and Others, and Ajoy Kumar Mukherjee Vs. Local Board of Barpeta, , on which heavy reliance has been placed by the learned Counsel for the respondents cannot be of any help. Goodricke Group Ltd. case has already been explained and distinguished by the Apex Court in State of Orissa and Ors. v. Mahanadi Coalfields Ltd. and Ors. (supra) with the observation that there "that Act was held to be a law relating to tax on land and that makes all the difference". Ajay Kumar Mukherjee case was also distinguished for the similar reason in Orissa Cement Ltd, v. State of Orissa (supra).

23. Although in the writ petitions challenge is made to the Bihar Coal Mining Area Development Authority (Amendment) Act, 1992, but the learned Counsel for the petitioners during the course of their arguments have stated that the petitioners are really aggrieved by Section 89 and the rules framed thereunder only and they are, therefore, confining their challenge to the said provisions only. It is, therefore, not necessary to declare whole of the Amendment Act as ultra vires. Moreover, there is no challenge to the main Act.

24. For the reasons given above, these writ petitions are allowed. Section 89 of the Bihar Coal Mining Area Development Authority Act, 1986, as amended by the Bihar Coal Mining Area Development Authority (Amendment) Act, 1992 and the rules framed thereunder namely the Bihar Mineral Area Development Authority (Land Use Tax) Rules, 1994, are declared ultra vires. The assessment orders, demand notices and other notices issued under or pursuant to Section 89 and the rules are quashed. The respondents are directed not to realize and tax under

and in pursuance of the Section 89 and the rules. No costs.

Writ Petitions allowed.

A.K. Prasad, J.

25. I agree.