

**CHIEF JUSTICE'S COURT**  
HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE HRISHIKESH ROY  
HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MRS. JUSTICE B.V. NAGARATHNA  
HON'BLE MR. JUSTICE J.B. PARDIWALA  
HON'BLE MR. JUSTICE MANOJ MISRA  
HON'BLE MR. JUSTICE UJJAL BHUYAN  
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA  
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**COURT NO.1**  
**SUPREME COURT OF INDIA**  
**RECORD OF PROCEEDINGS**

**Civil Appeal No. 4056-4064/1999**

**MINERAL AREA DEVELOPMENT AUTHORITY ETC.**  
**Petitioner(s)**

**VERSUS**

**M/S STEEL AUTHORITY OF INDIA & ORS**  
**Respondent(s)**

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TRANSCRIPT OF HEARING

28-Feb-2024  
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1 **RAKESH DWIVEDI:** My Lords, before I pick up the thread from yesterday, may I show to  
2 Your Lordships, the Odisha Act also. The provisions of the Odisha Act...

3

4 **COUNSEL:** My Lord, I would like to mention item number 901.10 and 501.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Not now. Just circulate an email. I'll  
7 accommodate your mentioning request.

8

9 **ARVIND DATAR:** My Lord, just one before the... I'm the last batsman in Item 26, for Oil  
10 Companies. I'm the only part for the Oil Company.

11

12 **CHIEF JUSTICE D.Y. CHANDRACHUD:** On this side or this side?

13

14 **ARVIND DATAR:** On this side. Yes. We are saying that... Our point is *India Cements* is  
15 not a typographical. That's for us. And for us, more important thing is the Assam government  
16 is levying a tax, on the crude extracted. Whether the Assam government has a power to debit  
17 tax, and the Entry 49 ...

18

19 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We will hear you after all.

20

21 **ARVIND DATAR:** I've given the true questions...

22

23 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

24

25 **RAKESH DWIVEDI:** Volume IV, My Lords, at page 3179. Kindly have Section 3, 'Levy of  
26 Tax'. "On and from the commencement of this Act there shall be levied and collected a..." I'm  
27 sorry. My Lords, you have? My Lord, Justice Misra has got?

28

29 "On and from commencement of this Act, there shall be levied and collected a rural  
30 infrastructure and socio-economic development tax on all mineral bearing land in the manner  
31 hereinafter provided. For the removal of doubt, it is hereby declared that any land which is  
32 subject to levy of tax under subsection one shall not be liable to Cess under *Odisha Cess Act*  
33 **1962**. The rural infrastructure and socio-economic development tax shall be levied annually  
34 on all mineral bearing land at such rate not exceeding 20% of the annual value of such mineral  
35 bearing land as the state government may, by notification fix in that behalf and different rates

1 may be fixed for different mineral bearing land, provided that where in the case of any mineral  
2 bearing land, there is no production of mineral for two consecutive years or more, such land  
3 shall be liable for levy of tax at such rate not exceeding the dead rate, payable under the law  
4 for the time being, enforced on that mineral bearing land as may be prescribed. Provided  
5 further that the State Government shall notify the rule of tax in respect of any such mineral  
6 bearing land once during any period of two years. And (3) the state government, before fixing  
7 the rate, shall appoint a committee in such manner as we will prescribe. We shall recommend  
8 to the state government the annual value of mineral bearing lands and the rate at which the  
9 tax may be levied. Every notification shall be laid before the state legislature for 14 days." If  
10 your Lordships reverts to Section 2, "(a) is the annual value of mineral bearing land defined in  
11 relation to a financial year, means one half of the value of mineral produced from mineral  
12 bearing land during the two years, immediately preceding that financial year. The value of  
13 mineral bearing being that as could have been fetched by the entire production of mineral  
14 during the set to immediately preceding years. Had the owner of such mineral bearing land  
15 sold such mineral at the price or prices excluding the amount of tax fee duty, royalty, or any  
16 other amount as may be prescribed that prevailed on the date immediately." Explanations, My  
17 Lords are not important. The aspect which I wish to highlight is that this excludes, unlike what  
18 was being considered in *India Cement*, where land revenue royalty was brought in. Here all  
19 taxes of all kinds have been excluded. And not the total value, but one half of the value is being  
20 taken note of. So, that scenario of Cess on Royalty which my learned friend Mr. Salve had said  
21 that the Cess on Royalty and since I'm agreeing therefore, that his matter stands covered by  
22 that concession. Although concession doesn't decide, but the two provisions are completely  
23 different. This is not a Cess on Royalty at all. Not even a component. Now coming back My  
24 Lords, to... I had shown to Your Lordships, *Odisha Cement* where this error issue had been  
25 pointed out, but the Court did not go into it. The other case, My Lords, in which this issue of,  
26 the contradiction in para 34 was raised, is *Mahalaxmi Fabrics*. I'm just giving the  
27 reference, I'm not citing because as submissions have been made, I'll just give the reference.  
28 *1995 1, SCC 642 State of AP versus Mahalaxmi Fabric Mills* and that is at page 1567.

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Volume IV?

31

32 **RAKESH DWIVEDI:** Volume V. I'm sorry. Volume V.

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 1567.

35

36 **RAKESH DWIVEDI:** Now, in this case, Justice Kuldip Singh wrote the judgment, My Lord,  
37 and he culturally rejected it, relying upon *India Cement*, and said that he doesn't think that

1 there is an error. Then, My Lord, it was again raised in **Kesoram**. Finally, My Lord, it was left  
2 to Keshav and Ram to combine, My Lord, to correct the error.

3

4 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Where do we get **Kesoram**?

5

6 **RAKESH DWIVEDI:** This is Volume V, page 2020. And when Keshav and Ram, both are  
7 there My Lord, learned Solicitor General is estopped from...

8

9 **TUSHAR MEHTA:** Saying anything contrary.

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But they have not left a place for you on that  
12 side, Solicitor.

13

14 **TUSHAR MEHTA:** Yes, My Lord.

15

16 **RAKESH DWIVEDI:** There is place. I want him to come this side only.

17

18 **TUSHAR MEHTA:** I'm always with you.

19

20 **RAKESH DWIVEDI:** Because their slogan... The slogan of the Prime Minister is 'It's a  
21 double engine *sarkar*', My Lord. So, therefore....

22

23 **UNKNOWN SPEAKER 1:** There is a *Lakshman* in the Bench.

24

25 **UNKNOWN SPEAKER 2:** In the Bench there is a *Lakshman*.

26

27 **RAKESH DWIVEDI:** Although the Prime Minister... Hon'ble Prime Minister uses that  
28 expression in the sense of government of the same party, My Lord, in the party politics sense,  
29 but in the constitutional sense also, we have cooperative federalism. So, therefore...

30

31 **TUSHAR MEHTA:** These two lists is evidence of cooperative federalism that, certain things  
32 are left to Centre, certain things are left to...

33

34 **RAKESH DWIVEDI:** Of course.

35

36 **TUSHAR MEHTA:** ...assembly, etc. It is a...

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Now, GST has taken it to a different level  
2 altogether.

3

4 **TUSHAR MEHTA:** Different level, yes, yes.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Or at least in theory.

7

8 **TUSHAR MEHTA:** Mostly in practical also. But there are certain issues, doubtlessly.

9

10 **RAKESH DWIVEDI:** So, there were number of... The Acts of number of states were involved  
11 in this case. I just want to show, My Lords, at page 2085. In fact, Section 4 begins from 2084  
12 bottom, "All immovable property to be liable to a road cess and public work cess... From and  
13 after the commencement of this Act in any district or part of a district, all immovable property  
14 situated therein except as otherwise in (Section 2) provided, shall be liable to the payment of  
15 a road cess and a public works cess."

16 Section 6, next page is how to be assessed. "The road cess and the public works cess shall be  
17 assessed-- (a) In respect of lands on the annual value thereof, (b) In respect of all mines and  
18 quarries on the annual dispatches therefrom, and, (c) in respect of tramways, railways and  
19 other immovable property, on the annual net profit thereof, ascertained respectively as in this  
20 Act prescribed." And the rates at which cesses respectively, shall be levied for each year shall  
21 be determined for such year in the manner in this Act prescribed, "Provided that-- (1) the rates  
22 of such road cess and public works cess shall not exceed six paise and twenty five paise  
23 respectively on each rupee of such annual value; (2) The rates of each of such road cess and  
24 public works cess shall not exceed-- (i) fifty paise on each tonne of coal, minerals or sand of  
25 such annual dispatches, and (ii) six paise on each rupee of such annual net profits." If Your  
26 Lordships will come down to this explanation, which says, "For the purposes...", there's other  
27 Act also, West Bengal Primary Education Act, 1973, identically word, phrased, My Lords. Then  
28 explanation at the bottom. "For the purpose of Clause (b), the expression 'value of coal' shall  
29 mean-- (i) in the case of dispatches of coal as a result of sale thereof, the prices charged by the  
30 owner of a coal mine for such coal, but excluding any sum separately charged as tax, cess, duty,  
31 fee or royalty for payment."

32

33 Actually, the Odisha Act, was My Lord, drafted in accordance with this. After Your Lordships  
34 upheld this, then they altered their own Act accordingly, and that's how that stands.

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's in the West Bengal Act, right?

37

1 **RAKESH DWIVEDI:** Yes. And the next page 2086, Your Lords, will find the West Bengal  
2 Rural Employment and Production Act, 1976 and Your Lordships will find the similar kind of  
3 an explanation there also. That's Placitum E. Now kindly come to para 33. As regards to the  
4 **State of UP**, My Lord, it's at 2097, is the page where they have quoted the provision. Kindly  
5 come to para 33, at page 2102. "We now proceed to enter a deeper dimension in the field of  
6 tax legislation by considering the problem of devising the measure of taxation. This aspect has  
7 been dealt with in detail in **Union of India versus Bombay Tyre**. Tracing the principles  
8 from leading authority of a reference under the Government of Ireland Act and Section 3 of  
9 the Finance Act, passing through **Ralla Ram versus The Province of East Punjab** and  
10 treading through the law as it has developed, through judicial pronouncements one after the  
11 other. This Court has made subtle observations therein. It has been long recognized, that the  
12 measure employed for assessment... assessing a tax must not be confused with the nature of  
13 the tax. A tax has two elements. First, the person, thing, or activity on which the tax imposed  
14 and second, the amount of tax. The amount may be measured in many ways, but a distinction  
15 between the subject matter of a tax and the standard by which the amount of tax is measured  
16 must not be lost sight of. These are described, respectively, as the subject of tax and the  
17 measure of tax. It is true that the standard adopted as a measure of the levy, may be indicative  
18 of the nature of the tax. But it does not necessarily determine it. The nature of the mechanism  
19 by which tax is to be assessed is not decisive of the essential characteristic of the particular tax  
20 charged, though it may throw light on the general character of the tax." Then, Your Lordships  
21 have referred to, these various judgments. Kindly have para 38. "In **Hingir-Rampur Coal**  
22 **Co. Ltd**, the form in which the levy was imposed was held to be an impermissible test for  
23 defining in itself the character of the levy. It was argued that the method of determining the  
24 rate of levy was by reference to the minerals produced by the mines, and therefore it was a levy  
25 in the nature of duty of excise. This Court held that the method thus adopted may be relevant  
26 in considering the character of the impose, but its effect must be weighed along with and in  
27 the light of the other relevant circumstances. Referring to **Bombay Tyre**, the Court further  
28 held that, it is clear that when enacting a measure to serve as a standard for assessing the levy,  
29 the legislature need not contour it along lines which spell out the character of the levy itself. A  
30 broader based standard of reference is permissible to be adopted for the purpose of  
31 determining the measure of the levy. Any standard which maintains a nexus with the essential  
32 character of the levy, can be regarded as a valid basis for assessing the measure of the levy."  
33 Then Your Lordships have gone on to this Section... Entry 49, List II, what is the scope? I'll  
34 read, My Lord, para 40. "Ample authority is available for the concept at under Entry 49 in List  
35 II, the land remains a land without regard to the use to which it is being subjected. It is open  
36 for the legislature to ignore the nature of the user and tax the land. At the same time, it is also  
37 permissible to identify, for the purpose of classification the land by reference to its user. While

1 taxing the land, it is open for the legislature to consider the land which produces a particular  
2 growth or is useful for a particular utility and to classify it separately and tax the same.  
3 Different pieces of land identically situated otherwise, but being subjected to different uses for  
4 having different potential are capable of being classified separately without incurring the  
5 wrath of Article 14 of the Constitution. The Constitution Bench in **Kunnathat Moopil Nair**  
6 **versus State of Kerala** held that, the land on which a forest stands is not to be excluded  
7 necessarily from Entry 49. the erstwhile Entry 19 of List II applied to 'forest'. Their Lordships  
8 held that, the use of the word 'forest' in Entry 19 could not be pressed into service to cut down  
9 the plain meaning of the word 'land' in Entry 49. In **Ajoy Kumar Mukherjee vs Local**  
10 **Board Of Barpeta**, the appellant, a landholder held a *haat* for a market on this land. The  
11 Local Board asked the appellant to take out a license and pay Rs. 600/-, later Rs. 700/-, by  
12 way of license fee for holding the market. It was urged that the impost was unconstitutional,  
13 inter alia, on the ground that tax was actually imposed on the market, which infringed Article  
14 14 of the Constitution, and also because the State Legislature had no legislative competence to  
15 tax a market. The Local Board relied on Entry 49 in List II. The appellant urged that, Entries  
16 45 to 63, which deal with taxes, do not contemplate a tax on markets. Repelling the plea, the  
17 Constitution Bench held that the tax was on the land though the charges arise only when the  
18 land is used for market. The tax remained the tax on land, in spite of the imposition of being  
19 dependent upon the user of the land as market. The tax was an annual tax as contrasted to a  
20 tax for each day on which the market was held. The owner or occupier of the land was  
21 responsible for payment of tax on annual basis. The amount of tax depended upon the area of  
22 the land on which the market was held and the importance of the market. Thus the tax was  
23 held to be a tax on land." Then kindly have 42. "Once it is held that the land or building is  
24 available to be taxed it does not matter to what use the land is being subjected, though the  
25 nature of the user may enable land of one particular user being classified separately from the  
26 land being subjected to another kind of user. The tax would remain a tax on land. It cannot be  
27 urged that what is being taxed is not the land, but the nature of its user. So also, it is  
28 permissible to adopt myriad forms and methods of valuation for the purpose of quantifying  
29 the tax. In **Ralla Ram**, the Federal Court made it clear that every effort should be made as  
30 far as possible to reconcile the seeming conflict between the provisions of the Provincial  
31 Legislation and the Federal Legislation. Unless the Court forms an opinion that the extent of  
32 the alleged invasion by a Provincial Legislature into the field of the Federal Legislature is so  
33 great as would justify the view that in pith and substance, the impugned tax is a tax within the  
34 domain of the Federal Legislature, the levy of tax would not be liable to be struck down. The  
35 test laid down in, **Sir Byramjee N. Jeejeebhoy's** case by the Full Bench of the Bombay  
36 High Court was approved. In **Assistant Commissioner of Urban Land Tax Madras v.**  
37 **Buckingham and Carnatic Co.** for the purpose of attracting the applicability of Entry 49

1 in List II, so as to cover the impugned levy of tax on land and buildings, the Constitution Bench  
2 laid down twin tests, namely; (i) that such tax is directly imposed on lands and buildings and  
3 (ii) that it bears a definite relation to it. Once these tests were satisfied, it was opened to the  
4 State Legislature for the purpose of levying tax, to adopt the annual value or the capital value  
5 of the lands and buildings for determining the incidence of tax. Merely, on account of such  
6 methodology having been adopted, the State Legislature cannot be accused of having  
7 encroached upon Entries 86, 87, or 88 of List I. Entry 86 in List I proceeds on the Principle of  
8 Aggregation and tax is imposed on the totality of the value of the assets. It is quite permissible  
9 to separate lands and buildings for the purpose of taxation under Entry 49 in List II." Now,  
10 this is quite... very important My Lord, because this property may be same. In one case, it is  
11 aggregated with other assets, the Federal Legislature, as in the Parliament taxes. But if it's  
12 separate, then State under 49. And nobody can say that, it's the same property included there  
13 and the same property which is being taxed under 49, because the subject matter is different.  
14 And that's how the division of taxing power has been done.

15

16 Then in 45 also, in **R.R. Engineering**, I'm leaving the rest of paragraph 44, "Is a case of  
17 circumstances and properties tax levied on the basis of income which the assessee receives  
18 from his profession, trade, calling or property. The plea that the tax was a tax on income was  
19 discarded. The test propounded by the Constitution Bench is that an excessive levy on  
20 circumstance may tend to blur the distinction between a tax on income and a tax on  
21 circumstances. Income will then cease to be a measure or yardstick of the tax and will become  
22 the very subject matter of tax. Restraint in this behalf is a prudent prescription for the local  
23 authorities to follow. The Constitution Bench observed that it was only a matter of convenience  
24 that income was adopted as a yardstick or measure for assessing the tax and the evolution  
25 of such mechanism was not conclusive on the nature of tax." Now, this again is very significant,  
26 because income taxes directly on income and the *haisiyatkar*, as we say, or the circumstances  
27 tax, that can also be having a measure which is based on income. We are inclined to make a  
28 reference to a few selected Full Bench decisions. I am leaving these, My Lords. Your Lordships  
29 may just have 47, which is **Byramjee**, which is consistently referred to by the Constitution  
30 Benches. A full bench of Bombay High Court. "The Provincial Government levied a tax at the  
31 rate of 5% of the annual letting value in the city of Bombay on the buildings and lands. The  
32 buildings were classified by reference to their annual letting value and exception from  
33 payment of tax was also carved out in favour of such buildings, as remained vacant and  
34 unproductive of rent for the specified period. It was urged that the impugned tax purported or  
35 desired to tax the value. Placing reliance on the Federal Court's decision in **CP Motor Spirit**  
36 **Act, 1939**, Chief Justice Beaumont held that the impugned tax was a tax on land and  
37 buildings. Three submissions were made in support of the challenge: (1) that the tax is graded

1 by reference to the annual value of the property charged, (2) that an allowance was available  
2 to be made in respect of vacant properties and, (3) that the basis of the tax was the same as the  
3 basis on which tax on income from property was imposed by Sections 6 & 9 of the Income Tax  
4 Act, and therefore, in reality the rate was a tax on income. Chief Justice held that regard must  
5 be had to the pith and substance of the impugned tax, and not merely to the form. All the items  
6 in the Provincial List must be so construed as to exclude taxes on income. The tax is charged  
7 on lands and buildings, and it is based on the estimated rent which the property would fetch.  
8 Such a value may bear very little relation to the actual income of the property. It is imposed  
9 without any relation to the capital value except insofar as such value can be ascertained by  
10 reference to the rateable value. It did not make any difference if the arbitrary basis, which was  
11 adopted for the purpose of the rate, might as well be applied for ascertaining the capital value  
12 as for ascertaining income. The fact that some concession is allowed to the small owner, a  
13 concession which may be based as much on political as on economic considerations, and that  
14 an allowance may be made where the property is shown to produce no income, a fact which  
15 may be taken to show that the estimated value was found to be erroneous, cannot alter the  
16 nature of the tax. The concept that in case of conflict between the Federal List and Provincial  
17 List, an entry in the Federal List may be given a more restricted meaning, was endorsed. The  
18 legality of the levy was upheld." Now, this is a very... Classification is permissible under Article  
19 14 and I'm emphasizing this part of it where it says that, if a property is not earning any rent  
20 and is lying vacant, and the Legislature says we don't need to tax it, because the owner is not  
21 earning anything. So that's a valid classification. Otherwise, just in the case of farmers also,  
22 land revenue, this is a recurrent grievance of the farmers that because of vagaries of nature,  
23 the crop has failed or they have not been able to obtain sufficient crop yield, then it should be  
24 exempted. All those methodologies are available. Either you exempt in the beginning by the  
25 law, or you exempt later on or have a provision of exemption. So, these are various  
26 methodologies available to the state. And if we don't adopt this methodology, My Lord, then  
27 we...

