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of sales-tax by fixing upon the actual situation of the goods within the Province at the date of the contract, for the purposes of levying tax on sales. The Legislature has thereby not overstepped the limits of its authority : *The Tata Iron & Steel Company Ltd.* v. *The State of Bihar*(1). No argument has therefore been advanced before us to support the plea of unconstitutionality.

All the appeals fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

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February, 4

H. R. S. MURTHY

v.

COLLECTOR OF CHITTOOR AND ANOTHER

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH AND N. RAJAGOPALA AYYANGAR JJ.)

Mining Lease—Notice of demand for payment of land cess—Validity—Land cess, if recoverable as an arrear of land revenue—If a tax on mineral rights—Expression "Royalty", meaning of—If includes royalty payable under a mining lease—Madras District Boards Act (Mad. Act No. XIV of 1920), *ss.* 78 *and* 79*—Mines and Minerals (Regulation and Development) Act, (LIII of* 1948), *and Act LXVII of* 1957, *Entry* 49 *of the State List.*

Under the terms of a mining lease the lessee worked the mines and won iron ore in a tract of land in a village in Chittor district and bound himself to pay a dead rent if he used the leased land for the extraction of iron ore, to pay a royalty on iron ore if it were used for extraction of iron and in addition to pay a surface rent in respect of the surface area occupied or used. The lessee working the mines extracted ore and marketed it. After separation from Madras in 1953, the District of Chittoor became part of the Andhra State. In 1955 a demand was made for the payment of land cess under ss. 78 and 79 of the Madras District Boards Act and including in the computation of the "annual rent value", the amounts payable to Government in each year under the mining lease both as surface rent and royalty. On challenge to the validity of this notice by the lessee, the High Court quashed the notices.

(1) [1958] S.C.R. 1355.

After this decision the lessee died. On March 10, 1955, two notices were issued to the appellant demanding payment of cess for the years 1952—54 and 1955—57 respectively and threatening coercive proceedings, for their recovery in the event of non-compliance. Impugning the validity of the earlier notices of demand, the appellant filed a writ petition in the High Court and a similar petition challenging the validity of the notice of demand for the later period. Pending these petitions a further notice of demand for payment of cess for the years 1958-59 was served on the appellant in August 29, 1960 and to obtain a similar relief in respect of this notice and the proceedings for recovery thereof, the appellant filed a writ petition in this Court and contended: (1) that the expression "royalty" under s. 79(1) does not signify royalty as commonly understood but is confined to the rent payable for the beneficial use of the surface of the land; (2) assuming that royalty in the sense mentioned in point No. 1 is within ss. 78 and 79, of the Act, the provision imposing the land cess quoad royalty under the mining leases must be held to be repealed by the Central Acts of 1948 and 1957; (3) is the land cess demanded by the impugned notices dated March 10, 1958 and August 29, 1960 recoverable as an arrear of land revenue under the law? (4) s. 221 of the Act which made the provision for the recovery of sums due as taxes had, by reason of the changes effected in the rules, ceased to be applicable to the recovery of land cess under s. 78.

Held: (i) Where the land is held on lease, as in the present case, the lease amount is specifically referred to in s. 79 of the Act as one of the components for the computation of the annual rent value. It is therefore obvious that 'royalty' which follows the expression 'lease amount' is something other than the return to the lessor or licenser for the use of the land surface and represents as it normally connotes the payment made for the materials or minerals won from the land.

(ii) There is no connection between the regulation and development of mines and minerals dealt with in the Central Acts and the levy and collection of land cess under ss. 78 and 79 of the Act. There is therefore, nothing in common between the Act and the Central Acts of 1948 and 1957 so as to require any detailed examination of the enactments for discovering whether there is any overlapping.

Hingir Rampur Coal Co. v. *State of Orissa*, [1961] 2 S.C.R. 537 and *State of Orissa* v. *M. A. Tullock*, A.I.R. 1964 S.C. 1284, distinguished.

(iii) In the context of ss. 78 and 79 of the Act and the scheme of those provisions it is clear that the land cess is in truth a 'tax on lands' within the entry 49 of the State List.

Where the land is held under lease it is the lease amount that forms the basis. Where land is held under a mining lease, that which the occupier is willing to pay is accordingly treated as the "annual rent value" of the property; such rent value would, therefore, necessarily

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include not merely the surface rent but the dead rent, as well as the royalty payable by the licensee, lessee or occupier for the user of the property.

