SUPREME COURT OF INDIA

Threesiamma Jacob

Vs.

Geologist, Dptt. of Mining & Geology

C.A.Nos.4540-4548 of 2000

(R.M.Lodha, J.Chelameswar and Madan B.Lokur JJ.)

08.07.2013

JUDGMENT

CHELAMESWAR, J.

1. These appeals are placed before us pursuant to the Order dated 8th December, 2004 of a Division Bench of this Court which opined that the points involved in these and certain other appeals "need to be decided by a three Judge Bench."

2. These appeals arise out of a common judgment rendered in a number of writ petitions by a full Bench of the Kerala High Court dated 2nd August, 1999 by which all the writ petitions were dismissed.

3. The said full Bench of the Kerala High Court was called upon to examine the question (on a reference by another Division Bench) - whether the owners of jenmom lands in the Malabar area[1] are the proprietors of the soil and the minerals underneath the soil - and answered the said question in the negative:

> "Hence, we are of the view that so far as the lands in question are concerned, the minerals belong to the Government…" (para 31)

4. To illustrate the background in which such question arises, we may quote the facts of one of the writ petitions considered by the full Bench as narrated by the full Bench.

> "2. According to the petitioner in this case, her husband obtained jenmon assignment of 2 Acres of granite rocks situated in Dhoni Akathethara

> Amsom and Village, palakkad Taluk, Malabar. The petitioner's husband obtained the property from the previous jenmy, C.P. Thampurankutty Menon. Thereafter, the petitioner's husband executed a registered gift deed. According to the petitioner, the property was enjoyed by the earlier jenmy and thereafter by the petitioner without any interference from the Government. Due to ignorance of the legal position, the petitioner entered into a lease agreement with the Department of Mining and Geology to conduct quarrying operations in her property. Later on she realised that it was not necessary to pay any royalty to the Government with regard to the property belonging to her. In the above circumstances, she made a fresh application to the Department for licence. But the respondents failed to provide necessary permits to the petitioner. When she received a notice from the Kerala Minerals Squad directing her to stop the quarrying activities, she gave a reply to reconsider her contention. Thereafter, by Ext. P6, she was informed by the Department to renew the lease."

5. It can be seen from the above that the appellants asserted that they are holders of jenmom rights in the lands in question and the State has no legal authority to demand payment of royalties on the minerals excavated by the holder of jenmom right.

6. Such a claim of the appellants is based on the belief and assertion of the appellants (1) that the holder of the jenmom rights is not only the proprietor of the soil for which he has jenmom rights, but also the owner of the mineral wealth lying beneath the soil. (2) that the understanding of the appellants that a 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.

7. We must straightway record that the second of the above-mentioned propositions regarding the character and legal nature of royalty, (though was considered by this Court on more than one occasion) stands referred to a larger Bench by an Order of reference dated 30th March, 2011 of a three- Judge Bench in Mineral Area Development Authority & Ors. Vs. Steel Authority of India & Ors.¸(2011) 4 SCC 450, therefore, we are not required to examine and decide the question. We are only required to examine the amplitude of the rights of the jenmom land holders called jenmis in the Malabar area of the Kerala State and decide whether a jenmi is entitled to the rights of subsoil/the minerals lying beneath the surface of the land.

8. The appellants' case is that a 'jenmi'[2] holds jenmom[3] lands as absolute owner and has proprietary rights over both the soil and subsoil. The ryotwari settlement made by the British Government in the Malabar area of the erstwhile Madras Province only obligated the jenmis to pay revenue to the State but did not in any way affect their proprietary rights in the lands. Nor did the ryotwari settlement have the effect of transferring and vesting the ownership either of the land or the subsoil (minerals) to the State. In support of this submission, the appellants heavily relied on a judgment of this Court in Balmadies Plantations Ltd. and Anr. v. The State of Tamil Nadu AIR 1972 SC 2240 and also a standing order of the Board of Revenue of the erstwhile Madras Province dated 19th March 1888 and argued that earlier full Bench decision of the Kerala High Court in S. Sabhayogam v. State of Kerala, AIR 1963 Kerala 101 required a reconsideration.