28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In fact, paragraph 50 specifies that aspect, that  
30 though the Constitution has created a federal structure with a slight balance in favour of the  
31 Centre, while interpreting the different Entries, the Court must ensure that the powers of the  
32 States to impose taxation are not whittled down or they're not abrogated.

33

34 **RAKESH DWIVEDI:** That's right. So, unless there is compelling language, plain language,  
35 which makes us yield the power in favour of Federal Legislature or the Parliament, the effort  
36 should be, My Lord... Because as it is, the States are weak and gradually there is more and  
37 more erosions happening.

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**CHIEF JUSTICE D.Y. CHANDRACHUD:** Just see para 50, Placitum D. "True, the Centre has been given more powers..."

**RAKESH DWIVEDI:** "True, the Centre has been given more powers, but the same is accompanied by certain additional responsibilities as well. The Constitution is an organic, living document. It's outlook and expression as perceived and expressed by the interpreters of the Constitution must be dynamic and keep pace with changing times. Though the basics and fundamentals of the Constitution remain unalterable, the interpretation of the flexible provisions of the Constitution can be accompanied by dynamism and lean in case of conflict in favour of the weaker or the one who is more needy. Several taxes are collected by the Centre and allocation of revenue is made to the State from time to time. The Centre consuming the lion's share of revenue has attracted a good amount of criticism at the hand of States and financial experts. The interpretation of Entries can afford to strike a balance or at least try to remove imbalance so far as it can. Any conscious whittling down of the powers of the State can be guarded against by the Courts. Let it be said that federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle - the outcome of our own historical process and a recognition of the ground realities." Quoting from Shri M.C. Setalvad, Justice Jeevan Reddy observed, "It is enough to note that our Constitution has necessarily a bias towards Centre vis-a-vis the States. It is equally necessary to emphasize that Courts should be careful not to upset the delicately crafted constitutional schema by a process of interpretation."

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Then para 51 onwards, they deal with *India Cement*. So, we can look at that actually, without shifting...

**RAKESH DWIVEDI:** Here, Your Lordships may note this aspect has been also emphasized in *Jindal Steel*.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** That is on part 13, right?

**RAKESH DWIVEDI:** Yes. Page 108, Your Lordship, in note of my Written Submission, we have extracted that portion. I'm grateful to my friend. If Your Lordships have para 47, just above para 48. The same idea is...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** This very...

1 **RAKESH DWIVEDI:** Yes. "The concept that in case of conflict between the Federal List and  
2 Provincial List, an entry in the Federal List may be given a more restricted meaning, was  
3 endorsed. The legality of the levy was upheld." That is in para 47.

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Let's look at para 52 onwards, *India Cement*  
6 and then going to para 60.

7

8 **RAKESH DWIVEDI:** "What was impugned was a levy of cess on royalty and the question  
9 was, whether such cess on royalty is within the competence of the State Legislature. The  
10 appellant was required to pay...". This is all the Act reference... Reference to the Act and the  
11 entries involved. Then in paragraph 53, the Lordships refers to... It will be better if Your  
12 Lordship has from para 54, where *Lakshminarayana's* case of Mysore High Court is dealt  
13 with and then they come to the royalty of tax. "A Division Bench decision of the Mysore High  
14 Court in *Laxminarayana Mining Co. versus Taluk Board* was cited with approval in  
15 *India Cement*. The Mysore High Court struck down as violative of the MMDR Act, 1957, a  
16 licence fee on mining manganese or iron ore, et cetera imposed by a State Legislation. A  
17 perusal of the judgment of Mysore High Court shows that the impost was by way of licence fee  
18 on the mining of certain minerals. The regulation and development of mines and minerals,  
19 were undertaken by the Central Legislation and therefore the power of the State Legislature  
20 under Entry 23 and 52, List II got denuded in the field of regulation and development covered  
21 by the Central Legislation. The Division Bench in, Page 301 , para 6. 'It is therefore clear that  
22 to the extent the Central Act makes the provisions regarding regulation and development of  
23 minerals, the powers of the State Legislature under Entry 23 List II stands curtailed'. The State  
24 Government had sought to defend the licence fee on the ground that it was in the nature of tax  
25 and not a licence fee. This plea has been specifically noted by the High Court. However, what  
26 is significant to note is the revelation made by careful reading of the Judgment, that provision  
27 of license fee was made in the Central Legislation and the license fee was sought to be imposed  
28 by the State too. In fact, the license fee was a step trenching upon the field of regulation, and  
29 therefore was liable to be struck down on this ground alone. Yet another reasoning which  
30 prevailed with the High court was that Section 143 of the State Act, which was not inconsistent  
31 with the Central Act was relied on by the State Government as conferring power on it to levy  
32 the impugned licence fee. On what plea the High Court formed an opinion that on the framing  
33 of Section 143 of the State Act it did not, in express terms, authorized a levy of fee or a tax."  
34 So, the State had no delegated power to impose a tax. So, on two grounds... "The High Court  
35 observed , it cannot also be construed as conferring such a power on the respondents to levy  
36 attacks or fee on mining. In view of the well scheduled rule of statutory construction that a  
37 court construing a provision of law must presume that intention of the authority in making it

1 was not to exceed its power, but to enact it validly. The ratio of the decision of the Mysore High  
2 Court is that the provision for licences and licence fees operating in the field of regulation of  
3 mines and windows is not available to be made by the State Legislation - in view of the  
4 declaration in terms of Entry 54 List one. In our view, the decision of the Mysore High Court  
5 cannot be read, so widely as laying down the law that Union's power to regulate and control  
6 results in depriving the States of that power to levy a tax or free within their Legislative  
7 competence without trenching upon the field of regulation and control. There is a distinction  
8 between the power to regulate and control and the power to tax the two being distinct, and the  
9 difference has not been kept in view by the Mysore High court." So, actually that other part  
10 was not really necessary, because licence fee was challenged. They held it is free and there was  
11 no power also, which was sufficient ground.

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And the Central Act had a specific provision for  
14 licencing also.

15

16 **RAKESH DWIVEDI:** But the State said then, as it happens, that when we start falling  
17 back...

18

19 **CHIEF JUSTICE D.Y. CHANDRACHUD:** ...alternative grounds...

20

21 **RAKESH DWIVEDI:** So they said it's tax. So then, My Lord, the fault was really with the  
22 judgment of Justice Wanchoo in *Hingir-Rampur*, which is, though concurring but this  
23 judgment alone goes into... I'll show that judgment, it's a dissenting judgment. So because of  
24 that My Lord, being at the level of High Court then his Lordship, as he then was, so naturally  
25 had to...

26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Look at Justice Lahoti, as he then was. Para 56  
28 begins in a very beautiful way.

29

30 **RAKESH DWIVEDI:** "We would like to avail this opportunity for pointing out an error I  
31 attributable either to the stenographer's devil or to share inadvertent having crept into the  
32 majority judgment in *India's Cement Limited* case. The error is apparent and only needs  
33 a careful reading to detect, we feel constrained, rather duty bound to say so, lest the reading  
34 of the judgment continued such an error. Just an error of one word should continue to cause  
35 the likely embarrassment and have adverse effect on the subsequent judicial pronouncement,  
36 Which would follow *India Cement*, feeling bound, and rightly by the set judgment having

1 the force of pronouncement by Seven Judge Bench. Then they quote para 34 and they idealised  
2 the two observations in the first and last sentence.

3

4 Para 57. In the first sentence, 'the word 'royalty' occurring in the expression 'royalty is tax' is  
5 clearly an error. What the majority wished to say and has in fact said is, cess on 'royalty is a  
6 tax'. In place of 'royalty' only, the words 'cess on' appear to have been inadvertently or  
7 erroneously omitted while typing the text of the judgment. This is clear from the reading of  
8 the judgment in its entirety, while Paras 22 and 31, which precede Para 34 above said, their  
9 Lordships have held that 'royalty' is not a tax. Even the last line of Para 34 records, 'royalty on  
10 mineral rights is not a tax on land, but a payment for the user of the land.' The very first  
11 sentence of the para records in quick succession as such a cess on 'royalty', being a tax on  
12 'royalty' is beyond the competence of the State Legislature. What their Lordships have  
13 intended to record is, that cess on 'royalty' is a tax and as such cess on 'royalty' being a 'tax on  
14 royalty', is beyond the competence of State Legislature, that makes correct and sensible  
15 reading, a doubtful expression occurring in a judgment, apparently by mistake or inadvertence  
16 ought to be read by assuming that the court had intended to say only that which is correct  
17 according to the settled position of law and the apparent error should be ignored. Far from  
18 making any capital out of it, giving way to the correct expression which ought to be implied or  
19 necessarily read in the context, also, having regard to what has been said a little before and a  
20 little after. No learned Judge would consciously author a judgment which is self-inconsistent  
21 or incorporates passages repugnant to each other. White para 22, their Lordships have clearly  
22 held that there is no entry in List II which enables the State to impose tax on 'royalty' and  
23 therefore the State was incompetent to impose such a tax. The cess which has incidence of an  
24 additional charge on royalty and not a tax on land, cannot apparently be justified as falling  
25 under Entry 49, List II. It is of significance for the issue before us to determine the nature of  
26 'royalty' and whether it is a tax. And if not, then what it is. Until the pronouncement of this  
27 court in **India Cement**, it has been the uniform and unanimous judicial opinion that 'royalty  
28 is not a tax.' Then Your Lordship will see the consideration given by the court to the meaning  
29 of 'royalty'. They first refer in paragraph 59 to the dictionary meanings.

30

31 **JUSTICE J.B. PARDIWALA:** Para 60 is important.

32

33 **RAKESH DWIVEDI:** Para 60, I am leaving that.

34

35 **JUSTICE J.B. PARDIWALA:** Where they have referred to **D.K. Trivedi**.

36

1 **RAKESH DWIVEDI:** That's right. In *D.K. Trivedi*, a Bench of two learned Judges of this  
2 Court dealt with "rent", "royalty" and "dead rent" and held as follows. 'Rent is an integral part  
3 of the concept of a lease. It is the consideration moving from the lessee to the lessor for the  
4 demise of the property to him. In mining lease, the consideration usually moving from the  
5 lessee to the lessor is the rent for the area leased, often called "surface rent", "dead rent" and  
6 "royalty." Since the mining lease confers upon the lessee, the right not merely to enjoy the  
7 property as under an ordinary lease, but also to extract minerals from the land and to  
8 appropriate them for his own use or benefit. In addition to the usual rent for the area demised,  
9 the lessee is required to pay a certain amount in respect of the minerals extracted,  
10 proportionate to the quantity so extracted. Such payment is called "royalty". It may, however,  
11 be that the mine is not worked properly, so as not to yield enough return to the lessor, in the  
12 shape of "royalty." In order to ensure for the lessor a regular income, regardless of whether the  
13 mine is worked or not. A fixed amount is provided to be paid to him by the lessee, this is called  
14 "dead rent". "Dead rent" is calculated on the basis of the area leased while "royalty" is  
15 calculated on the quantity of minerals extracted or removed. Thus, while "dead rent" is a fixed  
16 return to the lessor, "royalty" is a return which varies with the quantity of minerals extracted  
17 or removed. Since "dead rent" and "royalty" are both a return to the lessor in respect of the  
18 area leased, looked at from one point of view, "dead rent" can be described as the minimum  
19 guaranteed amount of "royalty" payable to the lessor.

20

21 Then the bottom. In *H. R. S. Murthy*, to the Constitution Bench of this court had defined  
22 royalty to mean "the payment made for the materials and minerals won from the land." Then  
23 para. 61, the various High Courts are referred to. A Full Bench of the High Court of Orissa held  
24 in *Laxminarayan Agrawal*, royalty is, 'the payment made for the minerals extracted. It is  
25 not a tax.' In *Surajdin Laxmanlal v. State of M.P., Nagpur* Division Bench of the  
26 High Court of Madhya Pradesh referred to Wharton's Law Lexicon and Mozley and Whiteley's  
27 Law Dictionary, "Royalties are payments which the government may demand for the  
28 appropriation of minerals, timber, otherwise belonging to the government." The High Court  
29 opined that there are two important features of royalty. The payment is in proportion of the  
30 quantity removed and the basis of payment is an agreement. Then drawing a distinction  
31 between royalty and tax, a Division Bench of the High Court of Punjab and Haryana held in  
32 *Dr. Shanthi Saroop Sharma and Anr. v. State of Punjab*. If a person is merely in  
33 occupation of land which contains minor minerals, he is not liable. To pay any royalty, but it  
34 is only when he holds a mining lease, and by virtue of that, extracts one or more minor  
35 minerals that he's called upon to pay royalty to the government. Where the lease is in respect  
36 of the land in which minor minerals vest in the government. Royalty thus has its basis in the  
37 contract for payment to the owner of the minerals for the privilege of extracting minor

1 minerals computed on the basis of quantity actually extracted and removed. It is more akin to  
2 rent or compensation payable to an owner by the occupier or lessee for its use or exploit of the  
3 resources contained therein. Merely because, the provision with regard to royalties made by  
4 virtue of the rules relating to the regulation of the mining lease and a uniform rate is  
5 prescribed, it does not follow that it is compulsory exaction. They refer to the Gujarat High  
6 Court and, if I may say so, with respect....

7

8 **JUSTICE B.V. NAGARATHNA:** Royalty is paid for the exercise of mineral rights.

9

10 **RAKESH DWIVEDI:** Yes.

11

12 **JUSTICE B.V. NAGARATHNA:** And mineral rights could be taxed under entry 50 by the  
13 State Government. But in the interest of mineral development, the List I, which speaks of  
14 mineral development, wants to have a uniformity insofar as payment of royalty is concerned  
15 throughout the country. Therefore, it is taken as part of List I, and it is a limitation on the  
16 exercise of the state to impose any limit... royalty as per Entry 50 of List I. That is one way of  
17 looking at it. Therefore, it is a tax in a way, but coming under the MMRD Act and under Entry  
18 54 of List I.

19

20 **RAKESH DWIVEDI:** I would submit, 'tax by itself is sovereign exercise, which is not co-  
21 relatable to...'

22

23 **JUSTICE B.V. NAGARATHNA:** Or you can call it 'an impost.'

24

25 **RAKESH DWIVEDI:** Impost also, under 366 (28) is clubbed with tax. And it's a part of a  
26 definition of taxation. So we can't understand 'impost' as far removed, something different  
27 completely from...

28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** It's a compulsory exaction for the revenue.

30

31 **RAKESH DWIVEDI:** The *doctrine of noscitur a sociis*, My Lord. Just as a man is known by  
32 the company he keeps. Therefore, the word impost is only sort of defining. Taxation, including  
33 tax or impost. And then they say, "understand tax accordingly." That's what 28 is.

34

35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And even if the government is extracting the  
36 mineral from a land which belongs to a private party, is liable to pay the royalty.

37

1 **RAKESH DWIVEDI:** So, it can't be taxed.

2

3 **JUSTICE B.V. NAGARATHNA:** No, or an impost. Something which... it is an exercise of  
4 a mineral right, which has to be paid by the person who has got the mining lease. When he  
5 extracts the mineral, he is bound to pay the royalty.

6

7 **RAKESH DWIVEDI:** So, my respectful response is, My Lord, that please understand  
8 'impost' in Article 366 (28) as something similar to tax. All kinds of charges which are imposed,  
9 which are in the nature of a tax, namely a sovereign need. The government needs tax money,  
10 not because it is parting with its ownership of mineral, but because, My Lord, it has to maintain  
11 an army, a police force and there's a judiciary, the government itself, the foreign affairs, which  
12 it has to take care of, so it needs a large amount of money. For which government does not  
13 either. It's not parting with its ownership in anything, nor the lord. It is guaranteeing that it is  
14 going to give you something back in the sense of a *quid pro quo* or in a sense of a regulatory  
15 fee.

16

17 **JUSTICE B.V. NAGARATHNA:** Definition also begins with words, unless the context  
18 otherwise requires.

19

20 **RAKESH DWIVEDI:** Right. So I'm relying strongly on that expression, therefore this  
21 definition would not be available if the text or context of the particular Statute or the other  
22 provisions of the Constitution indicate that it is not attack.

23

24 **JUSTICE B.V. NAGARATHNA:** Therefore, we have to go into the object of having 'royalty',  
25 which is throughout the country, uniform under the Central Act.

26

27 **RAKESH DWIVEDI:** So innate character of 'royalty' remains the same irrespective of  
28 whether the State Government fixes it for minor middle under Section 15. Which will vary  
29 from State to State or the Central Government takes that power and wants to fix a uniform  
30 'royalty' for major mineral so idea of Uniformity is not inconsistent with the innate character of  
31 royalty. It doesn't change that, because, as I said, this is a cooperative federalism, and if a  
32 uniformity is desired in the field of 'royalty' for major minerals which are of National  
33 importance, then the only authority which can be trusted with this power would be the Union,  
34 because one State cannot fix it formally for the other States so therefore it has been fixed but  
35 'royalty'.

36

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Therefore quantum Uniformity is in regard to  
2 the quantum, not in regard to the character of the...

