

RAJASTHAN HIGH COURT

Mohd. Bux

Vs.

State

Civil Writ Petn. No. 441 of 1981

(J.R. Chopra, A.K. Mathur and Milap Chandra Jain, JJ.)

22.02.1993

JUDGEMENT

Mathur, J.

1. This matter has been referred to this Full Bench by Hon'ble the Chief Justice on account of the reference made by the learned single Judge by his order dated 2-2-1982, whereby the learned single Judge has referred the following four questions for consideration of the Full Bench, which read as under :-

"1. Whether under the Rules of 1977 in the lease of brick-earth, establishment of brick-kiln is also implied and if so whether subject matter of allotment of sites for establishment of brick-kilns is covered by the Rules of 1977 ?"

"2. Whether the Rajasthan Colonization Project Areas Brick Kiln (Lease) Conditions, 1966 only deal with the allotment of sites for the establishment of brick-kiln, a subject covered by Entry 18 of the List I of Schedule VII of the Constitution and as such are valid ?"

3. Whether the Rajasthan Colonization Project Areas Brick Kiln (lease) Conditions, 1966 are beyond the authority of the State Government and as such are *ultra vires* of its powers ?"

4. Whether the view of this Court in *Shiv-chand Goyal v. State of Rajasthan*¹ that in the lease of brick earth granted under the Rajasthan Minor Mineral Concession Rules, 1977 framed under Section 15 of the Minor and Minerals (Regulation and Development) Act, 1957 the establishment of brick-kiln is implied is not good law, and if so whether establishment of brick-kiln is a subject not covered by Entry No. 54 of the List I (Union List) of Schedule VII of the Constitution and is covered by Entry 18 of List II of Schedule VII of the

Constitution and as such the conditions of 1966 are valid ?"

2. Before we answer these questions, it will be necessary to refer the law on the subject as well as the brief facts giving rise to this controversy.

3. The petitioners Mohd. Bux and Ahmed Bux filed a writ petition praying that Rule 4(3) of the Rajasthan Minor Mineral Concession Rules, 1977 may be declared unconstitutional and void and be struck down and the Mining Engineer, Bikaner may be directed to proceed with the petitioner's application for grant of the mining lease without a 'No Objection Certificate' from the Colonization Commissioner and he may be directed to ignore Rule 4(3) of the Minor Mineral Concession Rules, 1977.

4. The petitioners and their father are manufacturers of bricks in Bikaner. The petitioners' father had a mining lease under the Rajasthan Minor Mineral Concession Rules, 1959 for excavating the brick-earth or manufacturing the bricks for the period from 7-2-1973 to 6-2-1978. Before the expiry of this lease, the State Government framed the Rajasthan Minor Mineral Concession Rules, 1977 (referred to hereinafter as 'the Rules of 1977') in exercise of the powers conferred on the State Government by Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957. These Rules superseded the Rajasthan Minor Mineral Concession Rules, 1959, Rule 4(3) of the Rules of 1977 provides that no lease shall be granted or renewed in any area which is a colony within the meaning of the Rajasthan Colonization Act, 1954 (hereinafter referred to as 'the Act of 1954') unless the applicant produces a 'No Objection Certificate' from the Colonization Commissioner under the said Act. Prior to the framing of the Rules of 1977, the State Government in exercise of the powers conferred by Section 28 read with Sub-Secs. (1) and (2) of the Act of 1954 prescribed conditions named as the Rajasthan Colonization Project Areas Brick Kiln (Leases) Conditions 1966 (hereinafter called as 'the Conditions of 1966'). Under the Conditions of 1966 the brick kilns can be established on a lease granted by the Collector by a public auction. Condition 4 provides for reservation of lands for this purpose. Conditions 6, 7, 8 and 9 provide the procedure for the auction and grant of the lease. Condition 12 provides that immediately on the grant of a lease by the Collector under Condition 10 the Collector shall inform the Mining Department and on receipt of such information from the Collector, the Mining Department shall issue a mining lease for the brick earth under the Minor Mineral Concession Rules valid for a period of lease granted by the Collector.

