

(2015) 10 AHC CK 0137

In the Allahabad High Court

Case No : Writ - C. Nos. 41148 and 14151 of 2015

Prayagraj Power Generation Company Limited and Others

APPELLANT

Vs

State Government and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 15(3), 3, 3(d)

Citation : (2015) 11 ADJ 341 : (2016) 2 ALJ 195 : (2016) 1 AWC 378 : (2016) 130 RD 638

Hon'ble Judges : Suneet Kumar, J.

Bench : Single Bench

Advocate : Raghav Nayar and Navin Sinha, for the Appellant

Final Decision : Partly Allowed

Judgement

Suneet Kumar, J.—Since, both the writ petitions arise from a common revisional order based on similar questions of law and fact, I would proceed to decide it together.

2. On the consent of the parties, the petitions are being decided without calling for the counter affidavit under the Rules of the Court.

3. Pursuant to statutory policy framed by the Government of India dated 19 January 2005, the Uttar Pradesh Power Corporation Limited¹ undertook a bidding process to select a Developer who would in turn establish a thermal power station at Bara, District Allahabad. The project site was chosen by the Corporation, 90% of the power that would be generated from the plant would be sourced to the five Distribution Companies of the State of Uttar Pradesh. Jaiprakash Associates Limited was selected in the bidding process on the strength of the lowest quoted tariff rate for a period of 25 years. By a Deed of Conveyance dated 23 February 2010, the entire land comprised in the project site was transferred to the petitioner Company by the Corporation. Upon transfer

and possession of the project site, petitioner Company proceeded to commence work for establishment of the Thermal Power Plant for which it had undertaken the process of levelling and laying foundation by excavation of earth and blasting of rocks. The petitioner Company on 18 December 2010 was served an order by the District Magistrate/Collector, Allahabad raising demand for royalty for the use of minor mineral i.e. ordinary earth and ballast (gitti). Aggrieved, petitioner preferred an appeal before the Commissioner, Allahabad Division, Allahabad which was rejected on 28 December 2011, against which the petitioner preferred a revision being Revision No. 07(R)/VSGM/2012 before the State Government under Rule 78 of U.P. Minor Mineral (Concession) Rules 19632, during pendency of the revision, an ad-interim order was operating. The State Government vide order dated 27 May 2015 rejected the revision on the premise that the State being the owner of the sub-soil and mineral thereunder was entitled to royalty, therefore, the petitioner Company is liable to pay royalty on the value of minor minerals determined by the District Magistrate; consequent thereto, the District Magistrate vide impugned demand order dated 12 June 2015, determined the value of the minerals being five times of the royalty determined in terms of Rule 21(2) of the 1963 Rules, thus, raising a demand of Rs. 4,45,47,830/- towards royalty and five times thereof towards value of the minerals at Rs. 22,27,39,150/-, aggregating to Rs. 26,72,86,980/-. The petitioner Company is assailing the orders mentioned herein above under Article 226 of the Constitution.

4. Sri Navin Sinha, learned Senior Advocate assisted by Sri Raghav Nayar, learned counsel for the petitioner would submit the following on behalf of the petitioner:

(1) that vide Deed of Conveyance dated 23 February 2010 the the vendor (Corporation) in lieu of consideration received, has agreed to grant, convey, sell, transfer and assign to the Vendee (Petitioner Company), the entire property comprised in the deed together with all its estates, rights, titles and interests whether held in law or in equity as also all liberties, easements, privileges, rights, advantages and appurtenances attached to;

(2) that no part of the "Project Site" is comprised in a mining lease or mining permit;

(3) that the petitioner Company has not taken any mining operation for the purpose of winning or extraction of a minor mineral;

(4) that the digging/mining operation undertaken by the petitioner Company were only for the purpose of erection and establishment of the Thermal Power Plant for which the site was transferred, therefore, cannot be subjected to a levy of royalty;

(5) that the ordinary earth excavated or gitti obtained from the site was not taken out of the Project Site, the minerals were utilized/deployed for the construction of the Thermal Power Plant.

