(2011) 03 SC CK 0055

In the Supreme Court Of India

Case No : Civil Appeal No''s. 4056-4064, 4710-4721, 4722-4724 of 1999, 1883 of 2006, Transfer Petition. (C) No. 722 of 2006, Civil Appeal No''s. 4745, 4990, 4991, 4992, 4993 of 2006, Transfer Petition (C) No. 951 of 2006, Civil Appeal No''s. 5649, 5599 of 2006, 378

Mineral Area Development Authority etc. APPELLANT

Vs

Steel Authority of India and Others RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15(3), 2, 9

Citation : (2011) 4 AWC 4221 : (2011) 3 KCCR 326 SN : (2011) 4 SCALE 152 : (2011) 4 SCC 450 : (2011) 4 SCR 19 : (2011) 2 UJ 1165

Hon'ble Judges : S. H. Kapadia, C.J;Swatanter Kumar, J;K. S. Panicker Radhakrishnan, J

Bench : Full Bench

Advocate : Vivek K. Thanka, Parag P. Tripathi, T.S. Doabia, ASG, Rakesh Dwivedi, K.K. Venugopal, Mahabir Singh, S.K. Bagaria, S.B. Upadhyay, Bhaskar P. Gupta, Ajit Kumar Sinha, P. Sadasivan Nair, Dipankar Gupta, Nagendra Rai, R.F. Nariman, A.K. Ganguli, Shambhu Prasad Singh, H.N. Salve, Abhishek Manu Singhvi, Ajit Kumar Sinha, Mahabir Singh, Shail Kumar Dwivedi, AAG, Aparesh Kumar Singh, Tapesh Kumar Singh, Preetika Dwivedi, Sansriti Pathak, Gopal Pathak, Pooja Dhar, Gopal Sankaranarayana, Radha Shyam Jena, Karan Singh Bhati, Rashid, Aishwarya Bhati, Pawan Upadhyay, Rajesh R. Dubey, Anisha Upadhyay, Sharmila Upadhyay, Praveen Kumar, Bharat Sangal, Alka Singh, Akshat Shrivastava, P.P. Singh, Inderjeet Yadav, Anip Sachthey, Mohit Paul, Shagun Matta, Syed Shahid Hussain Rizvi, D.K. Pradhan, Ashok Kumar Gupta-I, T.G. Narayanan Nair, K.N. Madhusoodanan, Sunil Kumar Jain, Parmatma Singh, Vanita Bhargava, Ajay Bhargava and Nitin Mishra, for Khaitan and Co., S.K. Verma, E.C. Agrawala, Ashok Kumar Singh and Sunil Dogra, for Lawyer''s Knit and Co., P.V. Yogewaran, U.A. Rana and Devina Sehgal, for Gagrat and Co., Ruby Singh Ahuja, Sridhar Potarju, Gaichangpou Gangmei, Guntur Prabhakar, Kunal Verma and Prashant Kumar, for AP and J Chambers, Gopal Prasad, Anupam Lal Das, A. Bhavan Singh, Ajay Aggarwal, Kanika Gomber, Rajan Narain, Manu Nair, Kirat Singh Nagra, Tanuj Bhushan and Adit Pujari, for Suresh A. Shroff and Co., Abhishth Kumar, Rakesh K. Sharma, Prashant Jha, Manjula Gupta, Vaibhav, Punam Kumari, Prem Sunder Jha, Lyna Perira, Manjula Gupta, Prashant Jha, Syed Shahid Husain Rizvi, D.K. Pradhan, Manik Karanjawala, Praveen Kumar, Sunil Kumar Jain, Aneesh Mittal, Parmatma Singh, Aakansksha Munjhal, Shally

Bhasin Maheshwari, E.C. Agrawala, Bharat Sangal, R.R. Kumar, Vernika Tomar, Alka Singh, B. Vijayalakshmi Menon, Gaurav Kejriwal, Jatinder Kumar Bhatia, Ashutosh Kumar Sharma, Gunnam Venkateswara Rao, B.S. Banthia, Vikas Upadhyay, Rishabh Sancheti, Sunita Sharma, Rekha Pandey, Asha G. Nair, D.S. Mahra, V.K. Verma, Dharmendra Kumar Sinha, Ashwarya Sinha, Ambhoj Kumar Sinha, Satyajit A. Desai, Prashant R. Dahat, Somanath Padhan, Aishwarya Bhati, Ashid Khan, Rajneesh Bhaskar, Jyoti Tripathi, Atul Jha, Rajesh Srivastava, Ram Naresh Gupta, Abhishek Gupta, Milind Kumar, Kanku Gupta, Gaurav Jian, Abha Jain, G.N. Reddy, V. Pattabhiram, Nandini Sen, D.P. Mukherjee, Anip Sachthey, Mohit Paul and Shagun Matta, for the Appellant;

Final Decision : Allowed

Judgement

1. Having heard the matter(s) for considerable length of time, we are of the view that the matter needs to be considered by the Bench of Nine Judges. The questions of law to be decided by the larger Bench are as follows:

1. Whether 'royalty' determined under Sections 9/15(3) of the Mines and Minerals (Regulation & Development) Act, 1957 (Act 67 of 1957, as amended) is in the nature of tax?

2. Can the State Legislature while levying a tax on land under Entry 49 List II of the Seventh Schedule of the Constitution adopt a measure of tax based on the value of the produce of land? If yes, then would the Constitutional position be any different insofar as the tax on land is imposed on mining land on account of Entry 50 List II and its interrelation with Entry 54 List I?

3. What is the meaning of the expression "Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development" within the meaning of Entry 50 of List II of the Seventh Schedule of the Constitution of India? Does the Mines and Minerals (Regulation & Development) Act, 1957 contain any provision which operates as a limitation on the field of legislation prescribed in Entry 50 of List II of the Seventh Schedule of the Constitution of India? In particular, whether Section 9 of the aforementioned Act denudes or limits the scope of Entry 50 of List II?

4. What is the true nature of royalty / dead rent payable on minerals produced / mined / extracted from mines?

5. Whether the majority decision in The State of West Bengal Vs. Kesoram Industries Ltd. and Others, , could be read as departing from the law laid down in the seven Judge Bench decision in India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others,

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

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

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

9. Whether Entry 50, List II read with Entry 54, List I of the Seventh Schedule to the Constitution constitute an exception to the general scheme of Entries relating to taxation being distinct from other Entries in all the three Lists of the Seventh Schedule to the Constitution as enunciated in M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another, (bottom)?

10. Whether in view of the declaration u/s 2 of the Mines and Minerals (Development & Regulation) Act, 1957 made in terms of Entry 54 of List I of the Seventh Schedule to the Constitution and the provisions of the said Act, the State Legislature is denuded of its power under Entry 23 of List II and/or Entry 50 of List II?

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

2. Before concluding, we may clarify that normally the Bench of five learned Judges in case of doubt has to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger coram than the Bench whose decision has come up for consideration (see: Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, . However, in the present case, since prima facie there appears to be some conflict between the decision of this Court in State of West Bengal v. Kesoram Industries Ltd. and Ors. (supra) which decision has been delivered by a Bench of five-Judge of this Court and the decision delivered by seven-Judge Bench of this Court in India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors. (supra) reference to the Bench of nine-Judge is requested. Office is directed to place the matter on the administrative side before the Chief Justice for appropriate orders.

