

ALLAHABAD HIGH COURT

Sheo Varan Singh

Vs.

State, (Allahabad)

Civil Misc. Writ No. 1980 of 1978

(K.C. Agrawal and K.M. Dayal, JJ.)

10.08.1979

JUDGEMENT

H.C. Agrawal, J.

1. This writ petition is directed against an order of the Mines Tribunal, Agra, dated 24-11-1977, determining the terms and conditions of the lease under Section 107(2) of U.P. Zamindari Abolition and Land Reforms Act (Act No. I of 1951), (hereinafter referred to as 'the Act').

2. The relevant facts are these. The petitioner, Sheobaran Singh, was an intermediary and Zamindar of Villages Ghaskata and Tantpur in tehsil Kheragarh, district Agra, before the enforcement of U.P. Act I of 1951. On the publication of the notification under Section 4 of the Act, all the estates stood transferred to and vested in the State free from all encumbrances. Consequences of vesting of an estate in the State are stated in Section 6 of the Act. It provides that when the notification under Section 4 has been published in the Gazette, then,

(a) all rights, title and interest of all the intermediaries.-

(i) in every estate in such area including land, and

(ii) in all sub-soil in such estates including rights, if any, in mines and minerals, whether being worked or not, shall cease and be vested in the State of Uttar Pradesh free from all encumbrances."

3. After the enforcement of U.P. Act I of 1951, the petitioner was asked by the Collector, Agra, to stop quarrying stones in the said village. The petitioners, thereupon, filed a writ petition in the High Court. The writ petition was finally

allowed on March 18, 1955. The High Court held that the petitioner was entitled to take advantage of the provisions of Chapter VI of the Act. A direction was issued by the High Court to the State Govt. and the Collector, Agra, for considering the application of the petitioner for grant of a lease under Sections 106 to 108 of the Act. It was also held that the petitioner was entitled to continue the working of the mines in accordance with the provisions of Chapter VI of the Act.

4. In pursuance of the judgment of the High Court, the Collector, Agra sent a letter dated 8-1-1964, offering the terms and conditions of the proposed lease, to the petitioner. Along with this letter, a draft of the mining lease containing the detailed terms and conditions had also been sent. This had offered to give a lease to the petitioner for a period of fifteen years and its terms and conditions were proposed to be in accordance with U.P. Minor Minerals (Concession) Rules, 1963, (hereinafter referred to as Rules), framed under the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957) (hereinafter referred to as the Central Act).

5. The petitioner filed an objection dated 17-2-1964 to the Collector against the terms contained in the proposed lease. He also filed a writ petition in this Court challenging the validity of the terms and conditions contained in the draft lease. The writ petition was dismissed on 9-2-1965. The High Court, however, held that if the petitioner and the State Government were not able to agree mutually with the terms and conditions on which the lease had to be given to the petitioner, the terms of the lease would be settled by the Mines Tribunal to be appointed under Section 110 of the Act. As the terms could not be settled, the Collector, Agra, on 12-10-1966 filed an application under Section 107(2) of the Act for settlement of the terms.

6. The application was contested by the petitioner on various grounds, including that since the provisions of the Central Act did not apply and the Rules framed by the U.P. Government under the said Act were also not applicable, the terms and conditions could not be settled in accordance with them. The points of disagreements were as follows :

(A) Period of lease.	
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Proposal of State Government.	Objection of Opposite Party.
The lease shall be for a period of fifteen years with effect from 1-7-1952.	The lease should be perpetual and permanent.
(B) Payment of Royalty or Dead Rent.	
The rate of royalty or dead rent shall be charged in accordance with the maximum rate prescribed under First Schedule (Rule 22) of the U.P. Minor Mineral (Concession) Rules, 1963, with effect from 1-7-1952.	The question of making payment of royalty or dead rent for the past years does not arise at all. The rate of dead rent indicated in the draft lease deed is excessive and there is no guiding principle to determine the same.
(C) Commencement and Execution of the lease.,	
The lease shall be deemed to have been executed with effect from July 1, 1952.	The terms and proposed lease deed should be prospective and not retrospective.

