RAJASTHAN HIGH COURT

GKW Ltd.

Vs.

State of Rajasthan

C. W. No. 1451 of 2007
(N.P. Gupta and Munishwar Nath Bhandari, JJ.)

22.02.2008

JUDGEMENT

Munishwar Nath Bhandari, J.

1. In all these writ petitions, a challenge has been made to the Chapter VII to Rajasthan Finance Act, 2006 (hereinafter referred to as 'the Act of 2006') and Rules framed there under, as well as consequential notification issued. It has been contended that the State of Rajasthan initially enacted Rajasthan Land Tax Act, 1985 (for short, 'the Act of 1985') for imposition of tax on the mineral bearing lands. However, said enactment was held to be *ultra vires* by the Hon'ble Supreme Court for want of competence of the State Government to impose such tax. After the decision of the Hon'ble Supreme Court in regard to the enactment of Act of 1985, the State of Rajasthan has now come up with a new enactment under Chapter VII of the Rajasthan Finance Act, 2006 which was then published in the Gazette on 31st March, 2006. After the enactment, the Government even framed Rules on 25-9- 2006 in exercise of the powers conferred by Section 61 of the Act of 2006. According to the petitioners, even the imposition of land tax pursuant to Chapter VII of Rajasthan Finance Act, 2006 and Rules framed there under is beyond legislative competence of the State of Rajasthan, hence it is prayed that the aforesaid Legislation may be held to be ultra virus.

2. Learned counsel Mr. Mehta appearing for the petitioners submits that the State Government can legislate Act and Rules on the subject matters falling under their competence as per Schedule VII of the Indian Constitution. However, State of Rajasthan came up with enactments beyond their legislative competence, inasmuch as,

at the first instance, Rajasthan Land Tax Act of 1985 was brought to impose tax on the minerals which was then struck down by the Hon'ble Apex Court in a reported case of *Federation of Mining Association v. State of Rajasthan,* [1] Referring to the aforesaid judgment, it is submitted that when imposition of tax on mineral bearing land is already held to be ultra virus, then it was not open for the State Government to bring another Legislation again for imposition of tax on the minerals with same different provisions in the Act 8 of 2006. In that regard, reference of paras 3, 4, 5 and 7 of the judgment aforesaid was made specifically and prayed that looking to the judgment of the Apex Court in the Federation of Mining Association case itself, Chapter VII of the Finance Act of 2006 and Rules made there under deserves to be struck down.

3. The further argument of the learned counsel for the petitioners is that as per Entry 49 of List II of Schedule VII of the Constitution, the State Government can impose tax on lands and buildings and as per Entry 50 of the same List, the taxes on mineral rights are subject to limitation imposed by the Parliament, if any, apart from the fact that even as per Entry 23 of the same List, regulation of mining a mineral development is subject to the provisions of List I of the Union. Thus, referring to the aforesaid Entries of the State List, it was submitted that though the Government may be competent to impose tax on lands and buildings as per Entry 49, but imposition of tax on minerals by the State Legislation is not permissible due to limitation provided under Entry Nos. 23 and 50 of List II of Schedule VII of the Constitution and in view of the Central Legislation of Mines and Mineral (Development and Regulation) Act, 1957 (for short, 'the Act of 1957'). Referring to Entry 86 of the List I of Schedule VII of the Constitution. It was further submitted that even tax on the capital value of the assets is subject matter of competence of the Union alone, hence the Finance Act of 2006, being imposition of tax on the capital value of the assets, thus, is beyond the competence of the State. For convenience and ready reference, relevant entries of List I of the Union List, as well as List II of the State List are quoted hereunder :-

> "List I - Union List.
> 86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
> List II -State List
> 23. 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.
> 49. Taxes on lands and buildings.

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

4. Referring to the aforesaid Entries, it is submitted by the learned counsel for the petitioners that pursuant to Chapter VII of the Rajasthan Finance Act of 2006, imposition of tax is directly and indirectly on the minerals, therefore, the aforesaid enactment does not fall under Entry 49 of the Second List and in view of Entry 50 and Central Act, 1957, the State Government is not competent to impose taxes on mineral rights, in view of Union enactment of 1957, therefore, the whole enactment is made by the State Government beyond their competence.

