

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)

TRANSCRIPT OF HEARING

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1 **10:40 AM IST**

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3 **[NO LIVE FEED AVAILABLE]**

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5 SPEAKER: My Lord's permission, may I mention a matter of Nine Judges. My Lord, this is the
6 same matter that has to be listed before next week Your Lordship, [UNCLEAR]. The
7 Constitution Bench where the Nodal Counsels, in that all the States were issued notice in
8 October 2020. Till now, we have not been handed over any submissions from any of the
9 parties. Only some of the private parties have filed. We are unable to make [UNCLEAR]. That's
10 why States have not filed any return submissions, we will not dislocate the [UNCLEAR]? We'll
11 hear oral submission, we'll go in the traditional mode, but we'll not change the date. This was
12 an item number 4. We are also little caught on a way of weak accommodation might help us
13 which of the other two in the middle 39, Bombay and Mueller said industrial dispute, that's
14 how I'm not being technical about this Article 39(b) et cetera. Property owners and property
15 owners everybody ready in property owners, is everybody ready to go on with property that is
16 notified from nobody. In the first week it was mellowed at item. Next week is the last week
17 before Holi. All right, then we will do this. We can just be accommodation, a weak breather,
18 that's all. I'm all right. We list it, then on the Tuesday after Holi, he'll start industrial alcohol,
19 we'll still go into the matter. They should not then collect, the Nodal counsel has mentioned
20 the mentioned the matter state that none of the states have filed either their compilation or
21 written submissions except for the State of Uttar Pradesh bearing in mind that instead of we
22 direct the hearing before the nine-judge Bench shall be adjourned to April 2024, immediately
23 after the holy research was to enable all the states and other parties to file their compilation
24 and written submissions. Really in the event that any of the parties, including the states, failed
25 to do so, comma, the hearing of. the hearing of the case shall proceed nevertheless on the date
26 assigned and no adjournment shall be granted, immensely grateful submissions shall be.
27 Thanks, shall be made available to the nodal counsel by today is the 14th. We will say by the
28 28th. Will that be all right for you? To be 28th. They give it to you 28th? I think should be fine.
29 This order should be sent to all. This copy of this order shall be supplied by the Registrar
30 judicial to all the Standing Counsel appearing for the respective states, of UP is the main. So,
31 it matter rising out of your feet? We have five impact all India and you are ready, Mr. you are
32 ready you'll be appearing for the oh, I see. Sometimes you also oppose the State of UP upright
33 actually. So, Centre and States, irrespective of this, the question of perceptions are different.
34 It won't take very long. This is unlike this matter. It's not a very complicated benches of five
35 constitution benches, from the 19 only synthetics is Seven. But Your Lordships, Your Lordship
36 would never contain us if we are not irrelevant or repeating whatever always structures our
37 children. The matter may change sometimes. This matter comes and it's weird, but in this

1 matter, we have given the list of those petroleum matters, can consider passing an order that
2 in view of the MOP you think you have downloaded, those matters may be detailed. So, he has
3 persuaded me without consideration we'll say that the Secretary of MOPNG citing out the
4 distinction, in this case without going into it, it's agreed on all counts that this should be
5 detrimental. The faculty in the Ministry of Petroleum and Natural Gas has as an affidavit
6 ranking out the factual distinction with the legal description. The distinction in this batch of
7 cases from the batch which is being heard by the Constitution Bench by the Nine Judge
8 Benches. Mr... Late Mr. Dusha. Metal and it fills the general. That was a big step this batch of
9 cases may be detached, to be held separately appearing for State of Assam. State of Assam,
10 State that he has no objection to this course of action being followed without expressing any
11 opinion on the submissions. We have directed the proceedings be detached at the present stage
12 in the above cases. This Act says you need to give the list of those. How many are there how
13 many are there? Totally India one more thing. Since the Lord mistaken *India Cements*, 2014
14 previous three judgments, referred six questions, and then directed the district tag along with
15 the MADA case only one question is common Royalty.

16

17 SPEAKER: Other questions are not really relevant here. So, I'll make a note to your question
18 number 3, which relates to nature of Royalty, will be covered. Other issues will be taken up.
19 Later subsoil rights. Otherwise give us a small one. Parameters before we rise, we'll pass that
20 order.

21

22 S. MAHESH SAHASRANAMAN: Should I give it tomorrow? So that will be done. Now I
23 walked the note. I'll give. Actually, nothing needs to help because it will come up. Before the
24 appropriate benches on Royalty issues on subserve, right after our judgment is delivered, we'll
25 see how much of it is covered by this. So, we just simply retype it. In my power present on this
26 civil appeal, numbers are given as a junior to just give a fresh just in two minutes. Ask
27 somebody just proposition. Where proposition without any argument, so that it can remain
28 on that typographical error or that do not arise in future. This was the state of the product it's
29 the name of Ghana. Shiva counsel or for the detective. Given detecting, give it to Court master
30 proceedings we are not present for it just give back to as business does not test. We'll give the
31 IA number to the Court must intervention application has been filed by ONGC. Also, the
32 matter has been given to oil man a rapid-fire mode. Are you in a test match mode as the umpire
33 directs. Look tiny, precious we are also looking for a break now. I think that alone has a beyond
34 poly. Everybody even does a little bit we also get a little intellectual break doing more routine
35 work for a week that's important finally notice. Happy hours for us we have been for six days.
36 A lot bearing the brunt of all the arrows fired from that side which were quite often fired at
37 each other also tax. Some say not tax there is a mutual contradiction but not the typical happy

1 hour now, one very witty question was put by Hon'ble Justice Hrishikesh Roy which was not
2 answered and that was whether the queen said a share whether the queen. Yes, as you share
3 in the mineral the answer is yes. In fact, the large-scale mining which began in the world is on
4 account of two queens not one the first was Queen Isabella of Spain whom after the
5 Englishman, the Spanish people succeeded in the Reconquesta in 1492 when she was the
6 Queen. And it was she who, granted a Charter after obtaining a Paper Bull from the Pope in
7 Rome to Christopher Columbus who then sailed across the Atlantic with the objective of
8 finding India. There was some simultaneous dispute between Portugal and Spain. Then the
9 king of Portugal granted a similar Charter to Vasco Da Gama to sail eastwards to find an
10 alternate route to India. So that was the importance of India in 1492, and that is all because of
11 the Islamic wall, which suddenly spread across from Morocco to the Central Asia. Columbus
12 floods when he reaches an island in the new World which was America, he thought it was
13 India. And therefore, we find West Indians and Red Indians and everybody. So, India is all
14 over the Globe and those innocent people, My Lord. In the various trips he made, he saw them
15 wearing Gold, carry Silver and that led to colonization and a massive, massive genocide. The
16 whole Maya Civilization disappeared. All those lands were captured for the sake of mines and
17 minerals. And Isabella had a share abroad in that loot and genocide. There is a book recently
18 written by David Canard, American Holocaust and he rightly says that, what Hitler did was
19 nothing hundred times, note, what Hitler did was done in the new World, America only for,
20 basically for mines and mineral and plantations for working, which we are. Then having
21 committed genocide then they transported Mullet Slaves from Africa, that was the first Queen,
22 1492. But this transportation of Silver and Gold, the Noble Mineral from across the Atlantic to
23 Spain, My Lord, was disturbing the balance of power in Europe. Spain was becoming richer so
24 something had been done. So, we had another Queen and Queen Elizabeth to restore the
25 balance. To prevent strain, they created Pirates. They were known as Elizabethan, Sea Dock
26 and Francis Drake is the most popular of the Pirate, and their job was to loot this Gold and
27 Silver. The Spanish ships were carrying to Spain quite often. The ship sets themselves used to
28 be carried and that's how My Lord, the European theatre transported itself into the Atlantic.
29 The Ocean began has seen of Warfare and India was the centrepiece. To find a route for India
30 so the Black Gold led to these mines and minerals search in the new World. So, what really?
31 How it is pertinent? Actually, it is the land or native landowners who were alienated from the
32 land not the mineral from the land, mineral from the land is extracted. And after, only after
33 extraction, it gets separated and decoupled until the extraction takes place. There is no
34 decoupling that's the story which history tells us the human being. The natives were decoupled
35 appropriately alienated completely from the landowners, and settlements were created there.
36 So, the Englishmen who settled there and the Spanish people who settled there, that is in the
37 south of America to even today we find speak Spanish. So, the decoupling was, if I use the

1 expression used by the other side, or rather better word alienation was of the landowner's
2 native landowner, not the mineral, *ipso facto* gradually speaking, I think almost the entire
3 South America, except for Brazil, broadly in Spanish. Yes. Brazil, of course, is Portuguese.
4 Portuguese. Portuguese and this genocide happened a lot when we read this, that these native
5 people used to just walk up lovingly willow to the Spanish people and the Englishman will
6 admit later on and they used to offer the gold blood because they were not doing that mass
7 scale mining for them. It was just the need embellishment wear it. So, it was nothing to hand
8 over a piece of gold. It's very interesting reading that book that tells us completely how all this
9 happened there but not going into the details. So, this is the story of two queens, which is very
10 pertinent and tells us that the alienation was of the landowner. The only thing was that what
11 genocide happened there did not happen in India, but there was a connection because when
12 the Britishers came here and the other European powers came to India then entire trade,
13 which was happening in the initial days, that's during the Mogul Regime then the trade, they
14 had nothing to offer. They call themselves very civilized, highly developed, and India was
15 nothing, no history, et cetera. All those things but the history was such that they had to
16 transport that gold and gold and silver to buy the products of India. The cotton, the spices, the
17 gems and other things. So that's how much gold and direct connection. Even the Roman times
18 and later also times that was directly connected, but after the battle of Plassey and when the
19 Lord Clive captured and all those, then it was different than the Cornwallis Permanent
20 Settlement comes. They were interested in revenue. What stopped then was that the gold and
21 silver stopped coming and the revenue which they generated by this permanent settlement
22 and the Diwani rights which they possibly obtained from Shah Alam then, that was used to
23 buy the products of India. So, our own money was used for buying that and also for trading
24 with the Chinese, tea and other porcelain and other things. So, the goal stopped the first
25 Mining lease is 1774 in India, which is by **M/s Sumner and Heatly of East India**
26 **Company**, but that was very small. There was no demand as such in the country for the
27 minerals as these kinds of minerals. It is only when in 1853, when railways started, then they
28 needed coal in mass scale and then more leases were granted. So, it's really the period of the
29 second half of 19th century and then, as has been stored to a Lorchess Load 1913 rules, mineral
30 concession rule 1939. And all those started coming as basically the two, World War I and
31 World War II will not put the pressure of more and more mining. So, the British were
32 interested in extracting more and more and using it for the war purposes. All the economy was
33 for the Achlees from 30 to 47 was war oriented but one thing is very common that all
34 throughout the people. In India, the approach was different, and the people were not alienated
35 from the land. Whoever owned the land they also were the owners of the mineral they were
36 interested in revenue for which Royalty, et cetera. And the Royalty is not a new concept today.
37 Suddenly created knowledge by the frameworks of the Constitution or by the Mines and

1 Mineral Act 1957 all through Royalty and which was understood as a consideration which a
2 return which is to be paid to the landowner for his rights in the land and the right or the
3 minerals so the land and the Mineral Rights were stood club together just as clubbing this
4 unified existence of land and minerals.

5

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7 **[LIVE FEED AVAILABLE FROM THIS POINT]**

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9 **RAKESH DWIVEDI:** ...must be noted, it's very important. The minerals grow naturally in
10 the womb of the earth. It is said, My Lord... I don't have a deep knowledge, but whatever I have
11 read, that even when the animals and plants die, when microorganisms are created, which
12 with the rainwater, percolate down into the earth and it takes hundreds of years for the mineral
13 to form. So, the formation of mineral is, which also they have said, that their IBM report says,
14 it's a natural process. So, it's naturally intertwined. It does not exist separately. It is through
15 the mining process, that it has to be excavated, extracted and then separated. And in many
16 cases, the soil itself is the mineral, silica; sand; clay. The soil itself is mineral. Through a natural
17 process... through a natural process in many cases, more than one mineral get aggregated, as
18 in the case of granite. Granite is not a single mineral. More than one, they get intertwined form
19 a rock, and that's how, My Lord, the granite. So therefore, this formation is a natural
20 formation. The question of the mineral lying separated or alienated or decoupled within the
21 womb of the earth is not a phenomenon which exists in nature. What can happen is, that the
22 law, notionally, may treat some aspects differently. It may notionally, provide that, and that
23 notion became important, My Lord, much later because many a times the landowners did not
24 have the wherewithal to do the mining. So, technology et cetera, as in technology grows. So,
25 the limited separation which occurred was that a landowner became entitled to grant a lease
26 to some other person to have a right of occupation over that land, to do the mining over that
27 land with all the mineralites, namely to extract and separate and then sell it. Now, this was a
28 very, very valuable right of the landowner. Whether it was private or the State land in either
29 case, it was a very valuable right. And to say that the landowner, My Lord, when he was
30 charging Royalty, then he was charging tax from the people. Individually the landowners...
31 Today, may be a different scenario, My Lord, that bulk of the mining is being done on State
32 land. But there was a time, it was reverse. The State land was less, and more My Lord, the
33 people were owning, the kings were owning. One-third of India was Indian States, State of
34 Princes. So, there that State was owning. Even after the independence, My Lord, they
35 continued to own much land in Allahabad, in the Shankargarh area, My Lord, across the
36 Jamuna, about 25 km², is still in the possession of the erstwhile Raja of Shankargarh. People
37 still call him, My Lord, Raja. So, it doesn't disappear from the mindset. Because they are

1 getting the subleases from him and they carry out the mining. So, the submission is, that the
2 decoupling, et cetera, which has been contended for by Mr. Salve, is neither a natural
3 phenomenon nor contemplated even today by the Mines and Mineral Act. Your Lordships,
4 have seen Section 4 of the Mines and Mineral Act. What does it say? It says, the State will grant
5 the lease, and in a private person's case, the private person will grant the lease, but the format
6 is prescribed. Slightly more liberal, in case of private person, some clauses don't apply, but
7 otherwise it has to be substantially Form K in both cases. And the source of Royalty is one in
8 the same, Section 9. So, it will be, it will require some kind of, My Lord, creating a sphinx or
9 some kind of, strange kind of a body, My Lord, where Royalty under Section 9 itself, in one
10 case we call tax, in other case we call... So, it is only under the lease... The lease, which is granted
11 under Section 4 in Form K, which entitles the lessee, whoever it is, whether Central
12 Government is doing the mining or a private person or in shares. This segregation, the
13 separation or decoupling happens after extraction, payment of Royalty and removal. You can't
14 remove. Whether we collect it at the removal stage or a later stage, State Government is given
15 a discretion to provide a manner in which you will recover. So, a State may say, that first pay
16 and then the remove. Another State may say remove in our presence, we will note what you
17 have removed, and then we will put. But the liability to pay Royalty is on removal and
18 consumption, My Lords, have seen that. The submission is, that liability to pay Royalty gets
19 fixed, the moment you remove the mineral from the leased area. In tax, My Lords, a fixation
20 of liability and its materialization, in the sense of recovery can be at different points.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Does it get fixed on the extraction or does it get
23 fixed on the removal stage?

24

25 **RAKESH DWIVEDI:** Removal. Quantification is removal. And there is a rule which says,
26 that before you are removing, weighing in fact, ensure that notice is given and the official of
27 the State is present, so that the weighing is done in the presence. Thereafter, removal takes
28 place. So, removal and consumption. So, physically... Physically, the mineral has now been
29 separated. It has been beneficiated and weighed, but the liability is under Section 9 itself.

30

31 **JUSTICE HRISHIKESH ROY:** Talks about?

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Removal.

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35 **JUSTICE HRISHIKESH ROY:** Towards Removal...?

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37 **RAKESH DWIVEDI:** Consumption.

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JUSTICE HRISHIKESH ROY: And consumption.

RAKESH DWIVEDI: Yes.

JUSTICE HRISHIKESH ROY: These are two key words in Section 9.

RAKESH DWIVEDI: That's right.

CHIEF JUSTICE D. Y. CHANDRACHUD: And from the leased area.

RAKESH DWIVEDI: From the leased area. Kindly for a minute, My Lord, turn to Form K, that's the lease. The book is same, it should be at page 125. And please have the second page after the name of parties, "Witnesseth..." No, kindly have from earlier page, "Whereas the lessees have applied"... The process of a contract begins, My Lord, it may be a statutory contract, rigid, form prescribed, penalties, et cetera., that may be different thing, but unless somebody applies, so he is offering to take it. "In accordance with the Mineral Concession Rules 1960, for mining lease for in respect of lands described in Part I of the Schedule here under written, and has even deposited with the Government the sum of rupees as security and the sum of rupees for meeting the preliminary expenses for a mining lease and whereas the Government has approved the grant of lease." So, they offer an acceptance and grant has happened. The order of grant is passed, then comes the execution of lease. The applicant can, My Lord, withdraw and walk away, say, I don't want the lease. So, it's not that all discretions have been shut out, "Witnesseth that in consideration of the rents and royalties, covenants and agreements by and in these presents and the Schedule hereunder written reserved and contained and on the part of the lessee/lessees to be paid observed and performed, the State Government hereby grants and demises unto the lessee/lessees. All those, the mines beds/veins, seams of...(here state the mineral or minerals) (hereinafter and in the Schedule referred to as the said minerals) situated lying and being in or under the lands". See, the coupling is still there. "...which are referred to in Part I of the said Schedule, together with the liberties, powers and privileges to be exercised or enjoyed in connection herewith which are mentioned in Part II of the said Schedule, subject to the restrictions and conditions as to the exercise and enjoyment of such liberties, powers et cetera in Part III." And then it also talks of making of payments, et cetera. And finally, at the bottom of that paragraph, "...and it is hereby mutually agreed between the parties hereto, in Part IX..." Lordship, got this sentence?