9. On the other hand, the State of Kerala took the stand that subsequent to the extension of the ryotwari settlement to the Malabar area of the erstwhile Madras Province, the jenmis ceased to be the absolute owners and proprietors of the lands held by them. The ryotwari settlement had the effect of transferring the ownership of subsoil (minerals) to the Government. The ryotwari pattadars rights are only confined to the surface.

10. The High Court rejected the contentions of the petitioners. The High Court attempted to distinguish the decision of this Court in Balmadies Plantations (supra):

> "Even though there is some force in the contention of the petitioners, the above observations of the Supreme Court are not inconformity with the observations made by the Full Bench (which followed the decision of the Supreme Court in Kunhikoman's case), that does not mean that the view taken by the Full Bench is not correct, because it can be seen from paragraph 14 of the above judgment itself that the Supreme Court has observed that in the Kerala case documents were produced and on the basis of the documents, the Court took the view that the nature of rights has changed after the Ryotwari settlements."

11. We must confess that we have some difficulty to understand the exact purport of the above extract. Be that as it may. The High Court recorded two conclusions (1) that the earlier full Bench decision of the Kerala High Court in the case of S. Sabhayogam case (supra) did not require any reconsideration as contended by the petitioners; and (2) the lands in question cannot be classified any more as jenmom lands but are lands held on a ryotwari patta.

> "The State has produced certain documents to show that the lands are Ryotwari lands. Ext.R1(a) produced will show that there are only two categories of lands, Ryotwari and Inam. Thus, on a consideration of the documents produced by the State and on a consideration of the decisions cited, we are satisfied that the decision reported in S. Sabhayogam v. State of Kerala – AIR 1963 Kerala 101 – does not require reconsideration in the light of the decision of the Supreme Court in Balmadies Plantations v. State of Tamil Nadu – AIR 1972 SC 2240. Hence, we hold that the lands in question are not jenmom lands and they are Ryotwari patta lands."

12. In view of such a conclusion the High Court rejected the submission that the petitioners are entitled to the rights over the subsoil relying upon certain passages from Secretary of State v. Sri Srinivasachariar, AIR 1921 PC 1, T. Swaminathan (Dead) and Another v. State Of Madras and others, AIR 1971 Mad 483, Sashi Bhushan Misra v. Jyoti Prasad Singh Deo, AIR 1916 PC 191, Kaliki Subbarami Reddy v. Union of India, ILR 1969 AP 736 and Gangarathinam v. State of Tamil Nadu, 1990 TNLJ 374; and certain recitals (in Malayalam) made in the patta issued to one of the petitioners before it which is translated by the High Court as follows:

> "The assessment shown in the pattayam is the share due to the Government for the agricultural produce on the surface of the property. If minerals are found in the property and the minerals are worked by the pattadar with regard to those properties a separate tax is to be paid in addition to the tax shown in the pattayam."

13. The High Court though referred to the standing order of the Madras Revenue Board dated 19th March 1888, it did not record any conclusive finding on the effect of the said order.

14. Before us the same submissions which were made before the High Court were repeated by both the parties, therefore, we are not elaborating the submissions made before us.

15. Before we examine the correctness of the judgment under appeal, we deem it necessary to take note of the legal position regarding the rights over minerals as they obtain in England. Halsbury's Laws of England[4] state the legal position:

> "19. Meaning of 'land' and cognate terms. Prima facie 'land' or 'lands' includes everything on or under the surface, although this meaning has in

> some cases been held to have been restricted by the context. 'Soil' is apt to denote the surface and everything above and below it, but similarly its meaning may be restricted by the context so as to exclude the mines. 'Subsoil' includes everything from the surface to the centre of the earth…….
>
> 20……Mines, quarries and minerals in their original position are part and parcel of the land. Consequently the owner of surface land is entitled prima facie to everything beneath or within it, down to the centre of the earth. This principle applies even where title to the surface has been acquired by prescription, but it is subject to exceptions. Thus, at common law, mines of gold and silvery belong to the Crown, and by statute unworked coal which was, at the restructuring date, vested in the British Coal Corporation is vested in the Coal Authority. Any minerals removed from land under a compulsory rights order or opencast working of coal become the property of the person entitled to the rights conferred by the order. The property in petroleum existing in its natural condition in strata is vested by statute in the Crown."

