

(1984) 12 CAL CK 0027

In the Calcutta High Court

Case No : Civil Order No's. 16152 (W) - 16161 (W) of 1980

Chandeswar Prosad Singh and Another

APPELLANT

Vs

Sub Divisional Land Reforms Officer, Barrackpore and Others

RESPONDENT

Date of Decision : 21-12-1984

Acts Referred:

Constitution of India, 1950 — Article 14
Mines and Minerals (Development and Regulation) Act, 1957 — Section 14, 15, 15, 15(3), 2
West Bengal Estates Acquisition Act, 1953 — Section 5(2)
West Bengal Minor Minerals Rules, 1973 — Rule 24, 26, 31, 4

Citation : AIR 1986 Cal 1 : 89 CWN 414

Hon'ble Judges : Dipak Kumar Sen, J

Bench : Single Bench

Advocate : S.B. Bhuniya and C. Gupta, for the Appellant; N.N. Gooptu, Govt. Pleader and S.N. Mukherjee, for the Respondent

Judgement

Dipak Kumar Sen, J.—At the instance of the parties this application has been heard along with a number of other applications as the facts involved are similar and the questions of law arising are the same.

2. The petitioners in these applications are either owners or lessees of or licencees in various plots of land in the State of West Bengal, a number of which have been described as agricultural land in the records of right.

3. Earth extracted from the said plots has been used or utilised or is alleged to have been used or utilised for manufacture of bricks either by the petitioners themselves or by persons to whom the petitioners have made available such earth.

4. The authorities contend that such extraction, use and consumption of earth were illegal, wrongful and in contravention of the provisions of Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the said Act) and the West Bengal Mines and Minerals Rules, 1973 (hereinafter

referred to as the said Rules).

5. Notices have been issued by several authorities namely the Additional District Magistrate (L.R.), or the Sub-Divisional Land Reforms Officer or the Junior Land Reforms Officer against each of the petitioners directing them, inter alia, to pay the price of the earth so extracted, or royalty for the same, or damages therefore as assessed, or to pay additional royalty for manufacture of bricks beyond the quantity permitted, and in some cases consequential charges including interest at the rate of 6% per annum. In some of the notices the petitioners concerned have been directed to show cause why penal action should not be taken against them for such wrongful extraction of earth and use thereof for manufacture of bricks.

6. The aforesaid notices have been issued in several different forms as set out hereafter.

a) Notice u/s 21(5) of the Mines and Mineral (Regulation and Development) Act, 1957 :

To.....

"Whereas it appears that you have raised and disposed of brick-earth from Mouza..... J. L. No..... Plot No..... P.S..... District..... during the period from to for commercial purpose without any lawful authority; And whereas you are on that account liable to pay price of earth as per provisions of Section 21(5) of the Mines and Minerals (Regulation and Development) Act, 1957, accordingly the amount of price of earth as per provisions of Section 21(5) of the Mines and Minerals (Regulation and Development) Act, 1957; has been assessed year-wise as detailed below : --

a) Serial No.

b)Year

c) Quantity of bricks earth extracted in eft.

d) Rate

e) Amount assessed to be payable

I, Sub-Divisional Land Reforms Officer, duly empowered to exercise power u/s 21(5) of the said Act, do hereby direct you to pay the said amounts of price of earth to the State Bank of India branch by through T. R. Challan duly passed by the undersigned and submit a copy of the receipted ehallan to this office by failing which action will be taken against you according to law.

Sd/- Sub-Divisional Land Reforms Officer"

b)

"To.....

Whereas it appears that you have extracted/ manufactured abouteft of earth/bricks/tiles from the land of plot No. appertaining Khatian No. of Mouza J. L. No. under P.S."District..... for manufacturing of bricks/tiles without obtaining the quarry permit as required under Rule 24 of the West Bengal Mines and Minerals Rules, 1973 and whereas you have deprived the State of West Bengal, the royalty of.....payable under Rule 18 of the Mines and (Minor?) Minerals Rules 1973 and Rs..... application fee payable under Rule 5(3) of Mines and (Minor?) Minerals Rule, 1973 you are, therefore, asked to pay the amount of..... (being the total of royalty and application fee payable) being the price of earth raised and disposed of for manufacturing of bricks/tiles within 30 days from the date of receipt of this notice or to show cause before the undersigned onat A.M./P.M. why criminal action under Sec. 23(i) of Mines and Mineral (Regulation and Development) Act, 1957 will not be taken against you.

Sd/- Additional District Magistrate (L.R.)"

c)

"To

"During my spot enquiry held on it was learnt that you have manufactured bricks before the last monsoon set in against the quarry permit granted to you by the undersigned for bricks only covered by Permit No.; valid up to

You are, therefore, called upon to arrange for payment of additional royalty at the rate of 10 times the normal rate for the excess production of bricks made by you beyond the quantity permitted to you within a week from the receipt of this notice failing which legal action will be taken against you. A sum of Rs. being the additional royalty at the rate of 10 times the normal rate at the rate of Rs. for the excess production of bricks is liable to be deposited by you within date prescribed.

Sd/- Divisional Land Reforms Officer."

d)

"To.....

Quarry permits were issued to from time to time for extraction ofeft of brick earth from plot Nos..... of Mouza of P.S..... but as per inspection report of J.L.R.O. it is found that you have unauthorisedly extracted. eft of excess brick earth and thereby violated the provisions of West Bengal Mines and Minerals (Minor Minerals?) Rules, 1973. Now, therefore. by virtue of the powers conferred upon me by clause 10 of Schedule IV of the West Bengal Mines or (Minor?) Minerals Rules 1973 I hereby

direct you to deposit within two weeks from the receipt of this memo an additional amount of Rs. 1598.94 only being two times of the usual royalty assessable on the excess quantity of brick earth extracted unauthorisedly by you failing which further legal action will be taken against you.

You are also hereby directed to surrender your quarry permit immediately and stop extraction of brick earth.

Additional District Magistrate".

e)

"To

Sub :

It appears from the report of J.L.R.O.that you have unauthorisedly extracted..... eft of brick earth for commercial purpose without permission of the authority and thereby violated the provisions of Mines or (Miner?) Minerals Rules, 1973.