3

4 **RAKESH DWIVEDI:** Character of the living quantity, the quantum of amount, which is to  
5 be recovered from, let's say, Coal. So whether coal is found in the mines in Jharkhand or  
6 Madhya Pradesh or Chhattisgarh or Orisa will make no difference. It may vary if the Central  
7 Government itself fixes it dependent upon the quality of Coal but otherwise the quantum will  
8 remain same so my submission is. Uniformity does not change the character. The innate  
9 character of royalty remains the same. Now let's take the State as a unit for the time being, for  
10 the sake of argument remove the other States. Let's take the State of up now, sand is a minor  
11 mineral and under Section 15, the State is empowered to fix 'royalty' for the minor minerals  
12 now the river is flowing right from Rishikesh right up to Varanasi and onwards into Patna,  
13 Bihar at various points the leases are granted for extracting sand as minor minerals. Now the  
14 State would like to have uniformity. So, it's not that uniformity is only in Section 9 even under  
15 Section 15, when a rule is made, the State would like to have uniformity that is with regard to  
16 the quantum, which can be realized from the sand, which is recovered from the same river or  
17 even if the river is different because Ganga there is Jamuna and various river passing to Betwa.  
18 So therefore, uniformity is something which is not peculiar to Section 9. It is there in Section  
19 15 when the state kicks his 'royalty', and that does not detract or alter the innate character of  
20 'royalty', which is that it is a return because the State has owner of the mineral and the land  
21 has parted with that right. So there are various rights at this stage itself, if I may scale. Out this  
22 mineral, right, which is an inscription what exactly will be there in the mineral? Right. Justice  
23 Wanchoo says that the right to extract mineral is a mineral right. But right to mineral itself is  
24 not a. Now, this is in my respectable submission, with due deference, the learned judge, rights  
25 which are given for extracting are under the lease. The lease is a grant under the statute.  
26 Various applicants are there, if it is option, they'll bid. If it is otherwise, first come, first serve,  
27 whatever formula. So the lease is a grant of a leased area for the purpose of mining. There can  
28 be a lease as we enjoy, where the government gives land for people to build houses and live,  
29 for residential purpose, for commercial purpose, various purpose, this is for mining purpose.  
30 So that is a grant of a right in the land for a particular purpose under the statute. Then under  
31 the lease which is given, you are given various rights. The first right is right to excavate, drill,  
32 or to take out the minerals in such manner as is suitable to the particular mineral. So right to  
33 excavate or drill the land. The second will be the right to extract mineral from that, after  
34 excavating. So right to extract mineral is the second right. The third will be the right to  
35 beneficiate because when you extract mineral, there is dust also coming out, there is the  
36 mineral dust also, there are lumps also. So it can't be sold like that. So they are permit... the  
37 lessees are permitted to convert it into a suitable size, segregate it and sell it. So therefore, that

1 is the third right, right to beneficiate, and the fourth right is right to carry and dispatch it for  
2 sale or sell it. They are all four rights interconnected, the whole exercise of excavating  
3 extracting, beneficiating is meaningless unless and until, My Lord, he sells the mineral which  
4 he has won and gets the return out of it.

5

6 **JUSTICE B.V. NAGARATHNA:** But taxes on mineral rights can be levied only by the state.

7

8 **RAKESH DWIVEDI:** By the state... on each of these four.

9

10 **JUSTICE B.V. NAGARATHNA:** Then under what... "royalty" is under the Central Act we  
11 have to see?

12

13 **RAKESH DWIVEDI:** So "royalty", My Lords, I have submitted that in great respect that,  
14 "royalty" is because of the parting of this. If the state does not part with this right by means of  
15 a lease, then the state will not be recov... getting any of these things. So the "rent", "dead rent"  
16 and this, all three of them are just consideration for parting with the land and the rights to  
17 excavate, extract, beneficiate and sell. All four of them are mineral rights, and it is the right  
18 which is taxed under. What will be the measure is a different thing. But it is the mineral right,  
19 not the right to land, right to mineral, the land which is leased and the right to mineral under  
20 the lease, are too distinct phenomena, two different and distinct aspects, if I may use this  
21 expression, which is deployed in understanding the taxing entries.

22

23 **JUSTICE ABHAY S. OKA:** Royalty cannot be a fee.

24

25 **RAKESH DWIVEDI:** That's right. Under the lease, the mineral right will rise, My Lords are  
26 right. And there are four aspects, four strands of those rights which flow from the lease. And  
27 "royalty", My Lords... Otherwise, Your Lordships will have to then understand "royalty."  
28 When State and Central Government is mining in a private land and is paying "royalty", it can't  
29 be taxed, which the government is paying to the private person. Or if this partly owned by  
30 government, partly Rule 53 says, you have to...

31

32 **JUSTICE J.B. PARDIWALA:** Mr. Dwivedi, you have to... you can fortify this submission.

33

34 **RAKESH DWIVEDI:** Yes, My Lord.

35

1 **JUSTICE J.B. PARDIWALA:** By relying on *Saurashtra Cement & Chemical*  
2 *Industries*, referred to in para 63 of *Kesoram* and these judgments are referred to in the  
3 1990 judgment.

4

5 **RAKESH DWIVEDI:** Yes, I may, please, My Lord.

6

7 **JUSTICE J.B. PARDIWALA:** Because they have said royalty may not be a fee also.

8

9 **RAKESH DWIVEDI:** But it is not a tax. It is payment for the mineral which is removed or  
10 consumed by the holder of the mining lease. The minerals themselves, the property beneath  
11 the soil, belonging to the Union. When the holder of the mining lease removes these minerals  
12 or consumes them, he can do so only on payment of its price or value. Therefore, royalty is a  
13 share which the Union claims in the minerals which have been won from the soil by the lessee  
14 and which otherwise belong to it. Royalty is a share in such minerals and not a tax in the form  
15 of a compulsory exaction. It is not compulsory, because anyone who applies for mining lease  
16 to win minerals for being removed or consumed must pay its price. If it does not want to pay  
17 the price, he may not apply for mining lease. Royalty, which is a share of the owner of the  
18 minerals, the Union won by the lessee from the soil, with the authority of the Union, can never  
19 be said to be an imposition on the holder of a mining lease.

20

21 **JUSTICE ABHAY S. OKA:** It's a consideration, not fee.

22

23 **RAKESH DWIVEDI:** Yes.

24

25 **JUSTICE ABHAY S. OKA:** Neither tax nor fee, but it's a consideration, payable to the  
26 Government.

27

28 **RAKESH DWIVEDI:** Now, look at it from yet another angle. Supposing, if royalty is a tax,  
29 what is it that the State is getting for giving this right to the...? If royalty is tax, dead rent is a  
30 minimum guarantee of royalty, so that is also tax. So, the State Government is owner of the  
31 land, State Government is owner of the mineral and it gets only the tax which is fixed as  
32 royalty. But it is getting no part of the consideration, the value, mineral value. As an owner, I  
33 am parting... any owner, it will be naturally to expect that he will expect a return for it. Which  
34 will then mean that the State will be entitled to ask for something extra, apart from royalty in  
35 lieu of the parting of Ownership Rights in the land and mineral.

36

1 **JUSTICE B.V. NAGARATHNA:** Then what happens when the State is the holder of the  
2 mining lease?

3

4 **RAKESH DWIVEDI:** If the State is doing and reserving itself, then the state will not pay to  
5 itself anything. Because it is reserved as my land, it's my mineral. There's no question of  
6 charging.

7

8 **JUSTICE B.V. NAGARATHNA:** Because, Section 9 of the Act, Central Act, says, "the holder  
9 of a mining lease."

10

11 **RAKESH DWIVEDI:** Yes.

12

13 **JUSTICE B.V. NAGARATHNA:** So, when the State itself...

14

15 **RAKESH DWIVEDI:** State doesn't hold a lease. The State is observing the land.

16

17 **JUSTICE B.V. NAGARATHNA:** There is no hold... The lease...

18

19 **RAKESH DWIVEDI:** Under Section 17, State will reserve the land and do mining itself.  
20 There is a provision under 17 and 17(a), that if the Central Government is mining, then Central  
21 Government will be deemed to be holding a lease and it will pay royalty to the State  
22 Government.

23

24 **JUSTICE B.V. NAGARATHNA:** Like NMDC?

25

26 **RAKESH DWIVEDI:** Yes.

27

28 **JUSTICE B.V. NAGARATHNA:** If they are mining.

29

30 **RAKESH DWIVEDI:** That's right. Company will be different from Central Government.  
31 Central Government will be protected from paying tax to the State Government under Article  
32 285.

33

34 **JUSTICE B.V. NAGARATHNA:** Yes.

35

36 **RAKESH DWIVEDI:** But Your Lordships have held that if the Central Government vests  
37 the lease in some company, then the company is not Union. Company will have to pay. So it

1 can't be, the Central Government is paying tax, My Lord, to Central Government... is exempted  
2 under 285. So, then...

3

4 **CHIEF JUSTICE D.Y. CHANDRACHUD:** There after the Court in *Kesoram* refers to  
5 subsequent decisions of the Supreme Court.

6

7 **RAKESH DWIVEDI:** Yes.

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And then, having referred to them, look at para  
10 69 now. In *India Cement*...

11

12 **RAKESH DWIVEDI:** In fact, 68 *Quarry Owners* was another interesting case.

13

14 **JUSTICE J.B. PARDIWALA:** That is important.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You can read. 68 and then 69.

17

18 **JUSTICE J.B. PARDIWALA:** [UNCLEAR] royalty and dead rent are integral parts of a  
19 lease. So, if there is no lease, no question of [UNCLEAR]

20

21 **JUSTICE B.V. NAGARATHNA:** It says holder of a mining lease.

22

23 **RAKESH DWIVEDI:** Because of *India Cement*, and this *Quarry Owners* was a bench  
24 of 2-judges. So, I was appearing, My Lord, I was in great difficulty how to convince and get out  
25 of this 'royalty is a tax.' So, I said that it's a kind of a mixed thing, there is a tax also, and there  
26 is a return also in that.

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** They refer notice that they try to wriggle out of  
29 the situation, the smaller bench... Royalty includes the price....

30

31 **RAKESH DWIVEDI:** My Learned Judges found it difficult to accept the concept, but tries  
32 to wriggle out of the situation by [UNCLEAR] it. Royalty includes the price for the  
33 consideration of parting of the right and privilege of the owner, namely the State Government,  
34 who owns the minerals. In other words, the royalty and dead rent, which a lessee or....

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Para 68.

37

1 **RAKESH DWIVEDI:**... includes the price of the minerals, which are the property of the  
2 state. Both royalty and dead rent are integral...

3

4 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Are integral parts of a lease.

5

6 **RAKESH DWIVEDI:**... parts of the lease. Thus it does not constitute usual tax as commonly  
7 understood but a return for the consideration of the parting. This is what I was saying, that if  
8 it is taxed, royalty it is taxed, then State will be entitled to something, charge something else.

9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Now see para 69.

11

12 **RAKESH DWIVEDI:** That will be a greater disturbance in the system, because then every  
13 state will be again left free to charge whatever it wants. So, it's much better that we say that  
14 royalty is not a tax and let it be uniform. Whoever has a lease, will pay the royalty and where  
15 there is a reservation by the Central Government, Central Government will pay. But where  
16 there is no reservation by any other authority and State Government is doing, then there's no  
17 question of... because states is the owner and itself is doing. In 69, in decisions of four High  
18 Courts, holding royalty is not taxed have been noted without any adverse comment, rather,  
19 the view seems to have been noted with tacit approval. Further, the connotative meaning of  
20 royalty being shared in the produce of land and *India Cement* itself says, if that error is  
21 corrected, it itself says in the last sentence, "Is shared in the use of." But for the first sentence,  
22 which we find to be an apparent error, nowhere else has the majority judgment held royalty to  
23 be a tax. How the above noted in inadvertent error in *India Cement* has resulted in throwing  
24 on the loop line, the movement of the latter case law in this point, may be noticed. Then I have  
25 pointed out the *Mahalaxmi* and this *Saurashtra Cement* decision by a bench of two  
26 learned Judges in *India Cement* has been quoted verbatim and dealt with in *Mahalaxmi*  
27 *Fabric*. This court noticed several dictionary meanings of royalty and also the decision...

28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Skip that. Go to 71.

30

31 **RAKESH DWIVEDI:** We have clearly pointed out the said error, as we are fully convinced  
32 in that regard and feel ourselves obliged constitutionally, legally, and morally to do so, lest the  
33 said error should cause any further harm to the trend of jurisprudential thought centring  
34 around the meaning of royalty. We hold that royalty is not tax. Royalty is paid to the owner of  
35 land who may be a private person and may not necessarily be a state. A private person owning  
36 the land is entitled to charge royalty, but not tax. The lessor receives royalty as his income, and  
37 for the lessee, the royalty paid is an expenditure incurred. Royalty cannot be taxed. We declare

1 that even in *India Cement*, it was not the finding of the court that royalty is taxed. A  
2 statement caused by an apparent typographical or inadvertent error in the judgment of the  
3 court should not be misunderstood as declaration of such a law by the court. We also record  
4 our express dissent with that part of *Mahalaxmi*, which says that there was no typographical  
5 error in *India Cement* and that the said conclusion of royalty as a tax logically flows from  
6 the earlier paragraphs.

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes. Now they go to the...

9

10 **RAKESH DWIVEDI:** 15 of my written submission, I have given two subsequent judgments  
11 which hold that royalty is not a tax. Page 15, that is Item 7 and 8. One is *State of Himachal*  
12 *Pradesh versus Gujarat Ambuja Cement, 2005, 6SCC 499*, para 44 to 46. It's Volume  
13 V(c), page 290.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And?

16

17 **RAKESH DWIVEDI:** And the other is *Indsil Hydro Power Versus State of Kerala*,  
18 2021, Volume 10, SCC 165, para 50 to 56 which is again, volume V(c), page 381 and it has  
19 considered *Jindal* also in this.

20

21 Kindly have Article 297 for a second My Lord. That deals with the land and minerals in the  
22 territorial waters. 'Things of value within territorial waters or continental shelves and  
23 resources of the Exclusive Economic Zone to vest in the Union. All land, minerals and other  
24 things of value underlying the ocean, within the territorial waters or the continental shelf or  
25 the Exclusive Economic Zone of India, shall vest in the Union and be held for the purposes of  
26 the Union.' The first thing to be noticed is that land and mineral are being separately... So, the  
27 fact that tax on mineral rights is in Entry 50 does not detract from... take out anything from  
28 tax on land and buildings, which is in Entry 49. They are two different objects.

29

30 **JUSTICE B.V. NAGARATHNA:** On the activity of mining?

31

32 **RAKESH DWIVEDI:** That's right. Yes. Activity plus the product...

33

34 **JUSTICE B.V. NAGARATHNA:** Product.

35

36 **RAKESH DWIVEDI:** ... which is to be extracted and sold. All other resources of the  
37 Exclusive Economic Zone of India shall also vest in the Union and be held for the purposes of

1 Union. The limits of territorial waters, continental shelf, Exclusive Economic Zone and other  
2 maritime zones of India shall be such as may be specified from time to time by or under law  
3 made by Parliament.' So, there's one area which is completely taken out from the states, and  
4 it is therefore, for the Central Government where Central Government grants a similar right  
5 to carry on any such activity to a private company, or an international company, multinational  
6 company. Then they will have to pay whatever the determinations are under the law or the  
7 lease.

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Coastal state can't tax.

10

11 **RAKESH DWIVEDI:** No.

12

13 **JUSTICE HRISHIKESH ROY:** Crude oil extraction from the ocean bay...

14

15 **RAKESH DWIVEDI:** Generally, yes, My Lord. Sometimes on the....

16

17 **JUSTICE HRISHIKESH ROY:** So, the Union would be the authority.

18

19 **RAKESH DWIVEDI:** And that's why, under the Offshore Rules of 2002, the royalty goes to  
20 the Central Government. Now that royalty again will not have a different character. It's  
21 because the land, etc., is vesting in the Union. Therefore, the Union, parts with that and then  
22 demands. Then after that... Their Lordships have dealt with *Sundaramier*.

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What remains now? Of course, you would like  
25 to conclude the reading in this?

26

27 **RAKESH DWIVEDI:** Yes, I'll just quickly finish through this. I'm not reading all the  
28 paragraphs, just pointing out to Your Lordships at page 2119, the general... before that, there  
29 are two paragraphs dealing with the doctrine of... the scheme of division of power regarding  
30 tax.

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That is *Sundaramier*.

33

34 **RAKESH DWIVEDI:** I am not reading that, My Lord. Then in para 77 onwards is 'general  
35 power of regulation and control does not include the power of tax'. Please come to page 2123.  
36 "Thus, the power to levy and collect fee or taxes in respect of minerals mined, quarried,  
37 excavated or collected was expressly conferred on the Central Government by a specific

1 provision made in that regard by the Act. Because the power to levy tax or fee was appropriated  
2 to itself by the Central Legislation, it was held that the impugned Odisha Act or State  
3 Legislation could not have provided for the levy of a fee by virtue." Now they are dealing with  
4 the `48 Act *Hingir-Rampur* 1948, which expressly had. At that time Constitution was not  
5 there. "The Union, having exercised its power to legislate, the field was covered and accepted  
6 from the legislative competence of the state. Yet, the recovery was held not liable to be annulled  
7 in as much as Central Act '53 was a pre-Constitution legislation, and there was no declaration  
8 under... "Then para 90. They said, "MMRD Act, which we are called upon today, stands on it  
9 much better footing for the Writ Petitioners herein, as it does not contain any provision similar  
10 to Section 6 and 10 of the Central Act of '48 or Section 9 of the Central Act of 1951." Then they  
11 go on to *Tulloch* and all those. You Lordships will kindly leave that for the moment. Kindly  
12 come to paragraph 97, Section 13 (2) (i) cannot be read as empowering the Central  
13 Government to levy any tax or fee. The expression "other fee and charges" has to be interpreted  
14 [UNCLEAR], taking colour from the other words and phrases employed in the same clause.  
15 The word 'charges' cannot and does not include within its meaning any tax. The expression  
16 "other fee or charges" must be assigned such meaning as to include therein only such fee and  
17 charges as are meant for regulation, for development." We are clear in our minds that a power  
18 to levy tax or fee cannot be spelled out from Section 13, 18 and 25 of the Act of 1957. It is well  
19 settled that power to tax cannot be inferred by implication. There must be a charging section  
20 specifically empowering the state to levy tax.

21  
22 Section 18(2)Q speaks of fee to be paid on applications for revision and not on minerals,  
23 mineral rights of mining land. Section 25 speaks of recovery of tax and fee, amongst others.  
24 Two observations are spontaneous. Firstly, a provision for recovery, being a machinery  
25 provision, cannot be read as empowering the levy of tax or fee. Secondly, it speaks of tax or fee  
26 being due to Government without defining the same and without qualifying the word  
27 "Government" with Central or State. A perusal of several provisions of the Act and in  
28 particular, section 9A, 15, 15(1)(a), 15(3), 17(3), 21(5), 25 goes to show that the power of  
29 recovery is invariably given to the State Government. Obviously, the word "Government" in  
30 Section 25 refers to State Government, which only is empowered to recover the sums due as  
31 arrears of land revenue. And then they deal with whether it can be located, power of tax is a  
32 residuary power. Kindly come to para 104 at 2130. Power to tax must be expressed else no  
33 power to tax. From para 104 to 107 and at page 2135, in paragraph 113, after referring to  
34 various other judgments.

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Para?

37

1 **RAKESH DWIVEDI:** Just above para 114. Part of 113 at page 2135, placitum A. The power  
2 of levying tax is essentially for the very existence of the Government, though its exercise may  
3 be controlled by constitutional provisions made in that behalf. Power of tax is not outside  
4 constitutional limitations. It is for Parliament to exercise power in the field made available to  
5 it by Entries 52 and 54, List I. It is also for Parliament to state by law, the limitations and the  
6 sweep thereof, which it may choose to impose on the field available to the state for taxation by  
7 reference into Entry, 50, List II. It may not be for courts to venture into inquiry in just an  
8 individual case to find out and hold what tax would hamper mineral development if  
9 Parliament has chosen to observe silence, but not legislating or failed to say something explicit.  
10 A reasonable tax or fee levied by State Legislation cannot, in our opinion, be construed as  
11 trenching upon the Union's power and freedom to regulate and control mines and minerals.  
12 Then para 125 *Goodricke* case. So, there was another issue where the *Buxa Dooar* and  
13 *Goodricke*, which is correct. And then 129, *Goodricke* was held to be correctly decided in  
14 para 128 and this is important because here, the tax on the tea estates, on the dispatches was  
15 on the dispatches, and therefore, and that was upheld. On applying the aforesaid principle  
16 that's para 127, the court concluded that taxing the quantum of yield of a tea estate for  
17 measuring the amount of tax perfectly valid and cannot be equated to the situation in *India*  
18 *Cement*. We may observe the reasoning adopted in *Goodricke* accords with the reasoning  
19 in *Hingir-Rampur* was correctly decided. Then 129 summarizes. So, in the, some of the  
20 written submissions, it was said, that if this tax is allowed, then the price of mineral will go up.  
21 Now, whenever tax is imposed, the prices do go up, but that will by itself be no ground, My  
22 Lord, for saying that the tax is to... power is to be denied by stretching some language here or  
23 there and saying the power is out. Then the best thing would have been to accept what was  
24 stated in the Constituent Assembly in Shift Entry 50 which was rejected. And that is if Your  
25 Lordship will find Volume IV(a) at page 16.