16. We are required to examine whether the law of this country and more particularly with reference to Malabar area regarding the rights over the mines and minerals is the same as it obtains in England or different.

17. By the time South India came under control of the British Government, there were in vogue innumerable varieties of land tenures in various parts of South India which eventually came to be called the Madras Presidency. The history of these tenures and how they were dealt under the various laws made either by the East India Company government or the British government (hereinafter in this judgment both the above are referred to as 'British' for the sake of convenience) was examined in detail in two seminal works titled - the Land Systems of British India by Bedan Henry Powell first published in 1892 and Land Tenures in the Madras Presidency by S. Sundararaja Iyengar, published in 1916.

18. Both the above-mentioned works examined the nature and legal contours of various kinds of land tenures in vogue. While Powell's book dealt with the pan Indian situation, Iyengar's book is confined to Madras presidency alone. Both the books took note of the existence of a land tenure known as jenmom in the present State of Kerala.

19. The history of the land tenures in South India and salient features of jenmon rights or the rights of a jenmi fell for the consideration of this Court on more than

one occasion. Two Constitution Benches of this Court had occasion to examine the above questions in Karimbil Kunhikoman v. State of Kerala [AIR 1962 SC 723], and Balmadies Plantations Ltd. and Anr. v. The State of Tamil Nadu [AIR 1972 SC 2240], wherein their Lordships examined in some detail the nature of land tenures as they existed in the erstwhile Madras province generally and the Malabar area specifically.

20. In the case of Kunhikoman (supra), this Court held that there were two varieties of tenures in existence in the erstwhile province of Madras. Those tenures were known as landlord tenures and ryotwari tenures. It was held by this Court that the landlord tenures were governed by the various enactments in force from time to time whereas the ryotwari tenures were governed by the standing orders of the Board of Revenue - in other words the orders issued by the Executive Government of the Madras province[5].

21. Eventually, the landlord tenures in the erstwhile province of Madras came to be governed by the enactment known as Madras Estates Land Act, No. 1 of 1908 which admittedly did not apply to Malabar area.[6]

22. The Madras Estates Land Act, 1908, which extensively dealt with the rights and obligations of the landlords/landholders owning an estate (popularly known as Zamindars) expressly recognises the right of the landholder to reserve mining rights while admitting a ryot to the possession of the ryoti land.[7] By necessary implication it follows that the landholder had the legal right and title to the minerals/subsoil over the lands comprising his estate and he is legally entitled either to grant the mining rights to the ryot or withhold the same. This implication which we drew gets fortified by Section 3 of Estates Abolition Act which expressly declares that with effect from the 'notified date' - a defined expression under Section 1(10), the estate with all the assets including mines and minerals shall stand transferred to and vest in the State. If the minerals/subsoil did not belong to the estate holder, there was no need to make an express declaration such as the one made in Section 3(b).[8]

23. Similarly, it can also be noticed that under various enactments abolishing the various lands tenures in South India such as inams etc., express provisions were made that the mines and minerals existing in such abolished tenures shall stand transferred to the Government and vest in the Government. See, for example, Section 2-A[9] of The Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956. We must remember that Andhra area of the present State of Andhra Pradesh was part of the old Madras Province.