5. To substantiate arguments, learned counsel for the petitioners referred to certain provisions of the impugned Act. Firstly, referring to Section 38 of the Act of 2006, it was focused that the definition of "land" as provided under Section 38 shows that the imposition of land tax is only on mineral bearing lands, inasmuch as, all other types of lands, like agricultural, residential and the urban lands have been excluded and by virtue of the aforesaid provisions, so far as the definition of the "land" is concerned, it remains same as was existing in the Land Tax Act of 1985. Hence, it is that except a superficial change in the language in the enactment of 2006, substantially it remains the same enactment as was enacted in the year, 1985. Referring to Section 39, it is urged that imposition of the tax is only on a particular class of land and at the rates as may be specified by the State Government from time to time. A reference of Sections 40, 41, and 42 was also made during the course of arguments to show that by virtue of the enactment of 2006, the State Government is again imposing tax on minerals, for which the State lacks legislative competence. A reference was also made in regard to the notification issued by the State Government prescribing the rate of tax to be imposed pursuant to the impugned enactment of 2006. In the first Notification dated 31st March, 2006, the State Government imposed tax at the rate of 5% of the market value of the land or Re. 1/- per square meter, whichever is lower. However, it is contended that subsequently, further notifications were brought to prescribe different rates for different class of land. For ready reference relevant provisions of Sections 38 and 39 of the Act of 2006 are quoted thus:-

"38. Definitions.- In this Chapter, unless the context otherwise requires, -

(a) ....

(b) ....

(c) "land" shall not include the land held or used exclusively for agricultural or residential purposes or an urban land as defined in the Rajasthan Land and

Building Tax, Act, 1964 (Act No. 18 of 1964), or an abadi land as defined in clause (b) of Section 103 of the Rajasthan Land Revenue Act, 1956 (Act No. 15 of 1956);

(d) "land holder means a person who holds or uses the land as its owner, tenant, lessee, licensee, grantee or under any right or contract or in any other capacity;

(e) ....

(f) "tax" means the tax on land payable under this Chapter;

39. Levy of tax and its rate.- Subject to the other provisions of this Chapter, there shall be levied and collected for each year a tax on such classes of lands at such rates, as may be specified by the State Government from time to time by notification in the official Gazette :

Provided that the rate of tax under this section shall not exceed ten percent of the market value of the land :

6. To support the arguments, learned counsel for the petitioners first referred the judgment reported in *Raja Jagannath Baksh Singh v. State of Uttar Pradesh* [2] *and another*. It is submitted that the imposition of tax in the aforesaid case was held to be valid, mainly for the reason that the imposition of the tax was of annual value to be ascertained in the manner prescribed under Section 5 of the U. P. Large Land Holdings Act, whereas in the Act of 2006, the imposition of tax is on the market value. The next judgment cited on the issue is reported in *State of Orissa v. M. A. Tulloch and Co.*,[3] where the Hon'ble Apex Court considered the validity of the Orissa Mining Areas Development Fund Act. Referring to the aforesaid case, learned counsel for the petitioners submitted that pursuant to the Union competence, as per Entry 54 of Union List, having enacted Mines and Minerals (Regulation and Development) Act of 1957, the State was not competent to make legislation on the same subject matter. The another judgment cited by the learned counsel for the petitioners is reported in *H. R.S. Murthy v. Collector of Chittor*. [4] According to the learned counsel for the petitioners, in the aforesaid case, Hon'ble Apex Court considered the provisions of Madras District Powers Act, whereby as per Sections 78 and 79 of the aforesaid Act, land cess was imposed. However, considering the nature of the cess, it was held to be a tax, but, then, said imposition was found to be under Entry 49 of the State List. Therefore, the imposition of tax was held to be lawfully. The last judgment on the aforesaid issue is reported in 5*India Cement Ltd. v. State of Tamil Nadu*. [5] It is contended by the learned counsel for the petitioners that the judgment of the Hon'ble Apex Court in the aforesaid case covers the issue involved in the present matter and was, otherwise, taken as basis while the Land Tax Act of 1985 was earlier struck down by the Hon'ble

Apex Court in the case of Federation of Mining Association's case (supra).

