PETITIONER:
INDIA CEMENT LTD.

Vs.

RESPONDENT:
STATE OF TAMIL NADU ETC.

DATE OF JUDGMENT25/10/1989

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
VENKATARAMIAH, E.S. (CJ)
MISRA RANGNATH
OZA, G.L. (J)
RAY, B.C. (J)
SINGH, K.N. (J)
NATRAJAN, S. (J)

CITATION:
1990 AIR 85 1989 SCR Supl. (1) 692
1990 SCC (1) 12 JT 1989 (4) 190
1989 SCALE (2)953
CITATOR INFO :
F 1992 SC 103 (4,5,8)
RF 1992 SC1264 (24)

ACT:
Madras Panchayats Act, 1958: Sections 115 and 116--Mining lease--Levy of cess on royalty--Held ultra vires.
Constitution of India, 1950: Seventh Schedule List II--Entries 23, 49 & 50--Levy of cess on royalty in respect of mining lease-Sections 115 & 116 of Madras Panchayats Act 1958--Held illegal and ultra vires.
Mineral Concession Rules, 1960: Levy of cess in respect of mining leases--Sections 115 and 116 Madras Panchayats Act 1958--Held illegal and ultra vires.

HEADNOTE:
The appellant company used to manufacture cement and was granted mining lease for limestone and kankar by the Government of Tamil Nadu in accordance with the Mineral Concession Rules, 1960. The royalty was fixed under the Mines and Minerals (Regulation & Development) Act, 1957 which is a Central Act by which the control of mines and minerals had been taken over by the Central Government for the regulation and development of minerals.
Sub-section 1 of section 115 of the Madras Panchayats Act, 1958 enjoins that there shall be levied in every panchayat development block, a local cess at the rate of 45 paise on every rupee of land revenue payable to the Government in respect of any land for every Fasli. An explanation to the said section was added, and was deemed always to have been incorporated by the Tamil Nadu Panchayats (Amendment and Miscellaneous Provisions) Act, 1964. In this explanation a fiction was created whereby even the royalty payable had been included within the definition of "land revenue".
The appellant filed a writ petition in the High Court challenging the competence of the State legislature to levy

cess on royalty. A learned Single Judge dismissed the writ petition holding that the cess levied
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under section 115 of the Madras panchayats Act was a tax on land and, as such, fell under Entry 49 of the State List of Schedule VII of the Constitution. The Division Bench dismissed the appellant's appeal and held that local cess authorised by section 115 was not land revenue but was a charge on the land itself, and section 115 merely quantified the basis of the quantum of land revenue. The learned Single Judge, as well as the Division Bench, relied on the decision of this Court in H.R.S. Murthy v. Collector of Chittoor, [1964] 6 SCR 666.

Before this Court, it was contended on behalf of the appellant that the levy of cess on royalty in this case was nothing but a tax on royalty and was therefore ultra vires the State legislature. On the other hand, it was contended that the cess in the present case was a levy in respect of land and could be justified or sustained either under entry 49, 50 or 45 of List II of the 7th Schedule to the Constitution. It was further submitted that the cess having been realised on the basis of the decision of this Court in "H.R.S. Murthy" case, if at all, the Court shall declare the said cess on royalty to be ultra vires prospectively.

Allowing the appeal, this Court,

HELD: (E.S. Venkataramiah, C J, Sabyasachi Mukharji, Ranganath Misra, B.C. Ray, K.N. Singh and S. Natarajan, JJ.--per Sabyasachi Mukharji, J.)

(1) Courts of law are enjoined to gather the meaning of the Constitution from the language used, and although one should interpret the words of the Constitution on the same principles of interpretation as one applied to an ordinary law but these very principles of interpretation compel one to take into account the nature and scope of the Act which requires interpretation. It has to be remembered that it is a Constitution that requires interpretation. Constitution is the mechanism under which the laws are to be made and not merely an Act which declares what the law is to be. [704B-C]

The Attorney General for the State of New South Wales v. The Brewery Employees Union of New South Wales, [1908] 6 CLR 469, referred to.

(2) A Constitution must not be construed in any narrow or pedantic sense, and construction most beneficial to the widest possible amplitude of its powers, must be adopted. A broad and liberal spirit should inspire those whose duty it is to interpret the Constitution, but
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they are not free to stretch or pervert the language of the enactment in the interest of any legal or constitutional theory, or even for the purposes of supplying omissions or correcting supposed errors. [704D-E-F]

In re.' C.P. Berar Sales of Motor Spirit & Lubricants Taxation Act, 1938, [1939] FCR p. 1 and James v. Commonwealth of Australia, [1936] AC 578, referred to.

(3) It is well-settled now that the various entries in the three lists are not powers but fields of legislation. The power to legislate is given by Article 246 and other articles of the Constitution. [704G]

Calcutta Gas Co. v. State of West Bengal, [1962] Suppl. 3 SCR 1, referred to.