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

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2 **RAKESH DWIVEDI:** So therefore, this lease as between the State Government and the
3 lessee is an agreement, it's a contract and the lease... And this is fixed by Central Government,
4 their understanding, the form K is under the rules, Rule 31 of the Mineral Concession Rules,
5 1960. So, the Government of India's understanding, and I must say My Lord, that both the
6 Learned Attorney General and the Learned Solicitor General fairly stated My Lord, that it's a
7 consideration, not a tax. And the Form K, My Lord, clearly talks of an agreement. We may call
8 it statutory agreement or whatever. Your Lordships, have held in numerous judgments that
9 even statutory contracts are contracts. It's not that there is no scope for a meeting of mind.
10 There is an offer and acceptance, though in accordance with the statute's terms and conditions
11 and forms. Now see, My Lord, what all is being passed on. Part I, the area of the lease. "All the
12 tracts of land situated at so and so and so...", location is given, "...detail on the plan hereto
13 annexed, north, south, the said lands." So, this lease involves the passing of the land also to
14 the lessee to occupy and carry on the mining operations.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's why it refers to 'rents'.

17

18 **RAKESH DWIVEDI:** Yes. Then Part II, talks of "Liberty and power at all times during the
19 term, hereby demised to enter upon the said lands, to search for mine, bore, dig, drill for win,
20 work, dress, process, convert, carry away and dispose of the minerals." This is the Mineral
21 Rights. The bundle of Mineral Rights. So, along with the land, the Mineral Rights, by the one
22 and same document, under one and the same Rule 31 and one and the same lease, under
23 Section 4 and Royalty under, one and the same Section 9. All go together, intertwined. I'm
24 leaving rest of the clauses, My Lords. We'll just elaborate on the Mineral Rights. Part III then
25 deals with 'Restrictions and conditions as to the exercise of the liberties, powers and privileges
26 in Part II'. Part IV is about 'The privileges reserved to the State Government'. The State
27 Government can, still go on the land to search for other minerals. The lease is apropos
28 particular mineral mentioned, but one may find some other mineral. So, liberty has been
29 reserved by the State, to make railways and roads. Part V is 'Rents and Royalties'. "Provided
30 that..." where the holder, the first Clause 1, "...the lessee pays for every year except the first
31 year of lease, dead rent as specified in Clause (2) of this Part. Provided that, where the holder
32 of such mining lease becomes liable under Section 9 of the Act, to pay Royalty for any mineral
33 removed or consumed by him or by his agent, manager, employee, contractor, sub-lessee from
34 the leased area, he shall be liable to pay either such royalty or rent in respect of that area which
35 is higher...". This is a reflection of the proviso to Section 9. Then, Clause 2 says, 'Dead rent as
36 per Third Schedule'. Now My Lord, the expression is 'dead rent'. Mr. Singhvi argued that, dead
37 rent is also tax. And I can understand their predicament, if Royalty is tax and you want to shut

1 out 50 completely, then you have to logically go to the extent of saying that dead rent is also
2 tax, surface rent is also tax, everything is tax. Just because of compulsion to pay; recovery;
3 penalty; offense; four things. Then Part VI. provisions relating to...

4

5 **JUSTICE ABHAY S. OKA:** One-minute Mr. Dwivedi. Clause 4 of Part V, a separate rent is
6 contemplated in respect of the land? Just see, Clause (4), "The lessee..."

7

8 **RAKESH DWIVEDI:** "The lessee shall pay rent and water rate to the State Government in
9 respect of all parts of the surface", that is surface rent.

10

11 **JUSTICE ABHAY S. OKA:** Right. So, that is rent in respect of the land.

12

13 **RAKESH DWIVEDI:** Land.

14

15 **JUSTICE ABHAY S. OKA:** That is separately...

16

17 **RAKESH DWIVEDI:** Separately paid. Because you damage the surface. That's Rule 72.
18 Then Part VI...

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** One more, very important thing is, that the
21 lessee does not become liable to pay Royalty merely on the execution of the lease.

22

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

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because liability to pay Royalty arises under
26 Section 9, when you remove from the leased areas. Removal or consumption. Because see the
27 proviso to Clause (1) "Provided that, where the holder of such mining lease becomes liable
28 under Section 9 of the Act..."

29

30 **RAKESH DWIVEDI:** "...to pay royalty for any minerals removed or consumed by him".

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** *Haan*, the execution of the lease *ipso facto*
33 does not make the lessee liable pay the Royalty. It's a payment which attaches... Liability
34 attaches when you remove or consume.

35

1 **RAKESH DWIVEDI:** And even dead rent, he becomes liable if he doesn't work. Or if he
2 works, but the production is so little that the Royalty is higher than... A Royalty is less than
3 dead rent.

4

5 **JUSTICE B. V. NAGARATHNA:** Royalty or Dead rent.

6

7 **RAKESH DWIVEDI:** Or dead rent, whichever is higher.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Plus, rent you don't have to pay anyway.

10

11 **RAKESH DWIVEDI:** If I work, but the extraction of minerals is so low, that I am not able
12 to give them Royalty more than the dead rent, then I'll give dead rent still. So, the provisions
13 of the law and the lease is clearly indicating the point of time, when the decoupling or
14 alienation of mineral from the land happens. There is no abstract notion created by either the
15 Constitution or the Act or the Rules or the Form, to say that, My Lord, at the time when the
16 lease is being granted My Lord, it stands separated. It is the exercise of Mineral Right, which
17 results in the segregation and separation.

18

19 **JUSTICE J.B. PARDIWALA:** Lessee to specify, what type of mineral he intends to extract?

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. If you see that...

22

23 **RAKESH DWIVEDI:** Yes actually, that gets settled by exploration and earlier exercise.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 123.

26

27 **JUSTICE J.B. PARDIWALA:** He cannot extract anything other than what...?

28

29 **RAKESH DWIVEDI:** No, no. If he finds, he has to report to the State Government. Then
30 either the State Government gives him a further lease for that mineral, or the State will...

31

32 **JUSTICE J.B. PARDIWALA:** Just come to page 137 of your...

33

34 **RAKESH DWIVEDI:** 137, My Lords. Yes, My Lord.

35

36 **JUSTICE J.B. PARDIWALA:** It is, Part VIII, 4, capital A.

37

1 **RAKESH DWIVEDI:** Your Lordships, are referring to particular clause of part?

2

3 **JUSTICE J.B. PARDIWALA:** Yes.

4

5 **RAKESH DWIVEDI:** The page is different in my book.

6

7 **JUSTICE J.B. PARDIWALA:** Yes. Part VIII, 4(A).

8

9 **RAKESH DWIVEDI:** 4(A). "The State Government may, on an application made by the
10 lessee, permit him to surrender one or more minerals from his lease, which is a group of
11 minerals on the ground, that deposits of the minerals have since exhausted and depleted to
12 such an extent that it is no longer possible to work the mineral economically. Subject to the
13 condition that the lessee makes an application for such surrender of mineral at least six
14 months before the intended date of surrender, gives an undertaking."

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, that is a surrender.

17

18 **RAKESH DWIVEDI:** So, that's a case, My Lords, where supposing a lease has been given,
19 for more than one mineral and one gets exhausted, then he will have to... Otherwise we'd be
20 charging dead rent, so he must comply with this.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** To answer another part of Brother Pardiwala's
23 question. See, Clause 1 at page 126, 'Liberties of the State Government'. "Liberty and power..."

24

25 **RAKESH DWIVEDI:** "...and the privileges reserved to the State Government..."

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** "...or any to lessee or persons authorized by it,
28 in that behalf, to enter into and upon the land and to search for win, et cetera, et cetera, and
29 carry away minerals other than the said minerals."

30

31 **RAKESH DWIVEDI:** Yes.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, the lease is for a specific mineral. Though,
34 the State is entitled to enter upon the land for exploiting any other mineral.

35

36 **RAKESH DWIVEDI:** Yes.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Provided you cause damage to his right then
2 you have to pay compensation.

3

4 **RAKESH DWIVEDI:** Yes. Now, there is a form of the application in which the lessee, My
5 Lord, had moved the application, which is also prescribed, that is Form I, probably at page
6 114. Form I, second page (vi). He has to specify "...the mineral or minerals which the applicant
7 intends to mine." My Lord, Justice Pardiwala has got this form?

8

9 **JUSTICE J.B. PARDIWALA:** Which page?

10

11 **RAKESH DWIVEDI:** My Lord Form I. Form I, Clause 3 (vi).

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What page was that?

14

15 **RAKESH DWIVEDI:** On 114 My Lord, 116 maybe.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** "Minerals are minerals for which the
18 applicant..."

19

20 **RAKESH DWIVEDI:** Yes.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** If you see Part VI, provisions relating to 'Rents
23 and Royalties'. Clause 1 says, that rent and royalties to be free from deduction, but Clause 2 is
24 very important. "For the purpose of computing the said Royalties, the lessee, lessee shall keep
25 a correct account", now what follows is important, "...of the minerals produced and
26 dispatched. The account as well as the weight of the mineral, minerals in stock or in the process
27 of exports may be checked by an officer." So therefore, the liability to pay Royalty...

28

29 **JUSTICE J.B. PARDIWALA:** So, that time he has to pay...

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's payable. The liability to pay royalty arises,
32 when the decoupling has taken place.

33

34 **RAKESH DWIVEDI:** Yes.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Namely that the mineral has been extracted
37 and at the point of removal.

1

2 **RAKESH DWIVEDI:** Yes. So that's the point of decoupling, not at the time of grant of lease,
3 at the time the land is as such. We transfer the land also to occupy. Unless we transfer the land,
4 the lessee cannot do the mining. The mining rights will be useless. So that, mineral rights and
5 the lease of land go together. And the lessee has to specify in the application, what minerals he
6 wants to mine, the period, the extent, the details of the area. So, he's making a conscious
7 choice. And even with respect to period, the law says minimum 20, maximum 30. So, there is
8 a range of 20 to 30, between which, My Lord, the applicant and the State Government will
9 have exercised that discretion and a bargain will be there to fix the period. Exact period, could
10 be 25 in between. So, it's not that contract is absent, My Lord, in the case of State.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now what, next?

13

14 **JUSTICE HRISHIKESH ROY:** Mr. Dwivedi, what Justice Pardiwala had just now
15 mentioned about giving up, page 137.

16

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

18

19 **JUSTICE HRISHIKESH ROY:** Now, don't look at it so seriously, but when a miner goes
20 down in order to extract the minerals for which he has already paid something and he finds a
21 placard there, "Queen Isabela is already here' or 'was already here' and he says, I give up the
22 rights for...

23

24 **RAKESH DWIVEDI:** Yes, that's right. So, that was the first point which I was making, My
25 Lord that under the Act, Rules, Forms. The alienation or segregation, separation or decoupling
26 of minerals from land happens upon exercise of the Mineral Rights post grant of lease.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Again. Take it again.

29

30 **RAKESH DWIVEDI:** The alienation, segregation or separation, which is the more
31 appropriate term or the decoupling of mineral from land, happens under the 1957 Act, Rules
32 and lease Form K, only upon the exercise of Mineral Rights by the lessee and not at any prior
33 point of time. Thus, the law is consistent with the natural phenomena of the minerals taking
34 birth and acquiring shape in the womb of the earth. And second My Lord, the lease itself shows
35 that one, this is a contract albeit statutory. But the essential elements of contract, namely the
36 making of application with an undertaking to comply with law, including payment of Royalty.
37 And the acceptance of the application by a grant order under Section 4. Along with execution

1 of lease, which states that it is an agreement would show that the lessor and lessee have to
2 agree to the terms.

3

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

5

6 **RAKESH DWIVEDI:** More than this My Lords, if the Central Government itself does the
7 mining under Section 17(3), it will have to pay Royalty, dead rent, surface rent, at the same
8 rate, at which is payable under Section 9 of the Act. As if, the words are, "As if such, mining
9 has been undertaken by private person". This is a fiction created by Central Government,
10 rather by the Parliament itself that even Central Government, if it does, is treated to be a
11 private person. But we are told that, it's a relic of past.

12

13 **JUSTICE B. V. NAGARATHNA:** So, when Form K is executed, is it a grant of a Mineral
14 Right?

15

16 **RAKESH DWIVEDI:** Along with the land, the Mineral Rights are also granted. But for the
17 lease, Section 4 says 'there will be no mining except under the lease'. So, the Mineral Rights
18 are transferred. They belong to the State, they are transferred. I can do mining myself. That
19 the state can do it itself. Reserve it. Earlier, My Lord, till introduction of 17(A), that is 10th
20 February, 1987. The State Government needed no approval of the Central Government. 17(A).
21 But after this, under 17(A) the State Government, if it wants to reserve under 17(A)(2), so now,
22 we need approval of Central Government, but up to '87 no approval was required. We could
23 say that we will do the mining under our own corporation, ourselves. Now Section 17(3), when
24 it says that Central Government will pay Royalty as a private person, it is acknowledging that
25 the land and the mineral belongs to the State and that is why, agrees to pay Royalty. It is not
26 agreeing to pay tax to the State. It takes a lease in the same manner. Therefore, you pay the
27 Royalty in the same manner. There are only two ways in which the State Government can be
28 deprived. The first is, either the Constitution itself provides that the land and mineral will vest
29 in the Union, that is Article 279. That is regarding the 'Economic Shelf', there's 'Economic
30 Zone'. The numbers were reversed, My Lord. 297. That's one way. The second way is, acquire
31 the land by means of an Acquisition Act by law, referring with respect to Entry 42, List III.
32 And in fact, if Your Lordship, looks at Article 31(A)(E), even private rights existing leases, the
33 rights can be extinguished by law. Which then will be protected, if it is under 31(A) protected
34 from challenge based on Article 14 etc. "Notwithstanding anything contained in Article 13, no
35 law providing for E..." In fact, A and E can be read together. "The acquisition by the State of
36 any estate or of any rights therein, or extinguishment or modification of any such rights." And
37 then E, "Extinguishment or modification of any rights accruing by virtue of any agreement,

1 lease or license for the purpose of searching for or winning any mineral or mineral oil or the
2 premature termination or cancellation of any such agreement, lease or license."

3

4 **JUSTICE J.B. PARDIWALA:** A farm, a huge farm of 100 acres. 100 acres. And I come to
5 know that in some part of my farm there are minerals. I cannot start extracting those minerals
6 on my own because minerals, not of my ownership. Still, there has to be a lease deed, right?
7 So, lease deed will be only with respect to extraction or removal of the minerals. Land belongs
8 to me.

9

10 **RAKESH DWIVEDI:** And if Your Lordships are having out the... yourself, you want to do
11 the mining yourself, then of course it will be relating to permission to excavate.

12

13 **JUSTICE J.B. PARDIWALA:** Royalty has to be paid because I am removing it, removing
14 the minerals

15

16 **RAKESH DWIVEDI:** So that's the notion My Lord that minerals always belong to the
17 Sovereign and the State.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Can you just read Section 17(3) again, Mr
20 Dwivedi?

21

22 **RAKESH DWIVEDI:** Section?

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 17(3).

25

26 **RAKESH DWIVEDI:** 17(3), yes. "Where in exercise of the powers conferred by Subsection
27 1(a) or Section 2, the Central Government or the State Government, as the case may be,
28 undertakes prospecting or mining operations in any area in which the minerals vest in private
29 person. It shall be liable to pay prospecting fee royalty, surface rent or dead rent, as the case
30 may be from time to time at the same rate at which it would have been payable under this act.
31 If such prospecting or mining operations had been undertaken by a private person." This is
32 17A(3). Your Lordship wants me to read, 17(3)?

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 17(3).

35

36 **RAKESH DWIVEDI:** "Wherein exercise of powers conferred by Subsection 2, the Central
37 Government undertakes reconnaissance, prospecting or mining operations in any area, the

1 Central Government shall be liable to pay reconnaissance permit fee or prospecting fee,
2 royalty, surface rent or dead rent, as the case may be, at the same rate at which it would have
3 been payable under this act. If such reconnaissance, prospecting or mining operations had
4 been undertaken by a private person under a mineral concession."

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now until the actual extraction takes place or
7 removal, as this statute uses the word, is it possible, of course, that the right to the surface of
8 the land vests in one person, and the rights to the mineral vests in another person. That's also
9 possible?

10

11 **RAKESH DWIVEDI:** It depends on the terms of the lease My Lord, what is being...

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, even before, forget the fact that there is a
14 lease, can there be a situation where the surface rights vests in A and the right to minerals
15 vests in somebody else? For instance, service rights vests in the private person and the right
16 to minerals vests in the state?

17

18 **RAKESH DWIVEDI:** No, it will go with the land. They are the right of the landowner. So,
19 unless by law or by contract a notional separation is brought about in the two My Lord it won't
20 happen.

21

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

23

24 **RAKESH DWIVEDI:** Before I leave this, Your Lordship may just have one more clause of
25 Form K which is the last Clause 9, of Part IX, page 141.

26

27 **JUSTICE HRISHIKESH ROY:** Begins at 137. You are saying Part IX, right?

28

29 **RAKESH DWIVEDI:** Part IX. Clause 9. The last clause.

30

31 **JUSTICE HRISHIKESH ROY:** Clause 9.

32

33 **RAKESH DWIVEDI:** "For the purpose of stamp duty. The anticipated Royalty from the
34 demised land is so and so per year."

35

36 **NIRANJAN REDDY:** Sorry, for the interjection, My Lord. Chief Justice's question. Kindly
37 look at Section 24A(2).

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CHIEF JUSTICE D. Y. CHANDRACHUD: 24?

NIRANJAN REDDY: 24A(2). You might get an answer. This is the question which from My Lord Justice Pardiwala, with a surface, right of somebody. Mineral Right with somebody else.

