MADHYA PRADESH HIGH COURT

M.P. Lime Manufacturers' Assocn

Vs.

State (M.P)

Misc. Petn. No.3055 of 1987

(G.G. Sohani, Ag. C.J., Faizanuddin and K.M. Agrawal, J.)

05.05.1989

JUDGMENT

G.G. Sohani, Ag. C.J.

1. The order in this case will also govern the disposal of Misc. Petitions Nos. 345/88, 323/83, 4051/87, 3298/87, 3361/87, 3562/87, 3777/87, 3803/87, 3810/87, 3881/87, 3882/87, 498/88, 621/88, 694/88, 942/88, 1122/88, 1253/88, 1278/88, 1290/88, 1229/88, 1423/88, 571/88, 573/88, 1885/88, 4031/88, 4107/88, 3105/88, 198/89, 3714/87 and 171/89.

2. By these petitions under Article 226 of the Constitution of India, the petitioners have prayed that the provisions of the Madhya Pradesh Upkar Adhiniyam, 1981 (Act No. 1 of 1982) as amended by the Madhya Pradesh (Sanshodhan) Adhiniyam, 1987 (Act No. 21 of 1987) imposing cess on land held in connection with mineral rights be declared as ultra vires. The material facts giving rise to these petitions briefly are as follows :

> (i) The petitioners hold mining leases under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957, hereinafter referred to as the M.M.R.D. Act. A Mineral Area Development Cess was imposed by the State under the provisions of the Madhya Pradesh Karadhan Adhiniyam, 1982, on the land held under the mining leases. The validity of that levy was assailed in Misc. Petition No. 410 of 1983 before this Court and a Division Bench of this Court held in *Hiralal v. State of M.P., 1* that the imposition of the Mineral Area Development Cess under the provisions of the Madhya Pradesh Karadhan Adhiniyam, 1982 was unconstitutional inasmuch as the State Legislature was not competent to enact such a law.

(ii) Thereafter, the provisions of Section 59 of the Madhya Pradesh Land Reven ue Code, 1959, hereinafter referred to as the Code, were amended. Under the a mended provisions of Section 59 of the Code, the Madhya Pradesh Land Under Mining Lease, Quarry Leases Assessment Rules, 1987, were framed and notice s were sent to the holders of mining leases demanding land revenue. This dema nd was assailed by the holders of mining leases by petitioners under Article 226 of the Constitution of India and this Court by its judgment reported in *Satna Sto ne and Lime Co. Ltd. v. State, 2*quashed the demand notices holding that the Ma dhya Pradesh Land Under Mining Leases and Quarry Leases Assessment Rules, 1987, were unconstitutional and invalid.

(iii) Thereafter, the Madhya Pradesh Upkar Adhiniyam, 1981 (Act No. 1 of 198 2), hereinafter referred to as the Act, was amended by the Madhya Pradesh Upk ar (Sanshodhan) Adhiniyam, 1987 (Act No. 21 of 1987). Under the Act, as it sto od prior to its amendment by Act No. 21 of 1987, Energy Development Cess wa s levied by Part 1 of that Act, Urban Development Cess was levied by Part II of the Act, Cess on Transfer of Vacant Land and Land Used for purpose of Agricul ture was levied by Part III of the Act and Cess on storage of coal was levied by Part IV of the Act. By the Madhya Pradesh Upkar (Sanshodhan) Adhiniyam, 19 87, (Act No. 21 of 1987), the heading of Part IV of the Act was substituted by t he heading "Cess on Land held in connection with Mineral Rights." By the ame nded provisions of Section 11 of the Act, cess was levied on land held in connec tion with mineral rights at the rate prescribed. Section 12 of the Act, as amende d, provided that the proceeds of the cess on land held in connection with minera l rights might be utilised by the State Government for the general development of the mineral bearing areas. In pursuance of the provisions of the Act so amend ed, notices were issued to the petitioners demanding cess on the land held in co nnection with mineral rights. Aggrieved by that demand, the petitioners have fil ed these petitions assailing the validity of the provisions of the Madhya Pradesh Upkar (Sanshodhan) Adhiniyam, 1987, imposing cess on land held in connecti on with mineral rights.