(4) It is well settled that widest amplitude should be given to the language of these entries, but some of these entries in different lists or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. Then, it is the duty of the court to find out

its true intent and purpose and to examine a particular legislation in its pith and substance to determine whether it fits in one or the other of the lists. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. [705A-B & D]

H.R. Banthia & Ors. etc. v. Union of India & Ors., [1970] 1 SCR 479; Union of India v. H.S. Dhillon, [1971] 2 SCC 779 and D.C. Rataria v. Bhuwalka Brothers Ltd., [1955] 1 SCR 1071, referred to.

(5) It is clear that over a period of centuries, land revenue in India has acquired a cannot active meaning of share in the produce of land to which the King or the Government is entitled to receive. [707B]

N.R. Reddy & Ors. v. State of A.P., [1965] 2 Andhra Law Times 297 and State ofA.P.v.N.R. Reddy & Ors., [1967] 3 SCR 28, referred to.

(6) There is a clear distinction between tax directly on land and tax on income arising from land. [708C]

Raja Jagannath Baksh Singh v. The State of U.P. & Anr., [1963] 1 SCR 220, referred to.

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(7) Explanation to section 115(1) itself makes a distinction between land revenue as such and royalty which by amendment is deemed to be land revenue. It is, therefore, recognised by the very force of that explanation and the amendment thereto that the expression 'royalty' in sections 115 & 116 of the Act cannot mean land revenue property called or conventionally known, which is separate and distinct from royalty. [707D-E]

(8) In the instant case, cess is not on land, but on royalty, which is included in the definition of 'land revenue', None of the three lists of the 7th Schedule of the Constitution permits or authorises a State to impose tax on royalty.

(9) Royalty which is indirectly connected with land, cannot be said to be a tax directly on land as a unit. Royalty is payable on a proportion of the mineral extracted. The Act does not use dead rent as a basis on which land is to be valued. Hence, there cannot be any doubt that the impugned legislation in its pith and substance is a tax on royalty and not a tax on land. [709E]

New Manek Chand Spinning & Weaving Mills Co. Ltd. & Ors. v. Municipal Corporation of the City of Allahabad & Ors., [1967] 2 SCR 679; S.C. Nawn v. W.T.O. Calcutta & Ors., [1969] 1 SCR 108; Asstt. Commissioner of Urban Land Tax & Ors. v. The Buckingham & Carnatic Co. Ltd. etc., [1970] 1 SCR 268; Second Gift 'Fax Officer, Mangalore etc. v. D.H. Nazareth etc., [1971] 1 SCR 195; Bhagwan Dass Jain v. Union of India, [1981] 2 SCR 808 and The Western India Theatres Ltd. v. The Cantonment Board, Poona Cantonment, [1959] 2 Suppl. SCR 63, referred to.

(10) Royalty is directly relatable only to the minerals extracted and on the principle that the general provision is excluded by the special one, royalty would be relatable to entries 23 & 50 of List II, and not entry 49 of List II. [713D]

(11) Royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature because section 9 of the Central Act covers the field and the State Legislature is denuded of its competence under entry 23 of List II. In any event, cess on royalty cannot be sustained under entry 49 of List II as being a tax on land. Royalty on mineral rights is not a tax on land but a payment for the user of land. [713F-G]

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Waverly Jute Mills Co. Ltd. v. Raymon & Co. (1) Pvt. Ltd., [1963] 3 SCR 209; Anant Mills Co. Ltd. v. State of Gujarat & Ors., [1975] 3 SCR 220; The Hingir-Rampur Coal Co. Ltd. & Ors. v. The State of Orissa & Ors., [1961] 2 SCR 537; State of Orissa v. M.A. Tulloch & Co., [1964] 4 SCR 461; Baijnath Kedia v. State of Bihar & Ors., [1970] 2 SCR 100: M/s. Laxminarayana Mining Co. Bangalore v. Taluk Dev Board, AIR 1972 Mysore 299; M. Lal & Ors. v. The State of Bihar & Ors., AIR 1965 Patna 491; Bherulal v. State of Rajasthan, AIR 1956 Rajasthan 161; Dr. S.S. Sharma & Anr. v. State of Punjab & Ors., AIR 1969 Pb. 79; Saurashtra Cement & Chemicals India Ltd. v. Union of India & Anr., AIR 1979 Guj. 180; L.N. Agarwalla & Ors. v. State of Orissa, AIR 1983 Orissa 210 and M/s Hira lal Rameshwar Prasad & Ors. v. The State of Madhya Pradesh & Ors., M.P. High Court Misc. Petition No. 410/83, referred to.

H.R.S. Murthy v. Collector of Chittoor & Anr., [1964] 6 SCR 666, overruled.

(12) The amounts of cess have been collected on the basis of the decision of this Court in H.R.S. Murthy's case. The Court is therefore justified in declaring the levy of the said cess under section 115 to be ultra vires the power of the State legislature prospectively only. The respondents will not be liable for any refund of cess already paid or collected. [714C-D & E]

Per G.L. Oza, J.