RAKESH DWIVEDI: 24A has nothing to do with that one. Section 24A doesn't answer that.

CHIEF JUSTICE D. Y. CHANDRACHUD: Well, because if the law contemplates a situation where the title to the surface vests in A and the right to mineral vests in B. Then, does the law then not provide for an artificial decoupling even prior to removal.

RAKESH DWIVEDI: It's not my submission that by Constitutional Amendment or by Parliamentary law since the power of regulation is with them under Entry 54. Whereas to see to what extent they want to provide. So, there will be some stray cases, if at all My Lord, where because of joint family or something. They divide amongst themselves that some part goes there, some part goes to somebody else which is very unlikely situation and perhaps My Lord, may not be very helpful in answering the controversy, which is Your Lordships, are considering. And so far as 24A is concerned, it's only a case where a private person's land if somebody is... Same as 24A that holder of lease will pay to the owner of surface. These will apply only where a private person is having a land which is having mineral and then some third person wants to do the mining on that then lease is granted by State Government under Section 4, but surface right, therefore surface rent is to be paid to private person. That's all it's saying.

CHIEF JUSTICE D. Y. CHANDRACHUD: Just come forth. Do you want to add this one sentence without affecting Mr. Dwivedi's, because we have almost come...

NIRANJAN REDDY: This was considered by the Supreme Court in the *Tarkeshwar*, I was mentioning at that time. Considering the Halsbury's Laws of England, specifically saying that both can be held the place. But normally the presumption is that, everything up to the centre of the earth, including mines and minerals, vest in a person who is the owner of the surface. But there should be a legislation.

CHIEF JUSTICE D. Y. CHANDRACHUD: To take away the mineral. That's what Mr Dwivedi also said.

1 **NIRANJAN REDDY:** This is a fundamental... that... The judgment is...

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. Please give us a citation.

4

5 **NIRANJAN REDDY:** It is *Tarkeshwar*...

6

7 **RAKESH DWIVEDI:** I will cite that judgment.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You're citing. Then, it's okay. Mr. Dwivedi is
10 going to cite it. Mr. Dwivedi, don't forget this, when you are...

11

12 **RAKESH DWIVEDI:** Yes. So, Your Lordships have seen that Stamp Duty.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, we saw that.

15

16 **RAKESH DWIVEDI:** It's a different entry, but Royalty is the measure. I will elaborate on
17 this aspect when I again come back to the Constitution, the submission would be that the
18 mineral value is not the sole preserve of Entry 50 List II. Stamp duty, the law itself
19 contemplates Royalty as a measure. And if Your Lordships will look at Entry 54 List II Sales
20 Tax as it existed before GST, before the 101st Constitutional Amendment 2016. It was sale of
21 tax on sale of goods. So, mineral would have fallen there and States have been recovering under
22 Sales Tax Act, and it's the sale price. So, the entire mineral value is a measure in sales tax also.
23 Yeah. If it's a declared goods, minerals is declared goods, then Central Government will fix a
24 certain rate. Ceiling will be there. That's the limitation. Constitution has given enough
25 indication the framers as to what is limitation and I had referred to 86(3) also in that
26 connection.

27

28 **JUSTICE ABHAY S. OKA:** That was Section 15 of the Central Sales Tax Act.

29

30 **RAKESH DWIVEDI:** I'm grateful. It's not blocked by a prolix and expansive search all over
31 the places like searching a needle in the haystack My Lord and then come out that this is tax
32 occupied field. So occupied field has nothing to do with this. The Central the Parliament does
33 not occupy the field of taxation. It's a limited concept. As My Lord, said Justice Nagarathna
34 My Lord that you can extract everything from 23 but there also, to the extent. Yes, it's not
35 *subsilentio*. Parliament by law, provide extent. Not State Government, not by rules, not by
36 forms. So, the 4% will come from Section 15, but mineral value, the sale price of the mineral
37 value will be its basis. And not only State tax, My Lords, Parliamentary tax also. Excise duty if

1 they want to levy on the production of minerals, which they are levying, it will be based on the
2 mineral value. If you want to import, impose export duty under customs duty, again, it will be
3 based on mineral value. So, there's no such thing My Lord that other tax entries cannot be at
4 all have a measure which is connected with mineral value. It's not the sole preserve of Entry
5 50 List II. My Lord that mineral value, the measure based on mineral value is not the sole
6 preserve of Entry 50 List II.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Measure based... measure based on?

9

10 **RAKESH DWIVEDI:** Mineral value or a portion of mineral value. How else a capacity of
11 land can be salvaged; a capacity of land should be... how do we determine the capacity of land?
12 Same extent of land of same nature lying in Noida will have one value, coming back to Delhi
13 My Lord its location, its use, what the master plan is permitting, the moment you turn a lease
14 land, a residential land into a commercial land the same land value will go up. So, the capacity
15 of land depends on what it can produce, where is it located, what is the permissible use. Here
16 the permissible use is mining for the mineral which is lying in the belly of the earth. So, stamp
17 duty erstwhile as the Sales Tax stood and even today oil, still there. Under 54, a Sales Tax is
18 still being levied on oil, crude oil, and also on variations, gas. And it is based on sale price of
19 those items. And similarly in the Central Act, that is excise duty, customs duty, tax on capital
20 assets, all of them will be based on this. So merely because you find that we have imposed a
21 tax on land based on mineral value or half of mineral value, My Lords this also must be decided
22 My Lord, assuming I'm wrong in this and Your Lordships doesn't agree, that mineral value as
23 a whole can be used. Why can't My Lord a part of it be used, let's say as Orissa has done,
24 percentage of half of the mineral value. So, land's worth has to be determined in some way.
25 Why can't we say 25% of the mineral value? And if it is still disrupting some national policy or
26 something My Lord, there can be a dialogue, after all states have voluntarily united to create a
27 union. Article 1 says India that is Bharat is a Union of States. So, Union and States have to gel
28 together, they can't afford to all the time, despite the politics which is conflicting and
29 introduces an element of conflict, but cooperation is also there, has to be there. So, if there is
30 some such situation arising My Lord, that Government of India feels that their whole economy
31 will go bust and there will be disaster, et cetera My Lord, I don't think any state, possibly My
32 Lord will be saying no to reduction of tax or to grant a holiday of tax. What are we witnessing
33 around? Should we close our eyes My Lord to what the states are doing towards the
34 industrialists. Red carpet My Lords. They can walk into the Chambers of the Government My
35 Lord anytime. It's the common man who can't walk. The *chapprasi* will stop him My Lord,
36 'appointment *hai ke nahi*? But they can, just a phone call and they will be escorted into the
37 interior chambers. My Lord I'm not casting a, that's the capitalist phenomena which is all over

1 the globe. Not here alone. So, they can always walk there My Lords. In fact, these companies
2 are themselves competent to My Lord pressurize the Government to reduce the taxes. We can't
3 do it.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Anyway, Parliament has the power to impose
6 limitations.

7

8 **RAKESH DWIVEDI:** Yes, that's on one tax. One may say My Lord that all right, you can
9 get out of this and then go into 49. Go into stamp duty. This argument of 300%, 500% at one
10 point of time in 1990s, the figures have been given by the Learned Solicitor General that 300,
11 500, because the royalties, et cetera, were very low and therefore they needed revenue and
12 therefore. But today, no state is a revenue. The Affidavit is silent on one very vital aspect post
13 **Kesoram** at least in West Bengal for the last 20 years this tax is being levied. What disaster
14 has happened. Should not the Government of India tell Your Lordship, that this West Bengal
15 tax has caused what impact. Has it burnt the economy? Has it prevented any obstacles for
16 export import?

17

18 **JUSTICE ABHAY S. OKA:** In any case if state tax is high Royalty can be anytime reduced
19 by the Government.

20

21 **RAKESH DWIVEDI:** Yes

22

23 **JUSTICE ABHAY S. OKA:** Embargo is on increasing the Royalty that can be done only once
24 in three years. Reducing it it can be reduced anytime.

25

26 **RAKESH DWIVEDI:** Government of India has more than one power to tackle a situation of
27 disaster. So let this not be a subterfuge to bang the States. State of West Bengal is levying tax
28 on Mineral Rights as upheld in **Kesoram** for 20 years. What is the proportion of that tax to
29 the total. How is it impacting that's the real test, we say the proof of putting is in the eating.
30 Here is a tax, which is being levied for 20 years. Why don't you analyse that and tell the Court
31 to what disaster is happening. Are we to hallucinate some disaster just the moment the state
32 touches Rs.1 per. Jharkhand says one and a half rupee per square meter for land. No mineral
33 value and is lying stayed here, struck down by the High Court based on these series of cases
34 based on Para34. What is nothing to do with mineral value. What disaster would have
35 happened? The employees have not been paid their salary for four years. The tax is not a return
36 it's not a consideration itself a compulsion. That's not a complete analysis, compulsion penalty
37 or this. It's a recovery of amount to be spent by the State for its own needs and for welfare

1 activities, not to give you back something. But the structures, the construct of Mr Salve's
2 submission was reduced, avoid the word tax, use exaction. So, it's an exaction for return. Look
3 at the essence of Entry 50. It is also an exaction for return. So, bring it on the same plane and
4 then it's a limitation. That's how we read down one tax on Mineral Rights as becoming
5 something which is a return for Mineral Rights. Compensatory tax the losses after great effort
6 have been able to avoid compensatory tax in entry tax matter. At least four Constitution
7 Benches and one Seven Judge Bench Your Lordships overruled and everybody agreed it can't
8 be compensatory tax because compensatory tax means it's a fee.

9

10 **JUSTICE:** There are exceptions to that.

11

12 **RAKESH DWIVEDI:** Yeah. So having knockdown compensatory tax in context of Part 13.
13 Now we introduce compensatory tax Entry 50 itself. So, unless it becomes compensatory, it
14 can't be equated. It cannot be a limitation. These are the strange methods by which we alter
15 the innate character of Royalty. Please see one more Article in the Constitution. This 294 and
16 the purpose of showing this is that my right to land and mineral lying underneath in its belly
17 is not a gift of Mines and Mineral Regulation and Development Act. The Parliamentary Act
18 can regulate it but unless it acquires all...

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 294.

21

22 **RAKESH DWIVEDI:** 294. All the provinces, state provinces under all property and assets
23 which, immediately before such commencement, were vested in his Majesty for the purpose
24 of the Government or of the dominion of India and all property and assets which immediately
25 before such commencement, were vested. In his Majesty for the purpose of Government of
26 each Governor's province shall vest respectively in the Union and corresponding State, only
27 the continental shelf was taken out. So, the erstwhile ownership transferred to province we
28 continue to be the owner of the land and mineral and whatever is subsequently acquired by
29 the States under Land Reforms Act, under the abolition of kingships. My Lords, kindly have
30 Volume 1(c).

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume 1(c),

33

34 **RAKESH DWIVEDI:** Volume 1(c) which is a rejoinder submission.

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36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume 1(c) I think you have covered the, four
37 of your submissions.

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RAKESH DWIVEDI: Yes. At Page 7. Your Lordships have that? My Lord the Chief Justice?

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

RAKESH DWIVEDI: My Lords at the bottom I have done nothing but repeated what Your Lordships, *sutras*, as Mr. Singhvi said, kindly come to page 8. I have also mentioned Entry 13, where more than one *sutras* are involved.

CHIEF JUSTICE D. Y. CHANDRACHUD: Page 8, which?

RAKESH DWIVEDI: Para 4. If Your Lordship looks at Entry 23 and 27 and 67 of List I.

CHIEF JUSTICE D. Y. CHANDRACHUD: Entry 27 of List I, right? or at List 2, sorry.

RAKESH DWIVEDI: 23 of List I. Highways declared by or under law. Please mark this. I'm drawing a distinction between entries which say, by law, by Parliament, by law, or those which say by or under law. That will create a structural problem with respect to Section 9 being understood as a tax.

CHIEF JUSTICE D. Y. CHANDRACHUD: Which entry were you saying? List I.

RAKESH DWIVEDI: 23, highways declared by or under law made by Parliament and then 27 odds declared by or under law made by Parliament or existing law to be major ports including the delimitation and constitution and powers of port authorities. And then 67. Ancient and historical monuments and records in archaeological sites and remains declared by or under law made by Parliament. Perhaps Your Lordships will notice a box there. Declared, earlier it was declared by law but by Constitution 7th Amendment Act, 1956, it was altered. At the foot of that book Your Lordships should see that earlier. Now Entry 12 of List II. Libraries, museums and other similar institutions controlled or financed by the State. Ancient and historical monuments and records other than those declared by or under law made by Parliament, is reflection of that Amendment is here also. And then Entry 40 of List III. Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance. Now compare this with Entry 54, 52, 53 and 54 of List I. Regulation and development of oil fields and mineral oil resources, petroleum and petroleum products industries. The control of which the Union is declared by Parliament by

1 law. Parliament has to do this exercise by its law, and it cannot empower a delegate to make
2 the requisite declaration or to lay down the extent.

3

4 **JUSTICE B V NAGARATHNA:** That could be by a notification, if it is under law.

5

6 **RAKESH DWIVEDI:** Because one legislature is dealing with another legislature. The
7 Central Legislature vis-a-vis with the State Legislature. So Central Legislature has to do it. It
8 can't say that I'm delegating this power to the Government or some other authority or officer
9 of the Government to lay down limitations. Now 53 also, in the field, in the area of Oil Fields
10 and Mineral Oil declared by Parliament by law to be dangerously inflammable. So, no
11 Government or officer can say, I will declare it, or I will declare in part and leave it rest to the
12 Government to declare. 54 also Mines and Minerals to the extent to which such regulation,
13 development under control of Union is declared by Parliament by law. Parliament also cannot
14 say that well, I have made the law Section 2, is there now rest will be laid down by rules, as
15 was earlier done in 1948 Act. It did nothing but said rules will be made. That was Constituent
16 Assembly. But now that the Constitution is in force, it has to be done by Parliament, by law, so
17 by law, you have to provide the extent, if you want to alter, reduce or increase a tax or a
18 limitation or a different kind of limitation has to be by law, but my learned friends have been
19 taking Your Lordships to the rules, the forms, and all those stipulation, because it is general
20 principle is, that delegated exercise is considered to be.....

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 62, 63, 64.

23

24 **RAKESH DWIVEDI:** Yes. There are other Entries also. 56 is also there.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Under law.

27

28 **JUSTICE J.B. PARDIWALA:** Even Article... Entry 56.

29

30 **RAKESH DWIVEDI:** Yes, Entry 56. I'm grateful. 56 also. 63.

31

32 **JUSTICE J.B. PARDIWALA:** 64.

33

34 **RAKESH DWIVEDI:** 64.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, but this doesn't mean that everything has
37 to be specified by the law. The extent of the control by Union has to be declared by the law.

1 Once the extent of the control is specified in the matter of Parliament, then, of course, the rule
2 making power can supplement it.

3

4 **RAKESH DWIVEDI:** Integrities and minor details may come by Rules and Forms.

5

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

7

8 **RAKESH DWIVEDI:** I'm not saying that the Form must come in the Act itself.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Declaration cannot be by a declaration.

11

12 **RAKESH DWIVEDI:** Declaration can't be and the extent of declaration.

13

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

15

16 **RAKESH DWIVEDI:** Parliament, Your Lordships, have ruled in case, that if Parliament
17 cannot say that Section 2, I have brought in, now rest is to be done by Government. So what
18 minerals you are.... the important aspects of the declaration, because you are extracting from
19 23. You are depriving the State Legislature of its competence. That's the crucial thing. And
20 that's why it says to the extent, and even where Entry 52 did not use the word to the extent, in
21 *Ishwari Khetan's* judgment Your Lordship's Constitution Bench has said that we will read
22 in that word. Some meaning has to be given to the word 'extent of' because you are extracting,
23 depriving, denuding. It can't be sub silentio. Some nitty details can come in, the Form can be
24 prescribed. Many other things can be done. How you will recover Royalty, how you will recover
25 Surface Rent, all that can be done by rules.

26

27 **JUSTICE B. V. NAGARATHNA:** But under Entry 52, the control of the entire industry
28 which is declared is with the Parliament.

29

30 **RAKESH DWIVEDI:** Parliament.

31

32 **JUSTICE B. V. NAGARATHNA:** Unlike 54. It is... 54 is only to the extent to which it is
33 declared.

34

35 **RAKESH DWIVEDI:** My Lords right. But in *Ishwari Khetan's*, Your Lordship, said that
36 even those words are missing in 52....

37

1 **JUSTICE B. V. NAGARATHNA:** So, they read it down.

2

3 **RAKESH DWIVEDI:** But we will read it.

4

5 **JUSTICE B. V. NAGARATHNA:** That condition?

6

7 **RAKESH DWIVEDI:** Yes, if required, I can show that, in *Ishwari Khetan*, I'll show. For
8 the moment, this distinction, which I am pointing out has relevance to understanding the limit
9 of limitation in Entry 50. Entry 50 List II says any limitation imposed by Parliament, by law,
10 not by or under law.

11

12 **JUSTICE B. V. NAGARATHNA:** Also, the extent to which is only in the context of
13 regulation of minds and mineral development.

14

15 **RAKESH DWIVEDI:** Your Lordships is right. The words are missing. The words are missing
16 in 52. My Lords are right, absolutely right. Not but in *Ishwari Khetan*, if I may give, this
17 judgment is in Volume...

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, really speaking, Entry 50 of List II makes
20 it that the limitation has to be by Law of Parliament.

21

22 **RAKESH DWIVEDI:** Yes.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Second that law is again to the contained of
25 law is qualified by saying it has to be a law relating to regulation and development of...

26

27 **RAKESH DWIVEDI:** Yes. So, the major aspects, the major policy aspects of the law must
28 come by the law, they can't leave that to delegates. That is paragraph 11 of *Ishwari Khetan*
29 which is in Volume 5 (a) and the citation is 1980, Volume 4, SCC 136; 1980, Volume 4, SCC
30 136. Paragraph is devoted...