7. The whole emphasis of the learned counsel for the petitioners is to demonstrate that though a new enactment has been brought under Chapter VII of the Enactment Act of 2006 to show that it is imposition of tax on land, in substance, it is nothing but imposition of tax on the minerals, because even as per the definition of "land", all other types of lands have been excluded, except mineral bearing land. Thus, from the definition of the "land", it becomes clear that the intention of the Government is to impose tax on the mineral in camouflage manner, otherwise, while imposing such a tax, all other types of lands would not have been excluded. The State Government had brought the enactment of 2006 with somewhat different provisions to impose tax on the minerals as the earlier enactment of Land Tax Act of 1985 was struck down by the Hon'ble Apex Court, therefore, even if the language of the provision of somewhat different in the enactment under-challenge, substance of the provisions remains same and which shows that it is imposition of tax. on the mineral under the new Legislations. However, for the reason that similar earlier enactment of 1985 having been struck down by the Hon'ble Apex Court on the ground of the legislative competence, the present enactment under challenge, should not be allowed to stand. Thus, the prayer is made that not only the Chapter VII of the Finance Act of 2006, but Rules as well as Notifications issued there under may also be struck down, being beyond the legislative competence of the State Government.

8. Mr. N. M. Lodha, learned Additional Advocate, General, appearing for the State of Rajasthan, supporting the Legislations of Chapter VII of the Rajasthan Finance Act of 2006, submits that the State Government is competent to impose tax on land in view of Entry 49 of the State List in Schedule VII of the Constitution. Referring to the provisions of the Act of 2006, it was urged that the impugned enactment nowhere provides tax on the mineral. Rather it is a tax on the land, therefore, the whole basis canvassed by the petitioners to project it to be tax on the mineral is not in consonance with the provisions of the Act of 2006. Referring to the Land Tax Act of 1985, it is submitted that Section 3 of the aforesaid enactment of 1985 was under consideration before the Hon'ble Apex Court in the case of Federation Mining Association (supra) and as per the amended provision of Section 3 of the Act of 1985 the imposition of the tax was on the annual value equal to four times of the annual dead rent or twice of the amount of the royalty payable, whichever higher. The Hon'ble Apex Court after taking into consideration the provision of Section 3 and the definition of dead rent as was provided under Section 2 (d) of the Act came to the conclusion that the tax is being

imposed on the dead rent/royalty, hence same is not within the competence of the State Government. Referring to the provisions of the Act of 2006 learned counsel for the State submits that there exists no provision for imposition of tax on the annual value to be determined either on the dead rent or royalty. Therefore, the judgment of the Hon'ble Apex Court in the case of Federation Mining Association (Supra) has no application. The learned counsel for the respondents further referring all the judgments so cited by the learned counsel for the petitioners, submitted that even as per those judgments, the case of the State is fully supported, more specifically the judgment of the Hon'ble Apex Court consists of seven Judges in the case of *India Cement Limited v. State of Tamil Nadu* (Supra). Referring to the various paras of the aforesaid judgment, learned Additional Advocate General submitted that as per the Act of 2006, since there exists no imposition of tax on royalty or dead rent so as to corelate the tax with the mineral, not only subject matter remains within the legislative competence of the State Government but none of the judgments cited by the learned counsel for the petitioners supports the petitioners on that issue, therefore, it was prayed that all the writ petitions should be dismissed.

9. We have considered the rival submissions of the learned counsel for the parties and scanned the matter carefully.

10. The issue involved in the present matter is in regard to the competence of the State Government to legislate enactment of 2006, in view of the various Entries existing in Schedule VII of the Constitution of India. Thus, for deciding the aforesaid issue of the State's competence, not only reference of the various Entries is required to be given but, even the provisions of the Act of 2006 along with the various judgments cited by the learned counsel for the parties are required to be considered.

11. Since learned counsel for the petitioners have made reference to Land Tax Act of 1985, to start with and to demonstrate that a similar enactment of the year, 1985 has already been struck down by the Hon'ble Apex Court in the case of Federation of Mining Association. Thus, the Government was not competent to bring similar legislation with same intention to impose tax on the minerals. To consider aforesaid argument, we have perused the provisions of the Act of 1985 and gone through the judgment of the Hon'ble Apex Court in the case of Federation of Mining Association. The perusal of para 3 of the aforesaid judgment itself shows that pursuant to the amended provision, the imposition of tax was on dead rent/royalty whichever is higher and, for that reason, the enactment imposing tax on minerals was declared to be ultra vires. Paras 3 and 4 of the judgment in the case of *Federation of Mining Association*