In view of the above you are directed to deposit the royalty of Rs. only for unauthorised extraction ofeft of brick earth in the Slate Bank of India within days from the date of the receipt of this order failing" which legal action will be taken against you.

You are not to do such extraction work without prior permission of the authority in future.

Additional District Magistrate (L.R.)

(f)

"To.

Whereas it appears you have been manufacturing tiles/bricks in plot No..... at Mouza of P.S. for commercial purpose without obtaining permission as per Mines or Mineral (Minor Minerals?) Rules, 1973 against which royalty/damage/costs of Rs..... only has now been assessed excluding surcharge interest, fine etc. there of,

You are, therefore, directed to deposit Rs. and application fee Rs..... with surcharge and interest at the rate of 6% per annum over the payment within three days from the date of the receipt of this letter. It may be noted that further royalty etc. may be charged on detection of other production.

You are further directed to submit concerning treasury challan as soon as the amount is deposited, failing which legal steps will be taken against you in due course in terms of Commerce and Industries Department (Mines Branch) Memo No. dated.....suggesting therewith "criminal action" as well as "civil action".

Additional District Magistrate (L.R.)

g)

"To

Whereas it appears that you have/had been manufacturing bricks for commercial purpose without clearing arrears dues (royalty Rs. interest Rs. surcharge Rs..... application fee Rs.) and without obtaining any quarry permit in contravention of Rule 24 of the West Bengal Mines or Mineral (Minor Minerals?) Rules, 1973 and Section 4 of the West Bengal Land Reforms Act.

You are, therefore, directed to show cause within 7 days from the receipt of this letter why you will not be prosecuted under Rule 30 of the West Bengal Mines or Minerals (Minor Mineral?) Rules, 1973 read with Section 379 of Indian Penal Code and Section 4 of the West Bengal Land Reforms Act.

Additional District Magistrate (L.R.)"

h)

Notice

"To.....

Whereas it appears that you have extracted brick earth for manufacturing bricks in plot No..... Mouza.....P.S.....within, the jurisdiction of J.L.R.O. in the year for commercial purpose without obtaining any quarry permit under the Mines and Mineral (Regulation and Development) Act, 1957 and the West Bengal Mines or Mineral (Minor Minerals?) Rules, 1973 on payment of advance royalty etc.

And whereas you have already unauthorisedly extracted eft of brick earth/bricks for the aforesaid purpose;

And whereas Rs. has been assessed as price of the above quantity of materials u/s 21(5) of the above Act;

Now, therefore, you are directed to deposit the above amount plus other consequential charges including interest at the rate of 6% per annum over the price, within 7 days from the date of receipt of this letter, by treasury challan to be passed from this office. It may be noted that further amount of price/royalty etc. may be charged on you on detection of any other extraction of mines and minerals for which you may be liable.

If you fail to submit treasury challan showing the above mentioned deposit, show cause in writing against this assessment supported by documentary evidence, if any, within the stipulated period, action will be taken against you, as authorised by the Government as per provisions of the relevant acts and rules without any further reference to you. In case you want to show cause it should be clearly

stated that you like to be heard in person.

Additional District Magistrate (L.R.)

7. In these applications the petitioners seek to impugn the said notices, the demands raised therein and the actions proposed to be taken thereunder.

8. The case of the petitioners is, inter alia, that by extracting earth and soil for making bricks they do not remove any mineral from soil and that such extraction is not a mining operation. It is contended further that u/s 21(5) of the said Act or under the said Rules no principle or procedure has been laid down nor any provision has been made for determination of the price of the earth so extracted.

9. It is contended that the authorities have exercised unguided, uncontrolled and arbitrary power and have determined the volume as also the price of earth extracted by rule of thumb, without giving any opportunity to the petitioners of being heard or to make representations. The authorities, it is alleged, have not disclosed any material or basis on which the volume and the price of the earth have been determined. The demands raised on such determination, it is contended, are arbitrary and illegal.

10. It is contended that the Sub-divisional Land Reforms Officer is not authorised under the said Act nor under the said Rules to assess either the quantum or the price of earth extracted as a minor mineral and the impugned notices issued and proceedings sought to be initiated thereby are without jurisdiction.

11. It is contended that the said Act passed by the Parliament under Entry 54 of List I of the Constitution is ultra vires the Constitution as the subject matter of the said Act falls under Entry 18 of List II.

12. It is contended that under the Estate Acquisition Act, 1953, ryots have been granted sub-soil rights in their land which include the right to extract earth and clay. The subsequent Land Reforms Act enacted in 1955 preserves such right. The property in clay, soil or earth, it is contended, therefore does not vest in the State. Neither the Parliament nor any authority delegated can impose a levy on such soil, earth or clay, particularly by the said Act which provides only for regulation and development of minerals.

13. It is contended that on a harmonious construction of Entry 54 of List 1 and Entries 18 and 23 of List II of the Constitution read with Article 254 thereof, only metallic ores like coal, salt and precious stones can be said to be included in the expression "minerals". The Parliament, it is contended, is not entitled to give an artificial or extended or unreasonable definition to the expression "minor minerals" including therein clay, soil and earth.

14. The declaration made u/s 2 of the said Act, it is contended, does not cover soil, clay, earth or brick earth and as such there cannot be a valid imposition of levy on or realisation of price of brick earth.

15. It is alleged that some of the plots involved are low lying and are flooded by

adjoining rivers during rainy season, resulting in deposit of silt on the said plots. Such silt is removed in the dry months without disturbing the surface of the land and is used for making bricks. It is contended that removal of such silt is not a mining operation. In any event, quarry permits not having been granted to the petitioners, it is contended, that royalty cannot be demanded from them.

16. It is contended last, that items declared to be minor minerals under the said Act and the notifications thereunder include brick earth, sand and clay on the one hand and quartzite, saltpetre and marble on the other. The said items differ greatly in value, but in spite thereof, royalty at a uniform rate of Rs. 4,935 per hundred cubic feet has been fixed for all items. It is contended that such uniform classification of different minor minerals of different values for the purpose of levying royalty is violative of Article 14 of the Constitution.