24. State of Andhra Pradesh v. Duvvuru Balarami Reddy & Ors.[10] was a case where the respondents before this Court secured a lease of a piece of land in an inam village (shrotriem) and sought to carry on mica mining operation and applied for permission from the State of Andhra Pradesh under the Mineral Concession Rules, 1949 made under the Mines & Minerals Regulation & Development Act, 1948. The question was whether the lessor (shrotriemdar) had rights over the subsoil/minerals and whether he could pass rights therein by a lease.[11] A Constitution Bench of this Court examined the rights of the Inamdar under the legal regime that existed in the Madras province and came to the conclusion on the basis of a decision of the Privy Council[12] that every Inamdar necessarily did not own the subsoil rights. Such right depended upon the terms of the original grant – Inam. It, therefore, follows that in a given case if the original grant of Inam specifically conveyed the subsoil rights (by the grantor), the Inamdar would become the owner of the mineral wealth also.

25. The necessary inference is that the British recognised that the State had no inherent right in law to be the owner of all mineral wealth in this country. They recognised that such rights could inhere in private parties, at least Zamindars and Inamdars or ryots claiming under them in a given case.

26. Coming to the ryotwari tenures, this Court held that they were governed by the standing orders issued from time to time by the Revenue Board. Under the ryotwari system land was given on lease by the government to the ryot under a patta. Noticing the salient features of the ryotwari system as explained in various authoritative works, this Court opined that "though a ryotwari pattadar is virtually like a proprietor and has many of the advantages of such a proprietor", such pattadar was never considered a proprietor of land but only a tenant.[13]

27. We must remember that in the case of Kunhikoman (supra), the petitioners did not claim any adjudication of their rights as holders of jenmom lands. On the other hand, the appellants asserted that they were holders of ryotwari pattas issued according to ryotwari settlement in the erstwhile State of Madras under the revenue Board Standing Order. This Court further recorded:-

> "……..it is not in dispute that the ryotwari system was introduced in the South Canara District in the earlier years of this century"

28. The question before this Court was whether the holder of such a ryotwari patta could be called the holder of an estate within the meaning of the Kerala Agrarian

Relations Act and therefore, precluded by Article 39A of the Constitution to claim the benefit of the fundamental rights under Articles 19(1)(d) and 31 of the Constitution.

29. The legal nature of the rights of a jenmi was considered in greater detail in the case of Balmadies Plantations (supra). At para 6 of the said judgment, the Constitution Bench recorded:-

> "6. ……Originally the janmis in Malabar were absolute proprietors of the land and did not pay land revenue. After Malabar was annexed by the British in the beginning of the 19th century, the janmis conceded the liability to pay land revenue……."

30. This Court took note of a decision of the Madras High Court in Secretary of State v. Ashtamurthi [(1890) ILR 13 Mad 89][14] where the Madras High Court recorded:-

> ".. At the annexation of Malabar in 1799, the Government disclaimed any desire to act as the proprietor of the soil, and directed that rent should be collected from the immediate cultivators. Trimbak Ranu v. Nana Bhavani (1875) 12 Bom HCR 144 and Secretary of State v. Vira Rayan (1886) ILR 9 Mad 175 thus limiting its claim to revenue. Further in their despatch of 17th December 1813 relating to the settlement of Malabar the Directors observed that in Malabar they had no property in the land to confer, with the exception of some forfeited estates. This may be regarded as an absolute disclaimer by the Government of the day of any proprietary right in the janmis' estate. …. ."

31. This Court in Balmadies Plantations case (supra) quoted with approval the above extracted passage from Ashtamurthi's (supra) judgment.

32. It was specifically argued on behalf of Balmadies Plantations that by virtue of a resettlement which took place in 1926, the jenmom rights were converted into ryotwari tenure. This Court on examination of the relevant standing orders reached the conclusion that the effect of the Resettlement of 1926 was to retain the jenmom estates and not to abolish the same and convert into ryotwari estates.[15]

33. But neither of the cases dealt with the question whether a jenmi is entitled either before or after the abovementioned settlement of 1926 to the subsoil rights or minerals in the land held by him. Therefore, we are required to decide the same.