7. On the pleadings, the following issues were framed :

1. Whether the lease is in perpetuity by operation of law ? If not, what period should be fixed for the lease ?
2. Whether the terms of the lease can be retrospective also ?
3. What area of land is, or dead rent should be the lease ?
4. Whether royalty or dead rent should be fixed ? If so at what rate ?
5. Whether the reference is not maintainable ?
8. The Mines Tribunal did not accept the argument of the petitioner that the lease had to be in perpetuity, and that it could not be for a fixed term. It held that the period of the lease had to be governed by the provisions of

Rule 12 of the Rules. The Mines Tribunal further held that as under Section 107(2) the petitioner had become statutory tenant with effect from the date of abolition of zamindari, the lease would commence from 1-7-1952 and shall end after the expiry of ten years from the date on which the Tribunal decided the case. Since the Judgment of the Tribunal was given on 24-11-1977, the lease is to expire on 23-11-1987. On the other issues, the findings were against the petitioner and it was held that the petitioner was liable to pay dead rent in respect of the entire period covered by the lease in accordance with the provisions of the Rules.

9. The first question that may now be examined is about the rights of the petitioner in respect of the land in dispute. We have already stated above that on the publication of the notification under Section 4 of the Act, the right, title and interest of all the intermediaries in all sub-soil, including rights in mines and minerals, ceased and vested in the State of U.P. Under the sweep of Section 6, all the rights of the Zamindars had extinguished, and that no zamindar had any right left to operate the mines for the purposes of extracting minerals. Section 7, however, is a saving provision laying down that the rights mentioned therein would not be affected by the vesting of estates. Clause (a) of Section 7 with which we are concerned in the present case, provides that nothing contained in this Chapter shall in any way affect the right of any person to continue to work any mines comprised in any estate hereinbefore acquired by the State. Section 7(a) of the Act can cover two categories of persons. In the first category, the persons covered may be those to whom leases had been given by the zamindars for operating the mines. The second category could be those of zamindars themselves where they themselves had been operating the mines and had not let them out. Chapter VI of the Act contains the provisions laying down the manner in accordance with which the rights saved by Section 7(a) would be exercised. The heading of this Chapter is "Mines and Minerals". Section 106 provides for working of mines to be governed by this Chapter. Section 107 states that with effect from the date of vesting, all mines comprised in the estate or estates acquired under the Act, as were in operation on the date immediately preceding the said date and were being worked directly by the intermediary shall, if so desired by him, file deemed to have been leased by the State Government to the intermediary, and such intermediary shall be entitled to retain possession of those mines as a lessee thereof. Sub-Section (2) of Section 107, which is relevant, reads as under :

"The terms and conditions of the said lease by the State Government shall be such as may be agreed upon between the State Government and the intermediary, or, in, default of agreement, as may be settled by a Mines Tribunal appointed under Section 110;

Provided that all such terms and conditions shall be in accordance with the provisions of any Central Act for the time being in force regulating the grant of new mining leases"

10. The next relevant provision is Section 110, which provides for constitution of Mines Tribunal. It says that the Tribunal shall consist of a Chairman who shall be a District Judge and a member who shall be a mining expert.

11. Sri Jagdish Swarup, counsel appearing for the petitioner, contended that the Mines Tribunal acted erroneously in laying down the terms and conditions of the lease in accordance with the provisions of the Rules. He urged that the status of the petitioner being that of a statutory lessee, the provisions of the Central Act and the Rules applicable to contractual leases could not be the basis for the terms and conditions for the purposes of Sub-Section (2) of Section 109 of the Act. He urged that the provisions of the aforesaid Act applied only to contractual leases and not to statutory leases. In the alternative, counsel contended that if this Court were to find that the Central Act and the Rules applied, the liability for the payment of dead rent could arise only in respect of the period after August 26, 1963, when the Rules had been enforced. For the period before the enforcement of the Rules, the Mines Tribunal could not settle the liability for payment of dead rent in accordance with its provisions.

12. In order to examine the argument of the petitioner's counsel, it appears necessary that the relevant provisions of the Constitution as well as those of the Central Act be examined. Under the Government of India Act, 1935, the subject of mines and minerals was covered by Entry 36 of the Federal Legislation List I and Entry 23 of the Provincial Legislation List II of the Seventh Schedule. These Entries were practically adopted in the Constitution. Entry 54 of List I - Union List of the Seventh Schedule reads as under :

"Regulation of mines and mineral 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."

Entry 23 of List II-State List reads : "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."

13. The difference between the Government of India Act and the Constitution is the removal of oil-fields from the Entries.