According to these Conditions of 1966 the Deputy Commissioner Colonization who was conferred with the power of the Collector by the State Government under the Act of 1954 issued a notice dated 29-4-1980 for auctioning certain brick kilns and the petitioners being the highest bidders the auction was knocked down in their favor. The petitioners were asked to deposit 1/4th of the bid amount immediately which the petitioners did on 14-7-1980. The remaining amount was asked to be deposited by the Deputy Commissioner Colonization on 2-8-1980. But the Deputy Commissioner Colonization did not intimate the Mining Department for grant of lease despite that he accepted full payment of the auction bid from the petitioner. It is sub-mitted that the petitioners approached the Deputy Commissioner to intimate the Mining Department to grant lease in favor of the petitioners but they were informed that the Commissioner Colonization has directed to re-auction the plots as per the Conditions. Therefore, the Deputy Commissioner Colonization by the order dated 13-1-1981 finally refused to send intimation to the Mining Department for granting the lease. The Deputy Commissioner Colonization issued another notice for holding fresh auction. Therefore, under these circumstances, the petitioners have approached this Court by filing the present writ petition challenging the validity of Rule 4(3) of the Rules of 1977.

5. In this context, when the matter was argued before the learned single Judge, the learned single Judge felt that in view of the amendment in the definition of land as defined under Section 2(v) read with Section 7(1) of the Act of 1954, the matter requires reconsideration. He also felt that the Rules of 1977 do not include permission to establish brick kilns for manufacture of bricks.

6. In order to answer the controversy involved in this case, it will be necessary/relevant to refer to the legal position regard-ing the minerals. Entry 54 of List I of Seventh Schedule deals with the regulation of minerals development, which reads as under :-

"54. Regulation of minerals 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."

7. As per this entry it is the Parliament which has to regulate the development of the minerals and the Parliament has to declare the law for regulation and development of such minerals. In the purported exercise of this power the Parliament has framed the

Mines and Minerals (Regulation and Development) Act, 1957 (referred to herein-after as 'the Act of 1957'). Our attention was also drawn to Entry No. 18 of the List II (i.e. State List) of the Seventh Schedule, which reads as under:-

"18. Land, that is to say, rights in or over the land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; Colonization."

8. Section 15 of the Act of 1957 confers a power on the State Government to frame rules in respect of minor minerals. The 'minor minerals' has been defined in Section 2(e) of the Act of 1957 which reads as under :-

"(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;"

9. As per the definition of minor minerals the ordinary sand which is being used for manufacture of bricks is a minor mineral and, therefore, the State Government is competent to regulate its development by framing the rules in the purported exercise of power conferred on the State Government by virtue of Section 15 of the Act of 1957. In the purported exercise of this power the State Government first framed the rules known as the Rajasthan Minor Mineral Concession Rules, 1959. These rules were subsequently superseded by another rules known as the Rajasthan Minor Mineral Concessions Rules, 1977 and again now the State Government has framed the rules known as the Rajasthan Minor Mineral Concession Rules, 1986. Since we are concerned in the present matter with the Rules of 1977, therefore, we will refer to the provisions of the Rules of 1977 to answer the questions referred to us by this reference.

10. Under the Rules of 1977 the power to grant mining lease has been conferred on the authorities mentioned in the Schedule appended to these rules. Therefore, the power to grant license/lease has been conferred by the State Government on the authorities mentioned in these rules.

11. Here, we may also refer to the provisions of the Rajasthan Colonization Act, 1954 as the land in the present case lies within the colony area. Under the Act of 1954 the 'colony' has been defined in Section 2(ii) which reads as under :-

"(ii) 'Colony' means any area to which this Act shall be applied by order of the State Government published in the Official Gazette."

12. The term 'land' has been defined in Section 2(v) which reads as under :-

"(v) 'land' means land belonging to all or any of the following categories, namely :-

(a) land as defined in clause (24) of Section 5 of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1956),

(b) land acquired under the provisions of the Rajasthan Land Acquisition Act 1953 (Rajasthan Act 24 of 1953), for the purpose of Government or a local authority or an educational institution, while such land remains the property of Government or such local authority or education, as the case may be,

(c) land surveyed and recorded, whether before or after the commencement of this Act, as belonging to the Government or a local authority which is used for any public purpose such as a road,

(d) land surveyed and recorded as aforesaid for the use of the community such as, gochar, cremation-ground, grave-yard, road or path-way,

(e) land in the possession of Government or a local authority obtained by transfer or otherwise;

(f) abadi land within the limits of a municipality or a panchayat circle or a village town or city, vesting in the State Government, and

(g) land within the abadi area vesting in a local authority or land recorded and set apart for the development of abadi or of mandis or for other public or municipal purposes,

and includes benefits to arise out of such land and things attached to the earth or permanently fastened to anything attached to the earth."