34. In Balmadies Plantations case (supra) this Court took note of two facts – (1) that originally jenmis of Malabar area were absolute proprietors of the land; and (2) when Malabar area was annexed, the British expressly disclaimed the proprietorship of the soil. These conclusions were recorded on the basis of Ashtamurthi case (supra).

35. Ashtamurthi case (supra) itself relies upon an earlier decision of the Madras High Court in Secretary of State v. Vira Rayan [(1886) ILR 9 Mad 175][16] wherein the High Court found that the land in dispute appertains to the District of Malabar and recorded as follows:-

> " ……and we agree with the Judge that there is no presumption in that district and in the tracts administered as part of it, that forest lands are the property of the Crown. At the commencement of the century it was the policy of the Government to allow all lands to become private estates where that was possible. Despatch of Lord Wellesley quoted in Baskarappa v. The Collector of North Canara [I.L.R., 3 Bom., 550]. The despatch and order of the Governor-Gneral in Council on the annexation of Malabar, dated the 31st December 1799 and the 18th June 1801, have not been adduced, but their purport appears from the despatch of the 19th July 1804, quoted in Vyakunta Bapuji v. Government of Bombay [12 Bom. H.C.R. 144]. It was intimated that it never could be desirable that the Government itself should act as the proprietor of the lands and should collect the rents from the immediate cultivators of the soil. When in 1808 the Board of Revenue suggested that an augmentation of revenue might be derived from waste lands reserved, they were informed that the Government did not look to any advantage of that nature beyond the benefit of increasing the amount of the public taxes in proportion to the existing taxes of the country (Fifth Report, Appendix 30, page 902. Revenue and Judicial Selection, Volume I, p. 842). It will be seen that at that time the Government so far from abrogating the Hindu law intended to assert no proprietary right to the waste, but limited itself to its claim to revenue. At the time Malabar came under British rule, all the forests were claimed as private property (I.R.R., 3 Bom. 586). In their despatch of 17th December 1813, relating to the settlement of Malabar, the Directors observed that in Malabar they had no property in the land to confer, with the exception of some forfeited estates Revenue Selection, Volume I, p. 511). Although a different policy was subsequently pursued in other districts, and, especially in more modern times, rules have been framed for the sale of waste lands, there is nothing to show that any such change

was notified in Malabar up to a period much later than that at which there is considerable evidence to show that the respondents Nos. 1 and 2 were in possession of and recognised as proprietors of the lands they claim by Government officials…."

36. This Court in Balmadies Plantations case (supra) after taking note of the above legal position with reference to the jenmom lands of Malabar rejected the contention that as a result of the resettlement of 1926, jenmom rights stood converted into ryotwari estate.[17]

37. We have already taken note of the legal position with respect to the minerals obtaining subsoil in the lands held under landlord tenures (zamindari or inam estates), and also the law of England, we find it difficult to believe with respect to ryotwari tenures in the British India and particularly the Madras province, the government assumed the ownership of the subsoil. On the contra, there is positive evidence in the Board Standing Order No. 10 dated 19.03.1888[18] (hereinafter referred to as BSO No.10) that the State did not claim any proprietary right over the mineral wealth obtaining in lands held over a ryotwari patta or in jenmom lands in Malabar. The State/British in express terms declared by the said order dated 19.03.1888 that while "it lays no claim" at all to minerals (a) In estates held on sanads of permanent settlement (b) In enfranchised inam lands (c) In religious service tenements confirmed under the inam rules on perpetual service tenure. (d) In lands held on title – deeds, issued under the waste land rules, prior to 7th October, 1870, in which no reservation of the right of the State to minerals is made.the State/British claimed a limited right in minerals w.r.t. lands (a) occupied for agricultural purposes under RYOTWARI PATTAS",(b) JENMOM LANDS IN MALABAR"

[emphasis supplied]

38. The limited right claimed is "to a share in the produce of the minerals worked, if thought necessary by government." That right was exercised by the same order with reference to gold, diamonds and other metals and w.r.t. minerals like coal etc. it was left to the discretion of the government to be exercised from time to time. By necessary implication, it follows that the State recognised the legal right of the land holder to the subsoil metals and minerals – whatever name such right is called – proprietary or otherwise.