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, one thing is equally clear that you have to
33 also possibly concede, Ms. Bhatti yesterday made just one sentence, but it is a very succinct
34 sentence which she used, that the power of the state in regard to taxation is eclipsed not by a
35 taxing legislation of the union, but by a regulatory legislation of the union.

36

1 **RAKESH DWIVEDI:** That's right. No difficulty My Lords. With this statement I have no
2 quarrel My Lord, but I have a quarrel with the use of the word 'eclipse'.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It is subjective and therefore....

5

6 **RAKESH DWIVEDI:** Normally eclipse word My Lord, a doctrine of eclipse that was
7 deployed by Lordships under when existing law under 372 My Lord is found to be violated.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You have to apply that, Article 13.

10

11 **RAKESH DWIVEDI:** So, it was valid when made.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Was it still gone or was it only under a cloud
14 and the cloud lifted.

15

16 **RAKESH DWIVEDI:** And once again, if you go to the nature My Lord an eclipse happens
17 when something covers, the lunar eclipse or the solar eclipse My Lord, some other object
18 comes in between. The law MMRD Act cannot come in between, cannot extract, cannot usurp,
19 cannot arrogate. The relationship of 54 List I to 23 List 1 is of one character and the
20 relationship of entry 54 and entry 50, List II, is of another character.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Can you just wait for us, hold your thought
23 there, just for a moment.

24

25 **JUSTICE B. V. NAGARATHNA:** Could you please repeat it?

26

27 **RAKESH DWIVEDI:** Yes, My Lord. The relationship between entry 54, List I and Entry 23
28 List I, Entry 23 of List II is of one character, namely, you can abstract, denude it as much as
29 you want, as much as Parliament wants. And the relationship between Entry 54 List I and
30 Entry 50 List II is of another kind and character, which does not permit abstraction, only
31 limitation. My Lord Justice Nagarathna has noted this *Ishwari Khetan* citation.

32

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

34

35 **RAKESH DWIVEDI:** Para 11. Hypothetically My Lords, assume My Lord that instead of the
36 same expression was there in Entry 23 as in Entry 50 instead of subject to, subject to
37 limitation, would it remain identical, or would it bring about a substantial change in the nature

1 of the relationship? In that case, then even the regulation will always be exercised by the state.
2 So therefore, when the Learned Additional Solicitor General states that Entry 54 List I being a
3 regulatory power can limit. I have no quarrel. Limitations can be imposed but if it is said when
4 she says that this eclipses, then there is a problem. *Stricto sensu* the Doctrine of Eclipse has
5 propounded is for a different purpose where either the competence is lacking or some other
6 Constitutional provision is being violated by an existing law, then, but let's forget that
7 technicality and go by the literal expression. Even then, something should come in between.
8 The only thing that can come in between is a limitation. So, the power of limitation has its
9 limits. So please discover the limit of limitation. It's not unlimited. Otherwise, the easiest thing
10 was to accept **Shri Brajeshwar Prasad's** request to transfer Entry 50 List to List I. The
11 easiest thing, if you can eclipse, then take it. I have already placed that. Every debate which
12 happens on Constitution necessarily goes across the seas. The ship sail to the House of
13 Commons debate was read out to Your Lordship. It's no different Mr Percy can be substituted
14 by Mr. Prasad. What he was wanting. Mr. Prasad was wanting and on both occasions that was
15 not accepted. That's the key important thing. In a debate, in an Assembly where Constitutions
16 are being framed, speakers says so many things. Ultimately what is being accepted and
17 rejected is the important thing. So, both in the House of Commons and here although they
18 were paramount sovereign could do anything.

19

20 **JUSTICE HRISHIKESH ROY: Brajeshwar Prasad** part. Can you just tell me which
21 volume?

22

23 **SANSRITI PATHAK:** Volume 4A page 16 starts at page 10.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Dwivedi your junior is a walking
26 encyclopaedia. We have noticed this in repeated Constitution Benches. The last time we
27 allowed her to make that submission in the Constitution Bench today also, we are going to
28 hear her after you have concluded for five minutes.

29

30 **RAKESH DWIVEDI:** She is well armed today, My Lords.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** She's probably anticipated what's coming.

33

34 **JUSTICE HRISHIKESH ROY:** Volume 4A?

35

36 **SANSRITI PATHAK:** Volume 4A, page 7 to 16, Your Lordships, and the relevant is at Page
37 60. With regard to Entry 50 and with regard to Entry 54 is at page 10 and 12.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Just come again, please tell us?

SANSRITI PATHAK: Volume 4A and the debate starts at page 7 Your Lordships. So far as Entry 54 is concerned page 10 and 12 and Entry 50 is page 16.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

RAKESH DWIVEDI: Another way of saying occupied field, nothing else. The principle of occupied field is completely unrelated to the relationship between 54 and 50, can't occupy the field. Occupy the field.

CHIEF JUSTICE D. Y. CHANDRACHUD: Just to probe you a little bit on this. What kind of limitations would Entry 50 contemplate? Would these be limitations contained in the law relating to mines and mineral development, of an express nature, on the taxing power? Or could it be something more than just the.... that's one way of reading it, that you read the word 'limitations' in a very narrow sense, because you are carving out of the ...

RAKESH DWIVEDI: Competence.

CHIEF JUSTICE D. Y. CHANDRACHUD: Competence of the States. That's one approach, but does it have to be an express limitation on the taxing power itself under Entry 50?

RAKESH DWIVEDI: So, one My Lord relying, if I have to rely on a judgment, then 9 judges judgment in *Jindal*, Your Lordship, said it has to be expressed. All constitutional limitations must be expressly stated, either in the Constitution or the law, that's one. Second My Lord the framers of the Constitution have...

CHIEF JUSTICE D. Y. CHANDRACHUD: In what context? I think both... N. V. Ramana... In our judgment, we referred to that, I think.

RAKESH DWIVEDI: Yes. Judgment of the Chief Justice Thakur. Also, My Lords, that was in the context of 304(b) which requires that if it is reasonable restriction, then you have to refer to the President for ascent, so the contention was that if every tax law is to be placed before the President, it being violative of 301, then all fiscal federalism is gone. So, My Lord, the Chief Justice, My Lord, you handled the issue in a slightly different way. Your Lordship

1 said that under 301, all taxes are not impediments. So, the people who are challenging but they
2 must produce enough material to show that it is an impedimental free flow of trade, whereas
3 the Chief Justice Thakur said that it can't be a restriction. That was a divergence. But at the
4 end of the day, unanimously the taxing power was disentangled from the grip of 3 and 4 (B),
5 so that the States are free now. That's, in fact a very important aspect. That's para 28 of Chief
6 Justice Thakur's Judgment. That's **2017 12 SCC**, page 1, it's in Volume V, at page 2937. The
7 discussion begins at page 28 under the caption, 'constitutional limitations must be expressed'
8 at 3074.

9
10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume V, right?

11
12 **RAKESH DWIVEDI:** 3074. May I please read?

13
14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just a second.

15
16 **RAKESH DWIVEDI:** The power to levy taxes.

17
18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just only one second.

19
20 **RAKESH DWIVEDI:** "The power to levy taxes, being a sovereign power controlled only by
21 Constitution, any limitation on that power must be expressed. That proposition is well settled
22 by the decisions of this Court in *Umeg Singh And Others versus State of Bombay* and
23 from *Bansidhar Ramsuk Das versus State of Rajasthan* in *Umeg Singh* case, this
24 Court stated the legal position in the following words, 'The legislative competence of the State
25 Legislatures can only be circumscribed by express prohibitions contained in the Constitution
26 itself, and unless and until there is any provision in the Constitution expressly prohibiting
27 legislation, on the subject, either absolutely or conditionally. There is no fetter or limitation
28 on the plenary powers, which the State Legislature enjoys to legislate on the topics enumerated
29 in the List II and List III of the Schedule of the Constitution. The fetter or limitation upon the
30 legislative power of the State, which had plenary powers of legislation within ambit of
31 Legislative Heads specified in list II and III of the Seven Schedule to the Constitution could
32 only be imposed by the Constitution itself and not by any obligation'. Here one can substitute
33 Parliament under Entry 50. And not by any obligation which had been undertaken by either
34 the Dominion or the Province of Bombay or even the State of Bombay. Under Article 246, State
35 Legislature was invested with the power to legislate on topics enumerated in List II and III of
36 the Constitution, and this power was by virtue of Article 245(1) subject to the provisions of
37 Constitution. The Constitution itself laid down the fetter's limitations on this power. For

1 example, in 303-286(2), but unless and until the court came to the conclusion that the
2 Constitution itself had expressly prohibited legislation on the subject either absolutely or
3 conditionally, the power of the State Legislature to enact legislation within its legislative
4 competence was plenary. Once the topic of legislation was comprised within any of the entries
5 in the List II and III of Seventh Schedule to the constitution, the fetter or limitation on
6 legislative power had to be found within the constitution itself. And if there was no such fetter
7 or limitation to be found, the State Legislature had full competence to enact the impugned act
8 no matter whether such enactment was contrary to the guarantee given or obligation
9 undertaken by the dominion. Again, in *Bansidhar*, this court reiterated the legal position. It is
10 well established that Parliament or the State Legislatures are competent to enact law altering
11 the terms and conditions of previous contract or of a grant which, under the liability of
12 Government of India or of the State Government arises. The legislative competence of
13 Parliament or State Legislature can only be self-circumscribed by express prohibition
14 contained in the Constitution itself. And unless and until there is any provision in the
15 Constitution expressly prohibiting legislation on the subject, either absolutely or
16 conditionally, there is no fetter or limitation on the plenary powers which the legislature is
17 endowed for legislating on the topics enumerated in the relevant lists.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I think that's good enough.

20

21 **RAKESH DWIVEDI:** Yes. So, this goes on. I'm not reading My Lords.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No. Then it goes on to Part 13.

24

25 **RAKESH DWIVEDI:** Yes. Justice Bhanumathi is... Paragraph, My Lord... Judgment
26 Paragraph is para 281 and Justice Ramanna is Para 185. But the only difference will be that
27 under Entry 50, Parliament can impose limitation, but must do so expressly. My Lord, what is
28 there I don't understand My Lord, what is the hesitation? Parliament knows its policies.
29 Industrial policy, Mines and Mineral policy, everything. They know the export, import, the
30 need of FDI and so on and so many things. But what prevents them My Lord from having one
31 provision and saying that. Just look at 276. Article 276. I've already referred to Article 286(3).
32 276 is yet another provision where framers have indicated how they understand this
33 limitation. Taxes on profession, straits, colleagues and employments, notwithstanding
34 anything in Article 246, no law of legislature of State relating to taxes for the benefit of the
35 State or of a municipality, district board, local board or local authority therein in respect of
36 profession, State colleges or employment shall be invalid on the ground that it relates to tax
37 on income. The total amount payable in respect of any one person to the state or one

1 municipality, district board, local board or authority in the state by way of taxes so and so shall
2 not exceed Rs. 2500 per annum. So, the framers where they found that the measures are
3 overlapping and they wanted to protect it instead of eliminating it, they allowed it and said,
4 here is the limit. So, there is ample indication in 276 and 286(3) read with the Central Sales
5 Tax Act. So why should not the Parliament analyse everything? Look at the operation of West
6 Bengal. By affidavits we can't create My Lord a doomsday. All State Legislatures are
7 responsible, 300% 500%. My Lord, what prevents the Parliament, supposing the PI five say
8 the Parliament imposes 500%, 300%, that is after. It can be said vice versa to that also. But we
9 don't say that. We assume that they will act with constitutional responsibility.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** At one time in India, we had a 97, 97% tax on
12 income coupled with the wealth tax. In fact, the real rate of taxation went up to 103%. 103%.

13

14 **RAKESH DWIVEDI:** So sometimes the taxes are also imposed to control the exports. We
15 don't want a mineral to be exported, we'll say 100%. So, nobody will export and sell here, so
16 there are... but Parliament knows all these things. The Finance Ministry knows, the Commerce
17 Ministry knows. They can all deliberate and say that here is this. Don't impose it more than
18 this. Don't impose on Royalty. *Mohit Mineral* case, Your Lordships, My Lord, the Chief
19 Justice has *Mohit Mineral*, Your Lordships have talked about fiscal federation federalism.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. What is the citation of *Mohit Mineral*?

22

23 **RAKESH DWIVEDI:** *2022 10 SCC* page 700.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** At which para?

26

27 **RAKESH DWIVEDI:** Para 50, 52. In fact, it begins at paragraph 47 to 58, where Your
28 Lordship held that State Governments are not bound by the recommendation of the Counsel,
29 it's only recommendatory. And this principle was up to para 59.

30

31 **JUSTICE J.B. PARDIWALA:** Mr. Dwivedi, you have incorporated it in your written
32 submissions?

33

34 **RAKESH DWIVEDI:** Yes, I have.

35

36 **JUSTICE J.B. PARDIWALA:** You may just read that paragraph. We have five minutes to
37 go before we close for lunch. Para 10.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Para 10, is it?

JUSTICE J.B. PARDIWALA: Para 10.

RAKESH DWIVEDI: Which volume?

CHIEF JUSTICE D. Y. CHANDRACHUD: 1 (c).

JUSTICE J.B. PARDIWALA: 1 (c).

RAKESH DWIVEDI: Your Lordship on the judgment, from the written note?

JUSTICE J.B. PARDIWALA: From your written note, 1(c)

JUSTICE ABHAY S. OKA: You have quoted paragraph 56.

JUSTICE J.B. PARDIWALA: And 171.1.2.

CHIEF JUSTICE D. Y. CHANDRACHUD: Page 11 of your notes?

RAKESH DWIVEDI: Yes. Para 10. Recently this Hon'ble Court in *Union of India versus M/S Mohit Minerals* while holding that fiscal federalism is one of the important features of Indian federalism, held that the recommendations of GST Counsel cannot be held to be binding on the legislature. To regard them as binding addicts, would disrupt physical fiscal federalism, where both Union and State are given equal power to legislate on GST. One of the important features of Indian federalism is Fiscal federalism. A reading of the statement of objects and reasons of the 2014 Amendment Bill, the Parliamentary reports in speeches in indicate that Article 246(a) and 279(a) were introduced with the objective of enhancing cooperative federalism and harmony between the States and the Centre. However, the Centre has a one third vote share in the GST Council. This, coupled with the absence of the repugnancy provision in Article 246(a) indicates that recommendations of the GST Council cannot be binding. Such an interpretation would be contrary to the objective of introducing the GST regime and would also dislodge the fine balance on which Indian federalism rest. Therefore, the argument that if the recommendations of GST Council are not binding, then the entire structure of GST would crumble, does not hold water. Such a reading of the provisions of the Constitution diminishes the role of GST Council as a Constitutional Body

1 form to arrive at decisions by collaboration in contestation of ideas. Neither does Article 279
2 (a) begin with a non *obstante* clause, nor does Article 246(a) state that it is subject to the
3 provisions of Article 279(a). Parliament and State Legislature possesses simultaneous power
4 to legislate on GST. Article 246(a) does not envisage a repugnancy provision to resolve the
5 inconsistency between the Central and the State laws on GST. The recommendations of the
6 GST Counsel are the product of a collaborative dialogue involving the Union and the States.
7 They are recommendatory in nature. To regard them as binding addicts would disrupt fiscal
8 federalism, where both the Union States are conferred equal power to legislate on GST. It is
9 not imperative that one of the federal unit, units must always possess a higher share in the
10 power for federal units to make decisions. Indian federalism is a dialogue between cooperative
11 and uncooperative federalism, where the federal units are at liberty to use different means of
12 persuasion, ranging from collaboration to contestation. So, although the context is the GST in
13 parallel power, but ultimately My Lord, the whole trend of this Court's journey with regard to
14 federalism begins with *Kesavananda* where Your Lordship recognize it is a basic feature.

15

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

17

18 **RAKESH DWIVEDI:** Then *Bomma* and then *ITC versus Agriculture*. Four cases
19 where Lordships have held that, where there is lack of clarity, ambiguity, et cetera, then tilt in
20 favour of protecting the State's niggardly power rather than by interpretation, by some legal
21 subterfuge, dilute it, reduce it, or obliterate it, that's the principle. And not only there we are
22 witnessing today My Lord the conflicts between the state. Howsoever we may avoid this, the
23 conflict where the Governors holding the files, Your Lordship said you cannot, orders were
24 passed for premature release, Governor was not signing. then in *Periyapalayam's* case, the
25 Lordship said that no, you have no authority in that regard. In so many spheres Article 356
26 itself Your Lordship strictly construed the earlier laws were all overruled and a new law was
27 laid down. So, the whole journey of this court is to protect the state and the surest will, way of
28 killing the states, the federalism is to squeeze and strangulate the fiscal power.

29

30 **HARISH SALVE:** My Lord, My Learned friend is finishing now. There are a number of new
31 points he has made because, frankly you opened, we really opened the case, he has answered.
32 There are a number of points he has made on decoupling.

33

34 **RAKESH DWIVEDI:** I'm not finishing. Just hold on.

35

36 **HARISH SALVE:** Oh, you're continuing after lunch. I'm so sorry. I thought you were
37 finishing at 1pm.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Alternate benches. Discharge. We'll discharge the alternate benches.

HARISH SALVE: I'm sorry. My mistake. I was told you're finishing at 1.

TUSHAR MEHTA: My Lords, Your Lordships may give me five minutes on Federalism My Lord.

CHIEF JUSTICE D. Y. CHANDRACHUD: Well said in principle.

HARISH SALVE: My Lord there are some important points my Learned friend has made, including on MMDR.

CHIEF JUSTICE D. Y. CHANDRACHUD: All right. You can give us a small note.