3. When the matter came up for consideration before a Division Bench of this Court, it was stated on behalf of the State that certain provisions of the impugned Act were like ly to be amended and that the decision of this Court in *Hiralal Rameshwar Prasad v. S tate of M.P.,3* required reconsideration. The hearing was then adjourned. Thereafter th e Act was further amended by the M.P. Upkar (Sanshodhan) Adhiniyam, 1989, (Act N o. 9 of 1989) deleting the provisions of Section 12 of the Act which enabled the State t

o utilise the proceeds of cess on land held in connection with the mineral rights for the general development of the mineral bearing areas. As the correctness of the decision r endered by another Division Bench of this Court in Hiralal Rameshwar Prasad's case was questioned, a Full Bench was constituted to hear these petitions. That is how the matter has now come up before us for consideration.

4. On behalf of the petitioners, it was contended that as the cess levied under the impu gned Act was a fee relatable to Entries 23 and 66 in List II of the VII Schedule to the Constitution, it was beyond the legislative competence of the State Legislature having regard to the provisions of Entry 54 in List I of the VII Schedule to the Constitution, re ad with the provisions of the M.M.R.D. Act. It was urged that the power of the Legisla ture to legislate on any matter referable to Entry 23 in List II of the VII Schedule to th e Constitution was denuded by the declaration made by the Parliament in Section 2 of the M.M.R.D. Act. It was further contended that even if it was held that the imposition of the cess under the provisions of the Act amounted to imposition of a tax and not a f ee, the State Legislature had no power to impose tax on minerals as was sought to be d one under the provisions of the impugned Act because the field of taxation in respect o f land held in connection with mineral rights was occupied by the provisions of Sectio ns 18 and 25 of the M.M.R.D. Act, the Central Act of 1957. In reply, it was contended on behalf of the respondents that what was levied by the provisions of the impugned Act was a tax and not a fee and that such imposition by the State Legislature was perm issible in view of Entries 49 and 50 in List II of VII Schedule to the Constitution. It wa s urged that the field of taxation with regard to land held in connection with mineral ri ghts was not covered by the M.M.R.D. Act and the State Legislature was competent to enact a law in that behalf by virtue of Entries 49 and 50 in List 11 of the Seventh Sch edule to the Constitution.

5. In view of the contentions advanced on behalf of the parties, the first question that a rises for consideration is whether the levy imposed by the impugned Act amounts to a fee or a tax. It is conceded on behalf of the respondents that if the levy imposed by the impugned Act amounts to a fee, then the State Legislature is not competent to impose such levy in view of the decision of the SC in *(State of Orissa v. M.A. Tulloch and Co.),4* In that case, it was observed, relying upon the decision in *(The Hingir Rampur Coa l Co. Ltd. v. State of Orissa), 5* that as there was express provision in Section 13 of the M.M.R.D. Act to levy a fee in respect of mining leases, the power of the State Legisla ture to legislate in that behalf was taken away. In view of that decision, it is first neces sary to ascertain the nature of levy imposed by the Act.

6. The charging section of the Act is Section 11. The material provisions of Section 11 are as follows :

> "Section 11 -
> (i). There shall be levied and collected a cess on land had in connection with m ineral rights at such rate as may be notified by the State Govt. per ton of major mineral raised there from subject to the maximum of Rs. 10.00 per ton of major mineral raised and the rate of cess prevailing in respect of coal during the perio d commencing from the date of commencement of the principal Act and ending on the date of commencement of the M.P. Upkar (Sanshodhan) Adhiniyam 1987 , shall be deemed to be the rate of cess notified under this sub-section in respect of coal.
> Provided that subject to the limitation mentioned above, the State Govt. may, by notification, increase or reduce the rate of cess at an interval of not less than on e year where the rate is increased, it shall not be in excess of 50% of the rate for the time being in force.
> Provided further that every notification under the above proviso shall be laid on the table of the Legislative Assembly and the provisions of Section 24-A of the M.P. General Clauses Act 1957, (Act No. 3 of 1958) shall apply thereto as they apply to a Rule."