17. The case of the respondents who are, the State of West Bengal and its officers impleaded viz., the District Magistrate, the Additional District Magistrate, the Sub-divisional Land Reforms Officer and the Junior Land Reforms Officer is, inter alia, that clay, brick earth and silt deposited by rivers all come within the definition of minor minerals and that the authorities are entitled to claim royalty on such minor minerals if used for manufacture of bricks. It is contended that the brickfields of the petitioners are or may be deemed to be quarries within the meaning of the said Rules.

18. It is contended that whenever a person raises any mineral from any land without lawful authority, the State Government concerned may recover from such person the minerals so raised or, where such mineral has already been disposed of, the price of the same. The Government is also entitled to recover, in addition, rent or royalty or tax as the case may be for the period during which the land involved is occupied by a person without any lawful authority. The Government concerned is also empowered to recover royalty from persons who have raised minerals for manufacture of bricks without a quarry permit.

19. It is contended that royalty or price in respect of brick earth has been determined on a valid basis.

20. Learned Advocates for the petitioners reiterated at the hearing the contentions in their pleadings. In further submissions learned Advocates drew my attention to the following Entries in Lists I and II of the Constitution : --

"Entry-54 of List I

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-18, of List II

Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of

agricultural land; land improvement and agricultural loans; colonization."

Entry-23 of List III

"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."

21. Relying on the said Entries, learned Advocate submitted that there was no declaration by Parliament that regulation of minor minerals was necessary in public interest as was required under the Entry 54 of List I.

22. It was next submitted that according to the dictionary, mineral means metallic ores, coal, salt and similar items but not sub-soil or clay or brick earth. By giving an artificial definition to the word "mineral" which was neither scientific nor popular nor commercial the Parliament, it was submitted, had extended its jurisdiction, which has resulted in the Central Act impinging on matters covered by Entry 18 of List II. It was contended that, therefore, section 3(c) of the said Act in so far it included ordinary clay or brick earth or subsoil was ultra vires the Constitution.

23. Learned Advocates next contended that u/s 5(2) of the Estate Acquisition Act rights over minerals in the sub-soil vested in the State. Similar provisions were repeated in Section 2(a) of the subsequent Land Reforms Act, 1955, which was also a State Act. It was contended that rights over major minerals thereby vested in the State but other rights, namely, rights over the sub-soil including the right to use earth and clay in the sub-soil was not taken away from the tenant who came to hold the land under the State. A tenant of a land within the State therefore had a right of property over the sub-soil. This right to property was guaranteed under Article 300A of the Constitution and could not be taken away without authority of law. To the extent the said Act permitted the State Government to recover price of minor minerals like earth or clay extracted from land the same it was submitted was bad. Such a right could not flow from the said Act, the purpose of which was to regulate and develop mines and minerals and which did not envisage vesting of property in the sub-soil in the State. A right to recover price would come into existence only after vesting of property. A tenant could not be made to pay for his own property and that Rule 31 of the said Rules recognised this position and permitted a person to extract any minor mineral from his own land for his personal use.

24. Learned Advocates next submitted that there was excessive delegation to the State Government under Sections 3(e) and 15 of the said Act. The regulation and development of minerals which included minor minerals, it was contended, were to be effected under the Central Act under the supervisory power of the Parliament. Any rule framed by the Central Government under the Act had to be laid before the Parliament. It was submitted further that power to make rules by the State Government under the delegated authority was unfettered. The Act did not provide for laying the rules framed by the State Government before the Parliament. This, it was submitted, amounted to a total abdication of legislative

power and the Rules framed by the State Government were therefore ultra vires and could not be sustained.

25. It was next submitted that the Second Schedule of the said Act prescribed different rates of royalty for different minerals and also for different grades of the same mineral. Item 43 of the said schedule laid down the principle of determining the rate of royalty for minerals not otherwise specified i.e. 7% of the sale price at the pitmouth for all minerals.

26. This guideline it was submitted had not been followed by the State Government. In the said Rules a uniform rate of royalty was fixed for all minor minerals i.e. Rs. 4,935 per 100 eft. At this rate, the royalty exceeded the price of earth extracted

27. Learned Advocates next submitted that Section 21 was incorporated by way of amendment to the said Act in 1972. But in several cases demands had been made on the basis of Section 21 for periods prior to 1972 when the said section was not in existence.

28. Learned Advocates submitted further that royalty, rent or price were not meant to be levied by way of penalty which the authorities were seeking to impose by raising demands for price, royalty or rent assessed arbitrarily.

29. It was next submitted that royalty was in the nature of a tax. Law was settled that in a statute imposing a tax, a regular machinery and procedure had to be laid down for assessment of such tax including machinery or procedure to challenge such assessment by way of appeal or revision. The said Rules did not provide for any such machinery or procedure and therefore the imposition of royalty was ultra vires.

30. Learned Additional Advocate General who appeared for the respondents submitted in his reply that the vires of the said Act has been affirmed by the Supreme Court in the case of Banarsi Dass Chadha and Brothers Vs. Lt. Governor, Delhi Administration and Others, , and the controversy on the question stood concluded.

31. He next contended that the petitioners had no proprietary right over earth, clay or brick earth contained in their land. They had only the right of user of the land. The property in the soil belonged to the State.

32. On the question of excessive delegation and abdication of legislative powers, the learned Additional Advocate General did not make any submission.

33. It was next submitted that price of the minerals extracted was a matter to be ascertained and there could not be any rule for the same. In the instant cases, the quantum of the price had been assessed by the appropriate authority and such assessment was made usually in the presence of the petitioners or their representatives. In the event, the amounts assessed were sought to be recovered from the petitioners through the machinery of the Public Demand

Recovery Act, the petitioners would have opportunity to contest the same. In the premises, it was contended that the principles of natural justice had not been violated.

34. In support of the respective contentions of the parties, a number of decisions were cited at the Bar some of which are considered hereafter as follows : --

(a) Bhatnagars and Co. Ltd. Vs. The Union of India (UOI), . In this case. Section 3(1)(a) of the Imports and Exports (Control) Act, 1947 which conferred power on the Central Government to make provisions for prohibiting, restricting or otherwise controlling the import, export, carriage, or shipment of specified goods as ship's stores was sought to be impugned as ultra vires inter alia, on the ground that the said section resulted in delegated legislation. Following its earlier decision in Harishankar Bagla and Another Vs. The State of Madhya Pradesh, it was held by the Supreme Court that on a construction of the preamble and the material provisions of the Act, a statement of policy underlying the statute could be ascertained. The principles which the legislature had laid down for the guidance of the authority to whom the implementation of the Act was delegated could also be ascertained. The delegation in the impugned section was found to be permissible and not ultra vires.