of Rajasthan v. State of Rajasthan, [6] is quoted hereunder:-

> "3. All these matters concern the question of the validity of the provisions of Section 3 of the Rajasthan Land Tax Act, 1985 (Rajasthan Act No. 6 of 1985) - hereinafter referred to as 'the Act' - by which the State Legislature purported to levy a tax on every landholder on the annual value of the land held or used by him insofar as it concerns land containing minerals. 'Land', inter alia, has been defined to include "land held or used for excavating, extracting, removing or utilising any ore or mineral". The "annual value" of the category of land has been defined in Section 2 (a) which, insofar as is relevant, read as follows:
> "Annual value" means, in the case of land held or used in a year -
> (i) for excavating, extracting, removing or utilizing any ore or mineral, (and amount) equal to the amount of the annual dead rent or half of the amount of the royalty payable for the year with regard to such ore or mineral, whichever is higher."

We may mention that subsequently this provision has been amended to make the annual value equal to four times of the annual dead rent twice the amount of the royalty payable, whichever is higher. Reference may also be made to the definition of the expression "dead rent" in Section 2(d) of the Act as follows:

> "dead rent" means the minimum guaranteed amount to royalty payable yearly by the lessee under the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act 67 of 1957) and the rules made there under or under an agreement for a mining lease.
> 4. The question of validity of levies of this type has come up for consideration by a seven Judge Bench of this Court in *India Cement Ltd. v. State of Tamil Nadu,* [7] and by a three Judge Bench in *Orissa Cement Ltd. v. State of Orissa,* [8] Following the above two decisions, a Bench of this Court has also disposed of the challenge to a similar levy made by the Gujarat State in Writ Petitions Nos. 100-116 of 1991."

12. The perusal of the aforesaid paras clearly reveals that not only dead rent was defined under Section 2 (d), but imposition of tax was on the dead rent/royalty, whichever is higher. However, in the present case, while enacting the Act of 2006, the imposition of tax is not on dead rent/royalty. Thus, in view of the judgment of the Apex Court in the case of Federation of Mining Association, enactment of 2006 cannot be struck down, in view of the different provisions under the Act of 2006.

13. Now, coming to the question as to whether the enactment of 2006 falls under Entry

49 or other Entries in different List as has been submitted by the learned counsel for the petitioners, we have perused all the Entries which are, otherwise, quoted in the judgment above. Entry 49 provides State's competence to impose tax on land and building, whereas Entries 23 and 50 pertain to tax on mineral rights as well as regulations of mines, but both are subject to enactment by the Parliament which then was brought in by the Act of 1957. Entry 86 of the Union List pertain to tax on the capital value of the assets. In reference to the aforesaid entries, the provisions of the Act under challenge was looked into by us to see as to whether the imposition of the tax falls under Entry 49 or under any other entries as referred to above and, in that regard, even we have considered the various judgments of the Hon'ble Apex Court on the issue. Since the Act of 2006 does not make a reference regarding imposition of tax on royalty or dead rent, rather provides for tax on the land, hence it cannot be said that the imposition of tax is on the minerals, only for the reason that while providing the definition of "land", agriculture, urban and residential lands have been excluded. Mere exclusion of other category of land cannot mean that it is a taxation on minerals, because neither the provision of the Act, nor Rules made there under shows basis of the imposition of the tax is the royalty or dead rent so as to relate such imposition with minerals as was otherwise existing in the previous enactment of 1985. Therefore, the argument of the learned counsel for the petitioners that it is again a tax on minerals, cannot be accepted. Our view is fortified from the various judgments of the Apex Court even cited by the learned counsel for the petitioners. In this regard, the reference of the judgment of the Apex Court reported in AIR 1962 Supreme Court 1563 would be relevant, where a tax was imposed on the agricultural land and validity of which was then challenged on the ground that such enactment does not fall under Entry 49 of the State List. Considering the argument, Hon'ble Apex Court held that as per Scheme of the Act, there is imposition of tax on a land holding, though determination may be on annual value, but object of the tax being land holding, it cannot be said that the State is not having legislative competence. Considering the word "lands" in Entry 49 of the List II, it was held that the said entry is wide enough to include all lands whether agricultural or not. In the aforesaid judgment, the Hon'ble Apex Court even considering Entries 86, 87 and 88 of List I to see whether the enactment challenged therein falls under those entries or not as otherwise submitted in the present case by the petitioners by referring Entry 86 of the First List. Reference of paras 10 and 12 of the aforesaid Judgment is relevant and, for ready reference, same are quoted hereinafter :-