It has to be noted that Section 12 of the Act which provided that proceeds of the cess o n land held in connection with the mineral rights, may be utilized by the State Govt. fo r the general development of the mineral bearing areas, has been omitted by Section 2 of the Act No. 9 of 1989 which reads as under :

> "Sec. 12 of the Madhya Pradesh Upkar Adhiniyam 1981 (No. 1 of 1982) shall b e omitted and shall be deemed to have been omitted with effect from 1st day of October 1982."

It is thus clear that alter the aforesaid amendment, there is no provision in the Act layi ng down any manner of utilization of the proceeds of the cess recovered under the Act. The Act now contains no provision to indicate that the cess in question is levied in co nsideration of any service to be rendered for the development of mineral bearing areas or for those from whom the cess is to be recovered. Can it then he held that the levy of the cess in question amounts to imposition of a fee?

7. In *(The State of Maharashtra v. The Salvation Army Western India Territory), 6* the SC has held that two elements are essential in order that a payment may be regarded a s a fee. In the first place, it must be levied in consideration of certain services which th e individuals accept either willingly or unwillingly, and in the second place, the amoun t collected must be earmarked to make the expenses of rendering these services and m ust not go to the general revenue of the State to be spent for general purposes. In *(Kew al Krishan v. State of Punjab), 7* a Constitution Bench of the SC has laid down that for satisfying the test for a valid levy of fees, it must be shown that the amount of fee real ized, is earmarked for rendering services and that though the element of quid pro quo need not be established with arithmetical exactitude, yet broadly and reasonably it mu st be established that at least a good and substantial portion of the amount collected on account of fees is spent for rend eringservices to those on whom falls the burden of th e fee. Judged by these tests, it cannot be held that the levy of the cess in the instant ca se amounts to imposition of a fee.
8. The learned counsel for the petitioners, however, contended that the tests for determ ining whether any levy amounts to a fee or a tax, have undergone a sea change. Relian ce was placed on the decisions of the SC in *(Southern Pharmaceuticals and Chemical s Trichur v. State of Kerala),8 (Muncipal Corporation of Delhi v. Mohd. Yasin), 9 (Th e City Corporation of Calicut v. Thachambalath Sadasivan), 10* It is true that the tradit ional concept in a fee of quid pro quo is undergoing a transformation, as held in *(The City Corporation of Calicut v. Thachambalath Sadasivan), (supra),* but even in the afo resaid decisions of the Supreme Court, it has been held that the fee must have some re lation to the services rendered and that though such relation need not be direct, a mere casual relation may be enough. From a perusal of the provisions of the Act, we do not, however, find even any casual relation whatsoever between the amount of cess to be re covered and any services to be rendered for that purpose.

9. It was then contended on behalf of the petitioners that in the return filed on behalf o f the respondents, it was stated that the proceeds of cess levied under the Act would be utilized by the State Govt. for the general development of the mineral bearing areas. It is, however, significant to note that what has been averred in the return is that the cess under the Act. has been imposed for carrying out welfare activities in the mineral bear ing areas as well as in other areas within the district or the State. This averment, in the return cannot, in our opinion, transform the levy of cess to be recovered under the Act into a fee. The Act which imposes levy should indicate that it has some relation to the services to be rendered so as to impress it with the character of a fee. Under the circu mstances, the contention that the levy imposed by the impugned Act is a fee, cannot b

e upheld. In our opinion, what has been imposed by the Act is a tax.

10. The next question for consideration is whether the State Legislature is competent t o levy the tax in question. Learned counsel for the respondent State contended that the State Legislature has the power to impose the tax in question under Entry 49 or 50 of t he State List. On behalf of the petitioners, however, our attention was invited to Entry 54 of the Union List which is as under :

> "54. Regulation of mines and mineral development to the extent to which such r egulation and development under the control of the Union is declared by Parlia ment by law to be expedient in the public interest."