(1) Sub-clause (1) of Section 115 provides for levy of 45 naya paise for every rupee of land revenue payable to the Government. In the explanation a fiction is created whereby even the royalty payable has been included within the definition of 'land revenue'. [718A]

(2) The language of Entries 23 and 50 in List II clearly subjects the authority or jurisdiction on the State Legislature to any enactment made by the Parliament. Entry 23 talks of regulation and Entry 50 talks of taxes on mineral rights. It therefore could not be disputed that if the cess imposed under section 115 of the Madras Panchayats Act is a cess or tax on mineral rights then that jurisdiction could be exercised by the State Legislature subject to the law enacted by the Parliament. [715D-E]

(3) Unit of charge of royalty is not only land but land + labour + capital. It is therefore clear that if royalty is a tax or an imposition or a levy, it is not on land alone but it is a levy or a tax on mineral (land),

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labour and capital employed in extraction of the mineral. It therefore is clear that royalty if it is imposed by the Parliament it could only be a tax not only on land but on the three things stated above. [718H; 719A]

(4) When the Legislature included royalty, it went beyond its jurisdiction under Entry 49 of List II and therefore clearly is without the authority of law. [719D]

(5) This may lead to an interesting situation. As this cess on royalty is without the authority, the result will be that the cess is levied so far as lands other than the lands in which mines are situated are concerned but lands where mines are situated this levy of cess is not in accordance with the law. This anamoly could have been averted if the Legislature had used words 'surface rent' in place of royalty. Even if the lands where mines are situated and which are subject to licence and mining leases, even for those lands there is a charge on the basis of the surface of the land which is Sometimes described as surface rent or sometimes also as 'dead rent'. [719E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 62 (N) of 1970 etc. etc.

From the Judgment and Order dated 13.10. 1969 of the Madras High Court in W.A. No. 464 of 1967.

K. Parasaran, Attorney General, Dr. Y.S. Chitale, F.S. Nariman. T.S. Krishnamurthy Iyer, A.K. Ganguli, B. Sen, L.N. Sinha, R.N. Sachthey, R.B. Datar, R.F. Nariman, K.J. John, H.N. Salve, Praveen Kumar, A.V. Rangam, T.Sridharan, K.D. Prasad, Mrs. Naresh Bakshi, K. Rajendra Choudhary, Ms. Seita Vaidialingam, V. Krishnamurthy, Ms. A. Subhashini, N. Nettar, G.S. Narayan, Badrinath Babu, Anip Sachthey and S.K. Agnihotri for the appearing parties.

The Judgment of the Court were delivered by

SABYASACHI MUKHARJI, J. The question involved in these appeals, special leave petitions and writ petitions is, whether levy of cess on royalty is within the competence of the State Legislature. In order to appreciate the question, it is necessary to refer to certain facts. Civil appeal No. 62/79 is an appeal by special leave from the judgment and order of the High Court of Madras, dated 13th October, 1969, in writ appeal No. 464/67. The appellant is a public limited 698
company incorporated under the Indian Companies Act, 1913. The Company at all relevant times, used to manufacture cement in its factory at Talaiyuthu in Tirunelveli district, and at Sankaridrug in Salem district of Tamil Nadu. By G.O. Ms. No. 3668 dated 19th July, 1963, the Govt. of Tamil Nadu sanctioned the grant to the appellant mining lease for limestone and kankar for a period of 20 years over an extent of 133.91 acres of land in the village of Chinnagoundanur in Sankaridrug Taluk of Salem district. Out of the extent of 133.91 acres comprised in the mining lease, an extent of 126.14 acres was patta land and only the balance extent of 7.77 acres Govt. land. The lease deed was in accordance with the Mineral Concession Rules, 1960. The rates of royalty, dead rent and surface rent, were as follows:

> "Royalty:
> LIMESTONE
> Government Lands: Re.O.75 per tonne, but subject to a rebate of Re.O.38 per tonne to be given on Imestone beneficiated by froth flotation method.
> Patta Lands: Re.O.38 per tonne but subject to a rebate of Re.O. 19 per tonne to be given on limestone beneficiated by froth flotation method.
> KANKAR
> Government Lands: Five per cent of the sale price at the pit's mouth.
> Patta Lands: 2-1/2% of the sale price at the pit's mouth
> Dead rent:
> Government lands: Rs.25 (Rupees twentyfive only) per hectare per annum.
> Patta lands: Rs. 12/50 (Rupees twelve & naya paise fifty only) per hectare per annum.
> Surface rent and water rate: At such rate as the land revenue and cess assessable on the land are paid."

The appellant started mining operations soon after the execution

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of the lease deed and has ever since been paying the royalties, dead rents and other amounts payable under the Deed.