5. Sri Alok Singh, learned standing counsel appearing for the respondent State, upon instruction dated 14 July 2015, which is taken on record, would submit that for construction of Thermal Power Plant, the land was acquired by the Government under the Land Acquisition Act, thereafter, transferred to the Corporation as per policy of the Government. The petitioner Company obtained license under the Explosive Act, 1884 for blasting, which was issued in favour of D.K. Associates on 13 December 2010 on certain terms and conditions which include that royalty would be deposited by the petitioner for the use of minor mineral. The petitioner Company admittedly, has been excavating/digging the site, the mineral were used for the purpose of the project, but despite notice/letter dated 18 December 2010, the petitioner Company has not deposited the royalty, therefore, would contend that the impugned orders and the consequent demand notice are legal and lawful.

6. Rival submissions fall for consideration.

7. The question for determination is as to whether the petitioner Company is liable to pay royalty on the use/consumption/redeployment of minor mineral for the erection and construction of Thermal Power Plant under 1963 Rules.

8. The facts, inter se, parties are not in dispute. It is admitted that the minerals excavated from the site i.e. ordinary earth, gitti and boulders were used/redeployed for the construction of the Plant as per the Deed of Conveyance, admittedly, were not taken out of the site.

9. The Deed of Conveyance between Uttar Pradesh Power Corporation Limited, (vendor) and the petitioner Company (vendee) would inter alia provide as follows:

"A. The Vendor is the owner and absolutely seized and possessed of or otherwise well and sufficiently entitled to the entire freehold land along with other movables attached with all rights title and interest including, but not limited to, bhumidhari and cultivation rights, situated at villages Bewra, Borul, Jorvat, Kapari, Khan Semra, Pargana & Tehsil Bara, District Allahabad as more particularly described in Schedule I, admeasuring 725.788 Hectares as per the revenue record (the Property)". A copy of the map of the Property is attached to this Deed of Conveyance as Schedule II.

B.

C.

D. Upon the terms and conditions as are being recorded in this Deed of Conveyance and subject to the representations, warranties and covenants made by the Vendor to the Vendee, the Vendor has agreed to grant, convey, sell, transfer and assign to the Vendee the Property, and all its right, title and interest therein free from Encumbrances under the terms of this Deed of Conveyance and the Vendee has agreed to purchase the same."

10. The Vendor as per the terms of the Deed has a limited right in the demised property which is circumscribed by the words "not limited to bhumidhari or cultivation right situate in villages", meaning thereby, the vendor never had an absolute right in the property transferred to the petitioner Company. The land would comprise of five villages recorded in the revenue record of the district. The Corporation, therefore, could transfer whatever right, it had in the property. Upon enactment of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, Chapter-II provided for acquisition of the interests of intermediaries and its consequences. Section 4 provides for vesting of estates in the State which would come into force upon a notification being issued by the State Government, from such date of vesting, all such estates shall stand transferred to and vest, except as provided, in the State free from all encumbrances. Section 6 provides for the consequences of the vesting of estate in the State upon the notification under section 4 having been published, namely--

(a) all rights, title and interest of all the intermediaries--

(i)

(ii) in all sub-soil in such estate including rights, if any, in mines and minerals, whether being worked or not;

shall cease and be vested in the State of Uttar Pradesh free from all encumbrances;

11. In *Sharma and Co. and Others Vs. The State of U.P. and Another*, which was referred by the Division Bench in *J.K. Construction Engineers and Contractor and Sri S.V. Ranga Reddy Vs. The Union of India (UOI) and Others*--> , this Court considered the applicability of the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and held as follows:

"10. As a consequence of the notification issued under Section 4 of U.P. Act No. 1 of 1951, all rights, title and interest of all the intermediaries in such estates as had vested in the State including rights in any mines or minerals, whether being worked or not ceased and vested in the State including rights in any mines or minerals, whether being worked or not ceased and vested in the State of Uttar Pradesh free from all encumbrances. As would appear from Section 39, clauses (f) and (g), the mines and minerals existing in the estates which vested in the State were taken into account for the assessment of compensation to the intermediaries concerned. As a consequence of Section 18, Bhumidhari rights were created in favour of the class of persons mentioned therein. Bhumidhars are not owners of the land forming subject matter of their Bhumidhari and are merely tenure holders and as disclosed by Section 130 of U.P. Act No. 1 of 1951 have all the rights and are subject to all the liabilities conferred or imposed upon them by or under that Act. By conferment of Bhumidhari rights, the State did not divest itself of rights which had vested in it in mines and minerals by reason of Section 6 of U.P. Act No. 1 of 1951."

12. In State of U.P. Vs. Smt. Ram Sri and Another, , Division Bench of this Court held that the object of Sections 4 and 6 is that consequent on notification by the State Government, all the right, title and interest of the intermediaries in the estate should cease and such rights etc. should pass on to the State Government thus making it the absolute owner thereof. (Refer: Maharaj Singh Vs. State of Uttar Pradesh and Others,).

13. The Government has taken a categorical stand, as reflected from the impugned order, that the transfer of the land to the Corporation was as "Sankramani Bhumidhari". Bhumidhari rights under Act 1950 are transferable rights, but the owner of the land (Bhumidhar) does not have an absolute right, the minerals in the sub-soil vest in the State by virtue of Section 6. The Bhumidhar is merely a tenure holder having tenancy rights. This assertion of the State has not been disputed by the petitioner Company. The Corporation in their turn transferred the right and interest in the land to the petitioner Company but not the Bhumidhari right as is reflected from para (1) of the Deed of Conveyance. It would, therefore, mean that the petitioner Company has a right to use the land for the purpose of transfer (Thermal Plant) but not for any other purpose. It is relevant to note that the State Government is not a signatory to the Deed of Conveyance, no document or any other material has been brought on record by the petitioner Company to show that the State has divested its vested right in the minerals on the transferred land. Therefore, in my opinion, the rights in the mineral continued to vest in the State, it was neither conveyed nor transferred to the Corporation or the petitioner Company.

14. In this background, the incidental question that now arises is as to whether the State is entitled to royalty for the use/consumption of minerals by the petitioner Company for the project under the 1963 Rules.

15. The District Magistrate granted permission/license to the petitioner Company on 13 December 2010 for carrying blasting operation on the site, under the Explosive Act, 1884 so as to enable the petitioner Company for levelling of the land. The permission was granted subject to the certain conditions which include that mineral (gitti & boulder) being minor mineral shall not be taken out from the site nor permission is being granted to any other person to remove/transport mineral outside the site. In the event of such mineral being removed from the site, prior permission of the District Magistrate would be necessary and upon which royalty at the prescribed rate would have to be deposited. Any mineral that may be used in the project, royalty as per rules shall be charged. For the sake of convenience, conditions 2, 3 & 5 is extracted:

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16. The contention of the petitioner Company that the mineral was not removed from the site but redeployed/used for the purpose of construction/erection of the Thermal Power Plant; whatever mineral was brought from outside was against Form MM-11, royalty was paid on such minerals. According to the petitioner

Company, the conditions of the explosive license, extracted above, would provide that the petitioner Company is not required to pay royalty on the use/consumption of minerals for the purpose of the project, but is liable to pay royalty only for the minerals imported into the site from outside, Clause 5 of the license is to that effect.