14. In 1948, the Central Legislature enacted the Mines and Minerals (Regulation and Development) Act, 1948. In Section 2 of that Act is to be found the declaration contemplated by Entries 35 and 83 of the Seventh Schedule of the Government of India Act, 1935. Section 3 of the Act contained definitions. Section 4 provided that no mining lease would be granted after the commencement of the Act otherwise than in accordance with the Rules made under the said Act. Section 5 empowered the Central Government to make Rules for regulating the grant of mining leases. Section 8 provided that the Central Government could by notification direct any power exercisable under that Act to be exercised by any other authority as could be specified in that direction. The Central Government framed "The Mines and Minerals (Concession) Rules, 1949", and these Rules came into force on 25th October, 1949. These Rules defined the "minor minerals". Rule 4 provided that the Rules would not apply to minor minerals, the extraction of which shall be regulated by such rules as were framed by the Provincial Government. It is the admitted case that the U.P. Government did not frame any such Rules. Further rules were framed by the Central Government in 1955 and 1956. None of these Rules, however, made any provision in respect of any minor mineral within the meaning of Clause (c) of Section 3 of 1948 Act.

15. Before we come to Mines and Minerals (Regulation and Development) Act, 1957, (Act 67 of 1957), it may be pointed out that there was nothing either in 1948 Act or in the Rules framed there under to cover the cases of minor minerals. U.P. Government since had not made any Rules with regard to minor minerals there was no law in force at the time when U.P. Act I of 1951 came into force. Much after the enforcement of U.P. Act I of 1951, the Parliament enacted Act 67 of 1957. It came into force on 1st June, 1957. Section 2 of the

aforesaid Act, as required by Entry 54 of List I, contained a declaration to the effect that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the Act. Sections 4 to 13 make different provisions for effectuating the provisions of the said Act. The relevant provisions to be noticed is Section 9. It provides that royalties would be payable in respect of mining leases. Before coming to the interpretation of the Section, it appears proper to complete the narration of further provisions of this Act which are relevant for our purposes. The next relevant provision is Section 14. It says that the provisions of Sections 4 to 13 (inclusive) shall not apply to prospecting licenses and mining leases in respect of minor minerals. As a consequence whereof, Section 9 did not apply to minor minerals. Section 15 empowers the State Government to make Rules in respect of minor minerals.

16. Sri Jagdish Swarup, counsel appearing for the petitioner contended that as Section 9, which is the only provision dealing with the levy of royalties in respect of mining leases, did not apply to statutory tenancies, the petitioner could not be made liable to pay dead rent under the provisions of the Central Act and the Rules framed there under. Section 9, in fact, does not deal with minor minerals. It only provides for the payment of royalties in respect of other minerals. It is, however, not correct to say that Section 9 does not cover the case of a statutory lease. The language of Section 9 is wide enough to cover the case of a statutory leases as well.

17. It may be noted here that the use of the words "or in any law in force at such commencement" in the non obstante clause of Section 9(1) is clearly suggestive of the fact that this Sub-Section (1) of Section 9 covers the cases of statutory leases as well. This view is supported by a decision of a Full Bench in *Khas Karanpura Collieries Ltd. v. State of Bihar*. In arriving at the decision that Section 9 covers the case of a statutory lease as well, the Full Bench relied on a decision of the Supreme Court in *Bihar Mines Ltd. v. Union of India*.² The submission of the learned counsel for the petitioner that Section 9 does not apply to statutory leases, does not commend to us. Reference had been made by the learned counsel for the petitioner to a number of decisions of the Supreme Court in support of this submission, but none of those cases has any relevance on the controversy. We may, however, refer to only one case, which was a sheet-anchor of the petitioner's counsel for the above proposition. The said case is

reported in *Chhatu Ram Horil Ram Pvt. Ltd. v. State of Bihar*,³ In this case, the Supreme Court was not called upon to consider the scope of Section 9 of the Central Act. It considered the scope of Rule 40 of the Mining Minerals (Concession) Rules, 1949, and observed in connection with the said Rules that the same did not apply to statutory leases arising by virtue of Section 10 of the Bihar Land Reforms Act. The decision of this case turned on the language of Rule 40 itself. This case is of no help to us in interpreting Section 9 of the Central Act.