It was contended on behalf of the petitioners that once a declaration had been made by Parliament in Section 2 of the M.M.R.D. Act that the regulation of mines and mineral development under the control, of the Union was expedient in the public interest, the entire legislative field relating to mines and minerals was occupied and the State lost it s legislative power in respect of that occupied field. This contention overlooks the sign ificance of the words 'to the extent to which' occurring in Entry 54 in List I. In this con nection, we may usefully refer to the following observations of the SC in *(Western Co alfields Ltd. v. Special Area Development Authority Korba), 11*

> "That the declaration in Section 2 of the Mines and Minerals (Regulation and D evelopment) Act 1957 does not result in invalidation of every State Legislation r elating to mines and minerals is demonstrated effectively by the decision in *Stat e of Haryana v. Chanan Mal, 12* The Haryana State Legislature passed the Hary ana Minerals (Vesting of Rights) Act 1973, under which two notifications were i ssued for acquisition of right to saltpetre, a minor mineral, and for auctioning ce rtain saltpetre bearing areas. It was held by this Court that the Haryana Act was not in any way repugnant to the provisions of the Act of 1957 made by Parliame nt and that the ownership rights could be validly acquired by the State Governm ent under the State Act.
> The decision of a Constitution Bench of this Court in *Ishwari Khetan Sugar Mil ls (P) Ltd. v. State of U.P., 13* is even more to the point. In that case, 12 sugar un dertakings stood transferred to and were vested in a Government undertaking un der the U.P. Sugar Undertaking (Acquisition) Ordinance 1971, which later beca me an Act. It was contended on behalf of the sugar undertakings that since suga r is a declared industry under the Industries (Development and Regulation) Act

> 1951, Parliament alone was competent to pass a law on the subject and the State Legislature had no competence to pass the impugned Act by reason of Entry 52 , List I, read with Entry 24, List II. The majority speaking through one of us, De sai, J. held that the legislative power of the State under Entry 24, List II was ero ded only to the extent to which control was assumed by the Union Government pursuant to the declaration made by the Parliament in respect of a declared indu stry and that the field occupied by such enactment was the measure of the erosi on of the legislative competence of the State legislature."

11. In view of the aforesaid decision of the Supreme Court, the field occupied by the M.M.R.D. Act would be the measure of erosion of the legislative competence of the St ate. Our attention was then invited to the provisions of Section 18(1) of the M.M.R.D. Act and it was urged that section 18(1) of the M.M.R.D. Act was wider in scope and a mplitude than Section 6 of the Mines and Minerals (Regulation and Development) Act 1948, that clause (i) of sub-
section (2) of Section 6 of the Act of 1948, contained a provision for levy of taxes in re spect of minerals and, therefore, the wider power conferred by Section 18(1) of the M. M.R. D. Act must be held to include power to levy taxes in respect of minerals. It is tr ue, as held in *(D.K. Trivedi and Sons v. State of Gujarat), 14* that where a statute confe rs particular powers without prejudice to the generality of a general power already con ferred, the particular powers are only illustrative of the general power. But the omissio n in Section 18(2) of the M.M.R.D. Act of the power to levy taxes on minerals similar to that conferred by Section 6(2) of 1948 Act, is significant. That is why the SC observ ed in *(H.R.S. Murthy v. Collector of Chittoor), 15* that a tax on mineral rights was not l eviable by Parliament, but only by the State, that the sole limitation on the State's pow er to levy that tax was that it must not interfere with a law made by Parliament as rega rds mineral development and that the attention of the SC was not invited to the provisi ons of any such law enacted by Parliament. The learned counsel for the petitioners con tended that Section 18(1) of the M.M.R.D. Act was such law. The contention cannot b e upheld. Section 18(1) of the M.M.R.D. Act, as amended by Act No.87 of 1986, read s as under :

> "18. Mineral Development -
> (1). It shall be the duty of the Central Government to take all such steps as may be necessary (for the conservation and systematic development of minerals in In dia and for the protection of environment by preventing or controlling any polluti on which may be caused by prospecting or mining operations) and (for such purp

> oses) the Central Government may, by notification in the Official Gazette (make such rules) as it thinks fit."