17. To analyse the submission, I would proceed to examine the provisions of the 1963 Rules framed under the Mines and Minerals (Regulations and Development) Act, 1957. The State Government in exercise of power conferred under Section 15 of the Mines Development Act, 1957, framed the Uttar Pradesh Minor Minerals (Concession) Rules, 1963. The 1963 Rules provide that "mine" and "owner" shall have the meaning respectively assigned to them in the Mines Act, 1952. Sub-rule (5) of Rule 2 defines "Mining operation" to mean any operations undertaken for the purpose of "winning" any minor mineral. Sub-rule (7) of Rule 2 of the 1963 Rules defines minor mineral as follows:

"Minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other minerals which the Central Government has declared from time to time or may declare, by notification in the official Gazette, to be a minor mineral, under clause (e) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957);"

18. Under the scheme of the 1963 Rules, "no person shall undertake any mining operations in any area within the State of any minor minerals to which these Rules are applicable except under and in accordance with the terms and conditions of a mining lease or mining permit granted under these rules". (Rule 3)

19. Chapter III of the 1963 Rules pertains to payment of royalty and dead rent. Rule 21 provides that the holder of a mining lease shall pay royalty in respect of any mineral removed by him from the lease area at the rates specified in the first schedule. Rule 21(1) is as follows:

"The holder of a mining lease granted on or after the commencement of these rules shall pay" royalty in respect of any mineral removed by him from the lease area at the rates for the time being specified in the First Schedule to these Rules."

20. Chapter V provides conditions of Mining Lease. Rule 36 of the 1963 Rules requires maintenance of correct accounts of minerals requiring the lessee to keep correct accounts showing the quantity and other particulars of all minerals obtained and dispatched from the mine, giving mode of transport, the prices and all other particulars of all sales of mineral. Rule 36 of the 1963 Rules is as follows:

"The lessee shall keep correct accounts showing the quantity and other particulars of all mineral obtained and dispatched from the mine, giving mode of transport registration number of vehicle, person incharge of vehicle of animal and a nature and quantity of minerals carried, the prices and all other particulars of all sales of mineral, the number and nationality of persons employed therein,

and complete plans of the mine, and shall allow any officer authorised by the State Government or Central Government in this behalf to examine at any time any accounts, plans and records maintained by him and shall furnish to the Central or the State Government all such information and returns as the Central or the State Government or any officer authorised by either in this behalf, may require."

21. Chapter VI provides for restriction or grant of mining permit. Rule 54 provides for deposit of royalty and in the event of the mineral not being removed within the permitted time, any amount deposited as royalty shall not be refunded.

22. Chapter VII deals with contraventions, offences and penalties. Rule 58 of the 1963 Rules provides for the consequences of non-payment of royalty, rent or other dues. It shall be determined by any officer who has been authorised by the State Government and is realisable as arrears of land revenue. Power has been conferred under Rule 66 for assessment, entry and inspections. Rule 69 provides royalty which may be collected through contractor. Rule 70 provides restriction of transport of minerals, every person carrying a consignment of minor mineral by a vehicle, animal or any other mode of transport must have Form MM-11 supplied by the District Officer. The State Government would establish check post for verification of the weight or measurement of the mineral and upon contravention of any provision, shall be liable to criminal consequences including imprisonment.

23. In the back drop of the scheme of 1963 Rules and particularly to Rule 21, it is urged that royalty is payable only on transportation of minerals outside the site. It is referable to commercial exploitation. In the case of the petitioner, it is their specific case that the mining operation and excavation of mineral is a consequence of the purpose of the grant thereof, there being no commercial exploitation of the excavated mineral inasmuch as the mineral being excavated was not sent outside the site or sold to anybody for commercial gain.

24. In *Bhagwan Dass Vs. State of U.P. and Others*, , the Apex Court explained "winning" of any minor mineral:

"In any case, the definition of mining operations and minor minerals in S. 3(d) and (e) of the Act of 1957 and R. 2(5) and (7) of the Rules of 1963 shows that minerals need not be subterranean and that mining operations cover every operation undertaken for the purpose of "winning" any minor mineral. "Winning" does not imply a hazardous or perilous activity. The word simply means "extracting a mineral" and is used generally to indicate any activity by which a mineral is secured. "Extracting", in turn, means drawing out or obtaining. A tooth is "extracted" as much as it fruit juice and as much as a mineral. Only, that the effort varies from tooth to tooth, from fruit to fruit and from mineral to mineral."