(iv) The cess under s. 78 would be "a cess lawfully imposed upon land" under s. 52 of the Madras Revenue Recovery Act and would therefore be covered by its terms. The legality of the procedure, which the respondents proposed to adopt for the recovery of the sums could not, therefore, be successfully challenged.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 316-A and 316-B of 1962.

Appeals by special leave and by certificate from judgment and order dated March 25, 1960, of the Andhra Pradesh High Court in Writ Petitions Nos. 534 and 535 of 1958.

AND

Writ Petition No. 302 of 1960.

Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

P. Ram Reddy, for the appellant (in C.A. No. 316A and 316B of 1962) and the petitioner (in petition No. 302 of 1960).

T. V. R. Tatachari and *B. R. G. K. Achar*, for the respondents (in both the appeals and the petition).

February 4, 1964. The Judgment of the Court was delivered by

Ayyangar J.

AYYANGAR J.—The two Civil Appeals and the Petition under Art. 32 of the Constitution which have been heard together raise a common point regarding the validity of notices of demand for the payment of land cess under the Madras District Boards Act (Madras Act XIV of 1920) which for shortness we shall call the Act, and the legality of the procedure for the recovery of the amount of the said cess. The impugned notices made a demand also for education cess but as this cess is merely a proportion of the land-cess, and as the validity of that demand stands or falls with that of the land-cess, it is sufficient if we refer to and consider the challenge to the demand of land-cess

alone, as that will determine the validity of the entire sum demanded.

The appellant's father obtained a mining lease from the Government of Madras dated September 15, 1953 under which he was permitted to work and win iron ore in a tract of land in a village in Chittoor district. The terms upon which the lessee was to work the mines are not very relevant but what is material is that under this instrument the lessee bound himself to pay a dead rent of Rs. 1,140/2 per year if he used the leased land for the extraction of iron ore and a higher amount if used for other purposes. Besides, he also bound himself to pay a royalty of 8 annas per ton of iron ore if the ore were used for extraction of iron and if the iron ore was used for any other purpose such as for sale in specie, at Re. 1/- per ton. In addition, the lease also stipulated for the payment of surface rent at Rs. 1-8-3 per acre per annum in respect of the surface area occupied or used. The lessee worked the mines, extracted ore and marketed it.

To raise finances for carrying on the local administration in the District Boards, several taxes are leviable. Among them section 78 of the Act imposes a land-cess on lands in the district in these terms :

> "78. The land-cess shall be levied on the annual rent value of all occupied lands on whatever tenure held and shall consist of a tax of two annas in the rupee of the annual rent value of all such lands in the district."

The "annual rent value" on the basis of which the land-cess to be levied was to be computed in the manner laid down in s. 79 and this section ran :

> "79. The annual rent value shall, for the purposes of section 78, be calculated in the following manner :
>
> (i) In the case of lands held direct from Government on ryotwari tenure or on lease or licence, the assessment, lease amount, royalty or other sum payable to Government for the lands,

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together with any water-rate which may be payable for their irrigation, shall be taken to be the annual rent value.

(ii) In the case of inam lands or lands held wholly or partially free from assessment, the full assessment which such lands would bear if they were not inam, together with any water-rate which may be payable for their irrigation, shall be taken to be the annual rent value; and such full assessment and water-rate shall be determined by the district collector under the general orders of the Board of Revenue.

(iii) In the case of lands held on any other tenure, the annual rent payable to the landholder, sub-landholder or any other intermediate landholder holding on an under-tenure created, continued or recognized by a landholder or sub-landholder, as the case may be, by his tenants, together with any water-rate which may be payable for their irrigation, shall be taken to be the annual rent value; and where such lands are occupied by the owner himself or by any person holding the same from him free of rent or at a favourable rent, the annual rent value shall be calculated according to the rates of rent usually paid by occupancy ryot for ryoti lands in the neighbourhood with similar advantages, together with any water-rate which may be payable for the irrigation of the lands so occupied.