13. Section 7 deals with the issue of statement of conditions of tenancy, which reads as under :-

"7. Issue of statement of conditions of tenancy. - (1) The State Government may grant land in a colony to any person on such conditions as may be prescribed.

(2) The State Government may issue a statement or statements of the conditions on which it is willing to grant land in a colony to tenants.

(3) Where such statements of conditions have been issued; the Collector may, subject to the control of the State Government, allot land to any person, to be held subject to such conditions contained in the statement issued under Sub-section (2) of this Section as the Collector may, by written order, declare to be applicable to the case.

(4) No person shall be deemed to be a tenant or to have any right or title in the land allotted to him until such a written order has been passed and he has taken possession of the land with the permission of the Collector, and after possession has been so taken, the grant shall be held subject to the conditions declared applicable thereto."

14. Section 28 of the Act of 1954 confers power on the State Government to frame the rules for carrying into effect the provisions and purposes of the Act.

15. In the purported exercise of the powers conferred by Section 28 read with Sub-Sections (1) and (2) of Section 7, the State Government framed the Rajasthan Colonization Project Areas Brick Kiln (Leases) Conditions, 1966 (hereinafter referred to as 'the Conditions of 1966'). These conditions govern the grant of leases for brick kilns in the colony area. Condition 4 lays down the reservation of areas for establishment of brick kilns. By virtue of Condition 4 the Collector shall order the reservation of areas for the establishment of brick kilns in mandis, villages and chak abadis, after examining the requirements of the local people, soils, etc., and the *khatedari* or other occupied lands including abadi areas. It further provides that this reservation shall be made by the Collector after consulting and obtaining a certificate from the Director of Mines or his nominee with regard to the suitability of the soil of the area to be reserve for brick kiln or kilns. Then, Condition 5 deals with the demarcation of plots for each brick kiln which shall not exceed ten bighas. Condition 6 deals with the allotment which shall be leased out to the public by auction for a period not exceeding 10 years at a time. Condition 7 deals with auction notice. Condition 8 deals with the description of the plots and Condition 9 deals with rent. Condition 10 deals with the period and Condition 11 lays down certain obligations of lessee. Condition 12 deals with grant of mining lease. Condition 12 of the Conditions of 1966 reads as under :-

"12. Grant of mining lease. - Immediately on grant of a lease by the Collector

under Condition No. 10, the Collector shall inform the Mining Department and on receipt of such intimation from the Collector, the Mining Department shall issue a mining lease for bricks earth under the Rajasthan Minor Mineral Concession Rules, 1959, valid for the period of the lease granted by the Collector."

16. The Rajasthan Minor Mineral Con-cession Rules, 1977 were framed by the State Government in the purported exercise of power conferred by Section 15 of the Act of 1957. Rule 4(3) of the Rules of 1977 prescribes restriction on grant of mining lease. The Rules of 1977 lays down a detailed procedure for grant of the mining leases and the authorities competent to issue such leases. Chapter II deals with the grant of mining lease and we are only concerned with Rule 4(3) of the Rules of 1977 in the present case and as to how the mining lease shall be granted of a mineral which lies in the colony area.

17. Rule 4(3) of the Rules of 1977 reads as under:-

"(3) No mining lease shall be granted or renewed in any area which is a colony within the meaning of Rajasthan Colonization Act, 1954 unless the applicant produces a no objection certificate from the Colonization Commissioner under the said Act."

18. According to this the mining lease shall be granted by the Mining Department on production of a no objection certificate from the Colonization Commissioner under the Act of 1954. A wide power to grant mining lease has been delegated to various authorities under Chapter VI. Rule 43 of the Rules of 1977 lays down the delegation of powers. Rule 43 reads as under :-

"43. Delegation of powers. - The powers vested in the Government under all or any of these rules shall be exercised by the Director or any other officer or officers of the Depart-ment or any other person as delegated in Schedule III of these rules. The Government may revise the Schedule III from time to time as it may deem fit."

19. According to Schedule III attached to the Rules of 1977, the State Government has conferred powers to various authorities for grant of mining leases as mentioned in the

Schedule III.

20. In this back-ground we have to examine the whole issue involved in the present case. The crux of the matter is that when a power to grant the mining leases has been delegated by the State Government under the Rules of 1977 on the Mining Engineer then how can the Commissioner Colonization or the Collector under the Act of 1954 interfere with this power of grant, revocation and renewal of the mining leases of minerals in the State.