26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What are you showing us?

28

29 **RAKESH DWIVEDI:** Page 16, Volume IV(a), entry... This was Draft Entry 54 at that time,  
30 Entry 50. He moved this amendment that Entry 54 of List II be transferred to List I. And in  
31 fact, he also said earlier that even 23 should be, not be there, which is at page 10. And that  
32 was... both were rejected.

33

34 **JUSTICE HRISHIKESH ROY:** This paragraph, page 10 is the relevant part, Mr. Dwivedi?  
35 Of the Assembly...

36

37 **RAKESH DWIVEDI:** Page 10 is for Entry 23.

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**CHIEF JUSTICE D.Y. CHANDRACHUD:** Entry 54 of the List transferred to List I. That one, is it?

**RAKESH DWIVEDI:** Yes. If Your Lordship looks at page 10, bottom. Page 10, bottom. 'My whole aim in moving this amendment is to make redundant Entry 28, which is 23 now of List II. I am clear in my own mind that mines constitute a vital subject as important as Defence, Foreign Affairs, Communications. I am of opinion that if system of defence is going to be organized on sound lines, then mines must remain in central subject. I do not want to give the provinces the power even to regulate mines and oil fields and mineral development, subject to the provisions of List I, as has been provided in Entry 28.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

**JUSTICE HRISHIKESH ROY:** That was the submission.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** And then rejected at page 16.

**RAKESH DWIVEDI:** Yes, so both were rejected. So, therefore the...

**JUSTICE B.V. NAGARATHNA:** Land is something under the control of the State Government.

**RAKESH DWIVEDI:** That's right. So, land could have still remained. It's not about 49. It is about Entry 23 List II, which to start with, says, "regulation of mines and mineral with the state." Then Parliament makes a law. It shifts to the extent the Parliamentary Law provides, under Entry 54. So, Mr. Prasad wanted that 23 should not be there at all.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** At all.

**RAKESH DWIVEDI:** Keep it with the List I. And Entry 50 also, he said, which was then Draft Article Entry 54, that, that should also be there. It should not be with the state at all. But it was rejected. So, the intent is that this taxing power should remain. But instead of transferring it, they kept the limitation.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Right.

1 **RAKESH DWIVEDI:** So, if the Parliament wants, we have no problem. We are still  
2 conceding that as far as Entry 50 is concerned, Parliament can make an amendment in the  
3 existing law or any other law and provide limitations that, 'you can't impose tax more than  
4 this,' whatever limitation it wants. But it will have to spell out, that it is doing so in order to  
5 limit Entry 50, List II. It's a very vital importance for the state's taxing power. So, which can't  
6 be *sub silentio*, by prescribing a fee or some royalties or surface rent, dead rent. You just take  
7 away *sub silentio*, a vital taxing power of the state.

8

9 **JUSTICE B.V. NAGARATHNA:** Should be in the interest of mineral development only.  
10 Limitations can be only in the interest of..

11

12 **RAKESH DWIVEDI:** I'm grateful. It can't be just absolute that I don't want this to happen.  
13 They have to consciously consider that, that is required in the interest of mineral development  
14 and not because of any extraneous considerations or reasons. So, there is a limit on the  
15 limitation power itself.

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's correct.

18

19 **JUSTICE HRISHIKESH ROY:** And some emphasis has to be given by the fact that this was  
20 specifically moved to bring it within the ambit of the Union List.

21

22 **RAKESH DWIVEDI:** That's right.

23

24 **JUSTICE HRISHIKESH ROY:** But then that was specifically rejected by saying it will  
25 remain with the State List. So, the debate in the Constituent Assembly, and the thought process  
26 then, will have to give, be given some meaning and some emphasis.

27

28 **RAKESH DWIVEDI:** It's very important aspect. Because, the easiest thing for the framers  
29 was... they were the people who were framing. They could have just shifted it. And I don't think  
30 anybody would have objected much, maybe, for minor minerals they would have been some  
31 voices. In *Kesoram*, they consider specific matters coal, tea, et cetera. For the time being, I'm  
32 not adverting to that.

33

34 **JUSTICE HRISHIKESH ROY:** The... making a point, I think, which is relevant.

35

36 **RAKESH DWIVEDI:** Yes.

37

1 **JUSTICE HRISHIKESH ROY:** Union does not have a land of its own. It's a Union of states.  
2 The states are owning the land. So, if you want to do some exploitation...

3

4 **RAKESH DWIVEDI:** That's right. So, it will have land, My Lord, in Union Territories and it  
5 can have land by acquisition, as in Coal Bearing Acquisition Act, they have acquired the land.

6

7 **JUSTICE B.V. NAGARATHNA:** That is by acquisition.

8

9 **RAKESH DWIVEDI:** Acquisition. To start with. My Lords are right.

10

11 **JUSTICE B.V. NAGARATHNA:** Otherwise, the land is with the state.

12

13 **RAKESH DWIVEDI:** Yes.

14

15 **JUSTICE HRISHIKESH ROY:** Or you have to travel to the sea.

16

17 **RAKESH DWIVEDI:** India was being united. Each states, there were pulls, pressures,  
18 compromises of all sorts. The framing of the Constitution is a complex exercise involving a  
19 large number of compromises. So, everything has to be adjusted.

20

21 **JUSTICE B.V. NAGARATHNA:** ... said that our Constitution its federal and structure and  
22 unitary in spirit.

23

24 **RAKESH DWIVEDI:** Yes. It has so many areas where it can acquire a larger domain than  
25 what is expected. But the problems were very very complicated.

26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Done now?

28

29 **RAKESH DWIVEDI:** No, My Lords. Just coming to the close.

30

31 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Don't tell me that, we don't have a clock which  
32 faces us. But I have a clock facing me.

33

34 **RAKESH DWIVEDI:** That's why we don't face the clock. We only look to Your Lordships  
35 benevolence. The matter is rather important.... even for the other side. And keeping in view  
36 the history, the twists and turns it has to be...

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** The next part?

2

3 **RAKESH DWIVEDI:** Now kindly have that *Hingir-Rampur* for the moment, Justice  
4 Wanchoo's judgment. Because of some of the reasons, he deployed Entry 84 to knockout the  
5 tax on mineral rights.

6

7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Dwivedi, you have not taken a break since  
8 the morning since 10:30. We'll offer you to take a break. We'll ask your junior to tell us what  
9 the facts of *Hingir-Rampur* are. Just take a break and have a glass of water.

10

11 **RAKESH DWIVEDI:** All right.

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** She's so well prepared. Ma'am, you tell us what  
14 *Hingir-Rampur* is.

15

16 **SANSKRITI PATHAK:** Your Lordships, in case of *Hingir-Rampur* is..

17

18 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Where do we find *Hingir-Rampur*?

19

20 **SANSKRITI PATHAK:** The dissenting judgment is at 172. Volume V.

21

22 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Volume V.

23

24 **SANSKRITI PATHAK:** Page 172 is the relevant para, 53 which has been relied.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just one second.

27

28 **SANSKRITI PATHAK:** My Lords, in this, the argument...

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Para?

31

32 **SANSKRITI PATHAK:** Para 53.

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes. Just read it out and then you can make  
35 your point.

36

1 **SANSRITI PATHAK:** The next contention on behalf of state of Orissa, is that, if the cess is  
2 not justified as a fee, it is a tax under Entry 50, List II of the 7th schedule. Item 50 provides for  
3 taxes on mineral rights subject to any limitations imposed by the Parliament by law relating  
4 to mineral development. This raises a question as to what are the taxes on mineral rights.  
5 Obviously, taxes on mineral rights must be different from taxes on goods produced in the  
6 nature of duties of excise. If taxes on mineral rights also include taxes on minerals produced,  
7 there would be no difference between taxes on mineral rights and duties of excise under Item  
8 84 of List I. A comparisons of List I and List II of the 7th schedule, shows that the same tax is  
9 not put in both the lists. Therefore, taxes on mineral rights must be different from the duties  
10 of excise, which are taxes on minerals produced. The difference can be understood if one sees  
11 that before minerals are extracted and become liable to duties of excise, somebody has to, got  
12 to work the mines. The usual method of working them is for the owner of the mine to grant  
13 mining leases to those who have got the capital to work the mines. There should therefore be  
14 no difficulty in holding that taxes on mineral rights as taxes on the right to extract minerals  
15 and not taxes on the minerals actually extracted. Thus, tax on mineral rights would be  
16 confined, for example, to tax on leases of mineral rights and would be on premium or royalty  
17 for that. Taxes on such premium and royalty would be taxes on mineral rights, while taxes on  
18 minerals actually extracted would be duties of excise. It is said that there may be cases where  
19 the owner himself extracts minerals and does not give any right of extraction to somebody else,  
20 and that, in such case, in the absence of mining leases or subleases, there would be no way of  
21 levying tax on mineral rights. It is enough to say that these cases, also, rare though they are,  
22 present no difficulty. Take the case of taxes on annual value of buildings where there is a lease  
23 of the building, the annual value was determined by the lease money, but there are many cases  
24 where owners themselves live in buildings. In such cases also, taxes on buildings are levied on  
25 the annual value worked out according to the certain rules. There would be no difficulty where  
26 an owner himself works the mine to value the mineral rights on the same principle on which  
27 reasons of mineral rights are made, and then to tax the royalty, which, for example, the owner  
28 might have got, instead of working the mine himself, he had leased it out to somebody else.  
29 There can be no doubt, therefore, that the taxes on mineral rights and taxes of this nature and  
30 taxes on minerals actually produced. Therefore, the present cess is not tax on mineral rights,  
31 it is the tax on minerals actually produced and can be no different in pith and substance from  
32 a tax on goods produced, which comes under Entry 84 as duty of excise. The present levy,  
33 therefore, under Section 4 of the Act, cannot be justified as a tax on mineral rights. My Lords,  
34 in this case, the argument was there was a fee which was being levied on the mineral  
35 dispatches. First, they have dealt with the fee, but on the tax part, Justice Wanchoo, in his  
36 dissenting judgment, draws a distinction between the mineral produced and the right of giving  
37 lease, which is mineral rights, which, to my understanding, is an incorrect interpretation. As

1 Mr. Dwivedi said, mineral right would include extraction, sale, consumption, all aspects. And  
2 so far as taxation principles are concerned, My Lords, different aspects, manufacturing yes,  
3 manufacturing will entail excise duty. But once it is being sold, it will attract VAT. So, that is  
4 another aspect which in state is competent to levy. Then mineral rights, My Lords, will include  
5 extraction, sale, so that would come in Entry 50.

6

7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just one second. So, how are you formulating  
8 it? Just formulate it again please for us.

9

10 **SANSKRITI PATHAK:** The artificial distinction drawn in paragraph 53, between the  
11 mineral produce and the mineral right, which is confined to "right to lease" or "royalty".

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** One second. Between the mineral produced  
14 and?

15

16 **SANSKRITI PATHAK:** The mineral right, that is "right to lease" or "royalty", is a narrow  
17 and restricted interpretation of the expression "mineral rights" in Entry 50.

18

19 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just one second.

20

21 **SANSKRITI PATHAK:** So, Entry 50, My Lords, cannot be limited to rights to "grant lease  
22 and royalty." State under...

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just one second. Cannot be restricted...

25

26 **SANSKRITI PATHAK:** ...to right to grant lease or royalty. The expression 'mineral right' is  
27 a comprehensive term which will include the extraction of mineral produce...

28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just one second. It will include extraction....?

30

31 **SANSKRITI PATHAK:** The mineral produce itself, the extraction thereof, consumption  
32 thereof, sale of mineral produce and the right to grant lease. So, it's a comprehensive term.  
33 Mineral produce cannot be extracted from Entry 50. So, this is where, My Lords, this para has  
34 gone wrong and has been subsequently followed in all the judgements.

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thank you. Thank you, Sanskriti. Mr. Dwivedi,  
37 I hope you agree with what is...

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**RAKESH DWIVEDI:** Yes.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Very well put actually. We must complement your junior. We are all.. we have been saying that, that's why I said, you know, we'll...

**RAKESH DWIVEDI:** Yes, I am grateful. There's one more fundamental error here.

**JUSTICE B.V. NAGARATHNA:** Very pithily submitted.

**RAKESH DWIVEDI:** Yes.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

**RAKESH DWIVEDI:** There's one more fundamental error. Justice Wanchoo holds that tax, assuming he's right on the distinction, that mineral right is extraction, but not the mineral. And from that he concludes that since the tax is on minerals therefore, it's falling under Entry 84. Entry 84, List I is excise duty.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Right.

**RAKESH DWIVEDI:** And the taxable event of excise duty is....

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Manufacture.

**RAKESH DWIVEDI:** Manufacture, not the good itself. So, therefore, even if it is, the incidence is falling on the mineral, Entry 84 is not tax on goods. In the case of *Godfrey Phillips* Constitution Bench, what was an issue was Entry 62 luxury tax.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** This is Venkatachaliah judgment, right?

**RAKESH DWIVEDI:** This is Volume V, page 2267 and Odisha High Court in this judgment has just followed that dissenting judgment as approved in *India Cement*, and it is said it is not departed expressly in *Kesoram* and therefore larger bench and we will follow. That's how they.... So, tax on luxury was, under Entry 62 was an issue. And prior to this judgment, all states were imposing taxes on refrigerators and luxury cars and various other luxury items. And this was a case where luxury tax were imposed on tobacco, cigarettes. The contention was

1 that tax has been imposed on cigarettes as goods. Whereas Entry 84 is there, and if the two  
2 entries are understood as being covering the tax on goods, then there will be overlap and  
3 conflict. So, therefore Entry 62 will not include tax on goods. If Your Lordship has para 54 at  
4 page 2295, the argument of... Lordship has para 54? " The argument of the SAC says that, the  
5 tax levied under Entry 62, List II, cannot be a tax on goods, as that would not only allow the  
6 states to levy sales tax in contravention of Article 286, but would permit trespass on the  
7 Union's legislative field, under Entry 83 and 84 of List I. Indeed, the contention of the SAC  
8 says that the states have the impugned legislations done just that. Entry 83 and 84, then  
9 adhere.... 84 is extracted. 55. The states have countered this by contending that Entry 62, List  
10 II envisages the tax on luxury goods, whereas duties of excise, customs, sales are not directly  
11 on the goods, but with reference to goods and that the taxes are leviable on the event of  
12 manufacture. Import, export and sale, according to the states, this court has held. So, while  
13 construing Article 289(i) in **Bill to Amend Section 20 of the Sea Customs Act**, the  
14 taxable event in the case of duties of excise, is the manufacture of goods and duties not directly  
15 on the goods, but on the manufacture. We may.... in this connection, contrast sales tax, which  
16 is also imposed with a reference to goods sold, where the taxable event is the act of sale.  
17 Therefore though both excise duty and sales tax are levied with reference to goods, the two are  
18 very different imposts. In one case, the imposition is on the act of manufacture or production,  
19 while in the other, it is on the act of sale. In neither case, therefore, can it be said that the excise  
20 duty or sales tax is a tax directly on the goods, or in the event they will really become the same  
21 tax. It would thus appear, the duties of excise partake of the nature of indirect taxes as known  
22 to standard works on economics and are to be distinguished from direct taxes, like taxes on  
23 property and income. Similarly, in the case of duties of customs, including export duties,... we  
24 can leave that... Now this submission...

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Para 59.

27

28 **RAKESH DWIVEDI:** Para 59, yes. The logical corollary of holding the taxes are imposed  
29 only on taxable events is that even when an Entry speaks of a levy of tax on goods, it does not  
30 include the right to impose taxes on taxable events which have been separately provided for  
31 under other taxes in Entries. The tax, in respect of goods has sometimes been referred to as a  
32 tax on an aspect of the goods. So, this doctrine of aspects, My Lord, is well accepted and  
33 entrenched under Constitution. Sometimes as a taxable event. What the terminology....  
34 Because there can be no overlapping in the field of taxation, such a tax is specifically provided  
35 for under one Legislative Entry, effectively narrows the fields of taxation available under other  
36 related Entries. It is also natural when considering the ambit of an expressed power in relation  
37 to unspecified residuary power to give a broad interpretation to the former at the expense of

1 the latter. For example, the state cannot, under the garb of luxury tax under 62, List II, impinge  
2 on the exclusive power of the Union under 83 and 84, of List I by merely describing an article  
3 as a luxury. Of course, the states do have the exclusive power under Entry 54, List II, to  
4 legislate with respect to taxes on the sale and purchase of goods other than newspapers. But  
5 the power has been explicit, and it is subject to the provision from 92A. Apart from the  
6 limitations, et cetera, 86(3) is referred to and para 61 talks about the Parliament's power to  
7 limit and in this case, the limitation has been put at 4%. This is one illustration of how  
8 Parliament can expressly provide for a limitation. Kindly come to para 72. In view of the  
9 decision in **Sea Customs Act** case, the second premise propounded by Mr. Salve is  
10 unacceptable. As we have seen in that case, this court held that taxable event ownership is  
11 implicit in the concept of tax on goods. That the entries on taxable events in the legislative lists  
12 are not exhaustive is also recognized and provided for, in Article 248(2), which provides for  
13 power of Parliament to make any law imposing tax on mentioned in either the Concurrent or  
14 State List. This residuary power is reflected in Entry 97, List I. Furthermore, if an article or  
15 goods are taxable only with respect to a taxable event, and if as contended by Mr. Salve, all  
16 taxable events have been provided for, in different legislative heads, then by that token, no  
17 object or goods could be taxable. This would render the various Entries in the state list,  
18 including Entry 57 and 58 contentless, as we cannot accept that the taxation Entries  
19 exhaustively enumerate all taxable events. It does not follow that Entry 62 of List II does not  
20 cover goods. It is not possible, therefore, to hold merely on such a construction of the  
21 Legislative List and the taxation entries therein, that Entry 62, List II does not permit the  
22 states to levy tax. Having rejected the second premise contended for by Mr. Salve, the next  
23 question is that whether the language of 62 would resolve the issue. So, on this aspect of  
24 conflict, My Lord, we were able to deal with the contention, but we lost on another ground,  
25 which may have, that is, on a plain construction of the Entry itself, the court said that luxuries  
26 will not be on the goods, but on the act of entertainment, etc, which as happens, it could be on  
27 smoking, not the cigarette. Para 75 onwards Doctrine of *noscitur a sociis* was applied to the  
28 constitutional entry. Para 77 may be seen. We contended that it is a very treacherous doctrine  
29 to deploy. In the present context, the general meaning of luxury has been explained or  
30 clarified, must be understood in a sense analogous to that of the less general words, such as  
31 entertainments and amusement, gambling and betting, which are clubbed with it. The  
32 principle of interpretation known as *noscitur a sociis* has received approval in **Rainbow**  
33 **Steels**, although doubted in its indiscriminate application in **State of Bombay vs**  
34 **Hospital Mazdoor Sabha**. In the latter case, this court was required to construe to 2(j) of  
35 the Industrial Dispute Act, which read industry means so and so on, includes any calling  
36 service employment. It was found that the words in the definition were of very wide and  
37 definite import. It was suggested that these words should be read in a restricted sense, having

1 regard to the concluded item on the principle of *noscitur a sociis*. The suggestion was rejected  
2 in the following language. It must be borne in mind that *noscitur a sociis* is merely a rule of  
3 construction, cannot prevail in cases where it is clear that the wider words have been  
4 deliberately used in order to make the scope of defined words correspondingly wider. It is only  
5 where the intention of the legislature in associating wider words with the words of narrower  
6 significance is doubtful, otherwise not clear, that the present rule of construction can be  
7 usefully applied. It can also be applied where the meaning of words of wider import is doubtful.  
8 But where the object of the Legislature is using wider words is clear and free of ambiguity, the  
9 rule of construction in question cannot be pressed. We do not read this passage as excluding  
10 the application of principle of *noscitur a sociis* to the present case, since it has been amply  
11 demonstrated the reference to authority to the meaning of the word "luxury" in Entry 62 is  
12 doubtful and has been defined and construed in different cases.' So, by this, deploying this  
13 doctrine role, it was held that it will not include... Entry will not include the goods.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In para 93 they said?