18. We have already pointed out above that Section 14 of the Central Act provides that the provisions of Sections 4 to 13 shall not apply to minor minerals. Section 15 of the Central Act empowers the State Governments to make Rules for regulating the grant of prospecting licenses and mining leases in respect of minor minerals. Some of the words of Sub-Section (1) of Section 15 are important for the purpose of considering the argument of the petitioner's counsel. These words are: "regulating" and "for purposes connected therewith". The argument of the petitioner's counsel was that under Section 15(1), the State Government could not make any Rule laying down either the period for which the lease had to be granted or provide for the payment of royalty or dead rent. According to his submission, both these matters fell beyond the purview of the Section and, as such, the rules framed there under were invalid. The word "regulation" is of wide import and the dictionary meaning of the word "regulation" given in Shorter Oxford Dictionary is "the act of regulation", and the word "regulate" is given the meaning "to control, govern or direct by rule or regulation". This thus gives the power to the State Government to make Rules for the purpose of laying down the conditions necessary for regulating the grant of leases and licenses, the period and the money which would be payable by a lessee to the lessor or the terms to be mentioned in a lease. In the absence of these terms, a lease would not be complete. Section 15(1) is couched in a language which confers wide power on the State Government.

19. Another thing to be noted is that the Legislature has empowered the State Governments to make rules for all such "purposes connected therewith". Fixation of royalty for extracting minor minerals for the grant of lease undoubtedly comes within the expression "for purposes connected therewith". The expression "for purposes connected therewith" has been a subject matter of

interpretation before a Full Bench of this Court in *Dr. Shamshuddin v. Smt. Zaibunnisa* ⁴ The view taken by the Full Bench in this case established that this expression enables the rule making power to make provisions which may effectively administer the Act. For the purposes of grant of a lease of minor minerals, laying down of the period and the consideration being the necessary ingredients, the Rule cannot be said to be invalid on that ground.

20. For our purposes, the two rules material are Rule 21 and Rule 22. Rule 21 provides for the payment of royalty, whereas Rule 22 deals with dead rent. Royalty is a charge by the owner of minerals from those to whom he gives the concession to remove them, and the charge is on production. The meaning given to 'royalty' in Mozley and Whitleys Law Dictionary at page 327, 8th Edition, is "a pro rata payment to a grower or lessor on the working of the property leased, or otherwise on the profits of the grant or lease, the word is specially used in reference to mines, patents and copyrights".

21. "Dead rent", however, is a rent payable whether mines be worked or not. In Halsbury's Laws of England, Vol. 26, Third Edition, pages 430 and 435, these two terms have been considered in connection with mining leases. It has been observed that it is usual in mining leases to reserve both, a fixed annual rent (otherwise known as dead rent or minimum rent or certain rent) and royalty varying with the amount of minerals worked. The object of the fixed rent is to ensure that the lessee will work the mines. Another purpose of the fixed rent is to ensure a definite minimum income to the lessor. In respect of a mine, dead rent is payable until the expiration of the term although the mine is not worked or is exhausted during the currency of the term. Dealing with royalty, the learned Author says that "royalty is payment to the lessor proportionate to the amount of the demised mineral worked within a certain period". This would show that royalty or dead rent is a necessary concomitant of mining leases. Thus, it is not correct to say that under the power of regulation conferred by Sub-Section, (1) of Section 15, the State Legislature could not make rules laying down the amounts payable as royalty and dead rent. This discussion will help us more when we come to the challenge of the amount fixed as dead rent by the Mines Tribunal.

22. Reverting to the main submission counsel's argument was that the dead rent

could not be fixed in accordance with the provisions of the Rules. We have already noticed that under Section 107(2) of the Act, Mines Tribunal is required to determine the terms and conditions, if the same are not mutually agreed upon between the parties. Sub-Section (2) of the aforesaid Section has a Proviso. The Proviso lays down that all such terms and conditions shall be settled in accordance with the provisions of any act for the time being in force. We have seen above that there was no Central Act at the time when U.P. Act I of 1951 came into force. Admittedly, such an Act existed at the time when the terms were being settled by the Mines Tribunal.

23. The question is whether in settling those terms, the Mines Tribunal could take into account the Rules for the period before the enforcement of these Rules and after. This requires us to consider the phrase "for the time being in force". The expression "for the time being in force" is not capable of a precise meaning. As observed in *Ellison v. Thomas*⁵ these words are capable of different interpretations according to the context for example, they might be used with a context showing clearly that they were intended to point out one single period of time, and it might be according to the context that the same words applied to a succession of periods. This case was followed in *Gokul Chand De v. Gopi Nath Dey*,⁶ In our case, therefore, the context has to be seen.