25. Winning, therefore, would imply extracting a mineral and securing it by any means. The moment the mineral is extracted/drawn out or removed, the person would become liable to pay royalty under Rule 21. The removal could be for commercial exploitation or for self consumption. Sub-section (3) of Section 15 of

Mines Development Act, 1957 clarifies that the holder of mining lease shall pay royalty in respect of minor mineral removed or consumed by him; sub-section (3) is extracted:

"[(3) The holder of a mining lease or any other mineral concessions granted under any rule made under sub-section (1) shall pay [royalty or dead rent, whichever is more] in respect of minor mineral 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."

26. It is, therefore, clear that removal or consumption of mineral irrespective of commercial or non commercial use, royalty is payable. Mere vesting of the mineral in the State would not follow that the State is entitled to royalty. It is only when the mineral is removed/drawn-out, or consumed by the lessee, it is only then the State would require proportionate payment towards royalty on the mineral so removed or consumed. Sub-section (3) was incorporated in 19726 whereas "royalty" was inserted in 19877.

27. Royalty is not defined in the statutes referred to in the earlier part of the judgment. The concept of royalty explained in various pronouncements of the Supreme Court would suggest that royalty is not a compulsory exaction, it is neither tax or fee, the lessee is to part a share of the value of the mineral removed or consumed by him to the owner of the land. The claim of royalty can be made only by the owner of the mineral against a person who is excavating the mineral with the consent of the owner.

28. "Royalty" is a share of the product or profit (as of a mine, forest etc.) reserved by the owner for permitting another to use his property⁸.

29. Mineral royalty a right to a share of income from mineral production⁹.

30. In D.K. Trivedi and Sons and Others Vs. State of Gujarat and Others, , the Apex Court held as follows:

"Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called "royalty".

31. In H.R.S. Murthy Vs. Collector of Chittoor and Another, , the Constitution Bench of the Supreme Court defined royalty to mean "the payment made for the materials or minerals won from the land".

32. The legal nature of royalty, though was considered by the Supreme Court on more than one occasion stands referred to a Larger Bench in Mineral Area Development Authority etc. Vs. Steel Authority of India and Others, . I would,

therefore confine to the 1963 Rules, which unambiguously and necessarily provides for payment of royalty on removal of the mineral from the leased area. Transportation or dispatch of mineral follows removal, excavation of mineral drawn out from the sub-soil, without excavation there cannot be removal, therefore, the plea that the mineral, that was excavated was not transported outside the site would have no bearing as regard payment of royalty. The payment of royalty becomes due the moment, the mineral is excavated and removed (extracted) from the leased land, the mineral could be self consumed or transported or dispatched. Where, for instance, the mineral extracted by the lessee from one site owned by him and is dispatched to another site belonging to him for utilization in an ongoing project, that may not involve any commercial element, but as per the scheme of the 1963 Rules, the lessee would be fastened with royalty. Even, on applying the principles of statutory interpretation, the plain and unambiguous words employed in Rule 21 and Section 15(3) , would make it clear that mining operation invoking winning of mineral drawn from the sub-soil of the leased site would tantamount to mineral removed from the site area as contemplated in Rule 21 of 1963 Rules.

33. Learned counsel for the petitioner heavily relied upon the judgment rendered in Promoters and Builders Association of Pune Vs. The State of Maharashtra, , wherein, Supreme Court was dealing with the Central Government notification dated 3 February 2000 declaring ordinary earth used for filling or levelling purpose in the construction of roads, railways and buildings to be a minor mineral. In that context, the Supreme Court observed that the notification covered ordinary earth which is used for the purposes enumerated therein, namely, for filling or levelling purposes. Hence, it was held that excavation of ordinary earth for uses not contemplated in the aforesaid notification would not amount to a mining activity so as to attract the provisions of either the Maharashtra Land Revenue Code or the Mines Development Act of 1957. The observations of the Supreme Court is as follows:

"As use can only follow extraction or excavation it is the purpose of the excavation that has to be seen. The liability under Section 48(7) for excavation of ordinary earth would, therefore, truly depend on a determination of the use/ purpose for which the excavated earth had been put to. An excavation undertaken to lay the foundation of a building would not, ordinarily, carry the intention to use the excavated earth for the purpose of filling up or levelling. A blanket determination of liability merely because ordinary earth was dug up, therefore, would not be justified; what would be required is a more precise determination of the end use of the excavated earth; a finding on the correctness of the stand of the builders that the extracted earth was not used commercially but was redeployed in the building operations...."

