

(2000) 03 AHC CK 0049
In the Allahabad High Court

Case No : C.M.W.P. No. 25826 Connected with 63 writ petitions of 1999

Ram Dhani Singh

APPELLANT

Vs

Collector Sonbhadra and others

RESPONDENT

Date of Decision : 01-03-2000

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 2, 8, 9
Shaktinagar Special Area Development Authority (Cess on Mineral Rights) Rules, 1997 — Rule 3, 3(1)
Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 15
Uttar Pradesh Special Areas Development Authorities Act, 1986 — Section 17, 18, 19, 2, 20
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 2, 8, 9
Shaktinagar Special Area Development Authority (Cess on Mineral Rights) Rules, 1997 — Rule 3, 3(1)
Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 15
Uttar Pradesh Special Areas Development Authorities Act, 1986 — Section 17, 18, 19, 2, 20
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 2, 8, 9
Shaktinagar Special Area Development Authority (Cess on Mineral Rights) Rules, 1997 — Rule 3, 3(1)
Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 15
Uttar Pradesh Special Areas Development Authorities Act, 1986 — Section 17, 18, 19, 2, 20

Citation : AIR 2001 All 5 : (2000) 2 AWC 1761 : (2000) 2 UPLBEC 1270

Hon'ble Judges : R.K. Agarwal, J;Palok Basu, J

Bench : Division Bench

Advocate : Amresh Singh and S.P. Singh, for the Appellant; S.C., R.B. Pradhan and V. Pratap, for the Respondent

Judgement

Palok Basu, J.—This bunch of 73 cases, raises important question of law which may be having far reaching consequences, therefore, more than sufficient time was provided to the learned counsel for the parties to ventilate their grievances and respective arguments which all of them have done with great ability.

2. On February 24, 1997. "Shaktinagar Special Area Development Authority

(Cess on Mineral Rights) Rules, 1997" (hereinafter referred to as the Cess Rules) having been promulgated through publication in the U. P. Gazette, all the petitioners seem to have been asked to pay Cess in accordance with the Cess Rules and it appears that by the notice of demand the amount so calculated was demanded and the petitioners having not paid the Cess, the recovery proceedings as arrears of land revenue have commenced and each one of the petitioners has rushed to this Court challenging those recovery proceedings and the citations issued by the recovering authorities for attempting to collect the said Cess from each of the petitioners.

3. In all the writ petitions, the petitioners are firm, company or individuals, as the case may be, When these petitions were filed, notice was issued to the respondents to show cause as to why the writ petitions be not allowed while calling for counter-affidavits from them and recovery proceedings against each of the petitioners had been stayed which was extended from time to time. Four opposite parties. Collector Sonbhadra, Tahsildar. Tahsil Robertsganj, district Sonbhadra, State of U. P. through Principal Secretary Avas Anubhag-1. Government of Uttar Pradesh, and Secretary, Shakti Nagar, Special Area Development Authority, Turra (Pipary) district Sonbhadra, have put in appearance and have filed counter-affidavits to which the rejoinder-affidavits have also been filed.

4. Sarvashri Satya Prakash Singh (S.P. Singh) Amrash Singh and M.L. Srivastava, learned counsel have been heard on behalf of the petitioners at great length. Shri Ashok Mehta, Chief Standing Counsel assisted by Shri Vishnu Pratap Singh and Sri R.K. Saxena, standing counsel have espoused the cause of the State of U. P. and its officials and Shri R.B. Pradhan advocate has represented the Secretary Shakti Nagar. Special Area Development Authority. Turra (Pipari), district Sonbhadra.

5. Entire record of all the cases have been examined and as prayed by the learned counsel for the respective parties, all the petitions are being heard finally at the admission stage and this judgment shall decide all the writ petitions.

6. In order to appreciate the respective contentions, some factual happenings have to be taken note of. The State of Uttar Pradesh (hereinafter referred to as the State) has passed the Uttar Pradesh Special Area Development Authorities Act. 1986 (U. P. Act No. 9 of 1986), hereinafter referred to as the Act, which received the assent of the President of India on March 19. 1986 and has been published in the U. P. Gazette on that very day. The preamble says the Special Area Development Authorities Act has been enacted to provide for the establishment of Special Area Development Authorities for the planned development of certain areas of Uttar Pradesh and for matters ancillary thereto. The words "authority", "amenity", "building", "development", "regulation", "rule", "special development area" have been defined u/s z of the aforesaid Act. Section 3 of the Act permits the State Government when it is of the opinion that any area of special importance in the State needs to be developed in a planned manner, it

may by notification, declare such area to be a special development area. Section 4 defines the Development Authority. Section 5 enumerates the Staff of the Authority. Section 6 delineates functions of the Special Area Development Authority and Section 7 is about the Powers of the Authority. Sections 6 and 7 are quoted below for ready reference :

"6. Functions of the Authority.--The functions of the Special Area Development Authority shall be :

(i) to promote and secure development in a planned manner of the special development area for which it has been constituted ;

(ii) to prepare development plan for the special development area :

(iii) to implement the development plan after the approval by the State Government :

(iv) for the purpose of implementation of the plan, to acquire, hold, develop, manage and dispose of land and other property ;

(v) to carry out building, engineering, mining operations and other construction activity ;