39. In view of BSO No. 10 referred to above, we need not unduly trouble ourselves with the metaphysical analysis whether jenmom rights still subsist in lands of

Malabar area or whether they are converted into ryotwari lands. Apart from the legal implication of BSO No.10 with respect to Malabar, this Court had already opined that British never claimed proprietary rights over the soil and jenmis were recognised to be the absolute owners of the soil. It is obvious from the BSO No.10 that the British never claimed any proprietary right in any land in the Old Madras Province whether estate land and therefore both ryotwari pattadars and jenmis must also be held to be the proprietors of the subsoil rights/minerals until they are deprived of the same by some legal process. Even if we accept the conclusion recorded in the judgment under appeal that the lands in question have been converted to be lands held on ryotwari settlement, the conclusion recorded by us above w.r.t. subsoil/mineral rights will still hold good for the reason that even in the lands held on ryotwari patta the British did not assert proprietary rights.

40. Nothing is brought to our notice which indicates that the British intended and in fact did deprive the ryotwari land holders of the right to subsoil/minerals. Subsequent to 19th March, 1888, no law to the contra is brought to our notice. Nor any law made by the Republic of India is brought to our notice. Though we notice laws to the contra w.r.t. the lands held under landlords tenures.

41. Article 294[19] of the Constitution provides for the succession by the Union of India or the corresponding State, as the case may be, of the property which vested in the British Crown immediately before the commencement of the Constitution. On the other hand, Article 297[20] makes an express declaration of vesting in the Union of India of all minerals and other things of value underlying the ocean.

> "297. All lands, minerals and other things of value underlying the ocean within the territorial waters or the continental shelf of India shall vest in the Union and be held for the purposes of the Union."
>
> [as originally enacted[21]]
>
> The contradistinction between both the articles is very clear and, in our opinion, is not without any significance. The makers of the Constitution were aware of the fact that the mineral wealth obtaining in the land mass (territory of India) is not vested in the State in all cases. They were conscious of the fact that under the law, as it existed, proprietary rights in minerals (subsoil) could vest in private parties who happen to own the land. Hence the difference in the language of the two Articles.

42. The above conclusion of ours gets fortified from the fact that under the Mineral Concession Rules, 1960 framed by the Government of India in exercise of the powers conferred in Section 3 of the Mines & Minerals Regulation & Development Act, 1957, different procedures are contemplated and different sets of rules are made dealing with the grant of mining leases in respect of the two categories of lands in which the minerals vest, either in the Government or in a person other than the Government. While Chapter 4 of the said rules deals with the lands where the minerals vest in the Government, Chapter 5 deals with the lands where the minerals vest in a person other than the Government. Correspondingly, the Minor Mineral Concession Rules made by the State of Kerala also recognises such a distinction in Chapters V and VI.

43. In those areas of the Old Madras Province to which the Estates Land Act applied, the minerals came to be vested in the State by virtue of the subsequent statutory/declarations (which are already taken note of). But with reference to those areas where the above-mentioned Act had no application, such as the Malabar area of the Old Madras Province, which is now a part of the State of Kerala, or areas where the ryotwari system was in vogue, the proprietary right to the subsoil should vest in the holder of the land popularly called pattadar as no law in the pre or post constitutional period is brought to our notice which transferred such right to the State.