24. According to the petitioner, the Mines Tribunal was required to settle the terms and conditions in accordance with the provisions of the Central Act, as if on the 1st July, 1952, there was a Central Act, but since there was no such Act, Act 67 of 1957 cannot be looked into. The submission is untenable. The terms and conditions, which were required to be determined, could not be only for the future. They had to be for the whole period for which the lease was to be granted. As the Legislature had conferred the right of a statutory tenant on a zamindar operating the mines on the date of vesting and had further created the Mines Tribunal for settling the terms, it is logical to hold that the terms to be laid down by the Tribunal would be in respect of the past as well as the future. Nobody could imagine that the Tribunal would be created the day on which the rights were abolished, and that it would determine the rights without loss of any time.

25. Moreover the words "for the time being in force" cannot, therefore, mean

the day on which U.P. Act I of 1951 came into force. The Legislature could not have intended to do so. In the context in which these words find a place, the irresistible conclusion is that the phrase "for the time being in force" should be given a meaning that fulfils the object of the provision, the purpose being that at the time of settling the terms, the Mines Tribunal would take into account the provisions of the Central Act. It is settled law that when the statutory words are capable of two meanings, preference should be given to that meaning which produces more reasonable result (See *Madhav Rao Jivaji Rao v. Union of India*),⁷ If we accede to the contention of the petitioner's counsel, the Proviso would become redundant, and it will cease to achieve its object. A construction which leads to such a result must be avoided.

26. In *State of U.P. v. Babu Ram Upadhya*,⁸ the Supreme Court said :

"The Rules made under the statute are treated for the purpose of construction, as if they were in the enabling Act, and are to be of the same effect as if contained in the Act."

27. These observations leave no room for doubt that the Rules being part of the Act, the Mines Tribunal did not act illegally in considering the Rules and in determining the amount of dead rent payable by the petitioner.

28. There is yet another way to approach the problem. Proviso to Sub-Section (2) of Section 107 of the Act lays down the requirement of determining the terms and conditions in accordance with the Control Act for the time being in force. Now it is settled rule of construction that if there is mere reference to a provision of one statute in another without incorporating it, then, reference would mean the provision of law as it be in force from time to time. Interpreting such an incorporation, the Supreme Court said in *Bajya v. Gopikabai*,⁹ Para 27 that in such a case it may, be presumed that the legislative intent was to include all the subsequent amendments also, made from time to time in the generic law on the subject adopted by general reference. For arriving at this conclusion, the Supreme Court referred to the following passage :

"A statute which refers to the law of a subject generally adopts the law on the subject as of the time the law is invoked. This will include all the

amendments and modifications of the law subsequent to the time the reference statute was enacted".

(Vide Sutherland's Statutory Construction, Third Edition, Article 5208, P. 5209).

29. The same view was taken by the Supreme Court in *Mahindra and Mahindra Ltd. v. Union of India*,¹⁰

30. It may be argued that as in our case the Central Act regulating the lease governing minor minerals had not been enacted, the law laid down in these cases would not apply. This submission would be fallacious. The question is that of the intention of the legislation. If there is mere reference to a provision of statute without incorporation then unless different intention clearly appears reference to a provision be construed as a reference to a provision as may be in force from time to time. In the instant case according to Section 107(2), the terms would be settled in accordance with the Central law as may be in force for the time being. That means that this provision covers a case of an enactment which may be passed in future. If on the principal construction, the legislation by reference would include the amendment made from time to time, there is no reason to think that it will not include the new enactments. The legislative intent clearly is to include the new enactment.

31. Normally, in a case of contractual tenancy, the terms and conditions are settled beforehand. The definition of the word "lease" given in Section 105 of the Transfer of Property Act also lays down the requirements of a lease to the above effect. A statutory tenancy of the present case, however, cannot be kept at par with the contractual tenancy. The statutory tenancy came into existence automatically without any act of the parties and under the statute. The settlement of the terms and conditions had to be followed later on. Normally, a statutory tenancy also springs from a previous contractual relationship. But the present is a case of a different type. The petitioner being a tenant could not deny his liability of dead rent for the period before the framing of the Rules or the enactment of the Central Act 67 of 1957. Hence, the Tribunal was justified in determining the dead rent for the entire period.