HARISH SALVE: I don't think it's for you, Mr. Dwivedi, it's for the court to decide. May I suggest My Lord after he finishes give us half an hour.

RAKESH DWIVEDI: Don't be so stern, I'm just on a lighter vein.

CHIEF JUSTICE D. Y. CHANDRACHUD: All right, we'll come back.

HARISH SALVE: Give us 30 minutes My Lord at the end.

[NO AUDIO]

RAKESH DWIVEDI: Yes. if I may quickly show some more aspects of the MMRD Act. Yes, there are four situations. One where State Government grants a lease to a private person or to a Government Company...

[AUDIO AVAILABLE]

and person will include juristic entity. The second situation is where the Central Government reserves land that's 17(3), Section 17(3). The third situation envisaged is, where both either

1 Central or State Government decides to undertake mining in a private person's land that is
2 17A(3)...

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Either Central Government or the State
5 Government undertakes...

6

7 **RAKESH DWIVEDI:** ...undertakes mining or prospecting, et cetera in a private person's
8 land. And the fourth situation howsoever rare it may be, envisaged in Chapter VI of the Minor
9 Mineral Concession Rules, 1960 that is where the minerals are vest in partly in the
10 Government and partly in private persons. Now, these distinctions are significant for
11 Respondent to Mr. Salve's argument that in the case of private persons it's a contract, in the
12 case of State Government it is purely statutory, no contract. I've already answered that there
13 is a contract there. But see, Chapter VI of the MC rules, where partly, minerals vest partly in
14 Government and partly in private persons. Rule 53 at page 76. 'Provisions of Chapter III and
15 IV shall apply in relation to grant of prospecting license and mining leases in respect of
16 minor... in respect of minerals, which vest partly in Government and partly in....' Chapter III
17 and IV, all include, up to Rule 40(g), that is Rule 31 and Form K. So, completely at par. But,
18 once Royalty, Dead rent, et cetera, is obtained, then it's divided as per share.

19

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

21

22 **RAKESH DWIVEDI:** So, there's no difference between a State granting lease and where this
23 situation, the fourth situation is existing. And even in the situation where, private party
24 completely... where the minerals vest only in the private person, that is Chapter V, Rule 45.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That will be the fifth thing.

27

28 **RAKESH DWIVEDI:** Chapter V, which, according to me, was the third situation. The
29 Chapter V heading shows that 'minerals vest in a person other than the Government.' Now,
30 Rule 45 provides for the condition of mining lease here also, except that there is a certain
31 relaxation. 'Every mining lease shall be subject to the following conditions. The provisions of
32 Clauses (b) to (l) and (p) to (u) of Sub-Rule 1 of Rule 27 apply to such leases with modification,
33 that in Clauses (c) and (d) for the word 'State Government' the word 'lessor' shall be
34 substituted. Mining operations shall be undertaken in accordance with mining plan.' So, all
35 those things are required here also. They can't.... There also, you can't avoid the mining plan.
36 Now the only thing is that there can be some other ancillary conditions imposed by agreement
37 in that. But, the main thrust of the conditions in Rule 27 are applicable here also.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

RAKESH DWIVEDI: And Sub-Rule (iv) says - 'If the lessee makes any default in payment of Royalty as required, by Section 9...' So, Section 9 is straight away applied here. And Rule 49 prohibits premium. So, the range of restrictions, conditions, et cetera. are here also statutory, except for a slight relaxation. In essence, it's also a Statutory Contract.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

RAKESH DWIVEDI: And all these four situations, the royalty source is Section 9. Source of Dead rent is 9A. And importantly, Section 15 allows the State to fix the Royalty for minor minerals.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

RAKESH DWIVEDI: So, one of the submissions from the Respondent was that -'If it is a case of Section 15, then it will be consideration. But if it is this, it will not be...' So, one and the same concept, derived from one in the same source Section 9 or....

JUSTICE ABHAY S. OKA: Section 9 will not apply to minor minerals.

RAKESH DWIVEDI: Not to minor minerals. My Lords are right. It doesn't apply. But the nature of Royalty is identical.

JUSTICE ABHAY S. OKA: Only determination of Royalty is left to the State Government.

RAKESH DWIVEDI: Yes. Authority is different. So, the characters will not differ from situation to situation. It was also said that 9(b) and (c), Mr. Singhvi said that all of them are tax. Some others said, Mr. Singhvi said 9(c) is not tax.

CHIEF JUSTICE D. Y. CHANDRACHUD: It's a fee, he said.

RAKESH DWIVEDI: 9(b) is tax. 9(b) and (c) and C My Lords there is the hardly any difference. In fact, in both of them involved a *quid pro quo* quite apart from the fact that a Royalty does not come to the State Government. In one case it goes to DMF, other case to NMET. And both have specific purpose. In one case it is exploration, and the other case it is

1 rectification of the damage caused to the area affected by mining, or the people. So, yes, this is
2 one extra source for enabling relief to the people who have suffered there. But ultimately both
3 of them are portion of a Royalty and put in a separate fund for a specific purpose. So, whether
4 we did not enter into a controversy whether it is in the nature, essentially a fee or, but even tax
5 can be sometimes put in a separate fund for a specific purpose. So, irrespective of this, it's a
6 separate quantum. It's nothing to do with something coming to the State Government. So, this
7 can't be a limitation to Entry 50, List II. You can't club 9, 9(a), 9(b), 9(c), and all of them,
8 bundle them together and say that these constitute a limitation, impliedly. Now, one other
9 submission of Mr. Salve was - Apply the principle... Now, the other principle invoked was
10 *generalia specialibus non derogant*. Entry 50 is special entry. 49 is general. Therefore Entry
11 50 will not be, so nobody says what is...

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The argument was that since the Constitution
14 has bifurcated between taxes on land and taxes on mineral rights, taxes on mineral rights
15 cannot be subsumed in taxes on land and buildings.

16

17 **RAKESH DWIVEDI:** But nobody has, we have not argued that it is subsumed there. There
18 are two different aspects. One is what we contend is, as I said earlier also that the measure
19 based on mineral value is not the sole preserve of 50.

20

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

22

23 **RAKESH DWIVEDI:** As long as the minerals have a direct proximate nexus with any other,
24 for example Sales Tax is based on it, but it is a Sale Tax. It has to be per necessity based on a
25 sale price. Excise Duty. It has to be based on the point of sale. And even *Bombay Tyres*,
26 which they relied, actually helps us when it says that Excise Duty can even include the cost of
27 packaging. They say, it doesn't matter as long as the Excise Duty is tax on manufacture, you
28 can have a suitable modification and you can contour your measures accordingly and add
29 something here and there. So, that's not our contention that tax on land is a tax on mineral
30 rights. What they want to assert actually is, that we are actually using a Constitutional
31 subterfuge or trying to a colourable exercise of power.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** As in the guise of taxing land and buildings.

34

35 **RAKESH DWIVEDI:** We are doing that.

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mineral rights.

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RAKESH DWIVEDI: That's right.

CHIEF JUSTICE D. Y. CHANDRACHUD: So as to be liberated from the limitations which were imposed on you.

RAKESH DWIVEDI: This kind of a contention has been repeatedly raised and rejected by this Court that if in case in the context of income, *RR Engineering* was a case where the *Haisiyat* tax, the circumstances tax based on income.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

RAKESH DWIVEDI: Your Lordships said that one is in 62 others, List II and other will be in the tax on capital asset is an aggregate. So as long as individually the tax is right. For the incidents should be falling on the field which is contemplated. If the tax is on land and the measure is not remote, not far removed, it is valid. So, in order to sustain the Respondent's submission Your Lordships will have to hold then that the measure based on mineral value is the sole preserve. Then obviously other entries cannot. Then obviously even Sales Tax cannot use it. Stamp duty cannot be levied on that. But every day the registrations of transfer of property is being done on the based on the value of the property. And this is important aspect because what happens is that sometimes this Court will be limiting itself to saying that this particular measure is not available, struck down and we stop there. Some other measure is adopted. Then again there is a challenge. So, the State must know clearly, what are the measures which are available for imposing a tax on land? How should it be imposed? Cess and Royalty is struck down. So, if we say, all right, this is a tax relating to half of the mineral value. So where should we stop? Should we say a quarter, after all mineral value emerging from the land has some direct relation with it and some basis. It can be made a basis. Some as part of it can be made a basis. Now, since Orissa is not going for the whole of the mineral value is saying that x not more than 20% of half of the mineral value. Can we do that? Now, they say leave it to the smaller benches to decide. So once again matter rebounds back. We can't take the full mineral value. We can't take the half mineral value. We can't take the quarter mineral value. So where do we stop? How do we determine the capacity of the land? But one thing is very clear, the tax on mineral rights does not include mineral bearing land. In fact, some of the learned counsels on the other side said even minerals are out. It is only mineral right. Even here you can't take the mineral value. You just take the document of lease like Stamp Duty but they forget that Stamp Duty here also takes the mineral value, the value of the land. So therefore, the State must be clearly told, because who... otherwise will be every time doing

1 something, every time My Lord there will be a challenge. That look, there's some connection
2 with mineral land and mineral value. And for the last 20 years, the states are not able to, other
3 states apart from Bengal not able to collect. This is lack of uniformity in fact. One state is
4 collecting and for 20 years neither the Central Government nor Parliament has written to the
5 State of West Bengal that you limit this tax to this. That was the best test. They could have told
6 Bengal that this is high, leading to disaster. Please limit it. Make it half. Make it 25%. These
7 are all limitations which are permissible under Entry 50. They can say limitation means that
8 ensure that the tax or some factor that ETR rate or something which they have suggested it
9 should not go beyond this.

10

11 **A. K. GANGULI:** Just on a point of information. Since my learned friend mentioned West
12 Bengal, West Bengal is deprived of the enhanced rate of Royalty that was allowed in 1991, post
13 amendment.

14

15 **RAKESH DWIVEDI:** We don't want enhanced reality. We want our reserve. It's a question
16 of competence, not the amount you are depriving or not depriving, assigning or not assigning.
17 It's a question of federalism. The State must exist and State must enjoy the plenary power. If
18 you want to limit, limit it.

19 If you can deny something, deny it. Even limitation is denying. But this is significant, that non-
20 issuance of any directive, not including any provision with respect to State of West Bengal
21 shows that the Government is satisfied that the tax which is being levied and collected for the
22 last 20 years is appropriate and causing no disaster. 20 years is not a small period. Two
23 decades. So therefore, this principle of 'general and special', when does it apply? When
24 there's... the special provision must traverse the same genus, the same field. There is a general
25 provision which covers a particular field. Then comes a narrower provision, which covers part
26 of it. Then you exclude it from the general. But if the two fields, if the two taxing events, the
27 two taxing objects are different, now, here is the contradiction in their article. Mr. Salve says,
28 "There's a neat division, no overlapping." And this is what *Sundararamier* also says.
29 Whether we call it aspect theory, whether we call it neat division or whether we use taxable
30 event and taxable objects to delineate the distinction, once the division is neat, then where is
31 the question and where is the scope for applying this principle of *generalia specialibus non*
32 *derogant*. They are 2 independent taxing fields with a different taxing objects or taxable
33 events. And as the other side concedes, there is no overlapping, neat division, different aspects.
34 So, there is no scope for application. This will apply in cases, for example, I may just give an
35 illustration, where Your Lordships, in several cases have applied. They have cited some cases,
36 but they are traversing the same field, which is not possible in tax entries. Kindly look at Entry

1 24 List II. 'Industries subject to the provisions of Entry 7 and 52 in List I.' Just below is 'Gas
2 and gas works.'

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, in the case of 7 and 52, the moment a
5 declaration is made by Parliament...

6

7 **RAKESH DWIVEDI:** By law.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ...The entire subject is taken away. Those
10 industries go out of the fold of Entry 24. Because they are subject to the provisions of...

11

12 **RAKESH DWIVEDI:** That's right. Now, the issue arose in this court whether 25 will go...

13 *Calcutta Gas Company case*, 1962, Volume V, page 209. 'It was held that Union by law
14 under Entry 52 cannot extract the scope of Entry 25.' This is a case of special being carved out
15 from industries. Because one particular industry is separately mentioned. So, the field is same.

16 25 is... 24 is industry, 25 is [UNCLEAR] and the relationship of Entry 24, 26, 27, My Lord, the

17 Chief Justice has dealt with in that case of *RERA of West Bengal* and followed *Tikaramji*

18 and all those cases. So, the structure of the relationship, see, how the relationship of 24 with

19 52 drastically differs from 23 with 54. Because once the Union declares under Entry 52,

20 industry goes to the List I. But 26, 27 send the trade and commerce, production, supply,

21 distribution of goods to List 33, List III. In mines and minerals both shift... The mines, mineral

22 both shift to List I. But in case of industries, industry goes there, product supply, distribution,

23 trade, commerce, all shift to 33. My Lords have noticed all this in *RERA* case. So, these

24 structural differences demonstrate a different kind of interrelationship.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** *RERA* was a very interesting case, because

27 there the West Bengal Legislature enacted an Act identical to *RERA*. Identical to *RERA* in all.

28 There's no conflict as such, that one says X and the other says counter X. So Mr. Dwivedi

29 appearing for the West Bengal Government, there is a conflict. Because we have done exactly

30 what the Centre has done. So, where is the bar on us, a very interesting here. No other case has

31 raised that issue really.

32

33 **RAKESH DWIVEDI:** This is the only case.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This is the only case which dealt with that.

36

1 **RAKESH DWIVEDI:** And since all these entries had been dealt by, there was *ITC* and all
2 those Constitution benches, so I said, I will not defend that. But this was a solitary argument
3 left. But very correctly held by Your Lordships, that these theories will not apply in case of
4 taxations because there is no overlap, they are distinct, either divided by taxable event by
5 taxable objects, division is neat. I accept what Mr. Salve says. It's neat. But if it is neat, then
6 where is the question of extracting from here or there? We have just to see that particular Entry
7 and see is the tax actually in that field and is the measure having a nexus.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What do you mean by... you can address it in
10 your own turn. What do you mean by tax on mineral rights? I mean, how do we sort of
11 conceptualize what is meant by tax and mineral rights?

12

13 **RAKESH DWIVEDI:** It's a tax on the aggregate of mineral rights. Just like Your Lordship
14 held in case of tax on capital assets...

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** On the aggregate of the assets.

17

18 **RAKESH DWIVEDI:** Aggregate of all the assets.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** *S C Navan* and then *Dhillon* of course,

21

22 **RAKESH DWIVEDI:** Yes. That is entry 80...

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 86.

25

26 **RAKESH DWIVEDI:** 86.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 86, I think.

29

30 **RAKESH DWIVEDI:** Taxes on the capital value of the assets. Exclusive one asset is
31 excluded, agricultural land. So, when it says tax on mineral rights, it's a bundle of rights which
32 always goes with the lease. The land is given for working there, mining operations and the
33 rights are you can enter. Your Lordship notice that rule and the clause in the lease itself which
34 says you can enter, you can drill, you can excavate, you can benefitiate, so all those things
35 which you are doing in the leased areas including the right to extract and sell, that's the sum
36 total of the right. Because simply extracting and not selling is hardly any right, then.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But when you tax Royalty as a State, are you
2 taxing mineral rights then?

3

4 **RAKESH DWIVEDI:** So, Royalty, nobody is taxing now.

5

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

7

8 **RAKESH DWIVEDI:** All the laws of all the states, including the West Bengal, which has
9 been upheld in *Kesoram*, expressly excludes all taxes and Royalty. That is because of *India*
10 *Cement. Kesoram* has not attempted to indirectly overrule. It only said that, that related to
11 cess on Royalty, a particular. Taking a cue from that that we can't tax on Royalty. All the states
12 changed. They took the mineral value minus Excise Duty, minus Sale Tax, minus this, minus
13 Royalty. So, no State is taxing or having any component even of Royalty. So, there is no Royalty
14 in it,

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Of Royalty.

17

18 **RAKESH DWIVEDI:** Although I personally feel that cess on Royalty, striking down was
19 wrong because Royalty is a return. It's a kind of income for the State itself and the State was
20 using it as a measure.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But anyway, that is now, no state is doing...

23

24 **RAKESH DWIVEDI:** No state is doing it. That's not an issue. And it's not our contention,
25 it's not arising. The only issue referred to Your Lordship is *Kesoram* departing from that by
26 correcting that error in para 34. That is limited error. So, it's a bundle of rights, the aggregate
27 of rights which is granted by the rule, that is what is the subject matter of tax, which is also
28 connected with the mineral value, because ultimately as an excise of mineral right, one of that
29 right is to extract and carry away.

30

31 **S K BAGARIA:** [UNCLEAR] one thing, correct that the taxes and Royalty are not being
32 levied. [UNCLEAR] out in Chhattisgarh is 5% of the amount of Royalty payable and that is a
33 State Tax. Number of states [UNCLEAR] levied said is 5% of the amount of Royalty.

34

35 **RAKESH DWIVEDI:** That's a measure, 5%. That's why I'm submitting that, actually I would
36 say that if a measure includes Royalty, is rather better than having the whole mineral value at
37 Royalty. Royalty will be some percentage fixed by Central Government. So, it's my income with

1 respect to the transfer of mineral rights, that's what we have submitted. Now if that is taken as
2 a value, the tax will always be lesser than if you take the whole mineral value. By striking down
3 cess on Royalty, the result has been that the States are searching and groping where to, how
4 to take the measure. Instead of the whole mineral value, you take the Royalty, which is a
5 portion fixed by this Union. In Chhattisgarh, they should be happy that it is pegged on the
6 Royalty, not the whole mineral value. If you take the whole mineral value, it will certainly go
7 up, not down and that's why Odissa has taken half and Jharkhand has completely eliminated
8 just per square meter. So that to avoid all this controversy this is mineral value or not mineral
9 values...