(iv) In the case of lands, the assessment of rent of which is paid in kind, the annual rent value shall be calculated according to the rates of rent established or paid for neighbouring lands of a similar description and quality, together with any water-rate which may be payable for the irrigation of the lands first mentioned, or if such method of calculation is, in the opinion of the Board of Revenue, impracticable in any

particular case, according to any method which the Board of Revenue may approve for that case :

Provided that, where any landholder or sub-landholder has obtained under the provisions of sections 30(iii) and 33 of the Madras Estates Land Act, 1908, a decree empowering him to increase his rent in consequence of any additional payment by way of water-rate made by him to Government, the annual rent value shall be the balance remaining after deducting such increase of rent up to the amount of the water-rate from the sum ascertained as aforesaid."

When the State of Andhra was separated from Madras in October, 1953 the district of Chittoor became part of the State of Andhra. In 1955 a demand was made upon the father of the appellant for the payment of land cess calculated in accordance with the provisions of ss. 76 and 79 of the Act and including in the computation of the "annual rent value", the amounts payable to Government in each year under the mining lease both as surface rent and royalty. The validity of this notice was objected to on grounds which are no longer material and the objections being upheld, the notices were quashed on writ petitions filed to the High Court, Andhra Pradesh by the appellant's father.

After the decision by the High Court in his favour the appellant's father died. On March 10, 1958 two notices were issued to the appellant demanding the payment of the sums specified therein as being the cesses for the years 1952 to 1954 and 1955 to 1957 respectively and threatening coercive proceedings for their recovery in the event of the demand not being complied with. Impugning the validity of the notices of demand for the earlier triennuim, the appellant filed writ petition 534 of 1958 in the High Court of Andhra Pradesh and a similar petition No. 535 of 1958 challenging the validity of the notice of demand for the later period. While these petitions were pending before the High Court a further notice of demand claiming the pay-

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ment of cess for the years 1958 and 1959 was served on the appellant in August 1960 and to obtain a similar relief in respect of this notice and the proceedings for the recovery thereof, the appellant has filed writ petition 302 of 1960 in this Court. To complete the narrative it is only necessary to mention that both the writ petitions 534 and 535 of 1958 were dismissed by the High Court and when the appellant sought to obtain certificates of fitness the learned Judges granted a certificate in respect of their judgment in writ petition 535 of 1958 on the ground that the value of the claim made against the appellant was over Rs. 20,000, but refused a similar certificate in writ petition 534 of 1958 where the amount demanded was less than that figure—it was Rs. 15,000 and odd. The appellant thereupon moved this court for special leave in respect of the dismissal of his writ petition 534 of 1958 and the same having been granted all these three matters have been heard together.

The matter in controversy in the appeal is very limited and the point involved very narrow. Mr. Ram Reddy—learned counsel for the appellant raised three points in support of the appeal: (1) What is the meaning of the expression 'royalty' in s. 79(1) of the Act? Does it include the royalty payable under a mining lease on the ore won by the lessee. (2) Assuming that royalty in the sense mentioned in point No. 1 is within ss. 78 and 79, of the Act the provision imposing the land cess quoad royalty under mining leases must be held to be repealed by the Mines & Minerals (Regulation & Development) Act, 1948 (Central Act LIII of 1948) or in any event, by the Mines & Minerals (Regulation & Development) Act, 1957 (Central Act LXVII of 1957). so that after the date when these Central enactments came into force the land cess that could be levied under s. 78 must be exclusive of royalty under a mining lease. (3) Is the land cess which was demanded by the impugned notices dated March 10, 1958 and August 29, 1960 recoverable as an arrear of land revenue under the law?

We shall examine these submissions in that order. The first contention that the expression 'royalty' under s. 79(1) does not signify royalty as commonly understood but is

confined to the rent payable for the beneficial use of the surface of the land, scarcely deserves serious consideration. Where the land is held on lease, as in the present case, the lease amount is specifically referred to in s. 79 of the Act as one of the components for the computation of the annual rent value. It is therefore obvious that "royalty" which follows the expression "lease amount" is something other than the return to the lessor or licensor for the use of the land surface and represents as it normally connotes the payment made for the materials or minerals won from the land. The argument is therefore without substance and is rejected.