(vi) to execute works in connection with the supply of water and electricity and to provide such utilities and amenities as water, electricity, drainage and the like ;

(vii) to dispose of sewage and to provide and maintain other services and amenities ;

(viii) to provide for the Municipal management of the special development area in the same manner as is done by Nagar Mahapalika under the Uttar Pradesh Nagar Mahapalika Adhiniyam. 1959 :

(ix) to otherwise perform all such functions as are necessary or expedient for the purpose of the planned development of the special development area and for purposes incidental thereto :

Provided that the functions specified in clauses (viii) and (ix) shall not be performed unless so required by the State Government :

"7. Powers of the Authority.--The Special Area Development Authority shall :

(a) for the purpose of Municipal administration have the powers which a Nagar Mahapalika has under the Uttar Pradesh Nagar Mahapalika Adhiniyam. 1959 ;

(b) for the purpose of taxation have the powers which a Nagar Mahapalika has in relation to a city under the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959".

7. The above function, thus, noted is in the contents of Chapters 1 and II. It would be mentioned here that Chapter III permits the preparation of master plan for Special Development Area. Chapter IV provides the development of lands in Special Development Area. Chapter V makes permissible compulsory acquisition

of land. Chapter VI deals with the Finance. Accounts and Audit. Section 18 of the said Chapter reads as under:

"18. Fund of the Authority.--(1) The authority shall have and maintain its own fund to which shall be credited :

(a) all moneys received by the Authority from the State Government or the Central Government by way of grant, loans, advances or otherwise ;

(b) all moneys borrowed by the Authority from sources other than the State Government or the Central Government by way of loans or debentures ;

(c) all fees, tolls. Cess and charges received by the Authority under this Act;

(d) all moneys received by the Authority from the disposal of lands buildings and other properties movable and immovable ; and

(e) all moneys received by the Authority by way of rents and profits or in any other manner or from any other source.

(2) The fund shall be applied towards meeting the expenses to be incurred by the Authority in the administration of this Act and for no other purpose.

(3) The Authority may borrow money by way of loans or debentures from the Central Government or State Government or such other sources and on such terms and conditions as may be approved by the State Government.

(4) The Authority shall maintain a sinking fund for the repayment of moneys borrowed under sub-section (3), and shall pay every year to the sinking fund such sum as may be sufficient for repayment within the period fixed of all moneys so borrowed.

(5) The sinking fund or any part thereof shall be applied in, or towards the discharge of the loans for which such fund was created, and until such loans are wholly discharged it shall not be applied for any other purpose."

8. Chapter VII incorporates supplemental and miscellaneous provisions such as offences and order of demolition of building. Section 30 thereof empowers the Authority to provide amenity or carry out development at the cost of owner in the event of his default and to levy Cess in certain cases. By Section 31, the Authority has been empowered to require the local authority to assume responsibility in certain cases. All the provisions under Sections 32 to 34 relate to the manner of betterment charge and its payment, Additional Stamp duty on certain transfers of property. Section 35, thereafter, provides Cess on mineral rights, which for ready reference is quoted below :

"35. Cess on mineral rights.--(1) Subject to any limitations imposed by Parliament by law relating to mineral development, the Authority may impose a Cess on mineral rights at such rate as may be prescribed.

(2) Any Cess imposed under this section shall be subject to confirmation by the

State Government and shall be leviable with effect from such date as may be appointed by the State Government in this behalf."

Section 36 permits levying charge on the consumption or sale of electricity. Section 37 says that any money certified by the Authority as due be recoverable as arrears of land revenue and no suit shall lie in the Civil Court for recovery of such money. Sections 38 and 39 deals with the manner in which the State Government has its control over the Authority and filing of returns and inspection etc. Section 40 empowers the State Government to give directions from time to time and by Section 41 the State Government is empowered to delegate its functions or any of the functions to any officer or authority subordinate to it. The dissolution of Authorities is permissible under the provisions of Section 42 while Sections 43 to 46 relate to the jurisdiction of the courts and offence and sanctions of prosecution etc. Sections 17 to 50 make some other ancillary provisions and Section 51 says that the "State Government may make rules for carrying out the provisions of this Act." Section 52, which creates overriding effect to the provisions of Special Area Act, is quoted as under :

"52. Overriding effect of the Act.--Upon any area being declared a special development area under the provisions of this Act, such area, if included in the master plan or the zonal development plan under the Uttar Pradesh Urban Planning and Development Act, 1973, or any other master plan or development plan under any other Uttar Pradesh Act, shall, with effect from the date of such declaration, be deemed to be excluded from any such plan."

9. The last Section i.e., Section 53 provides repeal and saving of the Ordinance, which was numbered as U. P. Ordinance No. 15 of 1985.

10. The Cess Rules enforced on February 24, 1997 by the State Government is quoted below for ready reference :

"In exercise of the powers u/s 35 of the Uttar Pradesh Special Area Development Authorities Act. 1986 (Uttar Pradesh Act No. 9 of 1986), the Governor is pleased to make the following rules.

Shaktinagar Special Area Development Authority (Cess on Mineral Rights) Rules. 1997.

1. (1) These rules may be called the Shaktinagar Special Area Development Authority (Cess on Mineral Rights) Rules. 1997.

