

MINERAL AREA DEVELOPMENT AUTHORITY ETC. A

v.

M/S. STEEL AUTHORITY OF INDIA AND ORS.

(Civil Appeal Nos.4056-64 of 1999)

MARCH 30, 2011

[S.H. KAPADIA, CJI, K.S. RADHAKRISHNAN AND
SWATANTER KUMAR, JJ.] B

Reference to larger Bench:

Mines and minerals – Royalty – Nature of – Tax on lands and buildings and on mineral rights – Conflict between decision rendered by five judge Bench of Supreme Court and decision delivered by seven Judge Bench of Supreme Court – Questions of law framed which need consideration by the larger bench – Request for reference to the Bench of nine Judge – Matter directed to be placed on the administrative side before the Chief Justice for appropriate orders – Mines and Minerals (Regulation and Development) Act, 1950 – ss.2, 9, 15(3) – Constitution of India, 1950 – Seventh schedule, List I, Entry 54; List II, Entries 49, 50. C
D
E

State of West Bengal v. Kesoram Industries Ltd. and Ors. (2004) 10 SCC 201; India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors. (1990) 1 SCC 12; M.P.V. Sundararamier and Co. v. State of Andhra Pradesh (1958) 1 SCR 1422; Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr. (2005) 2 SCC 673 – referred to. F

Case Law Reference:

(2004) 10 SCC 201 referred to Para 5
(1990) 1 SCC 12 referred to Para 5
(1958) 1 SCR 1422 referred to Para 9

A (2005) 2 SCC 673 referred to Para 11

CIVIL APPELLATE/ORIGINAL JURISDICTION : Civil Appeal Nos. 4056-4064 of 1999.

B From the Judgment & Order 22.3.1999 of the High Court of Judicature at Patna, Ranchi Bench Ranchi, in CWJC No, 1885, 178, 2251, 2252, 1783, 2915 of 1994 (R), 3113 of 1993 & 269 & 268 of 1994 (R).

WITH

C C.A. Nos. 4710-4721, 4722-4724 of 1999, 1883 of 2006, T.P. (C) No. 722 of 2006, C.A. Nos. 4745, 4990, 4991, 4992, 4993 of 2006, TP (C) No. 951 of 2006, C.A. Nos. 5649, 5599 of 2006, 378, 665, 1180 of 2007, TP (C) Nos. 481, 906 of 2007, D C.A. Nos. 3400, 3401, 3402, 3403 of 2008, 2055, 2174 of 2009, 6498, 6137 of 2008, SLP (C) No. 26160 of 2008, C.A. Nos. 6499, 6497, 7397 of 2008, 96, 97, 98 of 2009, SLP Nos. 3849 of 2006, 763, 15900 of 2007, TP (C) Nos. 613, 626 of 2009, C.A. Nos. 4478, 4479 of 2010 & SLP (C) No. 4191 of 2011.

E Vivek K. Thanka Parag P. Tripathi, T.S. Doabia, ASG, Rakesh Dwivedi, K.K. Venugopal, Mahabir Singh, S.K. Bagaria, S.B. Upadhyay, Bhaskar, P. Gupta, Ajit Kumar Sinha, P. Sadasivan Nair, Dipankar Gupta, Nagendra Rai, R.F. F Nariman, A.K. Ganguli, Shambhu Prasad Singh, H. N. Salve, Dr. Abhishek Manu Singhvi, Ajit Kumar Sinha, Mahabir Singh, Shail Kumar Dwivedi, AAG, Aparesh Kumar Singh, Tapesh Kumar Singh, Preetika Dwivedi, Sansriti Pathak, Gopal Pathak, Ma. Pooja Dhar, Gopal Sankaranarayana, Radha G Shyam Jena, Gp. Capt. Karan Singh Bhati, Rashid, Aishwarya Bhati, Pawan Upadhyay, Rajesh R. Dubey, Anisha Upadhyay, Sharmila Upadhyay, Praveen Kumar, Bharat Sangal, Alka Singh, Akshat Shrivastava, P.P. Singh, Inderjeet Yadav, Anip H Rizvi, D.K. Pradhan, Ashok Kumar Gupta-I, T.G. Narayanan