The second point has not, in our opinion, more merit The entirety of the argument on this head is based on two decisions of this Court in which this Court had to consider the continued operation of the Orissa mining areas (Development Fund) Act, (Act XXVII of 1952)—*The Hingir-Rampur Coal Co. Ltd. and Others* v. *The State of Orissa and Others*(1) and *State of Orissa* v. *M. A. Tullock & Co.*(2). As a matter of fact it might be mentioned that the present appellant intervened in *State of Orissa* v. *M. A. Tullock & Co.* and there was a direction by this Court that the present appeals and petition might be heard after the judgment was pronounced in the Orissa appeals. We are, however, clearly of the opinion that neither of the two decisions, the later one really following the earlier in respect of the matter now relevant, really help the appellant in these appeals. In *Hingir-Rampur Coal Co.'s* case(1) the decision rendered on writ petitions filed in this court under Art. 32 of the Constitution challenging the validity of the Orissa Mining Areas (Development Fund) Act. A cess had been levied under that enactment and it was the validity of the imposition of the cess that was the subject of debate in the petition. One of the points urged in support of the petition was that on the enactment of the Mines & Minerals (Regulation and Development) Act, 1948 (Central Act LIII of 1948) the Orissa Act stood repealed and the cess leviable under its provisions was not thereafter capable of

(1) [1961] 2 S.C.R. 537. (2) A.I.R. 1964 S.C. 1284.

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being enforced, with the result that the demand for the cess could not be sustained. This Court on a detailed comparison of the provisions of the Orissa Act and the Central Act of 1948 came to the conclusion that the Central Act covered the same field as the Orissa enactment. An examination of the scheme of the Orissa Act disclosed that it had been passed for the purpose of the development of 'mining areas' in the State and this was affected by constituting "mining areas" and making provision for the development of such areas by improving communications by the construction of roads, by providing means of transport, supply of water, electricity and other amenities for sanitation as also for the education of the labour force to attract workmen to these 'mining areas'. The cess which was there impugned was levied and collected for meeting the cost of this development of the "mining areas". An examination of the Central enactment which was also passed to provide for the conservation of minerals was held to cover the same field as the Orissa Act. The Orissa State enactment had been passed in pursuance of the legislative power conferred by Entry 23 of the State List in the 7th Schedule reading :

> "Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

The provision in List I referred to here is Entry 54 in the Union List reading :

> "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by law made by Parliament to be expedient in public interest."

It was argued on behalf of the State that the Central Act of 1948 though it contained a declaration that the Regulation and Development of mines and mineral development was expedient in the public interest, still such a declaration was not by "Parliament" as required by Entry No. 54, but by the Dominion legislature and could not on the terms of item 23 of List II affect the State power of legislation. This

argument was accepted and the State Act was, therefore, held to be competently enacted, and to remain unaffected by the Central Legislation. It was the same enactment of the Orissa legislature that came up for consideration in *State of Orissa* v. *M. A. Tullock & Co.*(1). By that date however Parliament had legislated and had enacted Central Act LXVII of 1957 which contained, if anything, more comprehensive provisions for the regulation and development of mines and minerals throughout the country. The Central Act also contained a declaration that "it was expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided." This Court held that having regard to the comprehensive provisions contained in the several sections of the Act which were examined, "the extent provided" included those which fell within the scope of the State Act of Orissa which was, as stated earlier, for the regulation and development of "mining areas" within the State. For these reasons it was held that the Orissa Act must be deemed to have been impliedly repealed and rendered ineffective by the Central Act.

It will be seen that there is no resemblance, whatever, between the provisions of the Orissa Act considered in the two decisions and the provision for the levy of the land cess under ss. 78 and 79 of the Act with which we are concerned. Sections 78 and 79 have nothing to do and are not concerned with the development of mines and minerals or their regulation. The proceeds of the land cess are, under s. 92 of the Act, to be credited to the District fund, into which, under the terms of the Finance Rules in Sch. V to the Act, the land-cess as well as several other taxes, fees and receipts are directed to be credited. This fund is to be used under Ch. VII of the Act with which s. 112 starts "for everything necessary for or conducive to the safety, health, convenience or education of the inhabitants or the amenities of the local area concerned and everything incidental to the administration" and include in particular the several matters which are mentioned in those sections. It will thus be seen that there is no connection between the regulation

(1) A.I.R. 1964 S.C. 1284.

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and development of mines and minerals dealt with in the Central Acts and the levy and collection of land-cess for which provision is made by ss. 78 and 79 of the Act. There is therefore no scope, at all, for the argument that there is anything in common between the Act and the Central Acts of 1948 and 1957 so as to require any detailed examination of these enactments for discovering whether there is any over-lapping.