Under s. 115 of the Madras Panchayats Act (XXXV of 1958) (hereinafter called 'the Act'), as amended by Madras Act XVIII of 1964 (herein after called 'the amended Act'), as royalty the appellant was required to pay local cess @ 45 paise per rupee. It may be mentioned that the said imposition was with retrospective effect along with local cess surcharge under s. 116 of the Act. The contention of the appellant is and was, at all relevant times, that cess on royalty cannot be levied. This is the common question which falls for consideration and requires determination in these appeals and petitions.

To complete the narration of events, however, it has to be noted that the Collector sent a communication on 10th April, 1965, demanding cess or royalty payable under the Act on minerals carried on during the period 1.7.1961 to 31.12.1964, and the petitioner was threatened of serious consequences in case of default of payment on receipt of that communication. Thereafter, writ petition No. 1864/65 was filed in the High Court of Madras. By the judgment delivered and order passed on 23rd February, 1967. a learned Single Judge of the Madras High Court--Justice Kailasam dismissed the writ petition holding that the cess levied under s. 115 of the act is a tax on land and, as such, falls under Entry 49 of the State List of the Schedule VII of the Constitution, and was within the competence of the State legislature. Reliance was placed by the learned single Judge on the decision of this Court in H.R.S. Murthy v. Collector of Chittoor & Anr., [1964] 6 SCR 666. He held that the cess levied under s. 115 was a tax on land, though fixed with reference to the land revenue. In regard to s. 116 of the Act, the learned Single Judge held that the maximum limit had been prescribed by the Government by rules flamed under the Act, and, therefore, there was no arbitrariness about the levy.

Sub-section 1 of s. 115 of the Act enjoins that there shall be levied in every panchayat development block, a local cess at the rate of 45 paise on every rupee of land revenue payable to the Govt. in respect of any land for every Fasli. An Explanation to the said section was added and deemed always to have been incorporated by the Tamil Nadu Panchayats (Amendment and Miscellaneous Provisions) Act, 1964 being Tamil Nadu Act 18 of 1964, which provided as follows:

> "[Explanation.--In this section and in section 116, 'land revenue' means public revenue due on land and includes
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> water cess payable to the Government for water supplied or used for the irrigation of land, royalty, lease amount or other sum payable to the Government in respect of land held direct from the Government on lease or licence, but does not include any other cess or the surcharge payable under section 116, provided that land revenue remitted shall not be deemed to be land revenue payable for the purpose of this section.]"

Sub-section 2 of s. 115 of the Act provides that the local cess shall be deemed to be public revenue due on all the lands in respect of which a person is liable to pay local cess and all the said lands, the buildings upon the said lands and their products shall be regarded as the

security for the local cess. Sub-section 3, 4 (a), (b), (c) and (d) of s. 115 of the said Act deal with the application of the cess so collected for various purposes mentioned therein. In the controversy before us, the said provisions need not be considered.

Section 116 of the Act is as follows:

"116. Every panchayat union council may levy on every person liable to pay land revenue to the Government in respect of any land in the panchayat union a local cess surcharge at such rate as may be considered suitable as an addition to the local cess levied in the panchayat development block under section 115 provided that the rate of local cess surcharge so levied (shall not exceed two rupees and fifty paise on every rupee of land revenue) payable in respect of such land."

The words "shall not exceed two rupees & fifty paise on every rupee of land revenue" were substituted for the words "shall be subject to such maximum as may be prescribed" by section 3 of the Tamil Nadu Panchayats' (2nd Amendment and Validation) Act, 1970, and these words were substituted for the words "shall not exceed one rupee and fifty paise on every rupee of land revenue" by s. 2 of the Tamil Nadu Panchayats (Amendment) Act, 1972.

There was an appeal from the said decision of the learned Single Judge, to the division bench of the High Court. The division bench by its judgment and order dated 13th October, 1969, dismissed the writ appeal, and held that local cess authorised by s. 115 as aforesaid "was not land revenue but is a charge on the land itself and Section 115

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merely quantified on the basis of the quantum of land revenue". The division bench held that the meaning of the Explanation added to s. 115 was that the cess is levied as a tax on land and is measured with reference to land revenue, royalty, lease amount etc. as mentioned in the Explanation. The division bench also relied on the decision of this Court in H.R.S. Murthy (supra), and further held that in the aforesaid view of the matter, it was not possible to accept the contention that s. 115 of the Act read with the Explanation contravened in any manner s. 9 of the Mines and Minerals (Regulation and Development) Act, 1957. By leave granted by this Court on 12th January, 1970 the appeal has been filed.

The appellant is bound to pay royalty to the Govt. according to the rates provided in the Second Schedule to the said Act of 1957. Clause (1) of Part VII of the lease document provides as follows:

"The lessee/lessees shall pay the rent, water rate and royalties reserved by this lease at such times and in the manner provided in Part V and VI of these presents and shall also pay and discharge all taxes, rates, assessment and impositions whatsoever being in the nature of public demand which shall from time to time be charged, assessed or imposed by the authority of the Central and State Government upon or in respect of the premises and works of the lessee/lessees in common with other premises and work of a like nature except demands for land revenue."