44. We must also hasten to add that even with reference to those areas of Old Madras Province, whether the ryots securing pattas pursuant to the abolition of the estates under the Estates Abolition Act, 1948 etc., would be entitled to subsoil rights or not is a question pending in other matters before this Court. Whether the patta granted pursuant to the provisions of the Estate Abolition Act etc., would entitle the pattadar to subsoil/mineral rights or is confined only to surfacial rights is a matter on which we are not expressing any opinion in this case. We are only dealing with the legal rights of the pattadars holding lands under the ryotwari system of the Old Madras Province, i.e. other than the lands covered by the Estates Land Act – Inam Lands.

45. That leaves us with another aspect of the matter. We are required to examine the correctness of the conclusion recorded by the High Court on the basis of the four judgments referred to in para 12 (supra) that a ryotwari pattadar is not entitled to the subsoil (minerals) in his patta land.

46. The first decision relied upon is Secretary of State v. Sri Srinivasachariar, AIR 1921 PC 1. In our view, the reliance placed by the High Court on the

abovementioned judgment is wholly misplaced. It was a case where the holder of shrotriem inam granted some 160 years prior to the decision "by the Government that existed prior to the British Government" claimed that the shrotriemdas had unfettered rights to quarry stone in the shrotriem village without payment of any royalty. The Privy Council held that the rights of the shrotriemdas depended upon the language and terms of the original grant. We have already noticed that the said judgment was considered and relied upon by this Court in Duvvuru Balarami Reddy case (supra). What is important in the present context is that the issue in Sri Srinivasachariar (supra) is not with reference to any claim of subsoil rights in a land held under ryotwari patta. Whatever was decided in that case is wholly inapplicable to the rights of a ryotwari pattadar. Nowhere it was laid down in the said decision that irrespective of the nature of the tenure – all mineral wealth in this country vested in the Crown or the State.

47. The next case relied upon by the High Court is T. Swaminathan (Dead) and Another v. State Of Madras and others, AIR 1971 Mad 483. A passage[22] occurring in the said judgment was relied upon in support of the conclusion that a ryotwari pattadar has no right to the subsoil/minerals. It is unfortunate that the Madras High Court opined that it is a well established proposition that all minerals underground belong to the Crown and now to the State. Such a statement of law is recorded without any explanation whatsoever nor examination of any legal principle. From our discussion so far, we have already reached the conclusion that neither in England nor in this country, at least in the Old Madras Province, during the British regime, there was any such established proposition of law that all the minerals belong to the Crown. On the other hand, the available material only leads to an inevitable conclusion otherwise.

48. The next case relied upon by the Kerala High Court is Sashi Bhushan Misra v. Jyoti Prasad Singh Deo, AIR 1916 PC 191. This decision once again dealt with the rights of an inamdar particularly an inam which was not part of the Old Madras Province. Therefore, the decision is wholly irrelevant in deciding the rights of a ryotwari pattadar especially in the Old Madras Province.

49. We are only sorry to notice that the next case relied upon by the Kerala High Court according to the judgment under appeal is ILR 1969 AP 736 titled Kaliki Subbarami Reddy v. Union of India. We searched in vain to secure this judgment. Though there is a case reported by the abovementioned cause title, which was decided in 1979 i.e. AIR 1980 AP 147: 1980 (1) APLJ

117. At any rate, in the light of our earlier discussion, the observation[23] relied upon by the judgment under appeal, allegedly from the above case, should not make any difference.

50. Equally the observations[24] made in the case of V. Gangarathinam v. State of Tamil Nadu, 1990 TNLJ 374 is without any basis.