16

17 **RAKESH DWIVEDI:** Yes. So, this doctrine, My Lord, which I am invoking for purposes of  
18 understanding the word 'imposed'. Now taxation includes tax and imposed, the first word is  
19 'including', which suggests expansive but the domain is taxation. It is the word taxation and  
20 tax which is being defined. There is an element of tautology involved. Tax means tax and  
21 imposed. Taxation includes tax and imposed. So, the very word which is being defined will  
22 circumscribe what is being included, the character of the imposed, therefore, has to be  
23 necessarily of the nature of tax. In para 33, we have referred to two cases on imposed, Your  
24 Lordship can just note it, para 33. Now just two or three cases My Lords, on this limitation  
25 aspect, I had shown that Entry 57 is similar, that there is a... page 53 of the written submission.  
26 If Your Lordship turns, some paragraphs have been extracted also there.

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Page 53?

29

30 **RAKESH DWIVEDI:** Yes. There's a caption of Entry 57. 57 is extracted. 35 is extracted. In  
31 *State of Assam*, that's para 113.

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just one second. Volume I(a), right?

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35 **RAKESH DWIVEDI:** Volume I(a).

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37 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

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**RAKESH DWIVEDI:** Volume 1(a), page 53, para 113 in '*State Of Assam & Ors vs Labanya Probha Debi AIR 1967*, this Honourable Court, while dealing with a challenge to Assam Motor Vehicles Taxation Act, held that the two entries deal with two different matters, though allied. One deals with taxes and the other deals with the principles on which'... I'm sorry, My Lord, Justice Nagarathna?

**JUSTICE B.V. NAGARATHNA:** Yes, I have it.

**RAKESH DWIVEDI:** At the bottom. '... are to be levied. The court upheld the law amending the Schedule by which the rates of taxes were increased.' Paragraph 11. 'The short question, therefore, is whether any of the provisions of the Amending Act is repugnant to any of the provisions of the existing law with respect to any of the matters enumerated in the Concurrent List. Under the existing law, that is of Act 9 of 36, no motor vehicles could be used in Assam province unless the owner thereof had paid in respect of it, a tax at the appropriate rate specified in the Schedule to the Act, and save as therein specified. Such a tax should thereafter be payable annually, notwithstanding that the motor vehicle might, from time to time, cease to be used. As aforesaid, the Schedule annexed to the principal Act was amended from time to time, by different amending acts and the rate was increased. Under the 1963 Amendment Act, apart from other provisions which do not relate to any principle of taxation, a new Schedule has been substituted. Neither the Amending Act nor the Schedule laid down any principles of taxation in respect of motor vehicles. So, to the Amending Act 66, substituted the Schedule of the Act by another Schedule A.

Perusal of the aforesaid Schedule only discloses that different rates were fixed. That is to say the amended schedule does not lay down any principle on which taxes on motor vehicles are to be levied within the meaning of Entry 35 List III. A Concurrent List. It is solely concerned with taxes on vehicles within the meaning of Entry 57 List II. The two entries deal with two different matters, though allied ones. One deals with taxes on vehicles and the other with the principles on which the taxes are to be levied. When two entries in the Constitution, whether in the same list or different list, deal with two subjects, if possible, an attempt shall be made to harmonise them rather than to bring them into conflict. Taxes on vehicles in their ordinary meaning connote the liability to pay taxes, the rate at which taxes are to be levied. On the other hand, the expression "principles of taxation" denotes rules of guidance in the matter of taxation. We therefore hold that the amending acts do not come into conflict with the existing law. A similar view was held in *Jairam's* case. It is true that the object of enacting Section 63(7) by the Parliament was to promote all-India and inter-state tourist traffic. But taxes on

1 vehicles suitable for use on road is a State Legislative subject, and it is for the State Legislature  
2 to impose a levy and to exempt from the levy. True again, Entry 57 of the State List is subject  
3 to Entry 35 of Concurrent List and as explained by us at the outset, it is therefore open to  
4 Parliament to lay down the principles on which taxes may be levied on mechanically propelled  
5 vehicles. But the Parliament, while enacting Section 63(7) of the Motor Vehicles Act refrained  
6 from indicating any such principle, either expressly or by necessary implication. The state's  
7 power to tax and to exempt was left uninhibited. It may be that the State Legislation, plenary  
8 or subordinate, which exempts non-home state tourist vehicles from tax would be advancing  
9 the object of Section 63(7) of the Motor Vehicles Act, and accelerating interstate trade,  
10 commerce and intercourse. But merely by Parliament legislating Section 63(7), the State  
11 Legislatures are not obliged to fall in line and to so arrange their tax laws as to advance the  
12 object of 63(7), be it ever so desirable. State is obliged neither to grant an exemption nor to  
13 perpetuate an exemption once granted. This was reiterated in **Sharma Transport**, power  
14 to levy taxes on vehicles, whether mechanically propelled or not vests solely in the State  
15 Legislature, though it may be open to Parliament to lay down the principles on which taxation  
16 may be levied or on mechanically propelled vehicles in the background of Entry 35. To put it  
17 differently, Parliament may lay down the guidelines for the levy of taxes on such vehicles, but  
18 the right to levy in taxes were solely in the State Legislature. No principles, admittedly having  
19 been formulated by Parliament, in that sense, the Government of India's communication,  
20 dated 30th of August 1990, does not in any sense violate the power of State Legislature or its  
21 delegate to levy or exempt taxes from time to time. Then the next paragraph also may be seen.  
22 That's about the limitation. Limiting power under 286(3) and I've referred to **Rajasthan**  
23 **Roller Flour Mills Association**. Kindly have Volume V(c), page 97... Volume V(c), page  
24 97 at page 103.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

27

28 **RAKESH DWIVEDI:** What I want to emphasize is... the word is placitum D. We are  
29 therefore, just below that, placitum D. We are therefore inclined to agree with the learned  
30 Counsel for the states, that the provisions of Section 14 and 15 of the Act being restrictions  
31 upon the plenary power of the State Legislature to levy tax on sale or purchase must be  
32 construed strictly. So, there can't be a *sub silentio* exercise. Please have 21 also. In our opinion,  
33 the restrictions upon the legislative power of the states provided by Section 1415, read with  
34 Clause 3 of Article 286 must similarly be construed strictly. Therefore, commodities other than  
35 those specified cannot be introduced into relevant provisions on the ground that they are  
36 derived from the primary commodities, mentioned in 14(1). So, under 14, they can specify  
37 goods of special importance, in which event, the Parliament gets then, entitlement to impose

1 by law, restrictions. The said clause refers to certain primary commodities. The goods  
2 produced or manufactured out of them cannot be included in those commodities. Otherwise,  
3 problem of where to draw the line would also arise. Maybe that part of the tax collected on  
4 state is ultimately made over to the states and contemplated in 269. But that aspect has no  
5 relevance to the question of power of the State Legislature. So, when an Entry is to be shut out  
6 or limited, there must be express reference to Entry 50, List II that they are doing it with, in  
7 order to attain that objective. So, that's with regard to the limitation. The only issue is, as far  
8 as land, I have already referred exhaustively, the cases on land have been referred to. But in  
9 our written submission, page 26 to 35. in every case, the entry has been construed broadly  
10 with reference to other entries, something cannot be taken out. In this context, if Your  
11 Lordship also notes the Entry in the constitution with regard to cultivation of opium? That's  
12 Entry 59. Cultivation, manufacture and sale for export of opium. Now, this may dilute the  
13 Entry of agriculture in List II, squarely dealing with cultivation of opium, but it will not... it's  
14 not dealing with the land on which opium is being cultivated. So, therefore Entry 18 and 49  
15 would not be impacted.

16

17 Now, the only other submission which remains is My Lord, this, that Entry 50 is special and  
18 Entry 49 is general. Therefore, Entry 50 will be out of the fold of 49, is one of the submissions  
19 which I find on the other side. It is also said that **Kesoram** does not specify clearly as to  
20 whether the tax which was impugned will fall under 49 or will fall under 50. The court said the  
21 two entries are there, which I submit is the correct approach. If both are the powers of the  
22 state, then it matters little, My Lord, whether this or that, or both taken together. If there is  
23 something, a mix of the two, it hardly matters.

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Because that principle of rag-bag legislation  
26 can apply where the state... it's not only in relation to the Union List, because the state has the  
27 power and both under Entry 50 of List II and Entry 49, can combine both the power under  
28 both the entries.

29

30 **RAKESH DWIVEDI:** Just as in the case of Parliament, this court has said that if the  
31 Parliamentary law is challenged, one has to simply see whether it is covered by List I or III.

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33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** [UNCLEAR].

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35 **RAKESH DWIVEDI:** Once that is so, matter ends. Question of conflict, etc. doesn't arise.

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37 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Because of Entry 97.

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**RAKESH DWIVEDI:** But when State Legislation is involved, then one has to see whether any entry, taken isolated-ly or along with other entries in the State List support it. If it supports, then the only other question will be, is it clashing with anything which Parliament may have done with respect to the Entries. Is there a clash between the Entries then? Which ordinarily this court doesn't come to that conclusion straight away, that there is a conflict easily. It's the last resort. First of all, Doctrine of Harmonious Construction will come in, court will chisel this, chisel that, see that there is some scope in both the Entries, none of them are rendered for *otiose*. That's how the court approaches.

**JUSTICE B.V. NAGARATHNA:** But you are not relying on Entry 49?

**RAKESH DWIVEDI:** We are relying on 49. It's squarely a tax on land and annual value has been taken which Your Lordships have seen in *Kesoram*, that annual value can be and it does not matter.

**JUSTICE B.V. NAGARATHNA:** But it is more on Entry 50.

**RAKESH DWIVEDI:** It's a tax on land. And I'm saying that merely because the measure of tax is on the value of the minerals, that does not make it a tax on mineral rights. That's the first submission. This remains a tax on land. The value of mineral can be a measure for both the Entries, just as income can be basis a valid measure for various Entries. It can be a measure in the capital asset, it can be measured in the tax of income, it can be for tax of land and building. So, the measure therefore, start with one doesn't start with the measure and then determine the character. If the state is saying that it's a tax on land and the measure has nexus, that's the principle.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** So, even if the measure is the quantum, the mineral extracted?

**RAKESH DWIVEDI:** Extracted. These are all connected with the land. But for the land, this cannot be had. And it is on that land, we are imposing. Can we have the measure of annual value of the minerals for that? Or by deploying that measure, we are changing the character and trespassing into the field of Entry 50. So, to start with, my submission is, that the fact that the impugned legislation in the case of Odisha and other states, not Jharkhand. Jharkhand is simply per square meter of land, so Jharkhand is completely outside, squarely on land. Entry 49.

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**CHIEF JUSTICE D.Y. CHANDRACHUD:** Regards that Odisha legislation, you were saying something.

**RAKESH DWIVEDI:** Odisha legislation and some other states which have designed their statute based on *Kesoram*, they have deployed the annual value of the minerals dispatched. So, the product of the land and the land, they have intricate and direct connection. Every product which emerges out of land, be it on account of the effort of the farmer or manufacturer or a producer who's engaged in mining, the connect cannot be said to be remote, far removed. So, the connect is proximate and the value is relevant. The nexus is proximate and direct. So, it's a tax on land. Secondly, My Lord, the tussle between our own entry is arising because, the other side feels that by bringing in Entry 50, List II, the authority of the Parliament, then, to limit the tax arises. That's the reason. But there was no motion moved in the house, that Entry 49 for this reason... They could have easily said that, tax on mining land also put it in the fold of Parliament. They don't remove any kind of land from the fold of Entry 49.

**JUSTICE B.V. NAGARATHNA:** Your question is whether a tax on mineral right is a tax on land per se?

**RAKESH DWIVEDI:** Our Act is not saying My Lord, it's a tax on mineral right. It is because of the measure alone, that they say it is tax [UNCLEAR]. We are... our Acts are clearly saying that, "it's a tax on mineral bearing land."

**JUSTICE B.V. NAGARATHNA:** Then you are saying the limitation stated under Entry 50 would not apply?

**RAKESH DWIVEDI:** That's right. 50 doesn't come in because 50 doesn't deal with land.

**JUSTICE B.V. NAGARATHNA:** Submissions were made in the earlier cases also.

**RAKESH DWIVEDI:** In *Kesoram* also that was the plea which had been...

**JUSTICE B.V. NAGARATHNA:** Older cases, also, I think. In *H.R.S. Murthy* and all that.

**RAKESH DWIVEDI:** They also accept a tax on land. *H.R.S. Murthy* is a constitution bench. They accepted it's a tax on land.

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Are you saying, Mr. Dwivedi, that because the  
2 tax is on mineral bearing land, therefore Entry 23 of List I does not impose any restraint?

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4 **RAKESH DWIVEDI:** There's no power then, to limit it.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** I'll just pose a question after lunch. Because  
7 then the point really, is only this. If a tax on land, per se, obviously, Entry 23 of List I does not  
8 impose any fetters. But if the tax on land is albeit a tax on 'mineral bearing land', can we then  
9 not postulate? Can it not be postulated that the levy of this tax will have some impact on the  
10 development of minerals? And if so, would it not be open to Parliament to prescribe  
11 limitations, even though you are really seeking to exercise your power under Entry 49. True,  
12 Entry 49 of List II, we have to bear that in mind. Entry 49 of List II is not made expressly  
13 subject to Entry 23 of List I. But when you are choosing to levy the tax on 'mineral bearing  
14 land', your point that the annual value is the measure of the tax. That's fine, no difficulty. But  
15 if you are choosing to impose a tax on 'mineral bearing land,' is it not open to Parliament in  
16 exercise of its power under Entry 23 of List I, to impose restraint or limitations even when you  
17 are exercising the power...?

18

19 **RAKESH DWIVEDI:** If I understand, Your Lordship says that even though those  
20 expressions, subject to limitation, etc., is not there in 49, yet because of Entry 54, some  
21 limitation could still be imposed on 49.

22

23 **CHIEF JUSTICE D.Y. CHANDRACHUD:** When you choose to tax not land generally as a  
24 unit, but 'mineral bearing land' as a unit.

25

26 **RAKESH DWIVEDI:** I follow. I am grateful.

27

28 **NIRANJAN REDDY:** ....arise in the next case, where Andhra has specifically taxed mineral  
29 bearing land. I'll place it.

30

31 **CHIEF JUSTICE D.Y. CHANDRACHUD:** All right.

32

33 **RAKESH DWIVEDI:** In almost every case there is mineral bearing land.

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35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Almost every case.

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37 **RAKESH DWIVEDI:** And other land also.

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**CHIEF JUSTICE D.Y. CHANDRACHUD:** That's right.

**RAKESH DWIVEDI:** With regard to other land, this problem will not...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** We'll come back after lunch.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes, Mr. Dwivedi.

**RAKESH DWIVEDI:** My Lord, before responding to my Lord's query, may I draw Your Lordships, attention to two judgments? One is *Anant Mills*, which is mentioned at page 30, para 61 of my written submissions, and is at page 568 of Volume V. The question formulated, questions relating to the constitutional validity. My Lords have?

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

**RAKESH DWIVEDI:** Questions relating to the constitutional validity of the different provisions of the Bombay Provincial Municipal Corporation's Acts amended by Gujarat Act 1968, and number 5 of 1970 arise for determination in these appeals and the connected writ petitions. The Corporation's Act was enacted by the Bombay Legislature in December 1949 so and so. Now kindly come to paragraphs 44 to 47, page 597. Mr. Tarkunde on behalf of the petitioner company has urged that under Entry 49 of State List in the Seventh Schedule to the Constitution, the State Legislature is empowered to enact a law relating to taxes on lands and buildings. It is submitted that the State Legislature has no competence under the entry to enact a law for levying tax in respect of the area occupied by the underground supply lines. The word land according to the learned counsel denotes the surface of the land and not the underground strata. We are unable to accede to the above submission, Entry 49 of List II contemplates a levy of tax on lands and buildings or both as units. Such tax is directly imposed on lands and buildings and there is a definite relation to it. Section 129 makes provisions for the levy of property tax on buildings and lands. Section 139 merely specifies the persons who would be primarily responsible for the payment of that tax. The word land includes not only the face of the earth but everything under or over it as in its legal signification. An indefinite extent upward and downward giving rise to the maxim... I am leaving that out.

According to Broom's Legal Maxim 10th Edition, not only has land legal signification and indefinite extent upwards, but in law it extends also downwards. So that whatever is in a direct line between the surface and the centre of the earth by a common line drawn, belongs to the

1 owner of the surface and not merely the surface, but all the land down to the centre of the earth  
2 and up to the heavens. And hence the word land which is *nomen generalissimum* includes not  
3 only the face of the earth but everything under it or over it. Then they quote this. Kindly have  
4 46 which is also quoted. 47. Therefore there cannot be at doubt that land in 49 would include  
5 the underground strata also. The other case which I....

6

7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What happens if the underground strata is also  
8 the subject matter for specific entry?

9

10 **RAKESH DWIVEDI:** That is the content...

11

12 **CHIEF JUSTICE D.Y. CHANDRACHUD:** There I think you were levying a conservancy  
13 tax right? On pipelines, et cetera.

14

15 **RAKESH DWIVEDI:** But they were construing Entry 49.

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Entry 49?

18

19 **RAKESH DWIVEDI:** Yes.

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21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What if a statute is relatable to both Entry 49  
22 as well as their tax on [UNCLEAR].

23

24 **RAKESH DWIVEDI:** I will answer this. One more case and then I will come to that.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** All right.

