
(2004) 08 CAL CK 0009
In the Calcutta High Court
Case No : Writ Petition No. 1454 of 1988

Raj Kumar Kapoor and Others	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:

Constitution of India, 1950 — Entry 23

Citation : (2005) 2 CHN 65

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Judgement

Amitava Lala, J.—A seven-Judge Bench of the Supreme Court in in the matter of India Cement Ltd. etc. v. State of Tamil Nadu etc. held that royalty on mineral rights is a tax, and as such a cess on royalty, being a tax on royalty, is beyond the competence of the State Legislature because Section 9 of the Central Act covers the field and the State Legislature is denuded of its competence under Entry 23 of the List II of Schedule VII of Constitution. In any event, cess on royalty cannot be sustained under Entry 49 of List II as being a tax on land. Royalty on mineral rights is not a tax on land but a payment for the user of land. However, the levy of said cess was declared to be the ultra vires power of State Legislature only prospectively keeping in view of the fact that the amounts were collected by the State on the basis that the Supreme Court decision in H.R.S. Murthy Vs. Collector of Chittoor and Another, was the correct position which has been overruled by this judgment. If such judgment is to be read with the formula of binding effect given under the five-Judges Bench judgment reported in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., it has binding effect till this date upon this Court giving overriding value over the judgment of the Bench of lessor number of Judges.

2. However, since a circular has been issued by the Joint Secretary to the Government of West Bengal, Land & Land Reforms Department on 11th December, 2000 that the cess will not be applicable in respect of non-agricultural

land with its immediate effect so to say in the process of collection, no cess will be collected from the land in question.

3. As consequential effect of this order the grant of quarry permit, if any, will not be withheld on the ground of non-payment of cess. A copy of the circular being dated 11th December, 2000 be kept with the record.

4. With the above observations the writ petition stands disposed of.

5. No order is passed as to costs.

6. Let xeroxed certified copy of this judgment be supplied to the parties by the department within seven days from the date of putting in requisition for drawing up and completion of the order as well as the certified copy thereof.

7. All parties are to act on a signed copy of the minutes of the operative part of this judgment on the usual undertaking and as per the satisfaction of the officer of this Court in respect as above.