(2) They shall apply to the Special Area of Shaktinagar Special Area Development Authority.

(3) They shall come into force with effect from the date of their publication in the Gazette.

2. In these rules, unless there is anything repugnant in the subject or context.

(a) "Act" means the Uttar Pradesh Special Area Development Authorities Act ;

1986.

(b) "Mineral Rights" means rights conferred on a lessee under a mining lease granted or renewed for mining operations in relation to Minerals (providing operation for raising, winning or extracting coal) as defined in the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957).

3. (1) The Authority, subject to sub-rules (2) and (3) impose a Cess on mineral rights on such minerals and minor minerals and at such rates as are specified below :

Mineral/ Minor Mineral

Minimum Rate

Rate

(1)

Cess on Coal

Rs.5.00 (Per ton)

Rs. 10.00 (Per ton)

(2)

Cess on Stone. Coarse Sind/ Sand

Rs.2.00 (Per Cubic metre)

Rs.5.00 (Per Cubic metre)

(2) The rates shall not be less than the minimum rates or more than the maximum rates specified in sub-rule (1) and shall be determined by the Authority by a special resolution which shall be subject to confirmation by the State Government.

(3) The cess shall be leviable with effect from the date notified by the State Government in the Gazette in this behalf."

11. The learned counsel for the petitioners have attacked not only the Cess Rules for various reasons which may be discussed later, they have also challenged the competence of the State Legislature which has formulated the provisions in shape of Section 35 referred to above. The arguments proceeded that Section 35 which refers to the limitations imposed by the Parliament by law relating to mineral development, the provisions contained in the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the M.M.R.D. Act) came into operation, as it is admitted case that since Sonbhadra would fall within the State of U. P. which again would fall within the declaration as envisaged u/s 2 of the M.M.R.D. Act, all the limitations envisaged in the aforesaid Act shall be automatically attracted.

12. In this connection, it was argued that even if the distinction in major or minor mineral may exist in the M.M.R.D. Act and consequentially framing of U. P. Minor Mineral (Concession) Rules, 1963 (hereinafter referred to as the U.P.M.M.C. Rules, a charge created being at the "mineral rights", the State Government ceases to have power to promulgate the Cess Rules. In this connection, reliance was placed on the provisions contained in Sections 8 and 9 of the M.M.R.D. Act. It was stated that the royalty is fixed whenever a mining lease is executed and, therefore, the attempt on the part of the State Government to realise the Cess through impugned Cess Rules would also add to the royalty and, therefore, the powers are ultra vires the powers of the State Government which are conferred by the provisions of Section 15 of the M.M.R.D. Act. It was emphasised thus that even though the State Government was empowered to frame U.P.M.M.C. Rules because of the power which was conferred by the Section 15 of M.M.R.D. Rules, the State Government is precluded even from imposing unilaterally Cess even on minor minerals because it would in turn be the royalty amount which is payable at the time of execution of lease deed. It was further contended on behalf of the petitioner that the State Government is totally incompetent to legislate or frame any rule regarding the minerals governed by the M.M.R.D. Act and since the Cess Rules specifically refers to coal at item No. 1 in sub-rule 1 of Rule 3 of the Cess Rules, the said action of the State Government is ultra vires the provisions of M.M.R.D. Act. In this connection, it was further argued on behalf of the petitioners that in the shape of development activity, even for special area declared through the provisions of Special Area Act, the State Government cannot assume power to legislate or deal with the royalty on major mineral which have to be so done by the Union of India i.e., Central Government. In this connection, the petitioner contended that the definition of mineral rights as it exists in clause(b) of Rule 2 noted above, even licence permissible under Chapter VI of U.P.M.M.C. Rules would be covered because the lease has been extended to mean including operation for raising, winning or extracting coal. The reference was made to Rule 3 of the U.P.M.M.C. Rules, which provides that no person shall undertake any mining operations in any area within the State of any minor mineral except in accordance with the terms and conditions of a mining lease or mining permit granted under these rules. The argument, therefore, was that once the petitioners obtained the lease or licence as the case may be and royalty was paid in accordance with the U.P.M.M.C. Rules, further levying of Cess by the aforesaid provisions contained u/s 35 of the Special Area Act or the Cess Rules framed thereunder are beyond the powers of the State Government.

13. The learned counsel for the petitioners, therefore principally relied on the provisions which are contained in Entry No. 54 of the List I (Union List) as it exists in VIIth Schedule of the Constitution of India and in view of those provisions and also the provisions contained in M.M.R.D. Act, the power of the State Government to legislate the provisions contained in Section 35 of the Special Area Act and to promulgate the Rules contained in Cess Rules was challenged.