34. The Court was not dealing with the subject matter involved in the facts of the present case, that is, as to whether royalty is chargeable on the use/ consumption of mineral excavated/removed under 1963 Rules by the lessee,

though the argument advanced before the Supreme Court is similar to the submission being made before this Court. Division Bench of this Court in *R.C. Infra City (P) Ltd. v. State of U.P. & others* 2015 (2) ADJ 579 (DB) (LB), where excavation of ordinary earth was undertaken for building operations, the Court placing reliance on the observation of the Supreme Court in *Promoters and Builders case* (supra) observed that the purpose of winning (earth) minor mineral whether is utilized for building operations or not is a question of fact to be determined by the authority. Paras 6 & 7 are extracted:

"6. As we have noted above, the definition of the expression "Mining Operations" in Rule 2(5) of the Rules refers to operations which are undertaken for the purpose of winning any minor minerals. The purpose of the operation is hence what is significant.

7. In the present case, it is sought to be urged on behalf of the petitioner that the purpose of the operation is not winning of any minor minerals and that the entire quantity of soil which is excavated would be used only for the construction of the building. This, in our view, is evidently a factual matter which must primarily be determined by the Collector/District Magistrate, Lucknow. The petitioner has, as a matter of fact, already moved the Collector in a representation dated 8 January 2015."

35. In *Som Datt Builders Ltd. Vs. Union of India (UOI) and Others*, , the question for determination was as to whether "ordinary earth" had validly been declared to be a "minor mineral" by the Central Government vide notification dated 3 February 2000. Learned standing counsel placed reliance on para 28 & 29, wherein, the observation of the High Court was extracted to meet the argument of the appellants before the Supreme Court that demand of royalty can be raised only against a lessee or mining permit holder. The paragraphs are as follows:

"24. The learned Senior Counsel for the appellants also argued that demand of royalty can be raised only against a lessee or mining permit-holder and the demand raised against the appellants, who are neither lessees nor mining permit holders, is violative of the Rules, 1963.

25. The High Court while dealing with the aforesaid contention held:

"Now coming to the question as to whether the amount of royalty can be recovered from the petitioners who are the contractors and suppliers of ordinary earth and other minor minerals, we are of the considered opinion that the royalty is payable on excavation of any minor minerals. The liability is primarily of the person holding the mining lease or a mining permit but if a person does not hold any mining lease or a mining permit, the liability does not cease. Any person dealing in a minor mineral is required to maintain and keep documents to show that the royalty has been paid and in order to ensure that due royalty on minor minerals has been paid within the State of U.P., the State Government by the tree Government Orders have provided for producing copies of declaration in

form MM 11 and treasury challan evidencing deposit of royalty. It cannot be said that any undue restrictions have been placed upon the right to carry on trade or business or it is without the authority of law."

36. The observation extracted by the Supreme Court is no where connected to the issue that has been posed before the Court. The observation, therefore, is of no assistance to the respondent State.

37. A judgment rendered by the Uttranchal High Court in Jaiprakash Associates Ltd. Vs. State of Uttaranchal, , was brought to my notice. The High Court held that digging and laying foundation for the construction of a Hotel by the Company on their own land would not amount to mining operation, therefore, royalty is not payable under 1963 Rules. The facts of the case before Uttranchal High Court is distinguishable, the petitioner Company before the High Court, purchased 9 acres of land with buildings standing thereon. The Company demolished the buildings, thereafter constructed the Hotel. The minerals consumed, if any, was for laying the foundation of the building. In Promoters and Builders case, it was observed that building operations involving digging of earth for laying foundation would not necessarily mean undertaking mining operation, the end use of the ordinary earth has to be determined precisely.