27

28 **RAKESH DWIVEDI:** And that is *Western Coal Fields versus Special Area*  
29 *Development Authority, Korba (1982) 1 SCC 125, Western Coal Fields versus*  
30 *SADA Korba*, which is Volume V, page 772, 26 to 29 and 31. Apart from the fact that there is  
31 no data before us showing that the property tax constitutes an impediment in the achievement  
32 of goals of the Coal Mines Nationalization Act, the provision... This was a case where it's on  
33 the mineral bearing land that's involving coal. Under which Special Areas and Special Area  
34 Development authorities are constituted afford an effective answer to the Attorney General's  
35 contention. Entry 23 relates to regulation of mines and minerals and Entry 54 is then referred  
36 to and after that reference. It is true that on account of the declaration contained in Section 2  
37 of the MMDR Act 1957, the legislative field covered by Entry 23 of List II, will pass on to

1 parliament by virtue of Entry 54. But in order to judge whether on that account the state  
2 legislature loses its competence to pass the Act of 1973, it is necessary to have regard to the  
3 object and purpose of that act and to the relevant provisions thereof under which Special Area  
4 Development authorities are given the power to tax plans and buildings within their  
5 jurisdiction. We have set out the objects of the act at the commencement of this judgment, one  
6 of which is to provide for the development and administration of the special areas through  
7 special area development authorities. Section 64 of the Act which provides for the constitution  
8 of special areas lays down vide subsection 4 that notwithstanding anything contained in  
9 Madhya Pradesh Municipal Corporation Act 1956, the Madhya Pradesh Municipalities Act or  
10 the Madhya Pradesh Panchayat Act, the municipal corporation, municipal council, notified  
11 area of panchayat as the case may be, shall, in relation to the special area and as from the date  
12 of the Special Area Development authority undertakes the functions and Clauses 5 or Clause  
13 6 of Section 68 cease to exercise the power and performance and functions and duties which  
14 the Special Area authority is competent to exercise and perform under Act of 1973.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

17

18 **RAKESH DWIVEDI:** And then the last sentence, though, therefore, on account of the  
19 declaration, the legislative field covered by List II may pass on to the parliament by virtue of  
20 Entry 54. The competence of the State Government to enact laws for municipal administration  
21 will remain unaffected by that declaration. Entry 5 then is referred to. And kindly have para  
22 29, the decision of this Court in *Baijnath Kedia*, on which learned Attorney General relies  
23 is distinguishable. In that case, the Bihar Government demanded dead rent, royalty and  
24 surface rent from the appellant contrary to the terms of his lease on the strength of amended  
25 Section 10 of the Bihar Land Reforms Act, 1950 and the amended Rule 20 of the Bihar Rules.  
26 This Court held that the pith and substance of the amended Section 2 fell within Entry 23,  
27 although it incidentally touched land, and that therefore, the amendment was subject to the  
28 overriding power of Parliament, as declared in Section 15 of the Mines and Minerals  
29 Regulation Act. By the aforesaid declaration and the enactment of Section 15, the whole field  
30 relating to mines and minerals had come within the jurisdiction of Parliament and no scope  
31 was left for the enactment being provided to Section 10 of the Bihar Land Reforms Act. Second  
32 sub rule added to Section 29, was therefore, 20 was held to be without jurisdiction. That  
33 declaration in Section 2 of the MMDR Act does not result in invalidation of every state  
34 legislation relating to mines and minerals is demonstrated effectively in the decision of  
35 *Haryana versus Chanan Mal*. The State of Haryana Legislature passed the Haryana  
36 Minerals Vesting of Rights Act, 1973, under which two notifications were issued for acquisition  
37 of rights to saltpetre in minor minerals and for auctioning certain saltpetre quarrying areas. It

1 was held by the Court that the Haryana Act was not in any way repugnant to the provisions of  
2 the Act of 1957 made by Parliament under the ownership rights could be validly acquired by  
3 the State Government under the State Act. The decision of the Constitution as an *Ishwari*  
4 *Khetan* is referred to, which can be... so then this taxing power was upheld with respect to  
5 the coal. So, now let me respond to...

6

7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In fact, para 28, that last sentence, the  
8 paramount purpose behind the declaration contained in Section 2 of the Mines and Minerals  
9 Regulation and Development Act is not in any manner defeated by the legitimate exercise with  
10 the taxing power under Section 69(g) of the Act of 1973.

11

12 **RAKESH DWIVEDI:** So, the first response is that Entry 49 List II is the exclusive entry of  
13 taxing power with respect to land and buildings. There is no other entry in any of the lists  
14 which operate in the same field of tax on lands and building as a unit. As an aggregate it may  
15 come in in Entries 86 as an asset. Third, in particular, mining land would not be outside the  
16 hold of Entry 49 List II. The fourth is the frameworks of the Constitution therefore,  
17 contemplated that the State Legislature should have competence to impose tax on land and  
18 building of all kinds notwithstanding the other regulatory entries. The fifth submission is...

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Notwithstanding any?

21

22 **RAKESH DWIVEDI:** Any other regulatory entry in any list.

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

25

26 **RAKESH DWIVEDI:** And that is because the regulatory entries by themselves do not have  
27 a taxing... do not have the field of taxation. The fifth is, that as long as the measure of tax which  
28 has been adopted has close and proximate nexus with the land, keeping in mind its user or  
29 non-user, the levy of tax by the states would be valid and competent. Sixth, in the cases before  
30 Your Lordships, the case of *MADA*, that is Jharkhand State, is squarely at the rate of not more  
31 than Re. 1.50 per acre, and it applies across the board to all kinds of land. So in this case, there  
32 can be no dispute that the measure of tax is directly and intricately connected with the land.  
33 It's not a case where mineral land, mineral bearing land alone is being targeted. The next My  
34 Lords, in other cases, the annual value does include the annual value of the mineral also,  
35 although it also applies across the board to other lands also.

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37 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In other cases?

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**RAKESH DWIVEDI:** Yes.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Annual value?

**RAKESH DWIVEDI:** Annual value of land.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

**RAKESH DWIVEDI:** They also apply across the board to all kinds of land, but in the case of mineral bearing land the annual value is determined on the basis of the mineral value, dispatched. The incidence of the tax is entirely on the land and the measure also has proximate nexus with the land from which the mineral has been extracted. In fact, until extraction it lies embedded as part of the land. And hence it will fall exclusively under Entry 49 List II. Alternatively, if I'm assuming that if Your Lordships, ultimately hold that in as much as in the latter category of cases, excluding Jharkhand, the annual value of minerals is a measure and the mineral value is also intricately connected with the mineral rights and therefore, by virtue of Entry 50, the Parliament has in the interest of mineral development a role to play by providing limitations. And hence, there is an intermix of Entry 49 and 50. In that situation it may be possible to take a view that with regard to such tax based on annual value of minerals Parliament can by law impose limitation. And lastly, if I am right and if *Kesoram* is right that royalty is not taxed.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** One second.

**RAKESH DWIVEDI:** I'm sorry. If I am right, and *Kesoram* is right in saying that royalty is not taxed, then I would submit that there is no provision at all in the MMDR Act 1957, which imposes specifically and expressly any limitation whatsoever on the State's Legislative competence under Entry 50, List II. Therefore, all the laws impugned would be valid even if Entry 49 and 50 are read together. That's my... that my response is, so if it's inter mixed...if the Lordships take that view...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** There would be... that I'm just saying, the limitation of my question... there may be some difficulty in accepting my line of questioning, before the lunch for this reason that for us to subject to hearing the other side. I'm just thinking aloud that for us to accept that proposition which I was trying to put forth for a consideration,

1 we will have to, then say that the levy itself is under Entry, the levy itself is not on the land, but  
2 there is a tax on mineral rights or there is a tax on land and on mineral rights.

3

4 **RAKESH DWIVEDI:** Right.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes it's sort of rag bag, as you said. Justice  
7 Venkatachaliah used the word 'rag bag legislation' in the context of the Parliament's power.  
8 But if you are right that the mineral value is really a measure and not the taxing event then the  
9 alternate point which will not really arise then.

10

11 **RAKESH DWIVEDI:** And if I may just add one more, if I may just add one more reason My  
12 Lords.

13

14 **CHIEF JUSTICE D.Y. CHANDRACHUD:** I mean, you brought a great deal of clarity to it.  
15 Because this was worrying me actually but we'll hear the other side. Of course we are open....

16

17 **RAKESH DWIVEDI:** Just one more aspect I want to project My Lords. The fact that the tax  
18 is resulting in enhancement of price is wholly irrelevant because every tax results in  
19 enhancement of price which ultimately, so far as the companies which are questioning...

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's why in *Jindal Stainless*, we overruled  
22 the earlier line of authority. We said tax is never a restraint on pay. That is a view of the  
23 majority. Everybody has to bear a tax.

24

25 **RAKESH DWIVEDI:** I have just indicated in my written submission after paragraph -- after  
26 page 58, kindly just see the index. Kindly just see the index at page 4, Part II. The basic  
27 principles I have mentioned in all the cases which I put...

28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Sorry, what were you referring to?

30

31 **RAKESH DWIVEDI:** Page 4 of my written submission, Volume 1(a). That is Part II. Page 57  
32 onwards till the end.

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

35

36 **RAKESH DWIVEDI:** There are eight principles with regard to Taxation, and I have enlisted  
37 all the relevant cases which Your Lordships may also just take a note of. I'll not read all those

1 cases. These are well known as Mr. Salve, said. Otherwise, there's no controversy. It is an  
2 application of the principle, which really... that is my humble submission. I'm extremely  
3 grateful.

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thank you. Thank you, Mr. Dwivedi. Sanskriti  
6 you're not running away. We are putting you in to give us a five minute exposition of your  
7 point of view. Just five minutes of your recap. Take your time. Collect your thoughts. We never  
8 told you that we are going to hear you? Go slow. Take your time.

9

10 **SANSKRITI PATHAK:** I am actually adopting Mr. Dwivedi's submissions. Whatever had to  
11 be argued, he has argued that My Lord. So far as royalty and tax, inherently there are different  
12 levies. Royalty as Your Lordship... as Mr. Dwivedi said, it is for parting with a privilege, My  
13 Lords. Similarly, in cases of excise, when the State grants license for liquor that is a similar  
14 levy and there are Constitution bench judgments which say that. It is not covered under  
15 366(28). It is not in the nature of tax, cess, duty levy. That is because the State is parting with  
16 a privilege of undertaking this business in the trade of liquor, so that is one thing. So,  
17 structurally they are different. That is one thing. And merely to say that, merely to usurp the  
18 power of states under Entry 50 MMDR Act is being invoked to say that royalty is tax, and  
19 therefore that field is occupied. My Lords, therefore there the levies are absolutely different.  
20 Section 9 in no way affects the competence of the state under Entry 50 or Entry 49 My Lords,  
21 and as Mr. Dwivedi said, My Lords, we are primarily on Entry 14. And we don't need to go to  
22 Entry 50, because it's a tax on land and building My Lords. Before Entry 14 My Lords, in  
23 Government of India Act, it was tax on land, building, hearths and windows. That was the  
24 entry My Lords. And there are several cases. Whatever use the land may be factories. Recently  
25 tax on mobile towers has been upheld under 1849 My Lords. So, it could be factory. In  
26 **Jagannath Baksh** My Lord, the argument was it's an agricultural land. Agriculture is dealt  
27 with different entries, so you cannot tax. Your Lordships, of constitution bench said, 'No, there  
28 is no reason why non-agricultural land can be taxed and why agricultural land cannot be  
29 taxed'. So, the use to which land is put is absolutely irrespective. It doesn't affect the  
30 competence of the state My Lords. It could be anything My Lords. It could be put to any use  
31 My Lords, and Entry 50, I think has been covered My Lord. I'm obliged My Lords.

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thank you. Good show. Yes, Mr. Niranjan  
34 Reddy.

35

36 **NIRANJAN REDDY:** I am appearing at the state of Andhra Pradesh but I'm appearing in  
37 items 901.60, 65 and 66 My Lords. 901.60, 65 and 66. But I was going to start with saying that

1 my job was very difficult because I had to follow my senior friend Mr. Dwivedi, Your Lordships,  
2 made it more difficult by asking my younger friend Sanskriti also to just place some point  
3 before Your Lordship. The difficulty when doing a rear guard with a counsel like Mr. Dwivedi  
4 is, the battle hardly comes to us but when it comes to us My Lord we are left with no arms. All  
5 the arms are already used and extinguished. My Lord, I'll try to motor along. My Lord, I'll be  
6 very quick on the points that I only want to supplement. I'll not be repeating what points were  
7 argued. If I may start with Article 366 (28). Imposed taxation My Lord.

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

10

11 **NIRANJAN REDDY:** My Lord, 366 provides, that in this Constitution unless the context  
12 otherwise requires the following expression shall have the meanings. So, taxation for the  
13 purpose of the language used in the Constitution will include an impost. Now, this only means  
14 that Entry 50, which enables My Lord, the state to tax, enables the state to have an imposed  
15 also. It elasticises My Lord, the constitutional expression. This cannot be used to say that some  
16 other expression, use some other enactment would have to be stretched to fit it into the  
17 concept of tax under the Constitution. So this My Lord, is in favour of the state, because it  
18 means that the state's power to tax would also include the state's power My Lord, to have an  
19 impost. If impost, can be treated as something other than tax.

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Does impost have a meaning distinct from the  
22 word tax or what is the meaning? What do you mean by impost, actually?

23

24 **NIRANJAN REDDY:** Yes My Lord. My Lord, in a different context it may, but as my friend  
25 Mr. Dwivedi argued...

26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Do we really need a compulsory exaction? What  
28 is the meaning of an impost actually?

29

30 **NIRANJAN REDDY:** Yes. It maybe flows from the expression imposition, which is an  
31 exaction. If it is a compulsory exaction if it does not have the characteristic, in this case, for  
32 the purpose of 366(28).

33

34 **ATTORNEY GENERAL R. VENKATARAMANI:** The context of imposts and ex posts, it's  
35 got a special implication. US constitution use the word impost separately. That's how it is. I'll  
36 tell, yes.

37

1 **NIRANJAN REDDY:** But for the purpose of 366(28), I completely rely on my senior friend,  
2 Mr. Dwivedi's submission that, if impost is read in the context it is placed and because 366  
3 itself specifies that unless the context otherwise requires it would be read in the same manner,  
4 but my respectful submission would be impost for the purpose of 366(28) may not be very  
5 different. Maybe in some other context it may mean differently, but Your Lordships are not  
6 going to be troubled by that aspect in this matter. Because Your Lordships are now dealing  
7 whether Section 9 would constitute an impost, but just to answer My Lord's query, if the  
8 impost otherwise has all the characteristics of a tax it will be a tax. If it has certain  
9 characteristics which completely distinguish...The amounts do not go to the consolidated fund.  
10 It is not something, that is in the relation to a general augmentation of revenue. If it has an  
11 element of *quid pro quo* which may have certain characteristics of fee, then in such context  
12 impost may have a separate significant meaning, but for the purpose of the constitutional  
13 provision 366(28) *noscitur a sociis* learned senior counsel argued. I'm just adopting it. It  
14 cannot have any completely different meaning. My Lord something like royalty, which has no  
15 characteristics similar to that of a tax cannot be brought within the fold of that. While 366(28)  
16 itself cannot be used to see if Section 9 can be treated as tax. Because 366(28) is only for the  
17 purposes of constitution. My Lords just extending that logic, even then on demurrer that  
18 Section 9 impost cannot qualify as tax because it does not have any characteristics that are  
19 otherwise commonly attributed to tax.

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

22

23 **NIRANJAN REDDY:** Now, Section 9 of the MMDR Act, is the section that is being referred  
24 for the purpose of persuading Your Lordships to place a clog on the state's power either under  
25 article under Entry 49 or Entry 50 of List II, Section 9. If I may read 9, after reading for Your  
26 Lordships Entry 50 of List II, once. My effort would be to show to Your Lordships that 9 would  
27 not qualify to be a law for the purposes of the restriction that Entry 50 contemplates. Entry 50  
28 of the Constitution if I may just read. Your Lordships have been taken through this many  
29 times. Taxes on mineral rights subject to any limitations imposed by parliament by law  
30 relating to mineral development. The limitation would have to be on the state's power to tax.

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

33

34 **NIRANJAN REDDY:** The limitation would have to be explicit and express because it is  
35 excluding otherwise a constitutional power granted to the state.

36

37 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

1  
2 **NIRANJAN REDDY:** This power to impose limitation does not confer a separate authority  
3 on the central government to tax. My learned friend used the word it cannot usurp but I am  
4 saying that there is no tax enabling authority power under the Constitution. There is no taxing  
5 provision. In List I in relation to mineral rights. The limitation power cannot therefore be read  
6 as a taxing power of the Union particularly when it is placed in List II. It is a limitation on the  
7 State's power under List II. It cannot be transported or teleported to List I to exalt it to the  
8 status of a taxing power given to the Union. Section 9 of the MMDR Act, only continuing from  
9 the full force of my learned friend's submission, adopted fully, that royalty is not a tax, it is  
10 only a share; it does not have any characteristics of tax. 9(3) which was referred for the purpose  
11 of inferring a limitation on State's power to tax in *India Cements* is, in fact a limitation of  
12 the Central Government. It is not on the State Government, albeit in the context of royalty  
13 itself. If I may read 9, subsection 3, the Central Government. I'm sorry My Lords. 9(3), The  
14 Central Government may, by notification in the official gazette, amend the Second Schedule  
15 so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral  
16 with effect from such date as may be specified in the notification, provided that the Central  
17 Government shall not enhance the rate of royalty in respect of any mineral more than once  
18 during any period of three years. So, my respectful submission is 9(3) can never be construed  
19 to be a limitation. On the State's power to tax. 9(3) at best is an parliamentary limitation on  
20 the Central Government power to amend the schedule. Section...I'm sorry.