(b) Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, . In this case, Sections 4, 5 A and 7 of the Travancore-Cochin Land Tax Act, 1955 were struck down by the Supreme Court on the ground that the provisions of the said sections violated Articles 14 and 19(1)(f) of the Constitution.

Section 4 empowered the State to charge and levy a uniform rate of basic tax on all lands in the State of all descriptions and held under any tenure. Section 5A empowered the Government to make a provisional assessment of the basic tax prior to any survey of the land concerned and enforce payment of the amount determined by such provisional assessment from the person holding the land and thereafter conduct a survey of land for the purpose of making a regular assessment.

Section 7 permitted the Government by notification in the Gazette to exempt wholly or partially the operation of the Act in respect of any land or any class of land.

The Supreme Court held that the said legislation was hit by the equality clause under Article 14 of the Constitution as there was no attempt at any classification and as the Act did not lay down any principle or policy for the guidance of the exercise of discretion by the Government in granting exemption. It was further held that the Act was silent as to the machinery and procedure to be followed in making the assessment and as such it was left to the executive to evolve the machinery and procedure and levy the tax on an administrative basis. No notice was required to be given to the assessee, there was no procedure for rectification of mistakes committed by the assessing authority and no procedure for obtaining the opinion of a superior civil Court on any question of law. No duty was cast

upon the assessing authority to act judicially in making the assessment and there was no appeal from the order of assessment of the assessing authority.

(c) *State of Kerala v. Haji K. Kutty Nahar*, reported in AIR 1969 SC 879. In this case, the Supreme Court struck down Section 4 of the Kerala Building Tax Act, 1961 read with the Schedule to the said Act on the ground that the said section violated Article 14 of the Constitution. The tax was imposed on the basis of floor area ignoring the class, the nature, the situation, the capacity for profitability and other relevant circumstances relating to the buildings which were subjected to the tax. It was held that if uniform tax was imposed on dissimilar subjects then discrimination might result and it was obligatory to make a rational classification.

(d) *K.A. Abbas Vs. The Union of India (UOI) and Another*, . This decision was cited for the following propositions laid down by the Supreme Court :--

"If the law is vague or appears to be so, the Court must try to construe it, as far as may be, and language permitting the construction sought to be placed on it must be in accordance with the intention of the legislature. Where however the law admits of no such construction and the persons applying it are in a boundless sea of uncertainty and the law prima facie takes away a guaranteed freedom the law must be held to offend the constitution. This is not the application of the doctrine of due process. The invalidity arises from the probability of the misuse of law to the detriment of the individual. If possible the court instead of striking down the law may itself draw the line of demarcation where possible but this effort should be sparingly made and only in the clearest of cases."

(e) *Shyam Sundar Rathi Vs. The Addl. District Magistrate, Bankura and Others*, . In this case a learned Judge of this Court considered the provisions of Section 4(2-A)(b) of the West Bengal Land Reforms Act which prohibited a ryot from excavating or using himself or through others earth or clay for brick making. It was held that such a provision was beyond the competence of the State Legislature and, therefore, ultra vires. The learned Judge observed as follows (at P. 63) :--

"After the declaration of the Central Government u/s 2 of the Mines & Minerals (Regulation and Development) Act, 1957 the entire field relating to mines and minerals came to be occupied by the Parliament. The State Government only as a delegated authority has been empowered to prescribe rules relating to minor minerals. But the State Legislature is no longer capable of enacting a law of its own relating to minor minerals.

(f) *Bhagwan Dass Vs. State of U.P. and Others*, . In this case a person who was in possession of certain lands in the district of Allahabad under his title as either a Bhumidhar or a Saidar or as hereditary tenant claimed to have a right to collect sand, gravel, boulders and bajris which were deposited in large quantities on the land when the adjoining river Jamuna flooded and overflowed on the land.

The Mines and Minerals Department of the Government of Uttar Pradesh initiated proceeding to sell by auction the right to remove the said residuary deposits from the land of the tenant. The tenant moved an application under Article 226 of the Constitution in the Allahabad High Court seeking to impugn the said proposed auction sale.

The Supreme Court considered Section 4 of the U.P. Zamindari Abolition and Land Reforms Act, 1951 and held that by operation of the said statute the rights and interests of all intermediaries on the subsoil, mines and minerals vested in the State of U.P.

The Supreme Court, thereafter, construed the Mines & Minerals (Regulation and Development) Act, 1957 and the U.P. Mines and Minerals Rules, 1963. Rule 3 of the Uttar Pradesh Rules laid down that no person could undertake any mining operation for extraction of any minor mineral within the State except under and in accordance with the terms and conditions of a mining lease or mining permit granted under the Rules.

The Supreme Court held that sand, gravel, boulders and bajris deposited on any land by flood came within the mischief of the said Rule 3 and observed as follows (at P. 1397) : --

"..... the definition of mining operations and minor minerals in sec. 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."

(g) Banarsi Dass Chadha and Brothers Vs. Lt. Governor, Delhi Administration and Others, . In this case the question before the Supreme Court was whether the brick earth was a minor mineral within the meaning of the said Act. The Supreme Court held that brick earth was a mineral and also a minor mineral within the meaning of the said Act and observed as follows : --

"a substance must first be a mineral before it can be notified as a minor mineral pursuant to the power vested in the Central Government u/s 3(e) of the Act."

"The word mineral has no fixed but a contextual connotation."

"In the context of the Mines and Minerals (Regulation and Development) Act, we have no doubt that the word "mineral" is of sufficient amplitude to include "brick earth". As already observed by us, if the expression "minor minerals" as defined in the Act includes "ordinary clay" and "ordinary sand", there is no earthly reason why "brick earth" should not be held to be "any other mineral" which may be declared as a minor mineral."