10

11 **JUSTICE B. V. NAGARATHNA:** Another aspect is the definition of 'land revenue' under
12 115 and 116 of the Tamil Nadu Act...

13

14 **RAKESH DWIVEDI:** Yes.

15

16 **JUSTICE B. V. NAGARATHNA:** Land revenue, it means so many types of... It says, like,
17 for example, water supplies, irrigation on the land...

18

19 **RAKESH DWIVEDI:** Yes.

20

21 **JUSTICE B. V. NAGARATHNA:** These amount, other sum payable, Royalty.

22

23 **RAKESH DWIVEDI:** Royalty.

24

25 **JUSTICE B. V. NAGARATHNA:** So, Royalty was included in land revenue. And therefore,
26 section... the explanation included it. Therefore, under the Tamil Nadu Act, it was struck down.

27

28 **RAKESH DWIVEDI:** Absolutely right. I'm obliged. Your Lordships is absolutely right.

29

30 **JUSTICE B. V. NAGARATHNA:** If the word 'Royalty' was not there in the explanation. The
31 controversy with regard to MMDR Act [UNCLEAR] at all.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Explanation brought it in.

34

35 **JUSTICE B. V. NAGARATHNA:** Explanation included Royalty. Therefore, they expanded
36 the arguments to say that -'It is encroaching under the Central Act.'

37

1 **RAKESH DWIVEDI:** I agree. Absolutely, that's right. But what I am trying to place it for
2 consideration is that, had it been Royalty, because Royalty is a portion of the mineral value.
3 Central Government fixes under Section 9 and it can fix. We are not questioning. Now that will
4 be, let's say, 10% of the mineral value. So, as it is, we come down from 1000 to 100 and 100,
5 then you impose some percentage of Royalty. It's much less than paying 10% of the whole
6 value. So, it's up to you, My Lord. I would think that taking Royalty as a measure should be
7 permissible that enables the Union to then...

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, what else Mr. Dwivedi?

10

11 **RAKESH DWIVEDI:** Now, just one more aspect is that, one argument was raised, that -'We
12 are not the owners of land, we are the occupier, so you can't...' ... [NO AUDIO] raised by Mr.
13 Salve is, *Noscitur a sociis*, My Lord.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Point for her to argue.

16

17 **RAKESH DWIVEDI:** She has....

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Fine. Mr Dwivedi, just one point...

20

21 **SANSRITI PATHAK:** I've a very brief note.

22

23 **RAKESH DWIVEDI:** This *Noscitur a sociis*, My Lord, how does it apply to this... What is
24 the argument is -'Take Entry 45, 49, 50 neighbouring.' As I have understood, the words should
25 be associated in the same entry. One is general one and the rest are...

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You can't read taxing entries as if they form
28 part of one fasciculus, as they used to say in the 70's.

29

30 **RAKESH DWIVEDI:** So, this *Noscitur a sociis*....

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** *Noscitur a sociis* means that when words of a
33 general nature are followed by words of more specific nature. The general nature of the words
34 must take colour from the specific...

35

36 **RAKESH DWIVEDI:** It should be in the same provision. For example, in this luxury tax...

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Or as they say, "birds is a feather flock
2 together."

3

4 **RAKESH DWIVEDI:** Yes.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That is another way of saying.

7

8 **RAKESH DWIVEDI:** Or 'The man is known by the company he keeps.' May not be true
9 because...

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All really shades are the same principle
12 [UNCLEAR] *Noscitur a sociis*.

13

14 **RAKESH DWIVEDI:** Don't let it flow much, so wide that the scheme breaks down.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** These are independent taxing entries. You
17 can't restrict one by....

18

19 **RAKESH DWIVEDI:** One by the other. So, each has a different taxable event. You say, "No,
20 take it from that. Since land revenue is collected from the owner, therefore, here also it can be
21 levied only on the owner." But for the Respondent's benefit, if Your Lordship has Section 4.
22 Sorry, Section 3(i), at page 38 and 39 of the written submission 1(c). I'm giving the cases on
23 *noscitur a sociis*. See (i), 3(i). 'Expression 'mine' and 'owner' have the meanings assigned to
24 them in the occupational safety, health, and working conditions code 2020.' This was amended
25 by Act 16 of 21. Earlier, it said, as in Mines Act, 1952 and the owner, page 38 of the written
26 submission, at page 29, I have quoted. Sorry, page 29. This is the definition of 'mine', and at
27 page 30, Your Lordships will find L, 'owner'. 'When used in relation to mine, means any person
28 who is the immediate proprietor or lessee or occupier of the mine, or of any part thereof and
29 in the case of the mine business, the business whereof is being carried on by liquidator or
30 receiver, such liquidator, but does not include a person who merely receives a Royalty rent of
31 fine from mine or is merely the proprietor of the mine subject to any lease granted.' So, the
32 lessee and the occupier are owner under the MMRD Act. So, in any ways, even if *noscitur a*
33 *sociis* is applied and we treat it as falling on the owners, the occupier and the lessee are owner.
34 For 50 years lease, which is now mandatory under 8(a), you are the lessee and occupying and
35 carrying on operations, and it's also a matter which Your Lordships' judicial notice can be
36 taken that everywhere, the lessees are paying property tax and all those things. In our house
37 at Allahabad, it's on lease from the Union and property tax is to be paid by the lessee. In fact,

1 in that US case, which a young lawyer, Mr. Ghosh, had cited, the Supreme Court said that they
2 are two different rights. The power to tax is to tax as a sovereign and power to enter into a
3 contract and grant lease, et cetera, as a contractual right. So, the fact that you have given a
4 lease and that you have not reserved any right to tax is of no avail because tax is by virtue of
5 being a sovereign for sovereign needs. There's an interesting passage in **Jindal** with regard to
6 abuse of power. First of all, Your Lordships have consistently said that abuse of power is not a
7 ground to test the validity. That will be tested separately. Para 112. The court, very
8 interestingly, has said that when you tax, you tax your own constituent. Because we states are
9 wanting investors to come in. They want the money to flow in. They want business. They want
10 to give employment. So, the constituents themselves create pressure. I would submit that
11 please take para 112 of **Jindal** combined with **RR Engineering**, Chief Justice YB
12 Chandrachud's observation that if you impose the tax so high, then the measure will lose the...
13 and it will react on the levy and show that it's something else, which you are doing. The
14 character is lost then. If the two things are combined
15 then that resolves the issue of largely and rest, Government of India has many powers to do.
16 If somebody, some state is hell bent a lot to destroy the Union, its fiscal policies deliberately,
17 then 356 is there not to discharge it. In 355, they are bound to protect the Federation. They
18 can issue that.

19

20 **JUSTICE ABHAY S. OKA:** Are you giving ideas?

21

22 **RAKESH DWIVEDI:** They can acquire. Supposing for the critical atomic mineral, some
23 state is acting in a particular manner, they can acquire that land. That's at page 44.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Anything else, now?

26

27 **RAKESH DWIVEDI:** Yes, just one thing. It was said that... In the same vein and context, it
28 was said that resources are unevenly distributed again and again it was harped upon. And
29 therefore, few states, handful of states having resources will blackmail or do whatever, sinister.

30

31 **JUSTICE B. V. NAGARATHNA:** But the reality is the states which have these mineral
32 resources are the poorest states in the country.

33

34 **RAKESH DWIVEDI:** I'm so grateful. That's exactly what I wanted to submit that's *chirag*
35 *tale andhera jisko bolate hai*.

36

1 **JUSTICE B. V. NAGARATHNA:** The people are going from outside and exploiting the
2 minerals.

3

4 **RAKESH DWIVEDI:** That's right. Vedanta. Who's complaining? Vedanta, Tatas, Adanis,
5 Ambanis. They are complaining that this is too high. Your Lordships have detagged the Assam
6 case. We had given the State there was quite active and helpful. And so, they gave in statistics
7 that's a company which is a Government Company is earning 10,000 crores per annum is not
8 willing to part with 0.58% of that. In the last 20 years the amount of tax which they have to
9 pay is 1500 crores and that profit is 10,000 Crores per annum. Because of the delay, interest
10 has risen to by 3000 crores. But leaving that interest aside for the moment to judge the levy,
11 1500 crores in 20 years and 10,000 crores per annum in 20 years. So, none of these are coming
12 out with balance sheets to tell Your Lordships of how much profit they are earning from this.
13 But they are trying to paint disaster, the doomsday. As if all states are hell bent, they are
14 something like Indian states earlier, who were collaborating with the British and trying to
15 bring down the Centre. They constitute India. They are Bharat. Why will the States My Lord...
16 We have surrendered all the powers. They were all representatives of state elected by states in
17 the Constituent Assembly. And they surrendered the power willingly because they felt that the
18 Country must unite. So, the larger share was given to Union and now, we are told that you are
19 acting something like that to destabilize and do what not. So, this uneven distribution, actually
20 is a boon, not a bane. There would not have been trade and commerce in the world and in
21 India if this differential distribution is not there. Some state has got something to give. Another
22 state has got something else to give and that's how we unite. The economic unity is built on
23 this differential distribution which is being decried. And uniformity of price is yet another
24 theme. Uniformity of price. Does price depend only upon Royalty or upon this? It will depend
25 upon so many factors, supply and demand. The price will go up and down. These all-lease
26 holders and sometime back in the previous decade, they were all mining iron ore and sending
27 to China. Their religion is one. As somebody said, My Lord, that, in times when Rome
28 collapsed. So, it was said, Lord, that Venetians continued to trade with the Arabs also. They
29 used to go to Jeddah and everywhere. And they said the Venetians had only one religion. In
30 that religion was prophet. So, one side had Prophet Muhammad, the other side had prophet...
31 Both side prophet. So, they are worried whether their profits will go down. And not concerned
32 with this, as My Lord said that - Why is it? The real question is, why is it not that the regions
33 which have got so rich in minerals, why are the people there poor even after 75 years, is the
34 question to be asked. Of course, even the states... we have to answer for that. And Your
35 Lordships have been pushing this DMF and all those things, and some penalties which Your
36 Lordships imposed. Then Your Lordships have asked a separate fund to be created. Justice A.
37 K. Patnaik has been appointed, My Lord to see. And then we have to bring a scheme. We will

1 spend it on these things. Hospitals, education institutions and houses and water supply. So,
2 he's monitoring. So much is being done by the courts to push the states in. So, I thought, My
3 Lord, if today somebody would have, the two Governments would have seen that these people,
4 as Justice Krishna Iyer said, "The little man with little means. Where is he?' He's still there,
5 where he was. So, this uneven distribution is, in my respectful submission, a boon. It helps
6 trade and commerce. It helps mobility of people of one place going to the other place. And
7 these companies, unless they produce their balance sheets, et cetera, they should not be heard
8 to say that some disaster is offering at the doorstep.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What else, Mr...?

11

12 **RAKESH DWIVEDI:** Just one case, I want to cite, My Lord, which is the last in the occupied
13 field that is 'monetized path,' where *Tulloch* and all those cases, *Hingir-Rampur* were
14 discussed. *Tulloch*, Your Lordships had seen, My Lord, even with regard to Entry 23 and 54
15 relationship, since it is to the extent provided it extracts, how do the court approach the issue,
16 when a State Act is challenged? Then the Court will see what is the State Act doing? Is that
17 field covered by the MMRD Act? If the field is not covered, then this occupied field theory
18 doesn't hit the State Act. That is what *Tulloch* said. But *Tulloch* was dealing with the same
19 license fee which *Hingir- Rampur* dealt with, and therefore they said, that -'Since the field
20 is occupied, therefore you can't levy that fee also.' Because all fee entries are relatable to the
21 subject matter. If the subject matter is gone, no fee. Kindly see page 2839 of Volume V. Kindly
22 have paragraph 130. Para 130. Kindly have from para 129. Their Lordship also noticed the
23 'Debate of House of Commons.'

24

25 **JUSTICE HRISHIKESH ROY:** Give us the PDF page once again.

26

27 **RAKESH DWIVEDI:** 2839, My Lords.

28

29 **JUSTICE HRISHIKESH ROY:** I don't think so.

30

31 **RAKESH DWIVEDI:** It begins at 2760. I'm reading para 129, at page 2839. Volume V.
32 Volume V. May I, please, My Lord?

33

34 **JUSTICE J.B. PARDIWALA:** Yes.

35

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

37

1 **RAKESH DWIVEDI:** 'List I, Entry 36 Federal Legislative List and List II Entry 23 Provincial
2 List in Schedule 7 of the Government of India Act correspond to Entry 1, List I, Entry 54 and
3 List II, Entry 23 of State List in our Constitution. It is interesting to note that in the course of
4 debates in respect of the above entries in the Government of India Bill, the Solicitor General
5 in the House of Commons stated that the rationale of including only the regulation of Mines
6 and Development of Minerals and that too only to the extent it was considered expedient in
7 public interest by Federal Law was to ensure that the provinces were not completely cut out
8 from the law relating to mines and minerals. And if there was inaction at the Centre, then the
9 provinces could make their own laws. But not imposing limitations, it is inaction. Thus, powers
10 in relation to mines and minerals were accorded to both the Centre and the States. The same
11 philosophy is reflected in our Constitution. The management of the mineral resources has
12 been left with both the Central Government and the State Governments in terms of List I,
13 Entry 54, and List II, Entry 23. In the scheme of our Constitution, the State Legislatures enjoy
14 the power to enact legislation on the topics of mines and minerals development. The only fetter
15 imposed on the State Legislature under Entry 23 is by the latter part of the said entry, which
16 says, subject to the provisions of List I, with respect to regulation and development under the
17 control of the Union. In other words, the State Legislature loses its jurisdiction to the extent
18 to which the Union Government had taken over control. The regulation of mines and
19 development of minerals has manifested by legislation incorporating the declaration and no
20 more. If Parliament, by its law, has declared that regulation of mines and development of
21 minerals should be in public interest under the control of Union, which it did by making
22 declaration under Section 2 to the extent of such legislation incorporating the declaration, the
23 power of Legislature is excluded. The requisite declaration has the effect of taking out
24 regulation of mines and minerals from List II, Entry 23 to that extent. It needs no elaboration
25 that to the extent to which the Central Government had taken under its control the regulation
26 of mines and minerals development under 1957 Act, the states had lost their legislative
27 competence. By the presence of the expression to the extent hereinafter provided in Section 2,
28 the Union has assumed control to the extent provided in the '57 Act. The 1957 Act prescribes
29 the extent of control and specifies it.' So, this can't be by inferences and any other. You have
30 to specify the extent. 'We must bear in mind that as the declaration made in Section 2 trenches
31 upon the State legislative power it has to be construed strictly. Any legislation by the State
32 after such declaration trespassing the field occupied in the declaration cannot constitutionally
33 stand. To find out what is left with the competence of the State Legislature on the declaration
34 having been made in Section 2, one does not have to look outside the provisions of the 1957
35 Act, but as observed in *Bajjnath Kedia* have to work it out from the terms of that Act. In
36 order that the declaration made by Parliament should be effective, the making of rules or
37 enforcement of rules so made is not decisive. So, the rules, et cetera, are irrelevant. The

1 declaration made by Parliament in Section 2 of the 1957 Act states that it is expedient in the
2 public interest that the Union should take under its control the regulation of mines and the
3 development of minerals to the extent provided in the Act itself. Legal regime relating to
4 regulation of mines and development of minerals is thus guided by the '57 Act and the '60
5 Rules. Whether reservation made by '62 and 1969 notification is any manner contrary to or
6 inconsistent with '57 Act? In my view, not at all.' Now, this was a case prior to 17(a)(3) being...
7 Now approval is required of the Central Government. At that time, it was not. Whether the
8 Government of the erstwhile State of Bihar did not have the power to make reservation, which
9 it did by '62 and 1969 notification. I think there was no lack of power in the State in making
10 such reservation. I indicate the reasons therefore.' Then at the bottom 133. 'No fundamental
11 right nobody has...' which we can leave. Then kindly see 134.

12

13 **JUSTICE J.B. PARDIWALA:** 139. Mr. Dwivedi.

14

15 **RAKESH DWIVEDI:** I'm reading 139. Your Lordship will just note. 134 onwards. 'The
16 regulation of mines and development of minerals has been taken over and under its control by
17 the Central Government to the extent it is manifested in the 1957 Act, which does not
18 contemplate acquisition of mines and minerals by the presence of keynote expression to the
19 extent here and after provided is Section 2. The Union has assumed control to the extent
20 specified in the provisions following Section 2. In my view, though the word 'regulation' must
21 in the context received wide interpretation but the extent of control as specified in '57 Act has
22 to be construed strictly. The decision of the court in *Tulloch and Bharat Coking Coal,*
23 *Bajjnath Kadia* and few other decisions where this Court held that with reference to
24 declaration made by Parliament in Section 2 of the '57 Act and the provisions of that act that
25 the whole of the legislative field was covered, were in the context of specific State Legislations
26 under consider consideration. In the context of subject State Legislation, the whole legislative
27 field was found to be occupied by the Central Law. The same is the position in *Hingir-*
28 *Rampur* where whole of the legislative field relating to minerals was found to be covered by
29 the declaration.'

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's all. The first five lines are....

32

33 **RAKESH DWIVEDI:** Yes. And they have dealt with all those.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What else Now, Mr Dwivedi?

36

1 **RAKESH DWIVEDI:** Also note para 141, where they have to held that the State
2 Governments are the owner of the land and minerals.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's by virtue of the Bihar Act, they said.