21. A similar question also came up for consideration before this Court in *Liladhar v. State of Rajasthan*,² In that case also the petitioner was granted a mining lease under the Rajasthan Minor Mineral Concession Rules, 1959, which were in force at that time, by the Mining Engineer. When the lease was expiring and the petitioner wanted extension of his kiln then an application was made by him to the Deputy Commissioner, Colonization, Hanumangarh for further allotment of land measuring 9 bighas 1 biswa. This application of the petitioner was published by the Tehsildar, Colonization for inviting objections, but instead of granting land to the petitioner the Naib Tehsildar, Colonization, Nohar intimated the petitioner firm about the order of the Deputy Commissioner Colonization requiring the petitioner to stop the manufacturing of bricks forthwith and if the petitioner failed to obey his order then under Sections 22 and 24 of the Rajasthan Colonisation Act, 1954, possession of the land in dispute would be taken over by the State Government. This letter of the Naib Tehsildar was challenged by the petitioner in the writ petition. It was contended that the Naib *Tehsildar* or any other officer of the Colonization Department has no jurisdiction to pass such order. In this background the whole controversy was examined by the Division Bench of this Court and after reviewing the provisions of the Colonization Act and the Minor Mineral Concession Rules, it was held by the Division Bench as under :-

"Whatever authority is conferred on the Government by Sub-section (2) of Section 7 of the Colonization Act to prescribe conditions is in relation with the land which is to be allotted for agricultural purposes or any other purpose subservient thereto, or for such other purposes which have been specified in the definition of the word "land" in Colonization Act. Land allotted for a mining lease does not fall within the provisions of Sub-section (2) of Section 7 of the Colonization Act and therefore, Government have no authority, under this

provision of the Act, to prescribe any conditions which may govern the lease of the land in colony granted for the construction of brick kiln which has no connection whatsoever with the creation of rights regarding tenancy in the land. Impugned notification dated 21st March, 1959, prescribing conditions for granting lease for erecting brick kiln project area is *ultra vires* of the powers of the Government."

22. As a result of this the Rajasthan Colonization Project Areas Brick Kiln (Leases) Conditions, 1959 issued by the Government of Rajasthan by the Notification No. F. 6 (123) Rev. B/56, dated the 21st March, 1959 were declared *ultra vires*. Then, again the Government has framed the Rajasthan Colonization Project Areas Brick Kiln (Leases) Conditions, 1966, notwithstanding the fact that the same were already struck down by the Division Bench of this Court.

23. The next case in this line is that of *Shivchand Goyal v. State of Rajasthan*,³ There also similar question came up for consideration before the Division Bench but in that case the Rajasthan Land Revenue (Brick Kiln Leases in Non-Project Areas) Conditions, 1960 were declared *ultra vires* of the provisions of Section 19 of the Mines and Minerals (Regulation and Development) Act, 1957 and Section 102 of the Rajasthan Land Revenue Act, 1956. The Division Bench in this context observed as under :-

"The grant of mining lease is a concern of the Government or the officers of the Mines and Geological Department as specified in Schedule III and a mining lease can be granted under the provisions of the Rajasthan Minor Mineral Concession Rules and under no other law as Section 19 of the Mines and Minerals (Regulation and Development) Act, 1957, is a clear bar for the grant of a mining lease in any other manner except under the Minor Mineral Concession Rules made under the provisions of that Act. It has been clearly laid down in Section 19 of the said Act that any mining lease granted, renewed or acquired in contravention of the provisions of that Act or any rules or orders made there under shall be void and of no effect, and in view of such a specific provision of the Central Act, it is not open to the Government to create a parallel authority for granting the mining leases of the brick earth which has been clearly declared as a minor mineral by the Minor Mineral Concession Rules.

The purpose for which the Rajasthan Land Revenue (Brick Kiln Leases in Non-Project Areas) Conditions, 1960 have been prescribed by the Government runs counter to the object and the scope of Section 102 of the Rajasthan Land Revenue Act, 1956. The impugned Conditions of 1960 are also illegal as they are repugnant to the provisions of Section 19 of the Mines and Minerals (Regulation and Development) Act, 1957. Under these circumstances, the Statement of Conditions of 1960 cannot confer any power on the Collector to interfere with the working of the leases in respect of the brick earth validly granted under the provisions of the Rajasthan Minor Mineral Concession Rules."