(h) National Textile Workers" Union and Others Vs. P.R. Ramakrishnan and Others, . This decision was cited for the following observation of the Supreme Court (at P. 85):-

"The audi alteram partem rule which mandates that none shall be condemned unheard is one of the basic principles of natural justice and if this rule has been held to be applicable in a quasi judicial or even in an administrative proceeding involving adverse civil consequences, it would a fortiori apply in a judicial proceeding....."

35. The other decisions cited at the Bar are reported respectively in Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, , Bharat Raja Vs. The Union of India (UOI) and Others, , The State of Kerala Vs. Haji K. Haji K. Kutty Naha and Others etc., , Sri Tarkeshwar Sio Thakur Jiu Vs. Dar Dass Dey and Co. and Others, , Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR"s., , Hundraj Mariwalla Vs. Additional District Magistrate (L.R.) and Others, and Ajit Kumar Gurey and Others Vs. State of West Bengal and Others, .

36. The said decisions are not of particular relevance to the controversies raised in the present proceedings and need not be considered further.

37. Before dealing with the various points in controversy it will be convenient to refer to the relevant provisions of the said Act, the said Rules and the Notifications issued thereunder.

A. The Mines and Minerals (Regulation and Development) Act, 1957.

Preamble. An Act to provide for the regulation of mines and the development of minerals under the control of the Union.

Section 2. 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.

Section 3. In this Act, unless the context otherwise requires --

(a) "minerals" includes all minerals except mineral oils;

(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;.....

Section 4. (1) No person shall undertake any prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder."

Section 14. The provisions of Sections 4 and 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor

minerals.

Section 15. (1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

(2) Until rules are made under Sub-section (1), any rules made by a State Government regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

(3) The holder of a mining lease or any other mineral concession granted under any rule made under Sub-section (1) shall pay royalty in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals.

Provided that the State Government shall not enhance the rate of royalty in respect of any minor mineral for more than once during any period of four years.

Section 21(1) Whoever contravenes the provisions of Sub-section (1) of Section 4 shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of Sub-section (1) of Section 4 such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, without any lawful authority, any mineral from any land, and, for that purpose, brings on the land any tool, equipment, vehicle or any other thing, such mineral, tool equipment, vehicle or other thing shall be liable to be seized by a magistrate specially empowered in this behalf.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any

lawful authority."

Section 25. (1) Any rent, royalty, 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 prospecting licence or mining lease 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 prospecting licence or mining lease 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 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 prospecting licence or mining lease, as the case may be."

Section 28. (1) Every rule and every notification made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

(2) Without prejudice to the generality of the rule-making power vested in the Central Government, no rules made with reference to clause (c) of Sub-section (2) of Section 16 shall come into force until they have been approved whether with or without modifications, by each House of Parliament.

B. West Bengal Minor Minerals Rules, 1973.

Rule 3. (b) "District Authority" means the Additional District Magistrate or the Additional Deputy Commissioner in charge of Estate Acquisition or Land Reforms matters in a district and includes the District Magistrate or the Deputy Commissioner where no such Additional District Magistrate or Additional Deputy Commissioner exists"

(f) "Mineral" means minor minerals as defined in clause (e) of Section 3 of the Mines and Minerals (Regulations and Development) Act, 1957.

(g) "Mining Authority" means and includes a District Authority, Subdivisional Land Reforms Officer, a Junior Land Reforms Officer and such officer or officers as may be authorised by the District Authority under the provisions of clause I of

Schedule III appended to these rules.

(i) "quarry Permit" means a permit granted under Chapter III of the rules to extract and remove any minor mineral in specified quantities from a specified area.

Rule 4. No person shall undertake any mining operation in any area except under and in accordance with the terms and conditions of a mining lease or quarry permit granted under these rules :

Provided that nothing in this rule shall affect any mining or quarry operations undertaken in any area in accordance with the terms and conditions of a mining lease or mineral concession, granted before the commencement of these rules, which is in force at the time of such commencement.....

Rule 18. (1)(a). The holder of a mining lease or any other mineral concession granted on or after the commencement of these rules, shall pay royalty in respect of mineral or minerals removed or consumed by him or by his agent, manager, employee or contractor at the rate prescribed in the Schedule I:

Provided that the State Government shall not enhance the rate of royalty for more than once during any period of four years.

Rule 24. Grant of Quarry Permits : (1) The district authority or any officer authorised in this behalf by the State Government may grant, as per procedure laid down in schedule III, quarry permits in Form F to any person to extract or remove from any specified land within the limits of his jurisdiction any mineral on pre-payment of royalty at the rate specified in the Schedule I.

(2) Such quarry permit may be granted for a specified area not exceeding five acres and for a period not exceeding three months for a quantity as may be specified by the District Authority or any Officer authorised in this behalf by the State Government.

Rule 30. Penalty : Any person extracting any minor mineral without a proper lease or licence granted under these rules or in contravention of the provision of rule 31 shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Rule 31. Extraction of mineral from own land : No lease will be required to be taken by a person, who extracts any minor mineral from his own land, either for use in any cottage industry owned by him, viz., pottery, clay modelling, etc., or any other industry specified in a notification issued by the State Government or for his personal use for any other purpose; provided that such extraction shall be subject to the following conditions and also to such further conditions, as the State Government may impose by any general or special order from time to time : --

(a) The mineral so extracted shall not be disposed of by sale or otherwise without the prior permission in writing of the District Magistrate or Additional

District Magistrate (Estate Acquisition), or Deputy Commissioner or Additional Deputy Commissioner of the District, or Sub-divisional Officer or Sub-divisional Land Reforms Officer of the subdivision and except on payment of fees at the rate of 40 paise per cubic metre or at such reduced rate as may be fixed by the officer concerned.

(b) The mineral so extracted shall not be converted into bricks or tiles, except where such bricks and tiles are required for his own use;

Rule 33. Appeal: (1) Any person aggrieved by an order made by the District Authority or by any officer duly authorised by the District Authority in exercise of the powers conferred upon him by these rules, may, within thirty days from the date of communication of the order to him, prefer an appeal against the order.

(2) The memorandum of appeal shall be made to the State Government if the order appealed against has been passed by the District Authority and to the District Authority, if the order appealed against has been passed by any officer subordinate to the District Authority.