14. Shri S.P. Singh placed implicit reliance on the decision of the Hon''ble Supreme Court in *India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others*, *M/s. Orissa Cement Ltd. and Others Vs. State of Orissa and others*, He also placed reliance on the decision of *P. Kannadasan etc, etc. Vs. State of Tamil Nadu and others* [OVERRULED],

15. Shri Ashok Mehta repelled all the arguments raised by the learned counsel for the petitioners by pointing that the Special Area Act was within the competence of the State Legislature, the vires of which have not been challenged and even no arguments have been raised before the Court challenging the provisions existing therein. He further pointed out that what is chargeable to Cess is the one imposed on mineral rights and certainly not on minerals nor on the royalty thereon. He elaborated the arguments by referring the provisions contained in Section 35 of the Special Area Act itself pointing out that the law by the Parliament has been fully obeyed and the State has not made any attempt whatsoever to oust the jurisdiction of the Central Government as stand saved by the aforesaid Entry No. 54 of List I of the Constitution of India. He drew strength on what is contained in Entry No. 5 of List II (State List) of the Seventh Schedule read with the Entries No. 49, 50, and 66 thereof. He proceeded to argue that by Section 35 of the Special Area Act, the State is empowered to make provisions by Rules for realisation of Cess only. The Court should, therefore, not feel any difficulty if the aforesaid Cess can be termed as fees as envisaged in Entries No. 19, 50 and 66 read with the provisions contained in Entry No. 5. In fact it was argued by the learned counsel for the respondent that even if what is contained in Entry No. 50 of List II is examined in pith and substance, the Cess Rules do not transgress the powers of the State Government to limitations imposed by the law relating to mineral development and it confines the imposition of Cess only on the mineral rights, which rights are admittedly exercisable in the area already defined as Special Area within the meaning of the Special Area Development Act. It was contended that the development of the Special area will be a bounden duty of the State Government and for various reasons which need not be mentioned here, the aforesaid Special Area Development Act though passed in the year 1986, the present Government has taken up with all seriousness the steps to develop the Special area and imposition of cess envisaged through Special Area Act with regard to district Sonbhadra and promulgated the said Act and Rules.

16. Shri Ashok Mehta relied upon some of the observations of Hon''ble Supreme Court in the case of *India Cement Ltd., Orissa Cement Ltd. as also P.K. Kannadasan (supra)* but more sincerely he drew the attention of the Court to the decision of Hon''ble Supreme Court in *Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, . The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, , Goodricke Group Ltd. and Others Vs. State of W.B. and Others*, He also placed reliance on some of the observations in *Kunwar Ram Nath and Others Vs. Municipal Board, Pilibhit*,

17. In order to appreciate the various arguments noted above, and the cases relied upon by the learned counsel for the respective parties, some of the entries referred to above in List I (Union List) and List II (State List) of the Seventh Schedule need to be quoted below :

List I--Union List

Entry No. 53.--Regulation and development of oilfields and mineral oil resources ; petroleum and petroleum products : other liquids and substances declared by Parliament by law to be dangerously inflammable.

Entry No. 54.--Regulation of mines and minerals 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.

List II--State List

Entry No. 5.--Local Government, that is to say, the constitution and powers of Municipal Corporations, improvement trust district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

Entry No. 49.--Taxes on lands and buildings.

Entry No. 50.--Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

Entry No. 66.--Fees in respect of any of the matters in this List, but not including fees taken in any Court.

18. Both the decisions, India Cement Ltd., and Orissa Cement Ltd., (supra), came to be explained in Goodricke Group Ltd., (supra) and the view that was expressed in earlier two decisions as stated in paras 21 to 24 of the decision of Goodricks Group Ltd. is quoted below :

" 21. We shall now deal with the two decisions in India Cement and Orissa Cement upon which strong reliance is placed by the learned counsel for the petitioners. India Cement dealt with a levy u/s 115 of the Madras Panchayats Act which imposed a local cess @ 45 paise on every rupee of land revenue payable to the Government in respect of land for every fasli. The explanation to Section 116 defined "land revenue" to mean "public revenue due on land and includes water cess payable to the Government for water supplied or used for the irrigation of land, royalty, lease amount or other sum payable to the Government in respect of land held direct from the Government on lease or licence." What is of crucial relevance is that the levy of cess was not upon the land or upon its yield (or its income) but upon the royalty amount payable to the lessor, which was included within the definition of the expression "land revenue". Question, therefore, arose whether such cess levied with reference to or calculated on the basis of amount of royalty can be called a tax on land. It was held that it could not be. It was pointed out that the royalty varies according to the mineral quarried in a given

year and if no mineral is quarried, no royalty will be payable but this reasoning, as we shall explain a little later, is not the ratio of the judgment apart from being inapplicable in the case of land or tea estates. The basis of the judgment and the ratio of the decision in our respectful opinion is that it was a case where the tax was measured not with reference to or on the basis of the income or yield of the land but with reference to the amount of royalty payable by the lessee to his lessor. It was for this reason that the tax was held to be not upon the land. Royalty is a matter of agreement between the lessor and the lessee: it may also be determined by a statutory provision. But royalty is not the produce of the land ; royalty is not the income of the land nor is the royalty the yield of the land and that is the distinction. Now, it is significant to notice how the concept of royalty was understood in India Cement. The following observations from the judgment are opposite : "It is therefore, not possible to accept Mr. Krishnamurthy Iyer's submission that a cess on royalty cannot possibly be said to be a tax or an impost on land..... (P. 26). In the aforesaid view of the matter. We are of the opinion that royalty is a tax and as such a cess on royalty being a tax on royalty is beyond the competence of the State Legislature. (P.30)". Indeed, the petitioners' contention was "that the impugned measure being a tax not on share of the produce of the land but on royalty" the levy is bad. This contention was upheld by Mukharji, J. The learned Judge held ; "In any event, we are of the opinion that cess on royalty cannot be sustained under Entry 49 of List II as being a tax on land." The learned Judge characterised the cess impugned therein as "an additional charge on royalty." We are therefore, of the opinion that the decision in India Cement can have no relevance herein inasmuch as the levy in that case was altogether on a different basis and for which reason it was held to be outside Entry 49 of List II. It would be wrong to read this decision as overruling the innumerable decisions rendered with reference to Entry 49, List II (or the entry corresponding to it in the Government of India Act. 1935) which have upheld levy upon land and building measured on the basis of their yield or income. Only H.R.S. Murthy was overruled In India Cement and not others. The decision in India Cement must be understood consistent with and in continuation of the earlier decisions on the subject.