21  
22 So, My Lord, the follow up Submission 9, by whatever extended logic, even, My Lord, if for the  
23 purpose of an argument if Your Lordships, would momentarily consider it to be Central  
24 Government imposing a tax, My Lord, just momentarily, for the purpose of argument alone,  
25 even then, for the purpose of Entry 50, it must not impose a tax. It must go to the extent of  
26 saying that the State Government will not be able to impose any other tax. So, this imposition  
27 would have to be exclusive to the Central Government with a clear signal that the state is now  
28 limited to have any tax power under Entry 50. 9, My Lord, read in any manner, only fixes  
29 royalty payable by the Central Government. My Lord, no part of 9 can be understood or  
30 stretched to mean that this imposes a limitation on the state government to tax. My Lord, my  
31 respectful submission is, if royalty is payable as a share, in respect of My Lord, any mining  
32 lease area, this royalty, My Lord, this royalty would be equally payable to a private individual  
33 who would have mining rights. So, if royalty is paid to a private individual the power of the  
34 state is to tax mining rights. So, which means My Lords, if 'A' is a private individual, he is  
35 leasing it to 'B'. B is paying a royalty to A. My Lord, the power under 50 is for the state to tax  
36 A, for the mining rights and the money he receives as royalty My Lord, from the mining rights  
37 that he is granting. Now that power available to the state, is not touched upon by 9. 9, does not

1 say that even if royalty is payable to a private individual by the government, or it could even  
2 be by another private individual. The amount received by the landowner, the mine owner, in  
3 terms of the land and the subterranean rights in the minerals. That can also be subjected to  
4 tax in terms of 50. This Act My Lord, MMDR Act does not in any area say that the state is  
5 precluded from imposing any tax. So, 50, and the state's power to tax My Lord, is therefore  
6 not effaced or taken away, My Lord, by the provisions of MMDR Act. Now, this is particularly  
7 so because Your Lordships, have already seen Section 2, which is declaration which is to the  
8 extent hereinafter, provided. My Lord, the Parliament declares that it is expedient in public  
9 interest, the Union should take under its control the regulation of mines and development of  
10 minerals to the extent hereinafter provided, not all the judgments which hold that this is  
11 completely occupied field. My Lord, prior to **India Cements** read this to be an occupied field  
12 My Lord, for the purpose of Entry 23, and regulatory power of the state, not the taxing power  
13 of the state. So My Lord, in the context of 23, this was held to be regulatory completely  
14 occupied area in terms of regulation. States, therefore, would not be able to make a separate  
15 regulation. Therefore, **India Cements** My Lord relied on the Patna judgment and the Mysore  
16 judgment. Mysore judgment arising were in very different context and facts. To say, My Lord,  
17 that this may, in a passing sense this may also occupy the field for the purpose of Entry 50. For  
18 the purpose of Entry 50 occupied field may be a misnomer. That's my next submission.  
19 Because Entry 50 exclusion would have to be by express exclusion not by inferential occupied  
20 field theory where a particular space in terms of even imposing a tax may be there. There could  
21 be a situation where Central Government, if it is otherwise enabled, could also impose tax  
22 some tax, State Government may impose some other tax. So occupied field theory possible in  
23 a taxation field unless both taxing powers are given. Taxing powers are given to both entities  
24 and one is made subject to. If the state government has a taxing power subject to the union's  
25 power to tax.

26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

28

29 **NIRANJAN REDDY:** In that context, it can be said that the state's power is abstract, but  
30 occupied field is more in the context, Your Lordships always uses is in the context of 246, 254  
31 concurrent list, regulatory space. But when the Entry 50 is so specific that there have to be a  
32 law which will have to impose a limitation. Then this occupied field inferential theory, possibly  
33 may be an incorrect basis to say that the state's power is excluded. Then I proceed to the next  
34 argument I want to make in this context itself. Would it be open for the state? I asked myself  
35 this question for the Union to say that any tax in the context of this enactment would be  
36 detrimental to mineral development. Because that is My Lord, the basis on which the persons  
37 opposing the state's power are arguing that once the MMDR Act is comprehensively providing

1 for development. Even in the absence of an express limitation stipulated by law indicating as  
2 much, if an imposition of a tax on a normative basis is going to affect the development of  
3 mines, can it be understood My Lord that, that limitation of law can also be inferential? My  
4 first submission is this will be normatively incorrect. For instance, if the state were to impose  
5 a mineral right's tax of Re. 1 per thousand hectares because Your Lordships are concerned with  
6 the principal. It can never be said, that Re. 1 for thousand hectares would affect the  
7 development.

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** If the tax is expropriatory, conceivably it may  
10 affect it.

11

12 **NIRANJAN REDDY:** Correct. Then there are two remedies. One is, if the tax itself is  
13 arbitrary expropriatory then in a given matter, judicial review power can be exercised by the  
14 court. Secondly, more important in the constitutional frame of things, the Parliament can step  
15 in at any point of time in terms of the power available to it under Entry 50 of List II and make  
16 a law forbidding or restricting the state's power to tax. My Lords like some examples were  
17 floated yesterday by my senior friend that it could be for a period of five years. A particular  
18 mineral during the times of war or whatever regulatory space the Parliament can always step  
19 in. So there are two levels where corrections can be done. But as a principle, as a norm, it  
20 cannot be argued that the state's power to tax today by itself would be impeding the  
21 development of minerals under the MMDR Act Disposition.

22

23 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

24

25 **NIRANJAN REDDY:** The second point I want to make in response to this is, it may also  
26 possibly be in conflict with the Constitutional scheme. The Constitutional scheme does not  
27 think that while the Central Government, would have the overriding power for ensuring  
28 development and taking of minerals and mines and taking them under control wherever  
29 needed, it is still empowering the state to impose tax. Although it is conscious that some of  
30 sometimes this taxing power can itself impede development, so, it is entering it with a caveat  
31 that the Central Government can make a law to do it. So, which means the constitutional basis  
32 is State's power to tax by itself is not militating against mineral development or mine  
33 regulation, even in controlled areas. If it is so and Central Government were to feel, Central  
34 Government can step in and make a law. So, neither the constitutional basis nor any normative  
35 basis can be asserted to say that the State's power to tax at whatever price in the extreme  
36 example I gave of Re. 1 for 1000 hectares would automatically impede development of  
37 minerals or regulation of mines in any manner. So if it in principle, it cannot then it cannot be

1 held. **India Cements** proceeds to say that States cannot tax at all. That principle may be  
2 incorrect.

3  
4 I now move on to My Lord, my submissions on Entry 49 which is with regard to land. Yes,  
5 Entry 49. Now **Moopil Nair** settles the law that productivity or produce of land can be a  
6 reckoner for the purpose of imposing tax. In fact, in that particular case the law was struck  
7 down because there was under-classification. A flat rate was fixed in respect of all land,  
8 regardless of productivity or actual produce or realization that is made. The Supreme Court  
9 held that this results in under-classification. There ought to have been more rational  
10 classifications, because a person who is owning vast tract of forest land. In that particular case,  
11 even at the rate of Re. 1, was ending up paying nearly Rs. 3000, when he had virtually no  
12 income from that particular land. So, My Lords, on the ground of under-classification. With  
13 regard to building this principle was also upheld in the context of **Ralla Ram** saying that a  
14 rateable value can be fixed on the basis of the income. There is not a tax on income. But when  
15 it is assessing tax payable on land or on building, the value of the building, the productivity of  
16 the building, the potential income it may earn on a rental basis can be taken into account for  
17 the purpose of computing tax on land and buildings. In **India Cements**, itself there is a 'tacit  
18 approval', if I may use the expression method with respect with Your Lordships' permission  
19 that dead rent and surface rent could possibly have been used if the intention was to tax land.  
20 Now dead rent and surface rent will have certain relationship to the mineral capacity of the  
21 land. So, if minerals and the produce, mineral productivity or the mineral produce is to be  
22 used as a measure for the purpose of imposing a tax on land but it would synchronize with this  
23 other judgments of the Supreme Court, which says that a land's productivity and produce can  
24 be taken into account for the purpose of imposing a tax. Your Lordships have also laid down  
25 the test that in appropriate cases, Your Lordships would use the legal Doctrine of Colourable  
26 Exercise of Power. If under the guise of imposing tax on land if it is actually resulting or  
27 approximating to tax on income itself fully. In **Ralla Ram** itself the Federal Court said that  
28 the Legislature will have to be cautious because if it is not cautious, and the income is  
29 approximating to the value that is going to be determined, then it can be held as colourable  
30 exercise of power for the purpose of striking down that enactment. Not on the basis that the  
31 State did not have the power, but under the guise of a power it has it is trying to use it for some  
32 other purpose. For just another two or three minutes, I'll complete my submissions. But if I  
33 may just show My Lord, this part of section **India Cements** judgment, Volume V, page 1151.  
34 I'm sorry.

35  
36 My Lord at 1165, if I may just invite Your Lordships kind attention to para 23. This was read  
37 extensively, so I just want to go to the relevant part, that I am focusing on, Volume V, page

1 1165, the judgment starts at 1151, paragraph 23 at 1165. After the reference to ***Western India***  
2 ***Theatres vs Cantonment Board*** Poona Cantonment, after three lines, the sentence  
3 starting with, 'It appears that in the instant case'.  
4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.  
6

7 **NIRANJAN REDDY:** If I may read with Your Lordships permission, it appears that in the  
8 instant case also no tax can be levied or is leviable under the impugned act if no mining  
9 activities are carried on. Hence it is manifest that it is not related to land as a unit, which is the  
10 only method of valuation of land under Entry 49 of List II, but is relatable to minerals  
11 extracted. Royalty is payable on a proportion of minerals extracted. This is also the part that I  
12 would want Your Lordships to emphasize. It is mentioned that the Act does not use dead rent  
13 as a basis on which land is to be valued. So My Lord two things that were held against My Lord  
14 this cess on royalty was, that land as a unit was not referred to and it does not use dead rent  
15 My Lord as a basis on which land can be valued.  
16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.  
18

19 **NIRANJAN REDDY:** Mr. Dwivedi has shown Your Lordships that dead rent is in the nature  
20 of a minimum guarantee, it is, in the alternative. Now dead rent My Lord would not be payable  
21 in respect of a non-mineral bearing land. Dead rent as a concept is linked to mineral bearing  
22 land. It is linked to the productivity or produce of that particular land. It is hyphenated My  
23 Lord with that particular aspect of the land. So, if dead rent can be the basis for fixing a land  
24 tax the mineral produced only as a measure, can always be used for the purpose of fixing a tax  
25 on land for the purpose of Entry 49.  
26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes. Anything else Mr. Niranjan Reddy?  
28

29 **NIRANJAN REDDY:** But I wanted to just invite Your Lordships attention for a minute to  
30 that dissenting view of Justice Wanchoo in ***Hinge-Rampur*** page 142, Volume V.  
31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.  
33

34 **NIRANJAN REDDY:** Para 53.  
35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What is the point that you want to make on  
37 that?

1

2 **NIRANJAN REDDY:** Yes, even in this case in the dissenting opinion, His Lordship, while  
3 distinguishing between what would constitute mineral rights. Whether tax on minerals would  
4 also be permissible as tax on mineral rights His Lordship held that mineral rights are generally  
5 monetized in the concept of a royalty or goodwill. His Lordship holds that for the purpose of  
6 taxing under Entry 50 those royalty or My Lord that goodwill can be taxed. This is the last  
7 submission I wanted to make with regard to mineral rights and minerals. If I may just show  
8 this one para for Your Lordships. Para 53 at page 172.

9

10 The third sentence. This raises a question as to what are the taxes on mineral rights. Obviously  
11 taxes on mineral rights must be different from taxes on goods produced in the nature of duties  
12 of excise. If taxes on mineral rights also include taxes on minerals produced, there would be  
13 no difference between taxes on mineral rights and duties of excise under item 84 of List I. A  
14 comparison of List I and II of the Seventh Schedule shows that this same tax is not put in both  
15 lists. Therefore, taxes on mineral rights must be different from the duties of excise which are  
16 on taxes on minerals produced. The difference can be understood if one sees that before  
17 minerals are extracted and become liable to duties of excise somebody has got to work the  
18 mines. The usual method of working them is for the owner of the mines to grant mining leases  
19 to those who have got the capital to work the mines. There should therefore be no difficulty in  
20 holding that taxes on mineral rights are taxes on the right to extract minerals and not taxes on  
21 the minerals actually extracted. Thus, tax on mineral rights would be confined. For example  
22 to taxes on leases of mineral rights and on premium or royalty for that. If there is a royalty in  
23 respect of a mineral right that is granted, that royalty can be taxed in terms of mineral rights  
24 for the purpose of Entry 50. Taxes on such premium and royalty would be taxes on mineral  
25 rights, while taxes on the minerals actually extracted would be duties of excise. It is said that  
26 there may be cases where the owner himself extracts minerals and does not have any right of  
27 extraction to somebody, give to somebody else and in that case, in the absence of mining lease  
28 or sub-lease, there will be no way of levying right. My Lord learned judge goes on to hold that  
29 this can then be notionally done. Comparing it with some other thing. So, my respectful  
30 submission is if mineral rights in Entry 50 which enables the State to tax would include, My  
31 Lord, that this realization that happens by way of a premium or on royalty that is derived,  
32 which is directly linked to the mineral produce. If the mineral itself is taken into account, not  
33 for the purpose of taxing, but for the purpose of understanding what is that mineral right  
34 which can be taxed. How can it be computed for the purpose of taxing. But in my respectful  
35 submission, the expression in the morning that was used was there is an artificial distinction  
36 that was drawn between minerals and mineral rights for the purpose of reading the power of  
37 the state to impose a tax. But I support that argument because in my respectful submission

1 the royalty is a component, My Lord, of the mineral produce. A share. My Lords like in the  
2 schedule Your Lordships would see that it is 5%, 7.5% in some cases there is a fixed amount  
3 per metric ton relates directly to the mineral produce. So if royalty can directly relate to the  
4 mineral produce and if royalty can be the subject matter of a taxation for the purpose of Entry  
5 50, the taking into account of the mineral produce itself in my respectful submission may not  
6 be impermissible. In fact, this is also a case where if the tax is pegged on the mineral produce.  
7 A particular price in relation to a particular mineral. It actually delinks it from the royalty. If  
8 Your Lordship in **India Cements** case. There was 45 paise. Rs. 2.50 reduced to Rs. 1.25 for  
9 every rupee of land revenue. Land revenue included royalty. So if the central government were  
10 to increase the royalty after three years, then this also goes up automatically. But if it is linked  
11 only to the mineral produce the moment there is an increase in the royalty need not result in  
12 increase of the tax. So the delinking in fact shows that this is not a measure of enrichment, but  
13 more a measure of tax augmentation.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thank you. Mr. Reddy. Thank you.

16

17 **NIRANJAN REDDY:** I just had to bring to Your Lordship's notice that the state act, which  
18 is challenged. I'm appearing for the Respondent here is the other end of the spectrum. Your  
19 Lordships are not going into the individual facts. Just to give Your Lordships the lay of the  
20 entire complexity of the issues that are before Your Lordships. While Jharkhand was an act  
21 which provided that there would be a levy in relation to land as a unit at a particular price. The  
22 Andhra Act is the other end. It says that there is going to be a cess imposed on minerals from  
23 mineral bearing lands. But just to bring to Your Lordships' notice, the provision, My Lord in  
24 Andhra Act is identical or similar to the provision in **Hingir-Rampur** case. In **Hingir-**  
25 **Rampur** the same argument that the petitioners were attacking this Act will make before  
26 Your Lordships were made. This Honourable Court repelled it stating that while it talks of  
27 mineral produced or mineral bearing lands. In effect, it is a tax on land. Mineral produced is a  
28 measure for the purpose of computing the tax paid. So what I'll do is I'll just give the two page  
29 numbers of the provision in **Hingir-Rampur** case and the AP Act which will show that they  
30 are almost in *para materia*.

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thank you. Yes Mr. Hansaria?

33

34 **NIRANJAN REDDY:** Grateful Your Lordship,

35

36 **HARISH SALVE:** Before the baton is passed on, tomorrow, I notice Your Lordships have a  
37 special bench.

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**CHIEF JUSTICE D.Y. CHANDRACHUD:** Tomorrow in the afternoon first half of the day, we are sitting. Afternoon, we have that part heard in Vedanta, which we have to complete. So, we are just...

**HARISH SALVE:** Next week only has three working days. Friday is a holiday.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** 8th is a holiday.

**HARISH SALVE:** So, Thursday will become miscellaneous. So if we can sit through the whole of tomorrow [UNCLEAR].

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Let me just have a word with both Justice Pardiwala and Justice Misra.

**TUSHAR MEHTA:** We can start next week, Mr. Salve.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** I'll just have a word with my learned brothers the moment we rise.

**HARISH SALVE:** I think I am in the morning.

**VIJAY HANSARIA:** I think the time which Your Lordships gave, we are able to do it faster than that.

**HARISH SALVE:** In the afternoon if Your Lordships have that [UNCLEAR] of sitting then it will be a much better run.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Let me see. I'll talk to the...

**VIJAY HANSARIA:** May I please Your Lordships. I'm appearing in Item number 901.69 and 901.70 for Respondent number 3, Shakti Nagar Area Development Authority in the State of UP. And my written submissions are in Volume I(a), page 137 onwards. Volume I, page 137. Volume I(a) My Lord.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Volume I(a), 13?

1 **VIJAY HANSARIA:** 137. The section which is under challenge, it is arise out of a transfer  
2 petition filed by the SCC's because the main petition is pending in the High Court. Though the  
3 said Section was upheld by the High Court and upheld by Your Lordships in *Kesoram* but  
4 some petitions remain pending in the High Court and they've filed a transfer petition and Your  
5 Lordships issued notice and stay at the High Court proceedings. Would Your Lordships kindly  
6 see Volume IV, page 3864, the Act, for a minute? Page 3864 of Volume IV where the Act is  
7 there. This is Uttar Pradesh Special Area Development Authorities Act and it is an Act to  
8 provide for the establishment of special area development authorities for the planned  
9 development of certain areas in the State of UP. And Section 2(b) defines amenities which  
10 includes roads, streets, water, electricity supply, street lighting, open space, et cetera. So the  
11 purpose is, My Lord, that we are providing all these services under the Act. And under Section  
12 6 My Lord, which is at page 3866, the functions of Special Area Development Authority shall  
13 be (vi) apart from plant development to execute works in connection with the supply of water,  
14 electricity and to provide utilities and amenities such as water, et cetera. (v) My Lord to carry  
15 out building, engineering, mining operations and other construction activity. So My Lord for  
16 mining operations also, they have to take out permissions My Lord and there is no challenge  
17 to the validity of Section 6(5). Your Lordship may kindly see Section 7, special area power of  
18 the authority for the purposes of the municipal may share the powers of Nagar Mahapalika,  
19 under the Mahapalika Act, for the purpose of taxation have the powers of Nagar Mahapalika  
20 under the Act. And under Section 8 My Lord we prepared the master plan et cetera. And the  
21 charging section is Section 35 which is challenged My Lord before the High Court is at page  
22 3877.

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** [UNCLEAR].

25

26 **VIJAY HANSARIA:** Just one section, and then I'm going to.....

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Send it back to the High Court.

29

30 **VIJAY HANSARIA:** No. Your Lordship is right. Your Lordship will permit me to show one  
31 section, then I'll go straight away to the entries My Lord. Subject to any limitation imposed by  
32 the Parliament, by law relating to mineral development, the authorities may impose a cess on  
33 mineral right at such rate as may be prescribed. So Your Lordship may kindly note the  
34 language of section 35(1) is in *para materia* with the language of Entry 50 of List II. Now Your  
35 Lordship has read Entry 50 of List II would permit me to read it again My Lord for a limited  
36 purpose, if Your Lordship kindly see Entry 50 of List II says subject it is not a complete fetter  
37 on the -- it is an enabling entry in favour of the state to tax and only fetter on the enabling

1 entry to tax mineral rights is limitation imposed by the Parliament relating to mineral  
2 development. So there are two limitations. First is limitation on the state as may be imposed  
3 by the parliament. It's not an absolute limitation and only relating to mineral development.  
4 Nothing else. Now, would Your Lordship kindly see My Lord it is not a power enabling, the  
5 Centre or this Parliament to levy any tax on mineral rights. It is a limitation on the state side,  
6 not a limitation on the Parliament, not an enabling power in favour of the Parliament. The  
7 power of the Parliament to taxation, if the royalties held to be taxation My Lord it has to fall  
8 in one of the Entries, My Lord under 82 to 92(b) of List I. They cannot apply a limitation power  
9 on the state to be enabling power in favour of parliament.