5

6 **RAKESH DWIVEDI:** Yes. Justice Gokhale's judgment is conquering who all takes the same
7 view. So therefore, one has to see in each case the State Act. [NO AUDIO] Mr. Singhvi's and
8 his response to that, he referred to five cases. *Odissa Cements* and all those cases to show
9 that those cases took the view after *India Cement*, following *India Cement* and they said
10 that the power to tax on mineral rights would be located in Entry 54 List I read with Entry 97
11 List I. Now My Lords, these are all cases where the Supreme Court was following the Seven
12 judges, judgment but they reveal that the Court was struggling as in quarry owners where I
13 was arguing. Here also, to locate where is the power flowing from? So, in one case they say
14 that it emanates from 54 List I, supported by Entry 97. In other cases, no, not 97. It's only 54
15 List I. None of them will not consider *Sundaramier*, et cetera, because they were
16 following *India Cement* and it's a tax, and therefore, actually, there was no need to find out
17 where it is located. But... That was the position. But there is one grave danger, My Lord, when
18 written submissions some paragraphs, or some parts of the paragraphs are quoted. There was
19 a reference made to Para 40 of 'Synthetics and chemicals', which is now also under
20 consideration in another bench. Now para 40 is quoted. Now, 'synthetics and chemicals' had
21 nothing to do with 'mines and minerals.' It was dealing with... the issue was whether indus...
22 the fee on industrial alcohol could be levied by the State of U.P. or not. So, they referred to
23 Entry 52, in IRD Act, that is something similar to this MMRD Act. Industrial Development
24 Regulation Act, 1951. Having referred to that, they said that the field is occupied by those Act.
25 Right or wrong, Your Lordships will see in the other matter. But that was a case, which had
26 nothing to do with MMRD Act. And they... Para 40's 6 lines have been cited as if the court is
27 holding, that this Entry 50 list is subsumed or can be... the power could be exercised under
28 Entry 54, List I.

29

30 **MANU SINGHVI:** That's absolutely unfair because the next para says that it's not a mining
31 case. But what is an interpretation. That's what the next para says.

32

33 **RAKESH DWIVEDI:** Let me point out your unfairness, please.

34

35 **MANU SINGHVI:** No, no, I am pointing out...

36

1 **RAKESH DWIVEDI:** Or I'll come later on. You can comment on me. I am pointing out that
2 my learned friend should have pointed out to Your Lordships, that these 6 lines do not
3 constitute the paragraph. They are not the finding of the Court; they are submission of the
4 counsel. And he has presented it by extracting 6 lines and telling Your Lordship that - 'This is
5 dealing with it.' See para 40, My Lords.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Page?

8

9 **RAKESH DWIVEDI:** This is 1202, Volume V. This is unfairness. But I am not attributing
10 unfairness, because I don't engage in these things. It may be an error and I'm not saying that
11 the court was not cognizant. What I am saying is that, "You know that this case does not relate
12 to. And yet it is being relied upon for Entry 50." So, sometimes My Lord, in some other matters,
13 some passing observations do come in. Please see paragraph 40. It was submitted. The whole
14 paragraph is about submission. My Lords have got 1202?

15

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

17

18 **RAKESH DWIVEDI:** 'It was submitted in the statement on behalf of Union of India, that
19 the legislative competence of the State enactment in the various states will have to be
20 determined by reference to the following entries in List I of 7th Schedule. Entries, so and so,
21 so and so in List III. It was urged that there is dichotomy between 84, List I and 51, List II. But
22 this could not would not control the interpretation. There is no such dichotomy. It has also
23 been stated on behalf of Union of India that while opium was in entry, so and so it means that.
24 Parliament will have power, but the power to levy Excise Duty in opium is given to the state.
25 Similarly medicinal and toilet preparations, which contain alcohol and are fit for human
26 consumption. The power of levy of excise is given. Entry 8 of List II, similarly is not subject to.
27 For the reason it was submitted.' This is all submission of the Union. And what my learned
28 friend cited is from the sentence - 'The power to levy taxes is to be read from so and so.' And
29 then the court again said, "According to the Union of India, none of the entries is so and so."
30 So, the whole paragraph is a submission. And my learned friend has cited it and he's
31 attributing unfairness to me. I am not attributing, but my learned friend should withdraw the
32 words.

33

34 **MANU SINGHVI:** It's more of para-E (28). I don't want to engage in this. E (28) ...

35

36 **RAKESH DWIVEDI:** Naturally, you have to run away from that.

37

1 **MANU SINGHVI:** My submissions are there. It's very clear.

2

3 **RAKESH DWIVEDI:** Why should it have been included? Surely you would have seen. You
4 would have seen para 40 something is a submission, not a finding. Our submission was of Mr.
5 Khambata, the learned Counsel, about implied limitation drawing support from Justice Sikri's
6 observation in *Kesavananda Bharati*, that is paragraph 11 of his submission.

7

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

9

10 **RAKESH DWIVEDI:** The first aspect to be noted is that Justice Sikri's observation is in the
11 context of searching for limitations on the amendatory power under Article 368, so as to
12 prevent it from becoming absolute, but for this Doctrine of Basic Structure which was drawn
13 partly from the fabric of the Constitution and partly from the word 'amend', as Justice Khanna
14 interpreted it, contextually. So, this implied limitation theory is to curb absoluteness and draw
15 a line beyond which the amendatory power could not go. But in the present case, it is sought
16 to be utilized for the reverse purpose, that is, to expand the scope of limitation. So, while
17 limited power, a power which is, a field which is already limited, it is sought to be expanded so
18 as to make it so absolute, that it destroys and takes away the field from the fold of the State
19 and places it in the fold of the Union. I have dealt with this in page... paragraph 16 of my
20 submission, which is 1(d), this is just a small note to cover the yesterday's submission, so I had
21 to... The other submission was with regard to not drawing 97, List I in Article 248. I cannot do
22 better than rely upon My Lord Justice Nagarathna's judgment, Your Lordships have dealt with
23 Article 248, State of Karnataka. Your Lordships have said that you have to only see whether
24 the particular field is enumerated somewhere or not. Article 248 uses the word 'enumerated'
25 'and 97 uses the word 'mentioned'. They are meaning the same thing. So, we have just to see,
26 once it is mentioned there, then there is no question of 97. No question of Article 248. The
27 only thing is, power will always remain with the State, can only be limited. Whether you can
28 go up to complete limit, prohibiting or making it zero or not. As in *Kesoram*, I would submit
29 that Your Lordships can leave it to the Parliament's good sense to, in its wisdom and policies.
30 To decide if ever they want to impose limitation one and limitation has to be *qua* each mineral
31 for mineral development. So, it can't be across the board. For example, even minor mineral
32 usage is limited. The Parliament therefore, the Government will have to of the day which
33 moves the bill will have to apply its mind to which minerals should be allowed, to be taxed,
34 which should not be, in which case mineral right should be allowed to be taxed, where not,
35 how much. But it can't be a broad brush. It has to be a rational and reasonable exercise. And
36 248 is completely out. In this submission I have enclosed that judgment. U.S. Judgment. We
37 don't need to go. Your Lordships have time again said, US laws are different but it was...

1 provisions were quite close but yet different. I have demonstrated in paragraph 18 and I have
2 annexed that judgment also Your Lordships' benefit. Paragraph 18 of 1(d).

3

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

5

6 **RAKESH DWIVEDI:** Particularly pages 145 to 147 are more relevant.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Is it time to thank you, Mr. Dwivedi now?
9 Thank you so much.

10

11 **RAKESH DWIVEDI:** I'll close My Lord. I should thank you, My Lord, for giving me so much
12 time and extending it beyond the lunch period. Extremely grateful.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes Sansriti. Mr. Dwivedi, please sit by her
15 side. So, if there is something you can always assist her.

16

17 **SANSRITI PATHAK:** Your Lordships have my not Volume I(F).

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr. Dwivedi. Thank you.

20

21 **SANSRITI PATHAK:** Your Lordships, I have briefly covered four points. 1(F). This can be
22 actually scanned and put.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We got it here. Now it is scanned for us. Yes.

25

26 **SANSRITI PATHAK:** Your Lordship, so the argument is, although Parliament does not have
27 any power to tax minerals or mineral rights, but MMDR Act is exhaustive of all the fiscal
28 exactions and therefore State is denuded of its power. So, My Lords as the expression used is
29 colourless and neutral exactions. And, My Lords, there is nothing colourless about the
30 exactions in our Constitution. They are structurally different, historically different, and a
31 Constitutional significance is attached to each of them. I will refer to Para 2 of my written note.
32 'It is submitted that, there is nothing colourless about fiscal exactions in our Constitution. They
33 are structurally distinct, historically and constitutionally distinct, meaning and significance
34 have been attached to them, and are never used interchangeably.' Para 3, I can skip, Your
35 Lordships, it is *Jindal Steel*. Tax is a compulsory exaction by the state, in the capacity of a
36 sovereign, Your Lordships. When it is imposing a tax, it is imposing a tax on its sovereign. As
37 owners Constituent. And when Royalty is being levied, My Lords, that is being levied in the

1 capacity of the owner. So even the relationship in which the State is imposing a tax, that is
2 different, that is, sovereign taxing is Constituent. Royalty, owner imposing a consideration fee
3 for parting with the mineral resources that it has. Sub-para of para 4, Your Lordships. 'The
4 Constitution uses distinct expressions such as tax, duties, cesses, surcharge, fees, license fees,
5 or fees for services rendered.' This can be found in Article 110, which deals with 'Money bill.'
6 Distinct words. Then Royalty is used in Schedule 6, para 9, My Lord, of the Constitution. Fines,
7 other pecuniary penalties, again used in Article 110. So, how do we use it Interchangeably, My
8 Lords? There is no concept of uniform fiscal exaction in our Constitution, My Lords. 'Each
9 exaction or imposition are imposed under a distinct power, and they are distinct and not used
10 interchangeably. Tax, duties, cess and surcharge form one class of exactions which is levied
11 under Article 245, 246, read with the Taxing Entries. Fees is another class. Fees can either be
12 regulatory or services rendered, which is levied under 245, 246, read with General Entries and
13 Entry 96 and 66. Now, Royalty in the field of minerals, license fees for the grant of spectrum,
14 levy charge for parting with privilege and liquor trade is neither tax nor fees. It is the price
15 charged as owner of these resources, and in the latter case, a price of parting with privilege.
16 Constitutional bench in ***State of Punjab versus Devans Modern Breweries*** has held
17 that levy charge for parting with privilege is neither tax nor a fee. And it is simply a levy for the
18 act of granting permission for exercise of power to part with privilege. It is neither tax nor fee
19 and will not attract Article 301 and 304. Dead rent and surface rent are payable under MMDR
20 Act to the State and the capacity of the owner and lessor of the land. When the leases of a
21 private land with Royalty, dead rent and surface rent is payable to the private person. Here
22 also, payment is given to the private person, with the capacity of owner and lessor. These levies
23 are not mutually exclusive. State being the owner of the land can receive Royalty for parting
24 with the land with mineral rights and can also levy a tax on the same land as the capacity of
25 the sovereign taxing its constituent. The power of state to impose tax on mineral rights under
26 Entry 50 is a power to impose tax. None of the statutory fiscal exactions mentioned in Section
27 9, 9(a), 9(b) and 9(c) are or can be in the nature of tax. Parliament has provided for payment
28 of Royalty, Dead rent, surface rent, et cetera, under Article 245, 246, read with Entry 54, which
29 is not a taxing field. To say that MMDR Act, exhausts the field of fiscal exaction, distorts a
30 settle distinction between these impositions. Difference also arises on account of nature of
31 relationship. When taxes being levied, the sovereign is taxing its constituent...' I can skip that.
32 Para 8. 'It is neither tax, nor akin to tax, nor can it substitute a Tax.' Then an argument was
33 made regarding uniformity. Why is it so important that all the fiscal exactions are dealt with
34 an MMDR Act? All the subjects in List I, are those subjects which were sought to be held to be
35 having nation-wide implications and a uniformity was envisaged. But the fact that those
36 subjects, those subjects don't find mention in List II. Is that each state... Justice Bhanumati in
37 a judgment in ***Jindal*** My Lords, she has discussed that disparity in the state of development

1 of the states all across. Each state has its own unique natural resources. The nature differs, the
2 quality differs, the state of development differs, the need differs. So, to have a uniform fiscal
3 policy for the entire country, this is destructive of federalism, because the states should be in
4 a position to devise their legislative mechanism to deal with their individual needs. So, there
5 can't be straitjacket formula for List II. That was never the intention. Those subjects would not
6 have been put in List II My Lords. **Khazan Chand's** judgment, paragraph 2 of this heading.
7 It says -'Subjects regarding which uniformity was envisaged were put in list I and the other
8 subject...'
9 and therefore Your Lordships an Article 14 argument can never be made by
10 comparing one law of another state and some other state. Para 4 -'Like there cannot be any
11 taxation by inference, similarly, there cannot be any limitation by inference on sovereign
12 power of taxation. Firstly, limitations need to be expressed.' **Jindal** has been covered My
13 Lords. 'And secondly, even the express limitations need to be construed strictly.
14 Constitutionally, taxation by inference is a paradox.' Then Your Lordships, fiscal federalism.
15 'The jurisprudence regarding federalism, which is the basic feature of the Constitution, is
16 becoming more nuanced.' And Your Lordships, I have borrowed these expressions from Your
17 Lordship's judgment in **Mohit Minerals**. 'There is collaborative federalism, competitive
18 federalism, and federalism involving condescension. The consultative and participative
19 exercise of Royalty fixation is an instance of collaborative federalism. The states designing
20 their fiscal measures by giving incentives, tax holidays, exemptions, lower tax rates to attract
21 investment or increased tax base is an instance of competitive federalism. The states
22 contesting for their power conferred under the Constitution is a case of federalism in
23 contestation. This aspect of federalism should not be seen as disruptive, but it is abundant
24 duty of the States to ensure that no limitations are imposed *de hors* the Constitution in the
25 interest of uniformity national interest Your Lordships.' Article 249 deals with laws relating to
26 national interest My Lords. That deals with a situation where there may be a subject in the
27 State List, but in the interest of national interest, there may be laws. So, there's a procedure
28 prescribed. The resolution has a fixed life of six months. So, national interest, then you go to
29 Article 249 if it is permissible. 'There are express provisions in the Constitution for situations
30 requiring subordination of powers of the state in national interest, and the procedure is also
31 described in Article 249. The states have plenary and exclusive powers over List II subjects.
32 And that means they do not and should not have to knock on the doors of the Centre for
33 imposing levies which they are exclusively empowered to charge. Knocking on the doors of the
34 Centre for tax relating to List II subject is not collaborative federalism, but subversion of
35 federalism. Therefore, fiscal federalism is the most basic and fundamental aspect of
36 federalism. The existence of state depends on taxes, and they form the lifeline of the state,
without which states are rendered nothing but paper tigers. 'Your Lordships, then the

1 argument is limitation will include prohibition. And this is based on those judgements Your
2 Lordships...

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Article 19(6) judgments.

5

6 **SANSRITI PATHAK:** *Haan*. Sorry Your Lordships. 19(6) and those general provisions
7 which say that regulation will include prohibition. *Hind Stone* line of cases My Lord. So, if
8 Your Lordships just turn to Entry 50 first. This says -'Taxes on mineral rights, subject to any
9 limitation imposed by Parliament by law relating to mineral development.' My Lords, my first
10 submission is, 'regulation' word does not find presence here My Lords. The term is 'limitation'.
11 Regulation, Your Lordships have found in Entry 54. But here the power is given to the
12 Parliament to impose limitation, not to regulate power of the state. You can regulate under
13 Entry 54. You can make laws for mining. You can prohibit mining of a certain mineral. You
14 can prohibit mining of a certain... for a certain period, import. That you can do under 54. But
15 here word regulation is not there, limitation is there. So, to import those cases which say
16 regulation will include prohibition that doesn't apply Your Lordships. And Your Lordships,
17 the term 'limitation' is used in one another provision of Constitution, which is Article 134.

18

19 **JUSTICE B. V. NAGARATHNA:** Correct.

20

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

22

23 **SANSRITI PATHAK:** Your Lordship's limitation is found in another provision, which is
24 Article 134, which deals with appellate jurisdiction of this Hon'ble Court. I'll just read it out.
25 134(2), 'Parliament may by law confer on the Supreme Court and any further powers to
26 entertain and hear appeals from any judgment, final order or sentence in a criminal
27 proceeding of a High Court in the territory of India subject to such conditions and limitations
28 as may be specified in such law.' When such restrictive words are being used in context of a
29 court or of a co-equal organ to say that limitation will include destruction.

30

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

32

33 **SANSRITI PATHAK:** So, under the regulatory power of 54. You can do whatever in the field
34 of mining, but once you are imposing a limitation, you are not regulating the power of taxation
35 here. You are imposing a limitation.

36

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

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SANSRITI PATHAK: So that is, and Your Lordships, Mr. Dwivedi has already cited cases on Entry 57 but I just want to repeat. Entry 50... If Your Lordship sees Entry 57 List II. This is one other entry where the taxing power of the State has been made subject to the parliamentary law. This is under 35 Concurrent List.

CHIEF JUSTICE D. Y. CHANDRACHUD: And 35 refers the principles for the formulation of rate.

SANSRITI PATHAK: Context of Entry 57 Your Lordships have held that - Yes, they are allied subjects, but they are distinct. So, in *Assam* judgment at page 53 of the main written submission, 1(A) Your Lordships. The issue was the Assam Legislation had increased the rates of the taxes, so that was challenged being contrary to the Parliamentary Law. The Constitution Bench held that though the power is allied, one is power to tax, one is power to lay down the principle for fixation of taxation. So, yes, you can do it, but you can do it only under the general power. You can limit, you can also go to the extent of saying that 5% or maybe for next five years you're not going to tax, but to say that under this limitation you can regulate the power of State that is an incorrect submission to with great respect. My Lords, I think that I have covered.

CHIEF JUSTICE D. Y. CHANDRACHUD: Thank you, Sansriti. Thank you. I think we had said that only one rejoinder otherwise there will be.

VIJAY HANSARIA: In the beginning, we took less than time what was allotted to us. Your Lordship allotted 2 and 1/2 days. We concluded before two days. Both of us will conclude within the time which is remaining. We are in rejoinder.