22. Now coming to Orissa Cement, it was again a case where the cess was imposed on royalty. As amended by Act 15 of 1988. Section 5(2) of the Orissa Cess Act, 1962 read as follows :

(2) The rate at which such cess shall be levied shall be-

(a) in case of lands held for carrying on mining operations in relation to any mineral on such percentum of the annual value of the said lands as specified against the mineral in Schedule II ; and

(b) In case of other lands fifty percentum of the annual value."

23. Clause (a) in sub-section (2) was amended by Act 17 of 1989, after which amendment, clause (a) read thus :

"(a) In the case of land held for carrying on mining operations in relation to any material, such percentum of the annual value as the State Government, by notification, specify from time to time in relation to such mineral."

The expression "annual value" occurring in clause (a) (both prior to Amending Act 17 of 1989 and thereafter) was defined in Section 7 of the Act. Sub-section (3) of Section 7 provided that "in the case of lands held for carrying on mining operations, the annual value shall be the royalty or as the case may be, the dead rent payable by the persons carrying on mining operations (s) to the Government." It is for this reason that the Division Bench, speaking through Ranganathan, J., held that the case was squarely covered by India Cement. When it was contended by the State that the royalty payable in respect of a land on which mining activity is carried on is only a measure of the tax on land relying upon Ralla Ram and Ajay Kumar Mukharjee, Ranganathan, J., made the following perceptive observations, which are of great significance to the cases before us : (SCO p. 468, para 30) :

"But here the levy is not measured by the income derived by the assessee from the land, as is the case with lands other than mineral lands. The measure of the levy is the royalty paid. In respect of the land, by the assessee to his lessor which is quite a different thing."

24. The learned Judge pointed out that the decision in H.R.S. Murthy v. Collector of Chittor, which was overruled in India Cement also purported to levy land cess on the "annual rental value" which expression was defined to mean inter alia royalty or other sum payable to the Government in the case of lands held on lease licence and that the reason for which Murthy was overruled in India Cement was also present in the Orissa Act before them. The following observations bring out the distinction made by the learned Judge (SCO p. 470, para 33).

"But the question is, what is it that is really being taxed by the Legislature? So far as mineral-bearing lands are concerned, is the impact of the tax on the land or on royalties? The change in the scheme of taxation u/s 7 in 1976 ; the importance and magnitude of the revenue by way of royalties received by the State ; the charge of the cess as a percentage and, indeed, as multiples of the amount of royalty ; and the mode and collection of the cess amount along with the royalties and as part thereof are circumstances which go to show that the legislation in this regard is with respect to royalty rather than with respect to land."

19. Having examined the ratio flowing from India Cement Ltd. and Orissa Cement Ltd. the Hon"ble Supreme Court in Goodricke Group Ltd., explained, thus the two decisions as under :

25. In our opinion, therefore, the ratio of India Cement and Orissa Cement is clearly distinguishable and has no relevance to the cases before us. In the case of the impugned West Bengal enactment, the cess is upon the land measured on

the basis of the quantum of its produce. Being measured with reference to the yield of land, it is a levy upon the land, as explained in *Ralla Ram, Moopil Nair and Ajay Kumar Mukharjee*.....

....37. In view of our finding that the impugned cesses are clearly relatable to Entry 49 of List II. It is really unnecessary to deal at length with the alternative submission of Shri Shanti Bhushan, learned counsel for the State of West Bengal that the impugned levy can also be sustained with reference to Entry 45 of List II, i.e., as land revenue. Learned counsel submits that there can be more than one law levying land revenue and all of them will be relatable to Entry 45. He submits that the impugned levy can be treated as additional land revenue. Counsel gives instances of more than one Act levying excise duty on manufacture and production of goods. He relies upon the following observations of Mukharji, J., in *India Cement* (SCC p. 24 para 21).

"It is, however, clear that over a period of centuries, land revenue in India has acquired a connotative meaning of share in the produce of land which the king or the Government is entitled to receive."

The force of the submission cannot be denied. The presumption in favour of constitutionality obliges the Court to sustain an enactment, if necessary, by relating it to an entry other than the one relied upon by the Government, if that can be reasonably done. Moreover, as pointed out by this Court in *Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.*, It is the function and power of the Court to interpret an enactment. It is equally the function and power of the judiciary to say to which entry does an enactment relate. The opinion of the Government in this behalf is but an opinion and no more."