"10. The first contention which has been raised by Mr. Goyal before us is that

the Act is unconstitutional and void inasmuch as it is beyond the legislative competence of the U. P. Legislature, and this contention raises the question about the construction of Entry 49 in List II of the 7th Schedule of the Constitution. This Entry relates to taxes on lands and buildings. The argument is that 'lands' in the context does not Include agricultural lands and so, the U. P. Legislature was not competent to levy the tax. In considering the merits of this argument, it is necessary to bear in mind that we are interpreting the words used in the Constitution and it is an elementary cardinal rule of interpretation that the words used in the Constitution which confer legislative power must receive the most liberal construction and if they are words of wide amplitude, they must be interpreted so as to give effect to that amplitude. It would be out of place to put a narrow or restricted construction on words of wide amplitude in a Constitution. A general word used in an entry like the present one must be construed to extend to all ancillary or subsidiary matters which can fairly and reasonable be held to be included in it, vide, *Navinchandra Mafatlal, Bombay v. Commissioner of Income Tax,* [9] at P. 61, and *United Provinces v. Mt. Atiqua Begum,* [10] at P. 25. If this principle is borne in mind, it is obvious that the words "lands" cannot be interpreted in the manner suggested by Mr. Goyal. The word "lands" is wide enough to include all lands, whether agricultural or not, and it would be plainly unreasonable to assume that it includes non agricultural lands but does not Include agricultural lands.

12. It is then argued that when the Constitution wanted to refer to agricultural land it has used the expression 'agricultural land' as for instance, Entries 86, 87 and 88 in List I. This argument is entirely fallacious. The three Entries in which agricultural land has been specifically mentioned clearly Indicate that agricultural land had to be excluded from their purview and so. it was necessary to describe the land as agricultural land in the context. The fact that the necessity of the context required the use of the expression 'agricultural land' in the said 3 Entries, cannot possibly lead to the conclusion that wherever the word 'land' is used, it should mean non-agricultural land. We have, therefore, no hesitation in rejecting the argument that Entry 49 in List II does not take in agricultural lands. If agricultural lands are included in the said Entry, the validity of the Act would be beyond challenge, as in substance and in fact, it imposes a tax on land holding and as such, is within the competence of the State Legislature. As we have already seen, the scheme of the Act is to impose a tax on land tax has to be determined by its annual value as is ascertained in the

manner prescribed by Section 5. The object of the tax is land holding and the extent of the tax leviable is determined in the light of the annual value of the land. Thus, there can be no doubt that the Act was within the legislative competence of the U. P. Legislative competence of the U. P. Legislature and so, the challenge to its validity on the ground that it has been passed without legislative competence must be rejected."

14. Considering the submission made by Mr. Singhvi on the anvil of entry 86 of Schedule I which was also advanced by Mr. Mehta in another manner by submitting that in the first notification the tax has been prescribed on the rate of Rs. 1/- sq. mt., on 5% of the value of the land whichever is lower and therefore, it is a tax on the capital value of the land which falls under entry 86. It would suffice to observe that notification provided an upper limit beyond which tax cannot be imposed, and there is nothing in the Act to show that any tax has been imposed depending on the capital value of the land. Therefore, this contention also does not hold good, and otherwise if the subject matter said to fall in other entry also then apart from the fact that since the matter specifically falls in entry 49 of List-II providing for tax on land and building, the impugned tax cannot be said to be falling within the scope of entry 86 so as to denude the State legislature from its competence to tax. More so in view of the judgment referred above also when interpretation of the words used in the Constitution, which confer legislative power is to be given, then it must receive the most liberal construction.