S.18(2) of the Act then empowers the Central Government to frame rules on matters specified in that provision without prejudice to the generality of the powers conferred by Section 18(1) of the Act to frame rules in that behalf. But a tax cannot be imposed by a rule unless the statute specifically authorises the imposition. In this connection, we may usefully refer to the following observations of the SC in *(Bimal Chandra Banerjee v. State of M.P.)16*

> "No tax can be imposed by any bye-law or rule or regulation unless the statute under which the subordinate legislation is made specially authorizes the imposition even if it is assumed that the power to tax can be delegated to the executive. The basis of the statutory power conferred by the statute cannot be transgressed by the rule-making authority. A rule-making authority has no plenary power. It has to act within the limits of the power granted to it."

12. It was then contended on behalf of the petitioners that Section 25 of the Act provided that any tax due under the Act or the rules made there under, would be recovered in the same manner as an arrears of land revenue and, therefore, the M.M.R.D. Act must be held to contain provision for levy of a tax on minerals. The contention cannot be upheld. As observed by the Orissa High Court in *(Laxmi Narayan v. State of Orissa), 17* and the Andhra Pradesh High Court in *(M.K. Rama Murthy and 5 others v. Govt. of A.P.), 18* of the M.M.R.D. Act is a provision enabling recovery and cannot be held to be a substantive provision imposing tax. Having given our anxious consideration to the matter, we have come to the conclusion that the power of the State Legislature to legislate with respect to matters covered by Entries 49 and 50 of List II in the Seventh Schedule to the Constitution, has not been taken away by the provision of the M.M.R.D. Act.

13. The next question for consideration is whether the State Legislature was competent to levy the tax imposed by the impugned Act. On behalf of the respondents, it was contended that the impugned Act was relatable to Entry 49 or 50 of List II in the Seventh Schedule. These entries are as follows :

> "49. Taxes on lands and buildings.

50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development."

As held by the SC in (Asstt. Commissioner of *Urban Land Tax Maras v. Buckingham and Carnatic Co. Ltd.), 19* the legislative entries must be given a large and liberal inte rpretation, the reason being that the allocation of the subjects to the lists is not by way of scientific or logical definition, but by way of a mere simple enumeration of broad ca tegories. To ascertain whether the subject-
matter of the tax levied by the Act is covered by Entry 49, let us turn to the charging s ection which is Section 11 of the Act. That section lays down that there shall be levied and collected a cess on land held in connection with mineral rights at such rate as ma y be notified by the State Govt. per ton of major mineral raised there from. It is signifi cant to note that cess is not imposed on all land and that it is not dependent either on t he extent of the land held in connection with mineral rights or on the value thereof. Th e subject-
matter of tax, therefore, is major mineral raised from the land held in connection with mineral right. If no minerals are raised, tax is not livable. The tax is not dependant on t he extent of the land held in connection with mineral rights. It is not a case where all l and is liable to payment of cess, that the liability is assessed on the basis of the value o f the land and that the measure of the tax in so far as land held under a mining lease is concerned, is the value of the minerals produced. Under the impugned Act, value of th e land or of the minerals produced does not play any part in the levy of cess. The quan tity of major minerals raised from the land determines the liability to pay tax. In these circumstances, the impugned levy cannot be held to be a tax on land which is covered by Entry 49 of the State List. On behalf of the respondents reliance was placed on *(Ajo y Kumar Mukherjee v. Local Board of Barpeta), 20* and it was contended that the fact t hat the tax depends upon a particular use of the land would still render the tax, a tax on land. The decision in *(Ajoy Kumar Mukherjee v. Local Board of Barpeta), 21* is howe ver, distinguishable on facts. The following observations in that decision are pertinent (at p. 1563 of AIR) :