CHIEF JUSTICE D. Y. CHANDRACHUD: All right. Just two or three minutes.

VIJAY HANSARIA: The entire debate is List II. Now, Lordship may kindly note, List II has entries from 1 to 66. In effect, 7 entries have been deleted. There are 59 entries in List II out of which 36 entries are without any restrictions.

CHIEF JUSTICE D. Y. CHANDRACHUD: Just one second. So now, out of 66,

VIJAY HANSARIA: Out of 59 entries today in List II, I have put that in my Volume 1(c). Page 52 onwards. Out of 59 entries in List II today,

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CHIEF JUSTICE D. Y. CHANDRACHUD: How many were deleted? Out of 66, seven were deleted.

VIJAY HANSARIA: 7 have been omitted. Yes, by different amendments, including 101st Amendment. 36 entries are without limitations whatsoever or restrictions, I'll not use the word limitation, restrictions whatsoever. And 23 entries have limitations of different degree.

JUSTICE B. V. NAGARATHNA: Or you would say restrictions of various degree.

VIJAY HANSARIA: Restrictions of different degree which I have put in my written note in the chronological order from Category 1 to Category 10 in page 52 and 53 of Volume I(c).

CHIEF JUSTICE D. Y. CHANDRACHUD: Where is it? Your written note as Volume I(c), page?

VIJAY HANSARIA: Page 52 and 53. If Your Lordship only see one entry. I have put a name in chronological order.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

VIJAY HANSARIA: Your Lordships only see one Entry 37 of List II and My Lord, 50 of List II. Wide range of difference. For example, 37. I have quoted them subsequently in 58, 59 onwards. I am summarized them at 52. If Your Lordship see, page, Entry 37, which I've extracted at page 59 of Volume I(c). 'Elections to the Legislature of the State, subject to the provisions of any law, made by the Parliament.' It's a very broad. Now, Your Lordships, contrast it with Entry 50 of List II. My Lord, the argument on the other side is -'Once there is a laid provision of law made by the Parliament, entire entry is eclipsed or gone.' These are of different degree. The limitation itself has a limitation. And those degrees My Lord, I have put it in para.... Page 52, para... paragraph. 2.

CHIEF JUSTICE D. Y. CHANDRACHUD: Where have you put it, Mr. Hansaria?

VIJAY HANSARIA: In the descending order, I have put it My Lord. Lordship had asked me, "What are the limitations?" Which, I have tried to illustrate in paragraph 4 of Page 53. I'm sorry. It's page 52. My Lord, the Chief Justice has got it, My Lord?

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

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3 **VIJAY HANSARIA:** Because, first category is, subject to any law made by the Parliament, is
4 widest enough, My Lord. Second category is 'accept.' That is in Entry 3 and 65. Third category
5 is not specified. 'Subject to or other than.' Then, My Lord, not including, other than, to the
6 extent, subject to 1 and 3, then subject to 1, then subject to 3, and thereafter comes, My Lord,
7 'subject to the limitation imposed by the Parliament.' The argument is, this is the widest
8 enough. Which is in fact, this is the least restrictions, My Lords, the Parliament has thought it
9 to impose or the Constitution thought to prescribe. Secondly, Lordships have been asking,
10 "what are the limitations?" Which I have tried to give by way of illustrations in page 54 A, B, C
11 and D, paragraph 4. 'It can be extent or quantity of mineral that can be extracted, that is, by
12 way of regulation. You can also say, on what basis the valuation should be done for the purpose
13 of taxation? It can be price fixed by the Indian good of mines. It can be pit head price, it can
14 be sale price, it can be tax at the point of extraction of mineral, at the time, dispatch of mineral.
15 It can be a sealing...' My Lord. Repeatedly asking 500%. We are not saying that Parliament
16 cannot do it, the limitation. Parliament can say - 'All right, it cannot be more than so and so
17 percent of so and so.' So, it can put a sealing. The period of exemption of a particular period
18 or a particular area, or a particular mineral. These are the limitations and not the complete
19 abridgement. Para 5 and 6, My Lord, my learned friend, Mr. Dwivedi has gone... taken to Your
20 Lordship. Now My Lord, para 7 is important. If Your Lordships kindly come to page 55. Now,
21 My Lord, Entry 54, before 6th Amendment, was 'Taxes on sale or purchase of wood other than
22 newspapers.' It stopped there. This subject to 1992. Has come under the 6th amendment. And
23 before that, the 6th Amendment, there was no power of the Parliament to tax on, sale or
24 purchase of goods. It was introduced only by the 6th Amendment, and it was only controlled
25 by Article 286, which I have extracted at page 56, footnote. 'There were limitations on the
26 power of the state, and by virtue of Article 286, which were very specific, and precise, that's
27 where, you cannot tax outside. You cannot tax import or import. You cannot tax in the course
28 of interested trade or commerce. You cannot tax goods declared to be essential for the life of
29 the community, which were subsequently made of special importance.' Article 286 as adopted,
30 provided in Clause 3 of Article 286, saying that - 'Parliament can be.... cannot be... no law for
31 the imposition of taxes. It will be declared by the Parliament, to be essential for the life of the
32 community, which were subsequently made special important.' That is, they were declared
33 goods under the CST Act. So, these are the limitations. and not a power of enabling as we put
34 it in the beginning. This is limitation power and not an enabling power. And finally, Form K
35 has been read to Your Lordship as a statute levying tax. If Your Lordships see Rule 31. Rule 31,
36 which prescribed Form K, it says as nearly as in Form K or in a form as near thereto as

1 circumstances of each case may require. So that is where the contract is My Lord. If Your
2 Lordships kindly see rule 31, which is in Volume IV....

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4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You have quoted it in....

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6 **VIJAY HANSARIA:** Page 1644.

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8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You have quoted it at 57.

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10 **VIJAY HANSARIA:** I have quoted it My Lord.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 57. Page 57.

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14 **VIJAY HANSARIA:** Yes, My Lord. Page 57 I have quoted it. Rule 13 My Lord, Form K is a
15 modal form and it can be buried with the statute itself. And it says in Form K or in a form, if
16 it's a taxing, it cannot be left to the parties of the bargain it. So, that is where it has been left to
17 the discretion of the parties, to what extent they can modify. And that has been read to Your
18 Lordships as if it's a taxing power by the Centre. And finally, yes, the judgment My Lord the
19 Chief Justice said as is given in para 13, that the Form cannot control, Justice Chinnappa
20 Reddy's judgment, that is **(1986) 1 SCC 264** at 319, para 69, which says surely Form cannot
21 control acts, rules or the direction. It can definitely not control a constitutional entry, a
22 sovereign power to tax by the State. And finally, both the mineral companies and even the
23 Union of India has relied upon the House of Commons debate to interpret a constitutional
24 entry of 13th May 1935. What they were debating was one of the issues was whether Indian
25 subject of his Majesty should be there or British subject domicile in India is there. Those
26 debates cannot be relied upon. I'm so sorry. If Your Lordships kindly see the debate. One more
27 objection. Final My Lord. The affidavit of the Union of India. If Your Lordships see para 12, I
28 have quoted it. Page 57. They say, entries in the Union of India affidavit I'm quoting of 26
29 February 2024 -'Entry of List II, List IX cannot be absurdly wide reading, and that the
30 provisions of MMDR must be given wide and liberal construction.' This cannot be the stand of
31 the Union of India on affidavit before Your Lordships' Court. I'm extremely grateful. We are
32 extremely grateful.

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34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thanks Mr. Hansaria. Mr. Reddy?

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1 **HARISH SALVE:** My Lord, before Mr. Reddy begins, I just want to renew my request. I see
2 it's only 12 minutes to go. My Lord, there are some new points which have been made because
3 actually we opened the case and Mr. Dwivedi....
4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There was no new point made. There was no
6 new point made. It's an explanation.
7

8 **HARISH SALVE:** If I had time, I would have told Your Lordships what is the new point.
9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Decoupling was a phrase you used. So, Mr.
11 Dwivedi....
12

13 **HARISH SALVE:** My Lord, I am sorry. I did not have... if my learned friend had opened, I
14 would have replied. I opened with decoupling. He has given an answer to, which I have not
15 had a point to say where he's wrong. That's what I meant. If Your Lordship permits a note....
16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** If we permit you, there'll be another round. A
18 surrejoinder by their side.
19

20 **HARISH SALVE:** My Lord, just a note. Please allow us to deal with what he has said. I will
21 not go back to my original. That Your Lordships has already. The two points which he made
22 today, Entry 49, Entry 50 and land, and he made some submissions on when the land is
23 decoupled. Just a 4-page note.
24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What you can do is, Mr. Salve, you can file a
26 note not exceeding 3 pages. Just...
27

28 **HARISH SALVE:** Yes, My Lord, done. Yes, absolutely. And not necessarily three pages My
29 Lord.
30

31 **TUSHAR MEHTA:** Can I also file a note? Only 2 to 3 pages on new points.
32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright.
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35 **TUSHAR MEHTA:** Especially Entry 49. My Lords. That is what our concern is.
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37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Certainly Mr. Solicitor.

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HARISH SALVE: And My Lords, we'll file it by end of Friday.

JUSTICE HRISHIKESH ROY: Should we be limiting the size of the note, or should we be regulating the size of the note?

HARISH SALVE: As long as you allow. Your Lordship allows us to develop it.

CHIEF JUSTICE D. Y. CHANDRACHUD: But I suggest is that Mr. Solicitor, Mr. Salve, Mr. Bagaria give us one note of not more than 3 pages. Please put your heads down together and give us one note. I think that would be better. Conceptually better

TUSHAR MEHTA: We shall do that. We will do that.

AK GANGULI: I just wanted to give a reference to the notifications where Royalty was revised, excluding the State of West Bengal. Just the note.

CHIEF JUSTICE D. Y. CHANDRACHUD: What is in the note? We have pulled pen drive now.

AK GANGULI: Two-page references only. 2004 revision is at page 2170, Volume IV. 2007 notification is at Volume IV, page 2170 a [UNCLEAR] 2004 notification is at page 15312, Volume III.

NIRANJAN REDDY: May I please Your Lordships? I'm grateful. Volume I is my submission. I don't propose to read it because I have very little time. I'll just state three or four points that I've touched upon in my note, kindly have volume I(e) for Your Lordships reading agenda.

CHIEF JUSTICE D. Y. CHANDRACHUD: What are the points?

NIRANJAN REDDY: The point is, first point that I touched upon in my submissions is that minerals do not automatically vest in the State. That's a wrong concept. The judgment of this Honourable court in, *Thressiamma Jacob* that specifically refers to different lands having different characters. It notes that in different states there are different tenure right. For instance, when surplus lands reverted to the state, states then grant what are called as tenure rights. *Ryotwari pattas* in the south of India and some other terminology used in rest of the country. When *ryotwari pattas* are granted in respect of lands that revert to the state, there

1 state only grants cultivation rights. So, subsoil rights remain with the state, surface rights
2 remain with the cultivator. This is one category of land. Rule 72 in the morning, my learned
3 friend Mr. Ganguli showed Your Lordships, the statute was cognizant. That there could be one
4 category of lands like this. The statute was equally cognizant. There could be private lands
5 where the subsoil rights vest in the persons who own the land. Like in *Thressiamma*
6 *Jacob's* case, there was one category of landowners who were found to have subsoiled rights.
7 But in the House of Commons debate that is placed for Your Lordships, it notes the position
8 at the time Government of India Act was being made, that in Bengal, State of Bengal while it
9 was believed that under the British rule only the surface rights were granted, for over 100 years
10 each of the landowners were exercising subsoil rights without any complaint from the crown.
11 So therefore, those rights in that sense remain ceded. So, My Lord, that this concept that of all
12 minerals vest in the State, therefore the Royalty exclusively goes to the State, is my respectful
13 submission is a wrong argument. So, that's one point I've touched upon giving some details. I
14 also said that from 1901, the Mines Act, followed by the successor 1923 Act, 1948 Act, the rules,
15 1957 Act, consistently throughout recognize this position that minerals do not automatically
16 vest in the State. This is very important because if minerals do not automatically vest in the
17 State, and if the Royalty and Dead rent becomes payable to the mineral owners, it is actually a
18 consideration for one-time finite resource. The Royalty, the expression, I have touched upon
19 it in my submission. It has been explained to say that, unlike land, where cultivation can go
20 on, on a recurring basis, My Lord in respect of mineral it is a onetime finite source. So, an
21 owner of a land who has a subsoil rights. It could be the Government, it could be a private
22 person, it could be a limited right of a private person or the Government having subsoil rights.
23 When they give out these mining lease, the lessee extracts the mineral out. So, there's a one-
24 time complete exhaustion of a finite mineral resource. Therefore, there's a compensation that
25 has to be paid to the landowner who loses that mineral forever because it is a finite source. So,
26 Royalty is therefore not an exaction, levied by law. It is not a tax. Royalty is a consideration for
27 the grant of right. What 9 does, in the regulatory sphere, and it is permissible is, it caps the
28 consideration that can be levied, by a person who owns the mineral. But for 9, every person
29 can quote his own right as to, what he would ask for, for the purpose of giving a land on mining
30 lease. This may come in the way of the Country's Developments or Regulation steps in, Section
31 9 comes in, Royalty is fixed. Dead Rent is fixed. My learned friend Mr. Dwivedi showed to Your
32 Lordships, there's a little leeway in respect of private landowners. Dead rent is fixed as per
33 Schedule 3. Royalty My Lord may not be fixed in respect of private landowners, because that
34 Rule 45 does not take into account that Royalty fixation in *inter se* to private owners. So, if
35 Royalty is therefore, in my respectful submission, not an exaction. It is actually a regulatory
36 limitation of consideration that can be taken under a contract, for granting mineral rights. So,
37 if it is limiting the consideration, a contractual consideration, it can never have the sovereign

1 character of tax. And if it has... if we try to be contended and it was, and I'm therefore making
2 that submission that it has every trapping of tax. It can never go to a private person. If it is
3 going to a private person, and it is not going to the State, State gets nothing in those categories
4 of land and in those States where subsoil rights may vest exclusively with private people all
5 there. So, there's absolutely no element of tax. So, My Lord, it is one point I touched upon.
6 Only one... quickly another point. With regard to tax on land. Please see the situation when
7 they say that -'5... 50 completely eclipses 49.' My Lord, 'eclipses' I'm using the word literally.
8 Not in the legal sense. Mr. Dwivedi was at pains to point out. It cannot be. Because, land is a
9 continuing exist... It has a continuing existence. Land has been in existence throughout. 50
10 comes in only and only when a mining lease is executed. If there is no mining lease, executed,
11 I may have mineral in my soil, but I am carrying on cultivation. My Lord, I do not come under
12 50. State cannot tax me. Because it is land and I am cultivating the land. I am subject to 49.
13 50 comes in respect of one aspect of mineral rights. My Lord, please see the situation after the
14 mining is complete. Mining cannot be forever. It can go on for 30 years, 50 years, depending
15 on the mineral-richness of the soil. After 50 years, land reverse to being land again. It can be
16 taxed again under Entry 49. So, pre-mineral lease 49, post-exhaustion of mineral or
17 determination of lease 49 applies. So, 49 cannot go into this hiatus for the limited period
18 mining lease operates. So, mining lease deals with a different aspect of mineral rights. Land
19 remains land. It's a permanent feature. It continues to be land even when it is being mined. It
20 does not take it outside the taxation fore. The Government, in a given case, they're to abuse 49
21 power to surreptitiously override any limitations, that the Parliament, by law may impose.
22 Then the court would strike it down for being a colourable piece of Legislation. So therefore, I
23 touched upon this aspect, that land and 49 is something that cannot be made subject to 50,
24 which is purely temporal and on a completely different aspect. The last aspect that I touched
25 upon, that House of Commons debate that has been placed by Your Lordships. That's a very
26 interesting thing. The joint Parliamentary Committee, when it made recommendations on
27 Government of India Act, the recommendation it made was - 'Taxes on mineral rights should
28 be given, My Lord, to the Federal Government.' That went before the House of Commons when
29 they debated Government of India Act. Post-debate, post Mr. Percy's concern, Lord Percy's
30 concerns that were expressed, My Lord, the British Parliament made the Government of India
31 Act, which actually moved it. It is an improvement on the Constituent Assembly debate. It was
32 not originally, My Lord, in the provincial list. Notwithstanding these concerns, they wanted to
33 give this power to the provinces. Because provinces must realize some revenue. So contrary to
34 the Joint Parliamentary Committee recommendation.... My note, My Lord, gives us entries in
35 this. It was moved to the Provincial List. So, first is contention. Very importantly, the last of
36 the submissions, I put it in my note. A case arose from the country of Canada on British North
37 American Act. There were two entries. My Lord, the Federal List had an entry saying that - 'It

1 would deal with incorporation of banks, trade and commerce.' Provincial list says that -
2 'Provinces can levy tax on entities for augmenting its resources.' Matter went up before the
3 privy Council. Contention was if provinces were to act excessively and collect heavy taxes. It
4 would come in the way of regulation of trade and commerce by the Federal Government. Such
5 power must not, therefore, be ceded to the provinces. But I've placed that judgment. That
6 judgment which is not an identically worded terms, but on similar arguments that have been
7 advanced, that were rejected by the Privy Council, stating that when this Act vested this
8 authority with the provinces and their Governments, it did not suppose that these provisions
9 will be used injuriously, excessively, or arbitrarily. It reposed faith in these provinces, to
10 exercise their power judiciously. I'm sorry. So, therefore, that judgment may have some
11 guiding factors for Your Lordships. I've placed it also as a part of my submission. But I'm
12 deeply grateful, My Lord.

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14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you. Arguments concluded. Judgment
15 reserved.

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END OF DAY'S PROCEEDINGS

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