(3) Each memorandum of appeal shall be accompanied of a Treasury Challan showing the deposit of a fee of Rs. 20 in the same manner as prescribed in Sub-Rule (3) of Rule 5 in any Government Treasury or Sub-Treasury of the District concerned or in any branch of the State Bank of India or in the Reserve Bank doing treasury business to the credit of the State Government under the head of Account:

"XXXII-Miscellaneous-Provincial-Social and Development Organisation".

(4) An appeal for revision may be entertained even after the said period specified in Sub-rule (1), if the appellant satisfies the appellate authority that he had sufficient reasons for not preferring the appeal within the prescribed period.

(5) The order passed on appeal shall be final and there shall be no second appeal.

Explanation : For the purpose of this rule, when the District Authority or the officers authorised for the purpose have failed to dispose of an application for the grant of quarry permit within the period specified in respect thereof in these rules, the District Authority or the officer authorised shall be deemed to have made an order refusing the grant of such permit on the date on which such period expires.

Rule 34. Review : The State Government may, on application from an aggrieved party, within thirty days from the date of communication, or on its own motion, within six months from the date of passing, of an order, review the order on the ground of discovery of a new and important matter not known to it when the order was passed or on any other ground considered expedient for mineral development.

Rule 38. Repeal and savings : (1) The East Bengal Minor Minerals Rules, 1959 are hereby repealed.

(2) Notwithstanding such repeal anything done, any action taken, any application made or any prosecution started under the said rules shall be deemed to have been done, taken made or started, as the case may be, under the corresponding provisions of these rules.

38. By several notifications being Notification No.MII-159(18)/54 dated the 1st June 1958, Notification No.MII-159(6)/57 dated the 3rd Sept. 1959, Notification No. MII-159-(11J)/59 dated the 4th June 1960, Notification No. MII-169(4)/58 dated the 20th Sept. 1961 and Notification No. MIM(1)/63 dated the 28th Feb. 1965, all issued by the Central Government, various items have been included from time to time in the list of minor minerals within the meaning of Section 3(e) of the said Act. The items include boulders, shingle, chalcedony pebbles used for ball mill purposes only, limeshell, kankar and limestone used in kilns for manufacture of lime used as building material, morrum, brick-earth, fuller's earth, bentonite road-metal, reh-matti, slate and shale when used for building materials, marble, stone used for making household utensils, quartzite and standstone, when used for purpose of building or for making road metal and household utensils.

39. I now proceed to deal with the various points raised under separate headings --

Constitutional validity

The Supreme Court in *Bhagwan Dass Vs. State of U.P. and Others*, and *Banarsi Dass Chadha and Brothers Vs. Lt. Governor, Delhi Administration and Others*, has clearly held that "brick earth" like ordinary clay or silt or sand falls within the genus "mineral" and has been validly notified under the Act as minor mineral.

The contention of the petitioners that clay, brick earth or silt deposits from rivers are not minerals and cannot be validly classified as minor minerals, therefore cannot be sustained. It follows that in including the said items in the said Act or in the Notification thereunder the Parliament and the Central Government have not gone beyond the scope of Entry 54 of List I of the Constitution. If clay or brick earth or silt are held to be minerals then the declaration contained in the said Act validly covers the said items. Subsequent inclusion of the said items in the category of minor minerals is only a matter of classification which has not been challenged otherwise nor has been shown to be unreasonable.

Title to the earth extracted

40. As earth, clay and brick earth, all fall in the category of minerals, they come within the ambit of the said Act which is admittedly regulatory in nature. In *Shyam Sundar Rathi Vs. The Addl. District Magistrate, Bankura and Others*, this Court has held that in view of the declaration made u/s 2 of the said Act the entire field relating to mines or minerals has come within the jurisdiction of the Central Government and as such the State Government had no authority to legislate on its own on matters relating to minor minerals. On that ground

Section 4(2-A)(h) of the West Bengal Land Reforms Act was declared to be ultra vires.

41. u/s 5(2) of the Estates Acquisition Act rights over mines and minerals in the subsoil of any land vested in the State. Similar provisions are contained in the Land Reforms Act enacted subsequently in 1955. As earth, clay and brick earth all fall in the category of minerals, it must be held that they have vested in the State as was held by the Supreme Court in *Bhagwan Dass Vs. State of U.P. and Others*, . Regulation of such minerals however has been taken over by the Central Government under the authority of the Central Act and the Central Government has empowered the State Government as a delegatee to prescribe rules for grant of leases or concessions in respect of such minor minerals.

42. In the premises it cannot be held that the petitioners have any right over or property in earth, clay or other minor minerals contained in the sub-soil of the land as tenants therein. No right of property can be spelt out in favour of the petitioners as contended on their behalf. The contention of the petitioners that their property in the subsoil and the minor minerals contained therein has been taken away by the said Act or the said Rules cannot be therefore accepted.

Excessive Delegation

43. To appreciate the controversy raised under this head it is necessary to keep in view the power which has been delegated to the State Government under the Statute. u/s 15 of the said Act the State Government has been empowered only to make rules for the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

44. u/s 4(1) of the said Act a general prohibition has been imposed to the effect, inter alia, that no person can undertake mining operation in any area except in terms and conditions of a mining lease or concession granted under the said Act. It appears to me that this provision lays down a legislative policy.

45. u/s 14 of the said Act it is categorically provided that the provisions of Section 4(1A) of the said Act which imposes the prohibition noted above will not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals.

46. Reading the said Sections 14 and 15 together it is clear that mining leases or concessions in respect of major minerals are intended to be granted in terms of the rules made under the Act, obviously by the Central Government whereas the State Government will frame rules providing for grant of quarry lease, mining lease and other mineral concessions in respect of minor minerals.

47. It appears that acting under this limited delegated power the State Government has promulgated the said West Bengal Mines and Minerals Rules, 1973. A number of rules included therein, it appears, go far beyond the ambit of Section 15 of the said Act which are noted hereafter.