20. Ultimately in paragraph 52 of the case of *Goodricke Group Ltd.* (supra), the law laid down is as under;

"....As pointed out repeatedly in the several decisions referred to earlier in this Judgment, "measure of tax is not determinative of its essential character" and further that "the same transaction may involve two or more taxable events in its different aspects" and "the fact that there is an overlapping does not detract from the distinctiveness of the aspects". The question of superior Legislature or inferior Legislature does not really arise herein. Once the impugned legislation is held to be relatable to Entry 49 of List II. It will be within the exclusive competence of the State Legislature. In that behalf, the State Legislature is not inferior to Parliament.....".

21. The other authority which requires to be noticed here is the case of *Kunwar Ram Nath and Others Vs. Municipal Board, Pilibhit*, which reads as under :

"7.A cess may either be a tax or a fee. Whether a cess in given context is a tax or a fee depends upon the purpose for which it is levied. The very decision relied on by the respondents in this connection namely. *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, , substantiates the

above view. In that case this Court held that the cess imposed by the Orissa Mining Areas Development Fund Act, 1952 was a fee, relatable to entries 23 and 66 of List II of the Seventh Schedule to the Constitution having regard to the object and the scheme of that Act and the purpose for which the cess collected under it was to be used. There is no doubt that in Entry 19 of List II of the Seventh Schedule to the Government of India Act, 1935 the expression "cesses" is used in the sense of "taxes". In Entry 52 of List II of the Seventh Schedule to the Constitution, the expression "taxes" is substituted in the place of the expression "cesses", which was in the former Entry 49 in the Government of India Act, 1935 but the nature and content of the legislative power under both are the same."

22. The decision in the *Hingir-Rampur Coal Co., Ltd. and others u. State of Orissa and others*, (supra), embraces the points in controversy with more effectiveness though Hon''ble K.N. Wanchoo, J. as Hon''ble C.J.I., then was, disagreed with the conclusion of the majority. Nonetheless, the judgment delivered by Hon''ble P.B. Gajendragadkar, as Hon''ble Chief Justice of India, then was, on behalf of himself and Hon''ble A.K. Sarkar, Hon''ble K. Subba Rao and Hon''ble J.R. Mudholkar, J. made very significant observations in para 18 of the decided case which is quoted here :

"Thus the scheme of the Act shows that the cess is levied against the class of persons owning mines in the notified area and it is levied to enable the State Government to render specific services to the said class by developing the notified mineral area. There is an element of quid pro quo in the scheme, the cess collected is constituted into a specific fund and it has not become a part of the consolidated fund, its application is regulated by a statute and is confined to its purposes, and there is a definite co-relation between the impost and the purpose of the Act which is to render service to the notified area. These features of the Act impress upon the levy the character of a fee as distinct from a tax."

23. In paragraph 22, after quoting the decision of the Privy Council in *Governor General in Council v. Province of Madras*, the law laid down by their Lordships is as under :

"22. Therefore, in our opinion, the mere fact that the levy imposed by the impugned Act has adopted the method of determining the rate of the levy by reference to the minerals produced by the mines would not by itself made the levy a duty of excise. The method thus adopted may be relevant in considering the character of the impost but its effect must be weighed along with and in the light of the other relevant circumstances. In this connection it is always necessary to bear in mind that where an impugned statute passed by a State Legislature is relatable to an Entry in List II it is not permissible to challenge its vires only on the ground that the method adopted by it for the recovery of the impost can be and is generally adopted in levying a duty of excise. Thus considered the conclusion is inevitable that the cess levied by the impugned Act is neither a tax nor a duty of excise but is a fee."

24. Ultimately, the conclusions arrived at is as under :

"36. Our conclusion, therefore, is that the impugned Act is relatable to Entries 23 and 66 in List II of the Seventh Schedule and its validity is not impaired or affected by Entries 52 and 54 in List I read with Act LXV of 1951 and Act LIII of 1948 respectively. In view of this conclusion. It is unnecessary to consider whether the impugned Act can be justified under Entry 50 in List II, or whether it is relatable to Entry 24 in List III and as such suffers from the vice of repugnancy with the Central Act XXXII of 1947."

25. The learned counsel for the petitioners relied heavily on the decision of Hon"ble Supreme Court in the case of P. Kannadasan v. State of Tamil Nadu (supra) and submitted that the Parliament having already denuded the State Legislatures or their power to levy tax on minerals inhering in them by making declaration contained in Section 2 of the M.M.R.D. Act, the State of U. P. cannot levy cess on mineral rights. The decision of the Hon"ble Supreme Court in the aforesaid case considered the validity of Cess and Other Taxes on Minerals (Validation) Act. 1992, which was enacted by the Parliament validating the levy of cess by the State enactments which have been declared beyond the competence of the respective States by the Hon"ble Supreme Court in the case of India Cement Ltd., and Orissa Cement Limited (supra). The decision of the Hon"ble Supreme Court in the case of India Cement and Orissa Cement Ltd. had been considered by the Hon"ble Supreme Court itself in the subsequent case of Goodricks Group Ltd. v. State of W. B. (supra) and the Hon"ble Supreme Court while distinguishing the aforesaid two decisions had held that the cess is upon the land measured on the basis of the quantum of its produce and is levied upon the land under the West Bengal Enactment, Similar is the position in the present case also. Thus, the reliance by the learned counsel for the petitioners in P. Kannadasan v. State of Tamil Nadu is misplaced.