24. In this case also, the Division Bench took the same view that no other person than the authority created under the Minor Mineral Concession Rules is competent to grant the mining leases and in that context the resort was taken to Section 19 of the Act of 1957 and Section 102 of the Rajasthan Land Revenue Act, 1956. Therefore, the Rajasthan Land Revenue (Brick Kiln Leases in Non-Project Areas) Conditions, 1960 were also struck down and it was held that the Conditions of 1960 cannot confer any power on the Collector to interfere with the working of leases in respect of the brick earth validly granted under the provisions of the Rajasthan Minor Mineral Concession Rules.

25. The Hon'ble Supreme Court in the case of *Baijnath Kedia v. The State of Bihar*⁴ has categorically laid down while interpreting Entry 54 of the Union List that once the Parliament has stepped in and made a declaration by enacting the Mines and Minerals (Regulation and Development) Act, 1957, the State Legislature cannot trench upon the field and thereby it was held that the Bihar Government cannot enact a law by virtue of Entry 23 of List II of the Seventh Schedule. Thus, the position of law has been crystallized.

26. Now, advertent to the contention of the learned counsel in the present case that Rule 4(3) of the Rules of 1977 is valid or not.

27. Rule 4(3) of the Rules of 1977 puts an embargo on the power of the mining department for granting leases as the applicant has to obtain a no objection certificate from the Commissioner Colonization. This embargo has been put for the reason that according to the Conditions of 1966, as the land in question falls in the colony area,

therefore, the provisions of the Act of 1954 are applicable and likewise the conditions which have been framed under the Act of 1954, which lay down the procedure for grant of leases of brick kilns.

28. We have bestowed our best of the consideration to both the provisions, one thing is clear that the minor minerals are regulated by the Act of 1957 and under the delegated authority under Section 15 of the Act of 1957, the Rules of 1977 were framed by the State and that will hold the field rather than any other provisions of the Act or the Rules. If any other provisions of the Act or the Rules are contrary to that then they will be ultra vires. Therefore, we have to see as to what extent the Rules of 1977 and the Conditions of 1966 can hold the field and to what extent they run counter to each other. Chapter II of the Rules of 1977 lays down the grant of mining lease. The grant of a mining lease shall be governed by Chapter II and the procedure given in Chapter II has to be followed. Therefore, the Conditions of 1966 cannot hold the field and the Conditions to that extent are ultra vires. But to what extent they can be said to be ultra vires. So far as the legislative competence of the State Government for framing these Conditions under the Act of 1954 is concerned, the same is not disputed. But the question is that the grant of leases can be governed by these conditions or not. Our considered opinion is in negative. The grant of mining leases shall be governed by the Rules of 1977 as the same being mineral. Now, the question is whether Rule 4(3) of the Rules of 1977 is necessary or not. All the minerals vest in the State Government and the areas have to be ear-marked for mineral operations. Under Section 102 of the Rajasthan Land Revenue Act, 1956 also a power has been conferred on the Government for allotment of land for the purposes other than agriculture. This power has been delegated to the Collector of the concerned area. Therefore, the Collector has to ear-mark the land for the mining purposes. This land falls in the colony area and therefore some competent authority has to ear-mark the land for purposes other than agriculture. Therefore, a necessity arose for framing the Conditions of 1966 for the purpose of granting leases for brick kilns. Condition 4 provides reservation of areas for establishment of brick kilns. Condition 5 lays down the demarcation of plots. To this extent we can understand that the authorities under the Act of 1954 can legitimately act as this land falls in the colony area and under that a power has been delegated by the State Government to certain authorities like Collector or Commissioner Colonization, as the case may be. Therefore, to this extent Condition 4 does not run contrary to the Rules of 1977 and likewise Condition 5 of demarcation of plots. Condition 8 lays down the description of the plots. These conditions cannot be said to