As mentioned hereinbefore, there is an obligation of the lessee to pay rent and other charges mentioned in the said Clause, and all other Central and State Government dues

"except demands for land revenue". The question, therefore, which arises is, is cess on royalty a demand of land revenue or additional royalty?

For the appellants and/or petitioners we have heard Mr. Nariman,_ Dr. Chitale and Mr. Salve, and for the interveners, S/Shri K.D. Prasad, Rajendra Choudhary and Ms. Seita Vaidialingam have made their submissions. For the State of Tamil Nadu, Mr. Krishnamurthy Iyer and Mr. V. Krishnamurthy have made their submissions. We have had the advantage of the submissions made by learned Attorney General on behalf of Union of India. The issues are common in the writ petitions as well as in the appeal and in the special leave petitions. The question involved in the appeals and the writ petition is about the constitutional validity of Section 115(1) of the Act, in so far as it

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sought to levy as local cess @ 45 naya paise on every rupee of the land revenue payable to the Government, the meaning of land revenue being artificially expanded by the explanation so as to include royalty payable under the mining lease.

In this connection, it may be appropriate to refer to the Statement of Objects and Reasons for the amendment which stated, inter alia, as follows:

> "Under the Explanation to section 115 of the Act "land revenue" means public revenue due on land and includes water-cess payable to the Government for water supplied or used for the irrigation of land but does not include any other cess or surcharge payable under section 116. The Explanation does not cover "royalties", lease amount or other sum payable to the Government in respect of land held direct from the Government on lease or licence which were included in the definition of "land revenue" under the Madras District Boards Act, 1920. As under the Madras District Boards Act, 1920, certain panchayat union councils continued to levy the cess and surcharge under the Madras Panchayats Act, 1958 also. It is considered that the levy should be on the same basis as under the Madras District Boards Act, 1920. It is, therefore, proposed to include "royalty, lease amount and other sums payable to the Government" in the definition of land revenue in the Explanation to section 115 of the Act and also to validate the levy and collection of the cess and surcharge made hitherto on the said basis."

It is obvious that the said amendment was intended to bring royalty within the Explanation and the definition of land revenue in section 115 as well as s. 116 of the Act, and was effected by the Gazette Notification of 2nd September, 1964 by Act No. 18 of 1964. In order to appreciate the controversy, it has no be understood that in this case royalty was payable by the appellant which was prescribed under the lease deed, the terms whereof have been noted hereinbefore. The royalty had been fixed under the statutory rules and protected under those rules. The royalty was fixed under the Mines and Minerals (Regulation & Development) Act, 1957 which is a Central Act by which the control of mines and minerals had been taken over by the Central Government. It was an Act for the regulation of mines and development of minerals under the control of Union of India. That

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Act was to provide for the regulation of mines and the development of minerals under the control of the Union of India. Sec. 2 of the Act declares that it is expedient in the public interest that the Union of India should take under its control the regulation of mines and the development of the minerals to the extent provided in the Act. Section 9 of the Act provides as follows:

> "9. (1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.
>
> (2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.
>
> (2A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.
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> (3) The Central Government may, by notification in the Official Gazette. amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification:
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> Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years."

The Act was passed by virtue of the power of the Parliament
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under Entry 54 of list I of the 7th Schedule. Since the control of mines and the development of minerals were taken over by Parliament, the question that arises here is whether the levy or the impost by the State Legislature imposed in this case can be justified or sustained either under entry 49, 50 or 45 of list II of the 7th Schedule.

Courts of law are enjoined to gather the meaning of the Constitution from the language used and although one should interpret the words of the Constitution on the same principles of interpretation as one applies to an ordinary law but these very principles of interpretation compel one to take into account the nature and scope of the Act which requires interpretation. It has to be remembered that it is a Constitution that requires interpretation. Constitution is the mechanism under which the laws are to be made and not merely an Act which declares what the law is to be. See the observations of Justice Higgins in the Attorney General for the State of New South Wales v. The Brawery Employees Union of

New South Wales, [1908] 6 CLR 469 at 611-2.

In re: C.P. and Berar Sales of Motor Spirit & Lubricants Taxation Act, 1938, [1939] FCR at p. 1, Chief Justice Gwyer of the Federal Court of India relied on the observations of Lord Wright in James v. Common wealth of Australia, [1936] AC 578 and observed that a Constitution must not be construed in any narrow or pedantic sense, and that construction most beneficial to the widest possible amplitude of its powers, must be adopted. The learned Chief Justice emphasised that a broad and liberal spirit should inspire those whose duty it is to interpret the Constitution, but they are not free to stretch or pervert the language of the enactment in the interest of any legal or constitutional theory, or even for the purposes of supplying omissions or correcting supposed errors. A Federal Court will not strengthen, but only derogate from, its position, if it seeks to do anything but declare the law; but it may rightly reflect that a Constitution of a country is a living and organic thing, which of all instruments has the greatest claim to be construed ut res magis valeat guam pereat.--'It is better that it should live than that it should perish'.