48. In Rule 4 of the said Rules the State Government has sought to prohibit mining operation in respect of minor minerals. This prohibition, in my view, can only be imposed by the Central Government under the Act and the same does not come within the four corners of the rule making power granted to the State Government u/s 15 of the said Act. Similarly by Rule 31 the State Government has sought to regulate the use of minor minerals after extraction.

49. The Rule lays down that a person will be entitled to extract a minor mineral for his own use but shall not dispose of the same thereafter by sale or otherwise without prior permission of the prescribed authority nor shall convert the same into bricks or tiles except where such bricks or tiles are required for the own use of the person extracting the same.

50. In my view such prohibitory rules are in excess of the limited rule making power delegated to the State Government,

51. I note, that, unlike the rules framed by the Central Government, the rules framed by the State Government, are not required to be laid before the Parliament for consideration. As such, the hands of the State Government have been left unfettered in respect of the rules to be framed by it and therefore the same have to be scrutinized and construed more strictly so that they are confined to the ambits of the delegated rule making power. Whether the limited delegation is by itself excessive or not is being left open as it is not necessary for me to determine the same to dispose of these proceedings.

Recovery of price

52. Section 21(5) of the said Act empowers the State Government to recover the minerals raised or its price if disposed of after extraction from any person who has raised the same from any land without lawful authority. Raising of mineral without lawful authority is therefore a condition precedent before the State Government can proceed to recover the same or its price.

53. The prohibition imposed on conducting any mining operation is contained in Section 4(1) which has been noted earlier. u/s 14 of the said Act, however, the provisions of Section 4 have been excluded from application to quarry leases, mining leases or other mineral concessions in respect of minor minerals. Where there is no quarry lease or mining lease or mineral concession granted by the State Government the general prohibition contained in Section 4(1) of the Central Act appears to remain unaffected.

54. It follows that if any person conducts any mining operation in any area within the State without a quarry lease or mining lease or other mineral concession from the State Government, he would come within the mischief of the general prohibition imposed by Section 4(1) of the said Act and his action in conducting such mining operation would be unlawful.

55. In such a case Section 21(5) of the said Act comes into play and empowers the State Government to recover the price of the mineral raised and disposed of

unlawfully from the person responsible for doing so. Even otherwise, as I have held that all minerals including minor minerals have vested in the State, there is no reason why the State cannot recover from such person the value of its property.

56. The price of the minerals unlawfully I raised and disposed of, however, has to be ascertained. No rule appears to have been promulgated under the Central Act laying down the procedure for ascertainment of such price. Similarly the rules framed by the State Government under the said Act also do not provide any procedure or machinery for such ascertainment. In any event, the rule making power conferred on the State Government u/s 15 of the said Act is extremely limited and is confined to regulation of grant of leases and concessions and for the purposes connected therewith. It may not be open to the State Government to promulgate rules for ascertainment of and recovery of price of minor mineral illegally extracted and disposed of and the remedy may be by way of a regular suit for conversion or recovery of price.

57. After the price has been lawfully ascertained, only then the same can be held to have become a sum due to the Government and it is thereafter that the State Government can proceed to recover the same as arrears of land revenue u/s 25 of the Act.

58. In the cases before me records were not produced to show in what manner or on what basis or by which authority the prices of minerals sought to be recovered from the petitioners were ascertained. The petitioners were not given any opportunity to make their representations as to the quantum of price at any stage nor were they given any opportunity to produce evidence in that behalf. Even the market price of the items concerned were not enquired into.

59. For the reasons as aforesaid I hold that the purported ascertainment and determination of price cannot be sustained and must be held to be illegal and void. It cannot be contended that any sum has become due to the Government on the basis of such ascertainment or determination of price and the Government cannot, proceed to raise or recover such demands summarily.

Demand for Royalty :

60. Under some of the notices impugned in these proceedings the authorities concerned have demanded payment of royalty from the petitioners concerned who are alleged to have extracted and disposed of or consumed brick earth without any quarry permit or other lawful authority. On a consideration of the relevant provisions of the said Act and the said Rules it appears to me that the prescribed royalty for minor minerals can only be demanded by the State in cases where a valid mining lease or a quarry permit has been granted by it and under the said concessions. Neither the Act nor the Rules, in my view, envisages collection of royalty where the mining operation resulting in extraction and disposal of minor mineral is wholly unauthorised. In such cases the claim of the State, it seems, would remain confined to the minerals unlawfully raised and

their price. This is clearly established by Section 15(3) of the said Act.

61. Section 21(5) of the said Act relied on by the respondents, in my view, does not aid the case of the State Government as in none of the notices involved it has been alleged that the petitioners were in unlawful occupation of land. In fact, in all the cases the petitioners have claimed some title to the land-which has not been denied or disputed. In any event there has been no fixation or determination of rent or royalty or tax under the said Section 21(5). The demands for royalty in such cases cannot be sustained and must be struck down.

Demand for Additional Royalty :

62. Under Rule 24 of the said Rules the District Authority or any officer authorised by the State Government may grant quarry permit in form "F" as annexed to the said Rules, following the procedure laid down in Schedule III of the said Rules.

63. Under Rule 26 every permit granted under Rule 24 would be subject to the conditions prescribed in Schedule IV of the said Act.

64. Clause 10 of "the said Schedule IV provides as follows : --

"If the issuing authority, after making such enquiry in such manner as he thinks fit and proper, finds that the quarry permit-holder has, either during the validity of the quarry permit or thereafter, removed more mineral than the quantity authorised by the quarry permit he may demand from the quarry permit-holder an additional amount for the excess amount of mineral removed at a rate not exceeding ten times royalty rate at which the quarry permit has been issued. The quarry-permit-holder shall on such demand make payment of the whole amount within two weeks of receipt of such demand and in case of failure such demand shall be recoverable as public demand."

65. From the aforesaid provision, which appears to have been overlooked by the learned Advocates for the petitioners as also the learned Additional Advocate General, it seems that a demand for additional royalty can be made only in case where a valid quarry permit has been issued, but where mineral has been extracted in excess beyond the permitted quantity. Where no quarry permit has been issued there is no question of any demand or payment of additional royalty. Such a levy has not been prescribed either by the said Act or by the said Rules.