It was next urged that the land-cess was really a tax on mineral rights falling within Entry 50 of the State List reading

> "Taxes on mineral rights subject to any limitation imposed by Parliament by law relating to mineral development"

and that the Central Acts under which also taxes and fees might be levied brought into play the last portion of this Entry and that as a result the power to impose this tax was not available after the Central Acts of 1948 and 1957 came into force. In this connection Mr. Ram Reddy pointed out that as the impugned land-cess was payable only in the event of the mining lessee winning the mineral and so paying the royalty and not when no minerals were extracted, it was in effect a tax on the minerals won and therefore on mineral rights. We are unable to accept this argument. When a question arises as to the precise head of legislative power under which a taxing statute has been passed, the subject for enquiry is what in truth and substance is the nature of the tax. No doubt, in a sense, but in a very remote sense, it has relationship to mining as also to the mineral won from the mine under a contract by which royalty is payable on the quantity of mineral extracted. But that, does not stamp it as a tax on either the extraction of the mineral or on the mineral right. It is unnecessary for the purpose of this case to examine the question as to what exactly is a tax on mineral rights seeing that such a tax is not leviable by Parliament but only by the State and the sole limitation on the State's power to levy the tax is that it must not interfere with a law made by Parliament as regards mineral development. Our attention was not invited to the provision of any such law enacted by Parliament. In

the context of ss. 78 and 79 and the scheme of those provisions it is clear that the land cess is in truth a "tax on lands" within Entry 49 of the State List.

Under s. 78 of the Act the cess is levied on occupied land on whatever tenure held. The basis of the levy is the "annual rent value" *i.e.*, the value of the beneficial enjoyment of the property. This being the basis of the tax and disclosing its true nature, s. 79 provides for the manner in which the "annual rent value" is determined *i.e.*, what is the amount for which the land could reasonably be let, the benefit to the lessor representing the rateable value "or the annual rent value". In the case of ryotwari lands it is the assessment which is payable to the Government that is taken as the rental value being the benefit that accrues to the Government. Where the land is held under lease it is the lease amount that forms the basis. Where land is held under a mining lease, that which the occupier is willing to pay is accordingly treated as the "annual rent value" of the property. Such a rent value would, therefore, necessarily include not merely the surface rent, but the dead rent, as well as the royalty payable by the licensee, lessee or occupier for the user of the property. The position then is that the rent which a tenant might be expected to pay for the property is, in the case of lease-hold interests, treated as the statutory "annual rent value". It is therefore not possible to accept the contention, that the fact that the lessee or licensee pays a royalty on the mineral won, which is in excess of what he would pay if his right over the land extended only to the mere use of the surface land, places it in a category different from other types where the lessee uses the surface of the land alone. In each case the rent which a lessee or licensee actually pays for the land being the test, it is manifest that the land-cess is nothing else except a land tax.

Learned counsel pointed out that in the case of inam lands and other lands dealt with in cls. (ii), (iii) and (iv) of s. 79 the royalty payable by the lessee or licensee did not figure in the computation of the annual rent value. That, however, appears to us to be wholly irrelevant, for

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what we are concerned with is whether on the terms of sub-cl. (i) the land cess is not in truth a tax on land.

The last of the points raised relates to the threat on the part of the Government to recover the impugned demands as an arrear of land revenue. Learned counsel pointed out that s. 221 of the Act which made provision for the recovery of sums due as taxes had, by reason of the changes effected in the rules, ceased to be applicable for the recovery of land cess under s. 78. The learned Judges of the High Court upheld this submission and, in our opinion, correctly, but this is of no assistance to the appellant because of s. 52 of the Madras Revenue Recovery Act which enacts:

> "52. All arrears of revenue other than land-revenue due to the State Government, all advances made by the State Government for cultivation or other purposes connected with the revenue, and all fees or other dues payable by any person to or on behalf of the village servants employed in revenue or police duties, and all cesses lawfully imposed upon land and all sums due to the State Government, including compensation for any loss or damage sustained by them in consequence of a breach of contract, may be recovered in the same manner as arrears of land-revenue under the provisions of this Act, unless the recovery thereof shall have been or may hereafter be otherwise specially provided for."

It was not disputed that the cess under s. 78 would be "a cess lawfully imposed upon land" and would therefore be covered by its terms. The legality of the procedure, which the respondents proposed to adopt for the recovery of the sums could not, therefore, be successfully challenged.

The appeals and the writ petition fail and are dismissed with costs—one hearing fee.

Appeals and petition dismissed.