"The scheme of Section 62, therefore, shows that whenever any land is used for the purpose of holding a market, the owner, occupier or farmer of that land has t o pay a certain tax for its use as such. But there is no tax on any transaction that may take place within the market. Further, the amount of tax depends upon the area of the land on which market is held and the importance of the market subje ct to a maximum fixed by the State Govt. We have, therefore, no hesitation in co

ming to the conclusion on a consideration of the scheme of Section 62 of the Ac t that the tax provided therein is a tax on land, though its incidence depends upo n the use of the land as a market. Further, as we have already indicated, Section 62(2) which uses the words 'impose an annual tax thereon' clearly shows that th e word 'thereon' refers to any land for which a licence is issued for use as a mar ket and not to the word 'market'. Thus the tax in the present case, being on land, would clearly be within the competence of the State Legislature."

From the aforesaid observations, it is clear that whereas in *(Ajoy Kumar Mukherjee v. Local Board of Barpeta) (supra),* the subject-
matter of tax was land, in the instant case, it is major minerals raised from the land.
14. Learned counsel for the respondents referred to the decision of the SC in *(Union of India v. Bombay Tyre International Ltd.), 22* and contended that the measure of tax ad opted could not be identified with the nature of the tax. Our attention was invited to th e following observations of the SC in that case (at p. 429 of AIR) :

"It has long been recognized that the measure employed for assessing a ta x must not be confused with the nature of the tax. In *Ralla Ram v. Provin ce of East Punjab, 23* the Federal Court held that a tax on building under Section 3 of the Punjab Urban Immovable Property Tax Act 1940 measur ed by a percentage of the annual value of such buildings remained tax on buildings under that Act even though the measure of annual value of a bu ilding was also adopted as a standard for determining income from proper ty under the Income-
tax Act. It was pointed out that although the same standard was adopted a s a measure for the two levies, the levies remained separate and distinct i mposts by virtue of their nature. In other words, the measure adopted coul d not be identified with the nature of tax. The distinction was observed by a Special Bench of the Patna High Court in *Atmaram Budhia v. State of Bihar, 24* where a tax on passengers and goods was assessed as a rate on t he fares and freights payable by the owners of the motor vehicles. Atmara n Budhia (supra) was referred to with approval by this Court in *Sainik Mo tors Jodhpur v. State of Rajasthan, 25* This Court, in that case, repelled th e contention that the levy was tax upon income and not upon passengers a nd goods. It pointed out that "though the measure of the tax is furnished b y the fares and freights, it does not cease to be a tax on passengers and go ods"

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Now, as observed in *(The Hingir Rampur Coal. Co. Ltd. v. The State of Orissa) (supra),* it is well settled that though the method by which an impost is levied, may be relevant in determining its Character, its significance and effect cannot be exaggerated. The character of impost in the instant case is that though in form it appears to be a tax on land, in substance, it is a tax on minerals, produced there from. The subject-matter of tax is, therefore, not covered by Entry 49 of the State List.

15. The next question for consideration is whether the impugned tax is a tax on mineral rights a subject covered by Entry 50 of List II of the Seventh Schedule. This raises a question as to what meaning should be attached to the expression 'tax on mineral right'. The meaning of 'mineral rights' as set out in Black's Law Dictionary, 4th Edition, at page 1146 is 'an interest in minerals in land; a right to take minerals or a right to receive a royalty.' In *(The Hingir Rampur Coal Co. Ltd, v. The State of Orissa) (supra)* the majority judgment did not deal with the question as to what was meant by the expression 'tax on mineral rights 'in view of the fact that it was held in the majority judgment that the impost in that case was fees relatable to Entry 23 in List II. Wanchoo J., in his minority judgment, has dealt with the question as to the scope of Entry 50, a matter not dealt with by the majority judgment, as follows (at p. 479 of AIR) :