66. The question whether the authorities concerned can lawfully demand and recover, additional royalty on the ground of excess recovery of minor minerals where a quarry permit has been issued remains to be examined. As noted earlier, the said Act and the said Rules do not provide for levy of additional royalty. In my view, the authorities are not entitled to impose or levy such an additional royalty by making it a condition of quarry permits. Such a provision would be beyond the rule-making powers of the State Government. In any event, the authorities have been left with unfettered, uncontrolled and unguided power to make enquiry as to the removal of excess mineral in the manner as they like and

the amount of additional royalty to be imposed subject to the maximum of ten times the prescribed royalty has been left entirely to the discretion of the issuing authority. Such a condition, in my view, violates Article 14 of the Constitution and cannot be sustained.

Recovery of damages, consequential charges and interest :

67. As in the case of additional royalty neither the Rules nor the Act provide for recovery of unascertained damages claimed by the authorities through the machinery of the Public Demands Recovery Act. Such damages, in my view, cannot be recovered as arrears of land revenue by merely raising a demand. It is, however, open to the State Government to proceed by way of a Civil Suit and recover damages from person unlawfully extracting or consuming minor minerals. For the same reason the demands for consequential charges and interest are also invalid.

Proposed penal action against the petitioners u/s 21(1) of the said Act:

68. I have already held that Section 4(1) of the said Act contains a general prohibition which forbids any mining operation in respect of any mineral including any minor mineral except under a lease or concession granted under the said Act or Rules framed thereunder. In the event, the petitioners or any of them have contravened the provisions of Section 4(1), in my view they are liable to be penalised as provided in Section 21(1) of the said Act in accordance with law.

69. It appears that in some of the impugned notices the petitioners have been threatened with penal action for having utilised the earth of brick earth raised unlawfully for the purpose of manufacture of bricks. To make it clear that the prohibition u/s 4(1) of the said Act is confined to mining operations and not to the user of the mineral extracted. I have already held that the said Rules to the extent it prohibits the user of the minerals raised are ultra vires the said Act as being in excess of the rule-making power conferred to the State Government. I make it clear that any penal action proposed or initiated has to be confined to unlawful mining operation.

Jurisdiction of the authorities issuing the notices :

70. It has been noted that the authorities who have issued the impugned notices in the cases before me are the Additional District Magistrate, the Sub-Divisional Land Reforms Officer and the Junior Land Reforms Officer. An Additional District Magistrate is a "District authority" within the meaning of Rule 3(b) of the said Rules. Under Sub-rule (g) of Rule 3, an Additional District Magistrate, the Sub-Divisional Land Reforms Officer and a Junior Land Reforms Officer are also mining authorities.

71. From Chapter 111 of the said Rules which includes Rule 24 and 25, it appears that the functions of the District Authority are confined to the grant of quarry permits by the State Government and nothing more. The Rules do not indicate at all the functions of a mining authority.

72. Under Rule 24. [he District Authority or any officer authorised by the State Government which may include a mining authority may grant quarry permits within the limits of his territorial jurisdiction in the prescribed form. Schedule III to the said Rules lays down the procedure under which such quarry permits may be issued.

73. Clause 9 of the said Schedule III reads as follows : --

"District Authority may, so far as they do not materially conflict with these instructions and subject to future directions of the Government, adopt any procedure and delegate so much of his power to such officer as he thinks fit for the purpose of better administration, revenue collection and less loss due to unauthorised workings."

74. It appears that this clause in the said Schedule was also overlooked by the learned Advocates for the petitioners as also the learned Additional Advocate General. The notices impugned before me appears to have been issued by the authorities concerned on the basis of the said Clause 9.

75. It appears on a reading of the said clause that the same is absolutely vague and confers wide, unfettered and unguided powers to the District Authority.

76. At the hearing, no instructions or directions from the State Government were produced to show that the procedure adopted by the authorities in issuing the said notices were ratified or prescribed by the State Government. It was also not shown if any power was delegated to the Sub-Divisional Land Reforms Officer and the Junior Land Reforms Officer by either the Additional District Magistrate who is a District Authority or the State Government, or the extent of such power.

77. Also for the said reasons as aforesaid it must be held that all the said notices issued are without jurisdiction.

Imposition of royalty at a fixed prescribed rule :

78. The contention of the petitioners is that, though the price of minor minerals vary considerably, royalty has been imposed at a fixed rate for all minor minerals irrespective of their value. This contention is of some substance. The further contention of the petitioners is that a guideline has been provided in the second schedule to the said Act, item 43 of which lays down that where no rate of royalty has been specified for any mineral, the same would be 7% of the sale price thereof at the pit mouth.

79. Except that a calculation was given as to how many bricks and tiles could be produced from 100 cft. of earth, nothing further was shown on behalf of the respondents as to how the rate of royalty for minor minerals had been computed.

80. I would not however like to interfere on this ground as the rate prescribed is not particularly high and the average sale price of earth or brick earth is not known. I take note of the fact that price of earth varies considerably within the State and it is not envisaged in the said Act or the Rules framed thereunder that

different rates of royalty should be prescribed for the same minor mineral varying with sites or location of such mineral or the mining pits.

81. For the reasons above the petitioners succeed to a limited extent in these applications. The authorities concerned are directed not to continue or enforce their demand in respect of price of earth, brick earth, royalty or additional royalty, damages, consequential charges or interest. The impugned notices are set aside. In the petitions where Rules nisi have been issued the same are made absolute to the extent as above. In the applications where no Rules nisi have been issued there will be directions in terms as aforesaid. Let appropriate writs be issued. There will be no order as to costs.

82. Let the operation of the above order be stayed till Jan. 31. 1985.

83. This order will govern the other cases heard together, i.e. In re : C.O. 4640(W) 1980 CO. 4595(W) 1980 4595(W) of 1980. In re : Jogendra Nath Mitra. In re : Ajit Kumar Nayak, In re : Sk. Asgar Ali; In re : Asoke K. Singh; In re : Panjab Mal Tahalan; In re : Sk. Kurban Ali; In re : Hiran K. Ghose; In re : Sital Das (two applications); In re : Abdul Aziz Mallick (3 applications); In re : Padma Bhattacharyya; C.R. 5196(W) of 1979 and all the applications be disposed of on the above terms.

84. There will be no order as to costs.