Certain rules have been evolved in this period, and it is wellsettled now that the various entries in the three lists are not powers but fields of legislation. The power to legislate is given by Art. 246 and other articles of the Constitution. See the observations of this Court in Calcutta Gas Co. v. State of West Bengal, [1962] Suppl 3 SCR 1. The entries in the three lists of the Seventh Schedule to the Constitution,

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are legislative heads or fields of legislation. These demarcate the area over which appropriate legislature can operate. It is well settled that widest amplitude should be given to the language of these entries, but some of these entries in different lists or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. Then, it is the duty of the court to find out its true intent and purpose and to examine a particular legislation in its pith and substance to determine whether it fits in one or the other of the lists. See the observations of this Court in H.R. Banthia & Ors. etc. v. Union of India & Ors., [1970] 1 SCR 479 at 489 and Union of India v. Shri H.S. Dillon, [1971] 2 SCC 779 at 792. The lists are designed to define and delimit the respective areas of respective competence of the Union and the States. These neither impose any implied restriction on the legislative power conferred by Article 246 of the Constitution, nor prescribe any duty to exercise that legislative power in any particular manner. Hence, the language of the entries should be given widest scope, D.C. Rataria v. Bhuwalka Brothers Ltd., [1955] 1 SCR 1071, to find out which of the meaning is fairly capable because these set up machinery of the Govt. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an entry it would not be reasonable to import any limitation by comparing or contrasting that entry with any other one in the same List. It is in this background that one has to examine the present controversy.

Here, we are concerned with cess on royalty. One can have an idea as to what cess is, from the observations of Justice Hidayatullah, as the learned Chief Justice then was, in M/s Guruswamy & Co. etc. v. State of Mysore & Ors., [1967] 1 SCR 548 where at page 571, the learned Judge observed:

> "The word 'cess' is used in Ireland and_. is still in use in India although the word rate has replaced it in England. It means a tax and is generally used when the levy is for some special administrative expense which the name (health cess, education cess, road cess etc.) indicates. When levied as an increment to an existing tax, the name matters not for the validity of the cess must be judged of in the same way as the validity of the tax to which it is an increment."

The said observations were made in the dissenting judgment, but there was no dissent on this aspect of the matter. Relying on the aforesaid observations, Mr Nariman appearing for the appellant and

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the petitioners suggested that the impugned levy in this case is nothing but a tax on royalty and is therefore ultra vires the State legislature. Mr. Krishnamurthy Iyer appearing for the State of Tamil Nadu submitted that the cess in question in the instant case is a levy in respect of land for every fasli. He urged that the words "a local cess at the rate of 45 naya paise on every rupee of land revenue payable" qualify the words "land revenue". These words were only intended, according to Mr. Krishnamurthy Iyer, to mean cess payable. It is, however, not possible to accept this submission, in view of the obligation indicated by the language of the provisions. Cess is not on land, but on royalty which is included in the definition of 'land revenue'. None of the three lists of the 7th Schedule of the Constitution permits or authorises a State to impose tax on royalty. This levy has been sought to be justified under Entry 45 of List II of the 7th Schedule. Entry 45 deals with land revenue, which is a well-known concept and has existed in India before the Constitution came into force. In N.R. Reddy & Ors. v. State of A.P. & Ors., [1965] 2 Andhra Law Times 297, Jaganmohan Reddy, J. as the learned Judge then was of the Andhra Pradesh High Court, while sitting in a division bench observed that no land revenue Act existed in the composite State of Madras nor had the ryotwari system ever been established by legislative enactment. The learned Judge at p. 306 of the report observed that in the earlier days, sovereigns had in exercise of their prerogative right claimed a share of the produce of all cultivated land known as 'Rajabhagam' or by any of the various other names, and had fixed their share or its commuted money value from time to time, according to their will and pleasure. The learned Judge noted that as long as the share of the sovereign was being paid, the sovereign had no right to the possession of the lands, and the proprietorship of these lands was vested in the occupier, who could not be removed because another offered more. The right of the sovereign to a share in the produce as observed by the Govt. of Madras in 1856 "is not rent which consists of all surplus produce after paying the cost of cultivation and the profits of agricultural stock but land revenue only which ought, if possible, to be so lightly assessed as to leave a surplus or rent to the occupier, when he in fact lets the land to others or retains it in his own hands." It was noted that the amount of tax that was levied before the Mohamedan Rule, amounted to 1/8th, 1/6th or 1/12th according to Manu depending on the differences in the soil and the labour necessary to cultivate it, and it even went up to 1/4th part, in times of urgent necessity, as of war or invasion. The later commentators, Yajnavalkya, Apastamba, Gautama, Baudhayana and Narada, have all

asserted not only the right but the extent of the share. When the British came to India they followed not only the precedent
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of the previous Mohamedan Rulers who also claimed enormous land revenue, with this difference that what the Mohamedan Rulers claimed they could never fully realise, but what the British Rulers claimed they realised with vigour. It is not necessary to refer in detail how land revenue developed in India after the advent of the British Rule. There was an appeal from the said decision of the High Court of Andhra Pradesh and this Court dismissed the appeal in State of A. P. v. N.R. Reddy & Ors., [1967] 3 SCR 28.