38. I would now advert to the undisputed facts inter se parties. The impugned revisional order would reflect that the petitioner Company was assessed to royalty by the Collector twice, upon protest by the petitioner, a Committee was constituted which upon inspecting the site jointly recorded:

- (i) 8,32,000 cubic metre excavation of stone/rock undertaken by the Company;
- (ii) 48,000 cubic metre stone/rock used in rainwater reservoir, for construction of retaining wall;
- (iii) Backfilling, construction of road 6,76,000 cubic metre ballast (gitti) and stone/rock were consumed;
- (iv) 18,000 cubic metre stone and ballast (gitti) were stacked on the site;
- (v) Consumption of 5,12,670 cubic metre of ordinary earth;
- (vi) use of ordinary earth/gitti in the construction of Railway track and Return yard.

39. It is made clear that the petitioner Company has neither disputed the figures nor the consumption of the minerals, aforementioned, either before the authorities or before this Court. The determination of the purpose and end use of the mineral, therefore, is conclusive. The petitioner has consumed by removing minor mineral, ordinary earth, ballast (gitti), boulder in the development and execution of the project comprising 725.788 hectares of land.

40. The Collector, therefore, raised a demand of Rs. 4,45,47,830/- towards royalty, which was finally assailed by the petitioner in two separate revisions,

which were heard and decided together. The revisional authority affirmed the order of the Collector, but directed the imposition and recovery of the value of the minor mineral consumed. Pursuant thereof, the Collector purportedly under Rule 21(2) of 1963 Rules demanded Rs. 22,27,39,150/- being five times the royalty towards the price/value of the minerals.

41. The petitioner Company would contend that there being no provision in the 1963 Rules for charging the price of the minerals consumed in the project, Rule 21(2) is not referable to valuing the price of the mineral. On a specific query to the learned standing counsel to point out the provision under which value/price of the mineral could be charged. The learned standing counsel was unable to bring to the notice of the Court any such provision but would refer to Chapter-VII of the 1963 Rules providing for penalty (imprisonment) for unauthorized mining (Rule 57) and consequence of nonpayment of royalty (Rule 58). Sub-rule (2) of Rule 58 provides for charging 24 percent simple interest on the sum due towards royalty and other charges.

42. Having due regard to the law and facts of the case at hand, it clearly emerges that royalty is payable on removing/extracting/excavating/drawing out mineral from the sub-soil of the leased area for the purpose of winning the mineral. The 1963 Rules is applicable to all the minor minerals available in the State [Rule 1(4)], therefore, royalty is chargeable irrespective of the nature of lease. Consumption/use/deployment of mineral for the project would, therefore, be chargeable to royalty. Transportation/dispatch of the mineral outside the site is not a condition precedent for charging royalty, consequently, the impugned order to the extent it imposes royalty upon the petitioner is upheld, whereas the demand of price/value of mineral assessed at five times the royalty is set aside being not referable to any provision of the 1963 Rules.

43. The writ petition is, accordingly, allowed in part.

44. No costs.

1Corporation

21963 Rules

3Act 1950

4English Translation (By the Court) "2. Minor minerals like stone-chips and boulder broken/fragmented by blasting shall not be transported in any way outside the proposed land of the project site nor shall anybody be permitted to take it away. 3. On requirement of transportation of minor minerals broken/fragmented by blasting, while mentioning the quantity of such minor minerals to be transported, prior permission/permission in writing will have to be obtained from the District Magistrate, Allahabad, following which royalty upon minor minerals will have to be deposited as advance at the prevalent rate. 5. The royalty of different minerals to be used in this project shall mandatorily be paid as per rule."

5Mines Development Act, 1957

6Ins. by Act No. 56 of 1972

7Subs. by Act No. 37 of 1986 (w.e.f. 10.2.87).

8Words and Phrases. Permanent Edn. (Vol. 37-A, P. 597)

9Black's Law Dictionary (7th Adn., P. 1330)