> "The next contention on behalf of the State of Orissa is that if the cess is not justified as a fee, it is tax under Item 50 of List II of the Seventh Schedule. Item 50 provides for taxes on mineral rights subject to any limitation imposed by Parliament by law relating to mineral development. This raises a question as to what are taxes on mineral rights. Obviously, taxes on mineral rights must be different from taxes on goods produced in the nature of duties of excise. If taxes on mineral rights also include taxes on mineral produce, there would be no difference between taxes on mineral rights and duties of excise under Item 84 of List. I. A comparison of Lists I and II of the Seventh Schedule shows that the same tax is not put in both the Lists. Therefore, taxes on mineral rights must be different from duties of excise, which taxes on minerals produced. The difference can be understood if one sees that before minerals are extracted and become liable to duties of excise, somebody has got to work the mines. The usual method of working them is for the owner of the mine to grant mining leases to those who have got the capital to work the mines. There should, therefore, be no difficulty in holding that taxes on mineral rights are taxes on the right to extract minerals and not taxes on the minerals actually extracted. Thus, tax on mineral rights would be confin

> ed, for example, to taxes on leases of mineral rights and on premium or royalty f
> or that. Taxes on such premium and royalty would be taxes on mineral rights, w
> hile taxes on the minerals actually extracted, would be duties of excise. It is said
> that there may be cases where the owner himself extracts minerals and does not
> give any right of extraction to somebody else and that in such cases, in the abse
> nce of mining leases or subleases, there would be no way of levying tax on min
> eral rights. It is enough to say that these cases also, rare though they are, present
> no difficulty. Take the case of taxes on annual value of buildings. Where there i
> s a lease of the buildings, the annual value is determined by the lease money; bu
> t there are many cases where owners themselves live in buildings. In such cases
> also, taxes on buildings are levied on the annual value worked out according to
> certain rules. There would be no difficulty where an owner himself works the m
> ine to value the mineral rights on the same principles on which leases of minera
> l rights are made and then to tax the royalty which for example, the owner might
> have got if instead of working the mine himself, he had leased it out to somebo
> dy else. There can be no doubt therefore, that taxes on mineral rights are taxes o
> f this nature and not taxes on minerals actually produced."

Now from a perusal of Section 11 of the Act, it would be clear that in the instant case
by the charging section, tax is not imposed on the mineral rights of every holder of mi
ning lease. The tax is levied on minerals produced in land held under mining lease. In
these circumstances, the tax levied by the Act cannot be held to be a tax covered by E
ntry 50 of List II of the Seventh Schedule to the Constitution. In our opinion, therefore
, it has not been shown that the State Legislature is competent to levy the impugned ce
ss.

16. For all these reasons, these petitions are allowed. The provisions of Section 11 of t
he M.P. Upkar Adhiniyam 1981 (Act No.1 of 1982) as amended by the M.P. Upkar (S
anshodhan) Adhiniyam 1987 (Act 21 of 1987) imposing cess on land held in connectio
n with mineral rights, are declared as ultra vires. The respondents are restrained from r
ecovering any cess from the petitioners in pursuance of the aforesaid provisions. In the
circumstances of the case, parties shall bear their own costs of these petitions. Securit
y amount, if any, be refunded to the petitioners.

Petitions allowed.

Cases Referred.

1. 1986 MPLJ 514
2. AIR 1988 Mad Pra 286
3. 1986 MPLJ 514
4. AIR 1964 SC 1284
5. AIR 1961 SC 459
6. AIR 1975 SC 846
7. AIR 1980 SC 1008
8. AIR 1981 SC 1863
9. AIR 1983 SC 617
10. AIR 1985 SC 756
11. AIR 1982 SC 697
12. (1976) 3 SCR 688
13. (1980) 3 SCR 331
14. AIR 1986 SC 1323
15. AIR 1965 SC 177
16. AIR 1971 SC 517 (at p. 520)
17. AIR 1983 Orissa 210 (FB)
18. (1985) 1 APLJ (HC) 84, S. 25
19. AIR 1970 SC 169
20. AIR 1965 SC 1561
21. AIR 1965 SC 1561
22. AIR 1984 SC 420
23. 1948 FCR 207
24. AIR 1952 Patna 359
25. (1962) 1 SCR 517