15. Even in the case reported in AIR 1965 Supreme Court 177, the Hon'ble Apex Court held that if the imposition of tax is on the land, then, same is permissible under Entry 49 of the List II and necessary legislation can be made by the State Government, therein land cess was imposed pursuant to the provisions of Sections 78 and 79 of the Madras District Boards Act and while considering the said cess to be a tax, the Hon'ble Apex Court came to the conclusion that it being a tax on the land and not on the mineral rights, the subject matter falls under Entry 49 and not under Entry 50 of the Second List. In para 10, the Hon'ble Apex Court held thus:

"10. It was next argued that the land cess was really a tax on mineral rights falling within Entry 50 of the State List reading:

"Taxes on mineral rights subject to any limitation imposed by Parliament by law relating to mineral development" and that the Central Acts under which also taxes and fees might be levied brought into play the last portion of this Entry and that as a result the power to impose this tax was not available after the

> Central Acts of 1948 and 1957 came into force. In this connection, Mr. Ramareddi pointed out that as the impugned land cess was payable only in the event of the mining lessee winning the mineral and so paying the royalty and not when no minerals were extracted, it was in effect a tax on the minerals won and therefore a mineral right. We are unable to accept this argument. When a question arises as to the precise head of legislative power under which a taxing statute has been passed, the subject of enquiry is what in truth and substance is the nature of the tax. No doubt, in a sense, but in a very remote sense, it has relationship to mining as also, to the mineral won from the mine under a contract by which royalty is payable on the quantity of mineral extracted. But that does not stamp it as a tax on either the extraction of the mineral or on the mineral right. It is unnecessary for the purpose of this case to examine the question as to what exactly is a tax on mineral rights seeing that such a tax is not livable by Parliament but only by the State and the sole limitation on the State's power to levy the tax is that it must not interfere with a law made by Parliament as regards mineral development. Our attention was not invited to the provision of any such law enacted by Parliament. In the context of Sections 78 and 79 and the scheme of those provisions it is clear that the land cess is in truth a "tax on lands" within Entry 49 of the State List.

16. A bare perusal of para above shows that the argument as has been raised by the learned counsel for the petitioners was even raised before the Hon'ble Apex Court, but the same was not accepted as the tax so imposed was not stamped as a tax on extraction of minerals or on mineral rights. In the present case also, irrespective of the excavation of mineral and the payment of dead rent or royalty, tax is payable by the "landholder" as defined in Act of 2006. Thus, the enactment under challenge having no correlation with the even excavation of the mineral cannot be said to be the tax on the mineral. Thus, in view of the Judgment above Itself, the argument made by the learned counsel for the petitioners is answered.

17. We may now refer to the Judgment of the Hon'ble Apex Court in *India Cement Ltd. v. State of Rajasthan.*[11] The aforesaid Judgment was given by a Bench consisting of Hon'ble seven Judges of Apex Court, wherein the validity of Tamil Nadu Panchayat Act was under challenge. Pursuant to the provisions of the aforesaid Act, cess was imposed on royalty payable on mineral rights. Considering the provisions, the Hon'ble Apex Court came to the conclusion that cess is nothing but a tax on royalty, thus same is beyond the competence of the State as enactment does not fall under Entry 49 of List II. Perusal of various paras specifically the facts narrated in the opening paras

coupled with the discussion made by the Hon'ble Apex Court in paras 12, 14, 20, 22, 23 to- 25 and 29, it clearly comes out that thereby virtue of amendment, the cess was imposed on royalty. Hence, it being a tax on the royalty, the Hon'ble Apex Court held it to be beyond the competence of the State Government. In that respect, reference of paras 41 and 42 would also be relevant, which are quoted below:-

> "41. It is not in dispute that the cess which the Madras *Village Panchayat* Act proposes to levy is nothing but an additional tax and originally it was levied only on land revenue, apparently land revenue would fall within the scope of Entry 49 but it could not be doubted that royalty which is a levy or tax on the extracted mineral is not a tax or a levy on land alone and if cess is charged on the royalty it could not be said to be a levy or tax on land and therefore it could not be upheld as imposed in exercise of jurisdiction under Entry 49 List II by the State Legislature.
>
> 42. Thus it is clear that by introducing this explanation to Section 115 clause (1) widening the meaning of words 'land revenue' for the purposes of Sections 115 and 116. When the Legislature included Royalty, it went beyond its jurisdiction under Entry 49 List II and therefore clearly is without the authority of law. But this also may lead to an interesting situation. This cess levied under Section 115 of the Madras *Village Panchayat* Act is levied for purposes indicated in the scheme of the Act and it was Intended to be levied on all the lands falling within the area but as this cess on royalty is without the authority the result will be that the cess is levied so far as lands other than the lands in which mines are situated are concerned but lands where mines are situated this levy of cess is not in accordance with that law. This anomaly could have averted if the Legislature in this explanation had used words 'surface rent1 in place of royalty. Even if the lands where mines are situated and which are subject to license and mining leases even for those lands there is a charge on the basis of the surface of the land which is sometimes described as surface rent or sometimes also as 'dead rent'. It could not be doubted that if such a surface rent or dead rent is a charge or an imposition on the land only and therefore will clearly fall within the purview of Entry 49 List II and if a cess is levied on that it will also be justified as tax on land falling within the purview of Entry 49 and it will also be uniform as this cess would be levied in respect of the lands irrespective of the fact as to whether the land is one where a mine is situated or land which is only used for other purposes for which land revenue is chargeable."