It is, however, clear that over a period of centuries, land revenue in India has acquired a connot active meaning of share in the produce of land to which the King or the Govt. is entitled to receive. It was contended on behalf of the appellants that the impugned measure being a tax, not on share of the produce of the land but on royalty; royalty being the return received from the produce of the land, revenue was payable for winning minerals from the land. In the premises it was contended that it cannot be attributable to Entry 45 of List II of the 7th Schedule, being not a land revenue. It has, however, to be borne in mind that Explanation to Section 115(1) was added and there was an amendment as we have noted before. That very Explanation makes a distinction between land revenue as such and royalty which by amendment is deemed to be land revenue. It is, therefore, recognised by the very force of that Explanation and the amendment thereto that the expression 'royalty' in sections 115 & 116 of the Act cannot mean land revenue properly called or conventionally known, which is separate and distinct from royalty.

It was also contended on behalf of the respondent State of Tamil Nadu of Mr. Krishnamurthy Iyer that it could also be justified under Entry 49 of List II of the 7th Schedule as taxes on lands and buildings. This, however, cannot be accepted. In this connection, reference may be made to the decision of this Court in Raja Jagannath Baksh Singh v. The State of U.P. & Anr., [1963] 1 SCR 220 where at p. 229 it was indicated that the expression 'lands' in Entry 49 is wide enough to include agricultural land as well as non-agricultural land. Gajendragadkar, J. as the learned Chief Justice then was, observed that the cardinal rule of interpreting the words used by the Constitution in conferring legislative power was that these must receive the most liberal construction and if they are words of wide amplitude the construction must accord with it. If general word was used, it must be so construed so as to extend to all ancillary or subsidiary matters that can reasonably be included in it. So construed, there could not be any doubt that the word 'land' in Entry 48, List II of the 7th Schedule
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includes all land whether agricultural or non-agricultural. Hence, since the impugned Act imposed tax on land and building which was within the competence of the State Legislature and its validity was beyond challenge but the Court observed that as there was Entry 46 in List H which refers to taxes on agricultural income, it is clear that agricultural income is not included in Entry 49. If the State Legislature purports to impose a tax on agricultural income it would not be referable to Entry 49. Mr. Krishnamurthy Iyer relied on the said principle. But in the instant case, royalty being that which is payable on the extraction from the land and cess being an additional charge on that royalty, cannot by the

parity of the same reasoning, be considered to be a tax on land. But since it was not a tax on land and there is no Entry like Entry 46 in the instant situation like the position before this Court in the aforesaid decision, enabling the State to impose tax on royalty in the instant situation, the State was incompetent to impose such a tax. There is a clear distinction between tax directly on land and tax on income arising from land. The aforesaid decision confirmed the above position. In New Manek Chand Spinning & Weaving Mills Co. Ltd. & Ors., v. Municipal Corpn. of the City of Allahabad & Ors., [1967] 2 SCR 679 at 696, this Court after referring to the several decisions observed that Entry 49 of list II of the 7th Schedule only permitted levy of tax on land and building. It did not permit the levy of tax on machinery contents in or situated on the building even though the machinery was there for the use of the building for a particular purpose. Rule 7(2) of the Bombay Municipal Corporation Rules was held to be accordingly ultra vires in that case. In S.C. Nawn v. W.T.O., Calcutta & Ors., [1969] 1 SCR 108 this Court had occasion to consider this and upheld the validity of the Wealth Tax Act, 1957 on the ground that it fell within Entry 86 of List I and not Entry 49 of List II. Construing the said Entry, this Court observed that Entry 49 list II contemplated a levy on land as a unit and the levy must be directly imposed on land and must bear a definite relationship to it. Entry 49 of list Il was held to be more general in nature than Entry 86, list I, which was held to be more specific in nature and it is well-settled that in the event of conflict between Entry 86, list I and Entry 49 of list II, Entry 86 prevails as per Article 246 of the Constitution.