be *ultra vires* of the Rules of 1977 and they can legitimately hold the field. But rest of the conditions regarding procedure for allotment contained in Condition 6, Condition 7 regarding auction notice, Condition 9 relating to rent, Condition 10 relating to lease period, Condition 11 of obligations of lessees and Condition 12 for grant of mining lease by the Mining Department which have been made conditional to the order of the Collector cannot be said to be valid. Therefore, the moment the Collector reserves the land and demarcate the plots and gives the description of the plots for grant of mining leases to this extent the action of the Collector can be justified under the Conditions of 1966 but beyond that he has no authority and he cannot direct the mining department as to what they should do and how they will grant the leases. He has authority only to the extent of allotting the area for mining operations and after that the procedure that will govern the grant is that of the Minor Mineral Concession Rules and thereafter he has no business to interfere in the grant of leases or otherwise. Therefore, both these the Rules of 1977 and the Conditions of 1966 have to be read together to the extent, they are not inconsistent. Thus we are of the opinion that the Collector or the Colonization Commissioner can ear- mark the area for establishment of brick kilns in the colony area and demarcate the plots but thereafter the authorities under the Rules of 1977 shall come into picture and they will grant the mining leases in accordance with the provisions of the Rules of 1977. Therefore, we hold that the Conditions of 1966 are only valid to the extent the Collector or the Commissioner Colonization ear- marks the area for establishment of brick kilns and demarcate them into plots. Rest of the conditions are contrary to the Rules of 1977 and they are struck down i.e. Conditions Nos. 6, 7, 9, 10, 11 and 12. They are contrary to the Rules of 1977 as such they are *ultra vires*.

29. Likewise, Rule 4(3) of the Rules of 1977 lays down that before granting or renewing any mining lease the applicant shall produce a no objection certificate from the Commissioner Colonization under the Act. This rule is also invalid and *ultra vires* because it makes the grant dependent on an authority created under the Colonization Act of 1954, which has no power under the Rules of 1977 framed under Section 15 of the Act of 1957.

30. The learned single Judge has also made a reference to Entry 18 of List II of the Seventh Schedule. Entry 18 has already been reproduced above. Entry 18 does not cover the minerals. When there is a specific entry which covers the minerals then that will govern it and it is wrong to say that the entry which covers land which includes

rights over the land will include mineral also. In fact, Entry 18 gives a power to the State Government to legislate regarding land rights in or over the land, land tenures including the relation of landlord and tenant, collection of rents, transfer and alienation of agricultural land, land improvement and agricultural loans and colonization. This entry by no stretch of imagination can be said to be an entry relating to minor minerals. All the rights over or in the land undoubtedly vest in the State Government but for the distribution of management of the land a proper division of powers has been made and so far as Entry 18 is concerned it relates to land tenure which is evident from the entry itself and it includes land tenure etc. as mentioned above. But it does not include the minerals as mentioned in Entry 54 of List I of Seventh Schedule, which clearly lays down that the regulation of minerals development to the extent to which such regulation and development shall be under the control of the Union and as is declared by the Parliament by law from time to time in the public interest. Therefore, under the Constitution primarily the regulation and development of the minerals has been re-served for the Union of India and a power has been given to the Parliament to declare the law and for control and management of the minerals the Parliament has framed the Central Law i.e. Minor Minerals (Regulation and Development) Act, 1957 and in that Section 15 has conferred a power on the State Government to manage and control the minor minerals and other minerals as is given under the Act by notifications from time to time. Therefore, Entry 18, List II of the Seventh Schedule will not confer any power on the State Government to frame the Conditions of 1966 for regulating the grant of leases for mining operations.

31. As a up-shot of the above discussion, we answer the questions framed by the learned single Judge as follows:-

Question No. 1 :

We answer that the area for establishment of brick kilns shall be made available by the Commissioner Collector/Colonization and the allotment of leases shall made by the Mining Department under the Rules of 1977. Rule 4(3) of the Rules of 1977 is *ultra vires*.

Question No. 2:

The Conditions Nos. 6, 7, 9, 10, 11 and 12 of the Rajasthan Colonization Project Areas Brick Kiln (Leases) Conditions, 1966 are *ultra vires* and they are struck down. Entry 18 of List II of Seventh Schedule does not cover the minerals.

Question No. 3:

The Rajasthan Colonization Project Areas Brick Kiln (Leases) Conditions, 1966 are beyond the authority/competence of the State Government to the extent of grant of mining leases.

Question No. 4 :

The law laid down in Shivchand Goyal's case (1967 Raj LW 30) is good law and the establishment of brick kiln is covered by Entry 54 of List I of the Seventh Schedule of the Constitution and not by Entry 18 of List II of the Seventh Schedule of the Constitution and the Conditions of 1966 are *ultra vires* beyond the ear-marking of the area for establishment of brick kilns.

32. We accordingly dispose of this Full Bench reference.

Order accordingly.

Cases Referred.

1. 1967 Raj LW 30
2. 1963 Raj LW 423
3. 1967 Raj LW 30
4. AIR 1970 SC 1436