18. Perusal of the aforesaid paras clearly shows that in view of the amendment in the

words "land revenue" that it was held to be beyond the competence of State because by virtue of amendment, the royalty was included in the definition of "Land Revenue" and thereby, the cess was to be imposed on the royalty. After considering the judgments, referred to above, it is difficult to accept the contention of the learned counsel for the petitioners that even if tax is not payable on the royalty or the dead rent, yet it should be treated as direct or indirect tax on minerals, for the reasons that pursuant to the definition of "land" under the Act of 2006, such tax has been imposed only on the lands having minerals and, in that regard, even a reference has been made towards notifications subsequently issued by the Government to provide rates for imposition of tax, though such notifications are not under challenge or placed on record but shown at the time of arguments to demonstrate that the Government has provided different rates for different type of lands, having minerals. Even though, such notifications have not been placed on record, yet even if different rates have been provided for imposition of tax on the land, it cannot be said that by virtue of issuance of the notification, enactment of 2006 itself becomes *ultra virus* or goes beyond the competence of the State Government, more so, when even subsequent notification does not provide imposition of tax on royalty or on the dead rent. The notification shows different rate of tax on land having different type of mineral but then also imposition of tax is neither on royalty or dead rent so as to correlate it with imposition of tax on mineral. Even for the sake of argument it is assumed that there is improper implementation of the Act, that does not furnish a ground to strike down the Act as ultra virus. Considering the judgment of Hon'ble Apex Court reported in AIR 1965 Supreme Court 177 para 10, the arguments of the learned counsel for the petitioners cannot be accepted, because even as per the notifications subsequently issued by the Government rate of tax has been provided, irrespective of the fact as to whether the royalty is paid by the land holder or not and the fact that mineral is excavated from the land in reference or not. Hence, the provisions of enactment having no nexus with the payment of royalty and dead rent cannot be construed to mean that there is imposition of tax on the minerals, in all the cases, so decided by the Hon'ble Apex Court, the provisions of law were struck down only in those cases, where the imposition of tax/cess was on royalty /dead rent. However, in the present matter, since imposition of tax is neither on royalty nor on dead rent, thus, in our opinion, the enactment of 2006 providing tax on the land remains under Entry 49 of the State List of Schedule VII, thus it is within the competence of the State Government.

19. Another submission made by Mr. Mehta is that if a tax were to be imposed on the land it could be imposed only on the person owning the land while in the present case

the tax purports to be levied even on the licensee or lessee, or even occupier of the land. In our view, the ownership is a bundle of things, and the persons who is given right to occupy the land in whatever capacity does possess some spice of that big genus of ownership, and therefore, on this count the tax cannot be declared invalid.

20. In view of the above discussions, we do not find any merit in the arguments of the learned counsel for the petitioners to challenge the enactment of 2006, rules framed and notifications issued there under. In our opinion, the State Government is having legislative competence for the enactment of Chapter VII of the Finance Act of 2006 and rules framed there under, therefore, the Act of 2006 cannot be held to be *ultra virus* as it is falling under Entry 49 of the State List of Schedule II of the Constitution.

21. Accordingly, all the writ petitions fail, hence dismissed with no order as to costs. Petitioners would however be at liberty to take legal recourse against the notice issued to them under the Act of 2006 and any other issue not raised and decided in this judgment.

Petitions dismissed.

Cases Referred.

1. AIR 1992 SC 103
2. AIR 1962 SC 1563
3. AIR 1964 SC 1284
4. AIR 1965 SC 177
5. AIR 1990 SC 85
6. AIR 1992 SC 103
7. (1990) 1 SCC 12: (AIR 1990 SC 85)
8. (1991) 2 JT 439: (AIR 1991 SC 1676)
9. AIR 1955 SC 58
10. AIR 1941 FC 16
11. AIR 1990 SC 85