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Nair, K.N. Madhusoodanan, Sunil Kumar Jain, Parmatma Singh, Vanita Bhargava, Ajay Bhargava, Nitin Mishra (for Khaitan & Co.) S.K. Verma, E.C. Agrawala, Ashok Kumar Singh, Sunil Dogra (for Lawyer's Knit & Co.), P.V. Yogeswaran, U.A. Rana, Devina Sehgal (for Gagrat & Co.), Ruby Singh Ahuja, Sridhar Potarju, Gaichangpou Gangmei, Guntur Prabhakar, Kunal Verma, Prashant Kumar (for AP & J Chambers), Gopal Prasad, Anupam Lal Dass, A. Bhavan Singh, Ajay Aggarwal, Kanika Gomber, Rajan Narain, Manu Nair, Kirat Singh, Tanuj Bhushan, Adit Pujari (for Suresh A. Shroff & Co.), Abhishth Kumar, Rakesh K. Sharma, Prashant Jha, Manjula Gupta, Vaibhav, Punam Kumari, Prem Sunder Jha, Lyna Pereira, Manjula Gupta, Prashant Jha, Syed Shaid Hussain Rizvi, D.K. Pradhan, Manik Karanjawala, Praveen Kumar, Sunil Kumar Jain, Aneesh Mittal Parmatma Singh, Aakansksha Munjhal, Shally Bhasin Maheshwari, E.C. Agrawala, Bharat Sangal, R.R. Kumar Vernika Tomar, Alka Singh, B. Vijayalakshmi Menon, Gaurav Kejriwal, Jatinder Kumar Bhatia, Ashutosh Kumar Sharma, Gunnam Venkateswara Rao, B.S. Banthia, Vikas Upadhyay, Rishabh Sancheti, Sunita Sharma, Rekha Pandey, Asha G, Nair, D.S. Mahra, V.K. Verma, Dharmendra Kumar Sinha, Ashwarya Sinha, Ambhoj Kumar Sinha, Satyajit A. Desai, Prashant R. Dahat, Somanath Padhan, Ashid Khan, Rajneesh Bhaskar, Jyoti Tripathi, Atul Jha, Rajesh Srivastava, Ram Naresh Gupta, Abhishek Gupta, Milind Kumar, Kanku Gupta, Gaurav Jain, Abha Jain, G.N. Reddy, V. Pattabhiram, Nandini Sen, D.P. Mukherjee, Anip Sachthey, Mohit Paul, Shagun Matta for the appearing parties.

The following Order of the Court was delivered

ORDER

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

A by the larger Bench are as follows:

1. Whether 'royalty' determined under Sections 9/15(3) of the Mines and Minerals (Regulation & Development) Act, 1957 (Act 67 of 1957, as amended) is in the nature of tax?
B
2. Can the State Legislature while levying a tax on land under Entry 49 List II of the Seventh Schedule of the Constitution adopt a measure of tax based on the value of the produce of land? If yes, then would the Constitutional position be any different insofar as the tax on land is imposed on mining land on account of Entry 50 List II and its interrelation with Entry 54 List I?
C
3. What is the meaning of the expression "Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development" within the meaning of Entry 50 of List II of the Seventh Schedule of the Constitution of India? Does the Mines and Minerals (Regulation & Development) Act, 1957 contain any provision which operates as a limitation on the field of legislation prescribed in Entry 50 of List II of the Seventh Schedule of the Constitution of India? In particular, whether Section 9 of the aforementioned Act denudes or limits the scope of Entry 50 of List II?
D
E
F
4. What is the true nature of royalty / dead rent payable on minerals produced / mined / extracted from mines?
G
5. Whether the majority decision in *State of West Bengal v. Kesoram Industries Ltd. and Ors*, (2004) 10 SCC 201, could be read as departing from the law laid down in the *seven Judge Bench* decision
H

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in *India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors.*, (1990) 1 SCC 12? A

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

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

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

9. Whether Entry 50, List II read with Entry 54, List I of the Seventh Schedule to the Constitution constitute an exception to the general scheme of Entries relating to taxation being distinct from other Entries in all the three Lists of the Seventh Schedule to the Constitution as enunciated in *M.P.V. Sundararamier & Co. v. State of Andhra Pradesh & Anr.*, (1958) 1 SCR 1422 at 1481 (bottom)? E

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

11. What is the effect of the expression "...subject to any limitation imposed by Parliament by law relating to mineral development" on the taxing power of the H

- A State Legislature in Entry 50 of List II, particularly in view of its uniqueness in the sense that it is the only entry in all the entries in three Lists (Lists I, II and III) where the taxing power of the State Legislature has been subjected to “any limitation imposed by Parliament by law relating to mineral development”.
- B

C Before concluding, we may clarify that normally the Bench of five learned Judges in case of doubt has to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger coram than the Bench whose decision has come up for consideration (see: *Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr.* – 2005 (2) SCC 673). However, in the present case, since prima facie there appears to be some conflict between the decision of this Court in *State of West Bengal v. Kesoram Industries Ltd. & Ors.* (supra) which decision has been delivered by a Bench of five-Judge of this Court and the decision delivered by seven-Judge Bench of this Court in *India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors.* (supra) reference to the Bench of nine-Judge is requested. Office is directed to place the matter on the administrative side before the Chief Justice for appropriate orders.

D

E

D.G. Matter referred to larger Bench.