26. The provisions of Special Area Act is more or less similar to the provisions of M.P. Nagar Tatha Gram Nivesh Adhiniyam enacted by the State of M. P. That Act was passed by the M.P. Legislature in order "to make provision for planning and development and use of land to make better provision for the preparation of development plans and zoning plans with a view to ensuring that town planning schemes are made in proper manner and their execution is made effective : to constitute Town and Country Planning Authority for proper implementation of town and country development plan ; to provide for the development and administration of special areas through Special Area Development Authority ; to make provision for the compulsory acquisition of land required for the purpose of the development plans and for purposes connected with matters aforesaid". Chapter VIII of the Act, consisting of Sections 64 to 71 is entitled "Special Areas". Section 64 empowers the State Government to declare any area as a special area by issuing a notification. Section 65 provides that for every Special Area there shall be a Special Area Development Authority consisting of a Chairman and such other members as the Government may determine from time

to time. The Chairman and the members of the Development Authority are appointed by the Government. Section 68, which prescribes the functions of the Development Authority lays down by clause (v) and (vi) that the Development Authority shall make provision for the Municipal Services and Municipal Management of the Special Area. Section 69, by clauses (c) and (d) confers upon the Development Authority powers for the purpose of Municipal Administration and for the purpose of taxation".

27. The provision of aforementioned M.P. Act came for consideration before Hon"ble Supreme Court in the case of Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, , and the Hon"ble Supreme Court held that the powers of the Authority show that those powers are conferred, inter alia. for the purpose of Municipal administration. The functions of powers and duties of the Municipalities do not become an occupied field by reason of the declaration contained in Section 2 of the M.M.R.D. Act. It further held that on account of that declaration the legislative field conferred by Entry No. 23, List II may pass on to the Parliament by virtue of Entry No. 54, List I, but the competence of the State Government to enact laws for Municipal Administration will remain unaffected by that declaration. Thus, in pursuance of the powers under Entry No. 5 of List II the State Legislatures have enacted the Coal Mines Nationalisation Act, 1973.

28. We have already referred the various relevant provisions of Special Area Development Act that the powers of Municipal Administration has been conferred on the Special Area Development Authority. Thus, the Special Area Act as has been enacted by the State Legislature is relatable to Entry No. 5 of List II of the Seventh Schedule of the Constitution.

29. Coming now to the argument as to whether the provision contained in Section 35 of the Special Area Act is encroaching upon the rights of the Central Government as kept apart by the provisions contained in item 54 of Schedule I, it may be pointed out that Section 35 itself says that subject to any limitations imposed by Parliament by law relating to mineral development, the Authority may impose a cess on mineral rights at such rate as may be prescribed. The contention of Shri S.P. Singh learned counsel for the petitioners to equate "cess on mineral rights" to regulation of mines and "mineral development" as is mentioned in Entry No. 54 of List I is totally misconceived. The mineral rights can and should be regulated by the Union of India under the M.M.R.D. Act as the law stands today and if it is the case of minor mineral, then the State Government has right u/s 15 of M.M.R.D. Act to deal with the minor mineral for which the State of U. P. has already framed U.P.M.M.C. Rules. Consequently, when the cess is levied on mineral rights, which rights admittedly are enjoyed by the persons, company or firm, as the case may be through lease which it or he gets under the provisions of M.M.R.D. Act has got nothing to do when he exercises that right in the area for which Special Area Act has been enacted and so many consequences would follow because of extraction, loading, unloading, removing, carrying away

the mineral from the Special Area and that Special Area has to be developed in accordance with the provisions of Special Area Act and that development may include the area from which digging or excavating or quarrying has already taken place. These will fall within Entry No. 5 of List II and, therefore, there is nothing wrong and the State Government does not transgress its power in any manner whatsoever when it levies the cess on mineral rights by virtue of powers conferred upon it by Section 35 of the Act. It is difficult to see any conflict in the provisions contained in Section 35 and the contents of Entry No. 54 of List I.

30. Shri S.P. Singh then argued that the Rule 3 of Cess Rules further creates mischief. He proceeded to argue that expression in Rule 3 "..... impose a cess on mineral rights on such minerals and minor minerals" is in fact raising the royalty on both types of minerals, Le., minerals which can be dealt with by the Union of India under the M.M.R.D. Act and also minerals which may be dealt with by the State Government. His argument proceeded that the rate specified refers to cess of coal in item No. 1 to be Rs. 5 per ton as minimum rate and Rs. 10 per ton as maximum rate whereas item No. 2 permits cess on stone, coarse, sand at Rs. 2 per cubic metre as minimum rate and Rs 5.00 per cubic metre at maximum rate. In this connection, he drew the attention of the Court to the Schedule as incorporated in the M.M.R.D. Act as also U.P.M.M.C. Rules and proceeded to enlarge his argument that under both these Schedules, the rate of royalty is fixed on the basis of cubic metre of the minor mineral concerned. He, therefore, said that for all practical purpose, levying of cess would amount to enhancement of royalty which the petitioners have already been asked to pay and all of them have already paid in terms of agreement contained in form of lease deed executed between the parties.