10  
11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just one second.

12  
13 **VIJAY HANSARIA:** I am so sorry. Limitation power of Parliament cannot be converted into  
14 enabling power of the Parliament, more particularly a taxing power, when the taxing power  
15 are specifically given in Entries 82 to 92(b) of the List I.

16  
17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

18  
19 **VIJAY HANSARIA:** Now My Lord Entry 54 also says subject to limitation. Now, Your  
20 Lordship kindly see My Lord it's not absolute limitation only the Parliament chooses to impose  
21 some limitation. Now, the MMDR Act, My Lord Section 2, which my learned friend just now  
22 read My Lord, may I just read it again? It only limits to the extent, My Lord, may I just read  
23 that Section 2 of MMDR Act which Your Lordship gets in the same volume, Volume IV, page  
24 910 at 920.

25  
26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

27  
28 **VIJAY HANSARIA:** Now My Lord, 2 says it is hereby declared it is expedient in public  
29 interest that the Union shall take under its control the regulation mines of the development of  
30 the minerals to the extent hereinafter provided. It is not the complete field, as has sought to  
31 be argued. It is completely occupied field. It is not that. It is only to the extent hereinafter  
32 provided. And My Lord in respect of mineral rights, because Entry 50 says relating to mineral  
33 development. Now, mineral development is only in Section 18 of the MMDR Act, and nowhere  
34 else. Because Entry 50 further restricts the power of the Parliament relating to mineral  
35 development. And what is mineral development? The Parliament has chosen to prescribe  
36 specifically in Section 18 and 18 alone. It's in Volume IV page 969. Section 18 is there.

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What page?

2

3 **VIJAY HANSARIA:** Volume IV, page 969, Section 18. Foot of the page My Lord and it says,  
4 the heading is important - Mineral Development. That is the heading My Lord, that is the  
5 restrictive power of the Parliament under Entry 50. That is all which can be done by the  
6 Parliament. It shall be duty of the central government to take all such steps as may be  
7 necessary for conservation and systematic development of mineral in India for protection of  
8 environment by preventing or controlling any pollution which may be caused by prospecting  
9 or mining operations, and the central government may by notification official make rules. And  
10 in exercise of that power, the rules have been made Mineral and Conservation Development  
11 Rule 2017 and without prejudice Clauses 1(2)(Q) further provides what rules can be made and  
12 none of them restrict the power of the state to levy any tax. None of the rules. So restriction if  
13 any, under Entry 50 limitation power can be referred only to Section 18 of the MMDR Act and  
14 the Parliament has chosen not to impose any restriction on the MMDR Act. On the state power  
15 to levy taxes on mineral rights, by saying, what is mineral development.

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** All right. Anything else?

18

19 **VIJAY HANSARIA:** Yes My Lord. There are two more aspects. There is no similar entry like  
20 Entry 50 in List I. So there is no taxing power by Parliament to levy any tax on mineral rights.  
21 Taxing power has to be specific. It cannot be -- It has to be specific, express and precise and  
22 cannot be by way of implication or inferences. In the absence of specific power to levy tax on  
23 mineral rights, if royalty is to be held as a tax, there is a good chance of challenging where is  
24 the power of the Parliament to levy royalty which is a tax. There is no power to levy tax. If that  
25 is not there My Lord, then an interpretation which may result in making a power to be  
26 unconstitutional. Lordship would interpret, which is making a constitutional. If Your Lordship  
27 leave it, not a tax, then it is there. Then just two more things.

28

29 In **Kesoram Cements**, para 47 to 50, Mr. Dwivedi has read to Your Lordships, in the Federal  
30 list has to be given a restrictive meaning and not the State list because State is already weaker  
31 in exercising in getting the revenue. So, these are the paragraph 47 to 50, **Kesoram** has said  
32 this, [UNCLEAR] has said this that the court should be careful not to upset the delicately  
33 crafted constitutional scheme by way of interpretation and put some restrictions by a judicial  
34 interpretation.

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

37

1 **VIJAY HANSARIA:** Then our next submission is that the taxing power under List II can be  
2 restricted by specific provision. Mr. Dwivedi has pointed out to Entry 57 of List II, which was  
3 subject to Entry 35 of List III. There is a similar provision which was Entry 54 of List II prior  
4 to 101st Amendment. If Your Lordships also kindly see that which is in this book. What was  
5 there prior to in Entry 54, prior to 101st Amendment was tax, on sale or purchase of goods...  
6 I'm so sorry. Yes, if Your Lordships have page number 476 of the said...

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes, yes.

9

10 **VIJAY HANSARIA:** If Your Lordships see the footnote 276.

11

12 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Taxes on the sale or purchase of goods...

13

14 **VIJAY HANSARIA:** Other than newspapers, subject to provisions of Entry 92A of list one  
15 and Entry 92A of List I is the tax on interest inter-state sale and in excise of the power Central  
16 Cess Tax Act was enacted 1956. So, if the taxing power of the State was to be restricted, we  
17 have two examples, My Lord. One is Entry 57, Mr. Dwivedi has taken to Your Lordships  
18 extensively. Another is this Entry 54 till 101st Amendment Act inserted by 56 Amendment.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

21

22 **VIJAY HANSARIA:** Reliance is sought to be made on the residual Entry 97 of List I.

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Covers a situation where there's no other tax.

25

26 **VIJAY HANSARIA:** That's right. We have a specific entry in List II, Entry 49 and 50. So,  
27 there is no question of levying the rent. The definition of royalty has been shown by Mr.  
28 Dwivedi the extensively. There are one or two definitions which are not there in that judgment  
29 of *Kesoram*, if Your Lordship kindly note....

30

31 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You have put it in your written....

32

33 **VIJAY HANSARIA:** No, I put in my notes. I'll just give the page number. In para 12, Volume  
34 I(A), page 150 of my written submission. I have given the definition as per Halsbury which is  
35 not there, as per Black Law Dictionary which are not there in the *Kesoram*. I think the last  
36 man it is very clear, easier way, when the scores are scored very high. By my predecessors, I'm

1 extremely grateful to Your Lordships. I'm extremely thankful to both my colleagues also, who  
2 associated me Ms. Kavya and Mr. Pavan. I'm extremely grateful to Your Lordships.

3

4 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Anybody, else now? Can we call upon the other  
5 side?

6

7 **VIJAY HANSARIA:** I think our side is...

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thank you. In case -- you've been taken by a  
10 little bit of surprise, because it's just 3:30. If you want to start tomorrow morning, we are fine.

11

12 **HARISH SALVE:** I was honestly hoping to open the matter for the reason. So I'm ready.

13

14 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You are ready? All right. Otherwise we can start  
15 tomorrow if you wanted to, we give you the option. About 25 minutes to go.

16

17 **HARISH SALVE:** I can give Your Lordships a little overview of what really we are all about.  
18 At some point I am going to read *India Cement* para by para. I have explained which  
19 submission is not noted, but answered. It might give some more, but nothing ultimately turns.  
20 Nine of Your Lordships are hearing. Your Lordships also saw Mr. Justice Raghunathan's  
21 judgement which said this royalty as the tax became the most exciting point, we should not  
22 determine anything of the matter. What our reading, the genesis of this is My Lord, in the  
23 Patna and the Mysore is as follows. As far as Entry 49 is concerned, the answer is very simple.  
24 I'm going to show Your Lordships, it is there in my note, but briefly, I'm going to show My  
25 Lord the genesis of [UNCLEAR]. When we talk of land we inherited the English system  
26 through our Common Law and under the English system, if you are a freeholder, tenant is  
27 [UNCLEAR], as we call it, you own everything from the tip of the sky to the floor of the earth.  
28 The British when they came up, and from large areas, especially our richer areas, were all in  
29 the British rule, Bengal as it then was, Bengal area, Orissa and all these states are very rich in  
30 mineral. They created the GOI Act 35, mechanism because they also realized, this is not a  
31 question of allowing states the full leisure of their taxing power. Certain taxes distort the  
32 federal balance. Not all our states are equally endowed. Odisha is rich [UNCLEAR] minerals,  
33 in mineral wealth. Bengal is rich in mineral wealth and both in World War two days coal was  
34 their number one mineral. Rajasthan not so much now they found oil. Don't know how much  
35 more there is. Maharashtra where we come from not particularly [UNCLEAR]. I don't think  
36 Kerala has any mining at all. I'm not a miner, valuable minerals. Karnataka is rich now. So for  
37 a holistic development of the Federal India one of the things was disparate rates of royalty, to

1 create economic deflection. And that is why Entry 50 languages were *sui generis*. It's not  
2 tagged to development or to conservation. Unfortunately, this is settled now right from Hinge-  
3 Rampur to [UNCLEAR]. So, Entry 50 is *sui generis*. Parliament realized, or rather the framers  
4 of the Constitution realized, in fact, the framers of the Government of India had realized, that  
5 you can give taxing powers to the state, but this is one particular taxing power in which you  
6 must give the Federal Government there as against the provincial governments, now My Lord  
7 the Union Government and Union Parliament as against the states, the power to limit the kind  
8 of tax and the quantum of tax which has been put in. First time, there are so many memories  
9 of this court room. First time when Justice Desai sat, the mics had been introduced because  
10 he had a little....

11

12 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes Mr Desai had a little hearing impairment.

13

14 **HARISH SALVE:** Justice Nariman came and he picked up, please he says, 'I'm from  
15 Bombay. I don't need microphones. the court can hear what I say.'

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In Mumbai sometimes you can hear the counsel  
18 in the adjoining court as well.

19

20 **VIJAY HANSARIA:** Sometimes in smaller courts we are asked My Lord [UNCLEAR]  
21 courtrooms.

22

23 **JUSTICE B.V. NAGARATHNA:** We say you are [UNCLEAR] court and now for the next  
24 court also.

25

26 **HARISH SALVE:** Limit your submissions to the point, to the law and to the courtroom.  
27 What is it that this challenge was brought as initially and two or three submissions which have  
28 been made shows, it is necessary to... these are not issues which are *res integra*. There are  
29 three kinds of balances in union and state legislations, occupied field, denudation and  
30 repugnancy. We sometimes use them interchangeably. The three have very different  
31 meanings. Today. I'm just giving you an overview. Tomorrow I will giving citations. I'm going  
32 to show Your Lordships law. Denudation is an expression which has used sometimes in  
33 conjunction with [UNCLEAR] for the physicalness of entries which have Parliament may by  
34 law declare. What's the effect of that declaration and to what extent does it remove the content  
35 or reduce the content of the corresponding state entry? Then we have another set of entries.  
36 We just say, so and so educational institution, institution of higher education, state list union  
37 also had for higher education. There the occupied field become more important because if it is

1 subject to Union Legislation, if they have not legislated your field is free. And the third is the  
2 do and don't test, the repugnancy. Parliament may make a law within List I, not even List II.  
3 And there may be incidental encroachment into List II. Then, because of the famous 246(1),  
4 246(3). 246(1) says notwithstanding 2 and 3 and 246(3) says, subject to 1 and 2. So incidental  
5 encroachment by Parliament to the extent of encroachment, anything inconsistent in the state  
6 law is allowed. That's where you apply the narrowest test. The do/don't. If I comply with one  
7 law, will I fall foul of the other law. When you say Parliament Law will bring. For us this over-  
8 rigorous analysis may perhaps be unnecessary because we are concerned today with two  
9 dimensions of the matter. The interplay between 49 and 50. And secondly, what is the  
10 connotation of the limitations introduced in 50 expressing. And if these two questions are  
11 answered in my submission, perhaps the entire matter will resolve one way or the other and  
12 yes, there are other side issues which will arise just to complete the full analysis. But this is My  
13 Lord, the heart of the matter.

14

15 The second is the overlay of our land legislation history. The British principle, the English Law  
16 Principle that a holder of fee simple or full owner -- nobody till recent times, nobody was a full  
17 owner-- holder of fee simple or a holder of fee entail. A holder of fee simple enjoyed the sky  
18 and everything which is under the surface. When in British days, the British were giving out  
19 grants, on many occasions they carved out mineral rights. And by conventional British Law,  
20 Your Lordship knows, you had the right to every mineral except silver and gold. They were  
21 royal minerals. They were reserved for the Crown. Again everything there is a convention.  
22 That's how it is. That's how it is understood. The devolution therefore, firstly, by way of many  
23 British grants themselves removing mineral rights because they had the pressure of World  
24 War II. You needed coal, you needed iron ore, you needed to make steel. So, they started  
25 removing or you said, yes, you shall have the run of the land, but not the mineral rights. And  
26 one of them in 1950 are Land Reform Laws which were upheld primarily as laws of acquisition  
27 of land. And in our Land Reform Laws, inevitably, it said mineral rights will vest in the State.  
28 There are some Land Reform Laws in which.. there are still some private owners and the Act,  
29 MMDR Act is agnostic ownership because it also covers private owners. We have one judgment  
30 of this Court, called **Jacob**. Your Lordships recognize that there are some areas, some general  
31 lands in Kerala, for example are still the old style because neither was the original title  
32 curtailed by the British nor they were covered by any land reform, full ownership principal  
33 continues. But if you see the theatre of this primarily lands belonging to the government,  
34 mineral rights belonging to the government. If I do not own a mineral right. I may have 50  
35 acres, 100 acres of vacant land where I can do farming. If you want to impose a tax on what I  
36 have, you can include the trees I grow, plants I grow. You can have on a square foot beach, you  
37 can have on return basis. All of them are recognized as legitimate measures having nexus with

1 the land. But if the mineral rights don't vest in me, that minerals cannot become a measure of  
2 my life. You can't then say that I'm taxing your land. The measure is the mineral. I don't own  
3 the mineral. How can it be a measure? You as well tax me or my neighbour because my  
4 measure as well be my neighbour's land because it has no nexus with my land. I don't have.  
5 All I have is surface rights. Now, you can tax surface rights in whatever sensible measure, but  
6 you can't say, I will also tax you for things which you don't own as in mineral rights. Now, this  
7 is a very important dimension, which *Murti* missed when looking at 49. And the second  
8 problem, it missed and it is now My Lord accepted, the special excludes the general even in  
9 constitutional miss. If land includes all my friends, you give me the definition. If land includes  
10 everything from the core of the earth to the tip of the sky, why do we then need a separate tax  
11 on mineral rights. Just like 49. If mineral rights is carved out from the field of tax legislation  
12 placed under a separate entry and which entry is limited, to what extent, is a separate matter,  
13 you then cannot say maybe so, but I still have my 49 which has no limitation. Then you are  
14 distorting the scheme of the constitution.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Why did you give the tax on mineral rights?

17

18 **HARISH SALVE:** That's right.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So if it's a tax on mineral rights, then the  
21 legislative field is covered by, not by, Entry 49 but by Entry 50. But if mineral rights really it  
22 constitutes the measure of the taxes as distinct from the taxing entry .....

23

24 **HARISH SALVE:** That's what I am saying. Today I hold a piece of land. I own a piece of land.  
25 I own 50 acres of land where I do farming. There may be a seam of iron ore under that. I can't  
26 touch it. 'a' it doesn't belong to me under Indian jurisprudence, it that belongs to the state.  
27 And 'b' I can't touch it unless I go under the MMDR Act, apply, get a permission and that too  
28 not as owner. I will get a lease in my very land to work a mine which vests in that state. How  
29 can that mineral wealth be a part of my annual value? Can't be. I have no right to it. I have as  
30 little right to that mineral, as I have to my neighbour's land. Can you say the annual value of  
31 your neighbour's land will be your annual value? Your Lordship will strike it down for the  
32 asking thing. This is not annual value, must have Nexus. My Lord the *Ralla Ram* cases. We  
33 did all those cases back in the day, *Ralla Ram, Boddu Paidanna*, where in a house or in a  
34 building, income tax could tax the income from that building. That is a tax on income. And the  
35 states could tax through their municipal bodies, the building itself. Now, in one day, in that  
36 very building, if I am the owner, and we My Lord unlike England, we have had tax on the  
37 occupier, not from the tenant. So, if you want to tax my building, you can tax it on square foot

1 basis, or you can tax it on applying a value, or you can say its capacity to yield income becomes  
2 a measure. That's the **Ralla Ram** principle. The rent I may receive is not the measure. The  
3 rent I receive is a method of valuing the capacity of that building and that is the relevant  
4 measure for that tax on the building. I own everything. I own the right to let that building out,  
5 see, even if it is vacant it means nothing, because I have that right. I may actually give it out to  
6 somebody who may be paying me much less than market rate or I may give it out to somebody  
7 who's paying me much more than market rate. But the inherent capacity, we have all these  
8 cases from **Dewan Daulat Rai**, et cetera. We just said you have to go by the capacity of the  
9 hereditament to yield an income. Perfectly sensible, but you cannot apply that. Suppose My  
10 Lord in a house tax or a tax on land and building, somebody said, and by the way, where your  
11 building is like we believe there are some seams of iron ore. You will add that also. Can't  
12 because I have no right to that iron ore. It is there but somebody has to buy my land, then go  
13 to the Government and get mining permission, get a lease. Pay the State because it belongs to  
14 the State. We'll have to put all this together.

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16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Sorry, just one... if we take the whole of  
17 tomorrow, you'll be wrapping up tomorrow? You'll be able to wrap up tomorrow?

18

19 **HARISH SALVE:** Maybe by... because I am at the opening there are a lot of case citations  
20 not being shown. Certainly by Tuesday afternoon Sir.

21

22 **CHIEF JUSTICE D.Y. CHANDRACHUD:** By Tuesday. So...

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24 **HARISH SALVE:** The Attorney is there, my learned friend Mr. Mehta, is there.

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26 **TUSHAR MEHTA:** Sir, my estimate... sorry.

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28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Salve, what we'll do is, we'll take a break  
29 tomorrow in the afternoon. So we will hear this matter in the first half till 1 o' clock. Because  
30 if you were likely to finish, then we'd have seen. But what will happen is, if I have to now  
31 reconfigure all the benches, the other benches will again have to be...

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33 **TUSHAR MEHTA:** Very realistically, if you are looking at the next week, two days, all our  
34 sides getting over My Lords, doesn't look very likely,

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36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But you see they had also given an assessment  
37 of 4 days, which came down to a day and a half,

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**HARISH SALVE:** Quite frankly, my concern is on the timing issue. My learned friends have in one sense come with an advantage saying, *Kesoram*, held this in our favour. If you start reading *India Cements* there's much you can pick on it. Let's be candid. One sentence somebody says doesn't match the other sentence, et cetera, et cetera. The real case is not even open before Your Lordships.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** You have to argue it really soundly as a matter of first impression

**TUSHAR MEHTA:** They have to take it from *Kesoram* to My Lord, we have to argue from the beginning...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** So, tomorrow we'll assemble at 10:30.

**TUSHAR MEHTA:** We will argue... for sure.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** We will assemble at 10:30 tomorrow morning.

**ATTORNEY GENERAL R. VENKATARAMANI:** And Union is sandwiched between these two. A certain angle...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** We've noticed that you are a little closer to this side than...

**VIJAY HANSARIA:** Completely that side My Lords. With the Union.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Alright tomorrow at 10:30.

***END OF DAY'S PROCEEDINGS***