51. The other material which prompted the High Court to reach the conclusion that the subsoil/minerals vest in the State is (a) recitals of a patta which is already noted by us earlier (in para 12) which states that if minerals are found in the property covered by the patta and if the pattadar exploits those minerals, the pattadar is liable for a separate tax in addition to the tax shown in the patta and (2) certain standing orders of the Collector of Malabar which provided for collection of seigniorage fee in the event of the mining operation being carried on. We are of the clear opinion that the recitals in the patta or the Collector's standing order that the exploitation of mineral wealth in the patta land would attract additional tax, in our opinion, cannot in any way indicate the ownership of the State in the minerals. The power to tax is a necessary incident of sovereign authority (imperium) but not an incident of proprietary rights (dominium). Proprietary right is a compendium of rights consisting of various constituent, rights. If a person has only a share in the produce of some property, it can never be said that such property vests in such a person. In the instant case, the State asserted its 'right' to demand a share in the 'produce of the minerals worked' though the expression employed is right – it is in fact the Sovereign authority which is asserted. From the language of the BSO No.10 it is clear that such right to demand the share could be exercised only when the pattadar or somebody claiming through the pattadar, extracts/works the minerals – the authority of the State to collect money on the happening of an event – such a demand is more in the nature of an excise duty/a tax. The assertion of authority to collect a duty or tax is in the realm of the sovereign authority, but not a proprietary right.

52. On the other hand, it appears from the judgment under appeal that the State of Kerala itself produced the BSO No.10 referred to (supra). Unfortunately, neither the content of the said order nor the legal effect of the said order has been examined by the High Court and the High Court with reference to the said order made a cursory observation as follows: "The State has also produced the proceedings of the Board of Revenue, dated 19th March, 1888 as Ext.R1(L). By that proceedings, standing order No.10 is issued in supersession of the existing standing order. It categorises four kinds of lands. The first head is the estates held on sanads of permanent settlement, second is the enfranchised inam lands and the

third is the religious service tenements conferred under the inam rules on perpetual service tenure and the fourth is the lands held on title-deeds, issued under the waste land rules, prior to 7th October 1870, in which no reservation of the right of the State to minerals is made."

53. The only other submission which we are required to deal with before we part with this matter is the argument of the learned counsel for the State that in view of the scheme of the Mines and Minerals (Development and Regulation) Act, 1957 which prohibits under Section 4[25] the carrying on of any mining activity in this country except in accordance with the permit, licence or mining lease as the case may be, granted under the Act, the appellants cannot claim any proprietary right in the sub-soil. In our view, this argument is only stated to be rejected.

54. Mines and Minerals Act is an enactment made by the Parliament to regulate the mining activities in this country. The said Act does not in any way purport to declare the proprietary rights of the State in the mineral wealth nor does it contain any provision divesting any owner of a mine of his proprietary rights. On the other hand, various enactments made by the Parliament such as Coking Coal Mines (Nationalisation) Act, 1972 and Coal Bearing Areas (Acquisition and Development) Act, 1957 make express declarations under Section 4 and 7 respectively[26] providing for acquisition of the mines and rights in or over the land from which coal is obtainable. If the understanding of the State of Kerala that in view of the provisions of the Mines and Minerals Development (Regulation) Act, 1957, the proprietary rights in mines stand transferred and vest in the State, it would be wholly an unnecessary exercise on the part of the Parliament to make laws such as the ones mentioned above dealing with the nationalisation of mines.

55. Even with regard to the minerals which are greatly important and highly sensitive in the context of the national security and also the security of humanity like uranium - the Atomic Energy Act, 1962 only provides under Section 5[27] for prohibition or regulation of mining activity in such mineral. Under Section 10[28] of the Act, it is provided that the Government of India may provide for compulsory vesting in the Central Government of exclusive rights to work those minerals. The said Act does not in any way declare the proprietary right of the State.

56. Similarly, the Oilfields (Regulation and Development) Act, 1948 deals with the oilfields containing crude oil, petroleum etc. which are the most important minerals in the modern world. The Act does not anywhere declare the proprietary right of the State.

57. For the above-mentioned reasons, we are of the opinion that there is nothing in the law which declares that all mineral wealth sub-soil rights vest in the State, on the other hand, the ownership of sub-soil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. In the instant appeals, no such deprivation is brought to our notice and therefore we hold that the appellants are the proprietors of the minerals obtaining in their lands. We make it clear that we are not making any declaration regarding their liability to pay royalty to the State as that issue stands referred to a larger Bench.