31. The aforesaid argument of Shri Singh is not acceptable. It may be pointed out that there is no other method to find out the extent of mineral rights exercisable by a lessee except by reference to the measurement of the mineral which the lessee is going to excavate or transport. The provisions contained in the Cess Rule, therefore, are more or less similar to the type of tax. which was imposed by the State of West Bengal on land in the case of Goodricke Group Ltd. v. State of W. B. (supra). The method of measurement to the extent of determining the mineral rights should not be confused with that of payability of the royalty on mineral excavated by the lessee. If this distinction is borne in mind, it is clear that the State Government through the Cess Rules has only permitted scientific basis for determining the cess on mining rights of individual or corporation, which is the lessee under the U.P.M.M.C. Rules and M.M.R.D. Act. Other arguments of Shri S.P. Singh that no legislation or subordinate legislation may be passed about coal because it is a major mineral and is exclusively covered by the provisions of M.M.R.D. Act could not detain any longer for the simple reason as already held above, cess on coal should not be confused as additional royalty but the measurement thereof is the method of determining the cess on the mineral rights which is conferred on the lessee or the licensee through the lease or licence executed in his or its favour by the State or Central

Government, as the case may be.

32. Having dealt with all the aspects argued from either side, this Court has now to determine whether the cess should be termed as fee or as tax. The very word cess came to be interpreted by the Apex Court in the case of *Kunwar Ram Nath v. Municipal Board, Pilibhit* (supra). The learned counsel for the petitioners have argued that since the provisions contained in Section 35, referred to the word cess and do not use the word "tax" or "fee", this Court should reject the argument of Shri Mehta. This Court is empowered to read the aforesaid expression cess either as fee referred to in item No. 66 or tax referred to in item No. 50 of the List II. This Court should also, therefore, follow what Hon'ble Supreme Court has done in the cases referred to above and leave the amount to be calculated and charged only as cess and does not feel necessary to hold that the aforesaid cess is fee or the aforesaid cess is tax within the meaning of item No. 50 of the aforesaid list.

33. At this stage, it should be pointed out that great stress was laid on the arguments of the respondents that if two sets of cases referred to above are examined deeply, the petitioners' case has to be thrown out by the power possessed by the State Government to levy the aforesaid cess under Entry No. 5 of the Second Schedule. The provisions of Special Area Act have been gone into in detail. The activities are certainly for the development of area inasmuch as functions of the authority which have been noted above. If and when executed fully, is likely to change the entire picture of special area for development of which special area, the Act has been passed. It is not disputed that the Shakti Nagar has been chosen and notified as special area within the meaning of Special Area Act. Therefore, it is held without any hesitation that levying of cess is permissible in view of the Entry No. 5 of the State list.

34. Before parting, two other arguments of Shri S.P. Singh have to be noted, which is regarding two annexures filed with the leading case being Writ Petition No. 25826 of 1999 which are Annexures-3 and 4. These two annexures indicate that the petitioner Ramdhani Singh has obtained licence for the years 1996-97 and 1997-98 from the Zila Panchayat, Sonbhadra as envisaged by Annexure-3 and further that he has paid Rs. 855 as licence fee and Rs. 20 per truck loading per trip as fee to the Zila Panchayat, Sonbhadra. It was, therefore, argued that for the same act of carrying mineral excavated from the special area, the Special Area Authority alone should take tax or cess and not Zila Panchayat.

35. Shri R.P. Pradhan learned counsel for the Special Authority has said that there is no material to indicate as to whether the said amount was or has been charged from the petitioner by the Zila Panchayat after promulgation of the Cess Rules and in absence of any pleading to that effect, the aforesaid argument should not be accepted. Similarly, Shri Vishnu Pratap Singh, learned standing counsel has stated that Zila Panchayat has not been impleaded as opposite party and if any grievance is raised, the petitioners had to implead the said Zila Panchayat as opposite party. There is force in the objection raised on behalf of

the respondents that the aforesaid issue sought to be raised on the basis of averments in one of the paragraphs of the writ petition and swearing Annexures-3 and 4 is not permitted to be raised and there being complete absence of pleadings and relevant parties, the question need not be decided in these petitions.

36. Lastly, it was contended that suddenly recovery proceedings have started and if all of a sudden, the petitioners are asked to pay huge amount at one stroke, they shall face great hardship and inconvenience. There is force in this argument and the petitioners should be afforded to pay the arrears in instalments. After consideration of relevant factors, therefore, it is hereby directed that all the petitioners respectively will move applications before the Special Authority within two weeks from today and so calculated the entire amount shall be paid in four equal monthly instalments each on or before 29th of each months i.e. March, April, May and June, 2000. The recovery proceedings, therefore, against all the petitioners shall remain stayed till 29th June, 2000 to enable them to pay first instalment on or before, 29th March, 2000, second instalment on or before 29th April, 2000, third instalment on or before 29th May, 2000, and the last instalment on or before 29th June, 2000. These payments of instalments shall be over and above the regular payments demanded for current liability of cess on mineral rights. If the entire amount as indicated above is paid in four instalments, the Special Area Authority will recall the recovery certificates. In the event of non-payment of any of the instalments, the recovery proceedings against defaulting petitioner shall stand renewed automatically on the day of first default.

37. All the writ petitions are dismissed with the aforesaid observations. The interim orders granted in these petitions are vacated with the directions noted above. However, there shall be no order as to costs.