32. As in 1952 there was no Central Act regulating the grant of new leases, the

legislature cannot be said to have required the determination of the terms conditions of the lease in accordance with the Act as in force at that time. Hence, the Central Act must mean the Act which may be in existence at the time of settlement of the terms.

33. Petitioner's counsel urged that in the present case the Mines Tribunal had directed for the payment of maximum rate of dead rent, whereas in other case the direction was for the payment of minimum rate. Counsel contended that the fixation of maximum rate was illegal. There is no justification for the counsel to make this submission. He did not take any ground in the writ petition to challenge the fixation of maximum rate.

He ought to have taken this plea and set out the relevant materials in justification of the argument. The petitioner did not do so. It appears from the judgment that the State Counsel's suggestion made before the Mines Tribunal for the fixation of maximum rate had been accepted as it had been found by the Mines Tribunal that the present was a case for fixation of the maximum rate. It may be noted here that the Tribunal appointed under Section 110 of the Act consisted of the District Magistrate and the Director of, Geology and Mining, U.P., as Member. It was an expert Body and, as such, can be presumed to know the character and nature of the mines which were in possession of the petitioner. In a case where an order or award is made by an expert Tribunal, this Court should not interfere unless a patent error was pointed out. No such error could be suggested. The fact that the petitioner did not challenge the amount on the ground argued orally before us, strengthens our conclusion that the said point has no merit.

34. In a supplementary affidavit of Gaya Prasad filed on behalf of the Collector, Agra, detailed reasons have been given for charging maximum rate of dead rent. It has been stated in paragraph 2 that royalty could not be fixed due to failure to furnish accounts by the petitioner. In the absence of accounts, it was difficult to assess the amount of royalty. Under these circumstances, the Mines Tribunal could not charge royalty. In this connection, the allegations made further are that the minerals extracted are mainly used for face work of the building, flooring, roofing, pillars etc. It has comparatively higher market value, and, therefore, maximum amount stated in the Schedule has been charged.

35. It may further be noted that after the filing of the application, interrogatories had been served on the petitioner by the State of U.P. calling upon him to give the details of the income which had been made from extracting the minerals. The number of the relevant interrogatory was 6. The petitioner gave evasive reply to the same. The petitioner had full accounts in his possession which could show the quantity of minerals taken out. Since the petitioner did not do so, he cannot be heard making any complaint that the Tribunal erred in fixing the maximum rate of rent laid down in Rule 22. For proving his case that the minimum rent was payable, the petitioner was required to give his evidence. The evidence was exclusively in his possession, which he deliberately withheld.

36. Counsel also faintly suggested that the period of lease was short, and that the lease should have been perpetual. The submission has no substance. The determination of the period for which the lease had to be given depended on various considerations. To accede to the request of the petitioner for the grant of a perpetual lease too was not possible and, as such, was rightly repelled. In determining the period, the Tribunal did not commit any mistake requiring interference. It took into consideration the provisions of the Rule and also the facts and circumstances of the case. The determination of the period for the lease being not based on any irrelevant or extraneous consideration, the same cannot be quashed. The High Court does not sit in appeal in writ jurisdiction and cannot substitute its own judgment over that of a subordinate Tribunal in such matters. The discretion thus having been rightfully exercised and guided by relevant considerations of law, cannot be interfered with.

37. Counsel for the petitioner contended that under the orders of the Mines Tribunal, the petitioner would be required to pay huge amount towards the lease money. That may be so. But, the order of the Mines Tribunal cannot be set aside on that ground. The petitioner has been operating the mines since 1951 knowingly that he was required to pay money for the same. He having enjoyed the fruits cannot be heard complaining when he has been called upon to pay price for the same.

38. In the result, the writ petition fails and is dismissed with costs. The stay order is discharged.

Petition dismissed.

Cases Referred.

1. AIR 1971 Pat 328
2. AIR 1967 SC 887
3. AIR 1969 SC 177
4. (1979 (UP) RCC 349)
5. (1862) 31 LJ CH 867 at P. 869
6. AIR 1952 Cal 705
7. AIR 1971 SC 530 at p. 576
8. AIR 1961 SC 751
9. AIR 1978 SC 793
10. AIR 1979 SC 798