In Asstt. Commissioner of Urban Land Tax & Ors. v. The Buckingham & Carnatic Co. Ltd. etc., [1970] 1 SCR 268 at 278, this Court reiterated the principles laid down in S.C. Nawn's case (supra) and held that entry 49 of list II was confined to a tax that was directly on land as a unit. In Second Gift Tax Officer, Mangalore etc. v. D.H. Nazareth etc., [1971] 1 SCR 195 at 200 it was held that a tax on the gift
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of land is not a tax imposed directly on land but only on a particular user, namely, the transfer of land by way of gift. In Union of India v. H.S. Dhillon, (supra), this Court approved the principle laid down in S.C. Nawn's case as well as Nazareth's case (supra). In Bhagwan Dass Jain v. Union of India, [1981] 2 SCR 808 at 816 this Court made a distinction between the levy on income from house property which would be an income tax, and the levy on house property itself which would be referable to entry 49 list II. It is, therefore, not possible to accept Mr. Krishnamurthy Iyer's submission and that a cess on royalty cannot possibly be said to be a tax or an impost on land. Mr. Nariman is right that royalty which is indirectly connected with land, cannot be said to be a tax directly on land as a unit. In this connection, reference may be made to the differentiation made to the different types of taxes for instance, one being professional tax and entertainment tax. In the Western India Theatres Ltd. v. The Cantonment Board, Poona Cantonment, [1959] 2 Suppl. SCR 63 at 69 it was held that an entertainment tax is dependent upon whether there would or would not be a show in a cinema house. If there is no show, there is no tax. It cannot be a tax on profession or calling. Professional tax does not depend on the exercise of one's profession but only concerns itself with the right to practice. It appears that in the instant case also no tax can be levied

or is leviable under the impugned Act if no mining activities are carried on. Hence, it is manifest that it is nor related to land as a unit which is the only method of valuation of land under entry 49 of list II, but is relatable to minerals extracted. Royalty is payable on a proportion of the minerals extracted. It may be mentioned that the Act does not use dead rent as a basis on which land is to be valued. Hence, there cannot be any doubt that the impugned legislation in its pith and substance is a tax on royalty and not a tax on land.

On behalf of the State of Tamil Nadu, learned counsel Mr. Krishnamurthy Iyer sought to urge that it can also be sustained under entry 50, list II. Entry 50 of list II of the 7th Schedule deals with taxes on mineral rights subject to limitation imposed by Parliament relating to mineral development. Entry 23 of List II deals with regulation of mines and mineral development subject to the provisions of list I with respect to regulation and development under the control of the Union and entry 54 in list I deals with regulation of mines and minerals under the control of Union declared by the Parliament by law to be expedient in public interest. Even though minerals are part of the State List they are treated separately, and therefore the principle that the specific excluded the general, must be applied. See the observations of Waverly Jute Mills Co. Ltd. v. Raymon & Co. (1) Pvt. Ltd., [1963] 3
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SCR 209 at 220, where it was held that land in entry 49 of list II cannot possibly include minerals.

In this connection, learned Attorney General appearing for the Union of India submitted before us that in order to sustain the levy, the power of the State Legislature has to be found within one or more of the entries of list II of the 7th Schedule. The levy in question has to be either a tax or a fee or an impost. If it is neither a tax nor a fee then it should be under one of the general entries under List II. The expression 'land' according to its legal significance has an indefinite extent both upward and downwards, the surface of the soil and would include not only the face of the earth but everything under it or over it. See the observations in Anant Mills Co. Ltd. v. State of Gujarat & Ors., [19751 3 SCR 220 at 249. The minerals which are under the earth, can in certain circumstances fall under the expression 'land' but as tax on mineral rights is expressly covered by entry 50 of list II, if it is brought under the head taxes under entry 49 of list II, it would render entry 50 of list II redundant. Learned Attorney General is right in contending that entries should not be so construed as to make any one entry redundant. It was further argued that even in pith and substance the tax fell to entry 50 of list II, it would be controlled by a legislation under entry 54 of list I.

On the other hand, learned Attorney General submitted that if it be held to be a fee, then the source of power of the state legislature is under entry 66 read with entry 23 of list II. Here also the extent to which regulation of mines and mineral development under the control of the Union is declared by Parliament by law to be expedient in the public interest, to the extent such legislation makes provisions will denude the State Legislature of its power to override the provision under entry 50 of list II. In view of the Parliamentary legislation under entry 54, list I and the declaration made under s. 2 and provisions of s. 9 of the Act, the State Legislature would be overridden to that extent. S. 2 declares that it is expedient in the public

interest that Union should take under its control the regulation of mines and the development of minerals to the extent provided therein. In this connection, reference may be made to the decision of this Court in The Hingir-Rampur Coal Co. Ltd. & Ors. v. The State of Orissa & Ors., [1961] 2 SCR 537. See also the observations in State of Orissa v. M.A. TuIloch & Co., [1964] 4 SCR 461 and Baijnath Kedia v. State of Bihar & Ors., [1970] 2 SCR 100 at 111-115.

Our attention was drawn to the decision of the division bench

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judgment of the High Court of Mysore in M/s. Laxminarayana, Mining Co., Bangalore v. Taluk Der. Board., AIR 1972 Mysore 299. There speaking for the court, one of us, Venkataramiah J- of the Mysore High Court, as the learned Chief Justice then was, observed that a combined reading of entries 23 and 50 in list II and entry 54 of list I, establishes that as long as the Parliament does not make any law in exercise of its power under entry 54, the powers of the State Legislature in entries 23 & 50 would be exercisable by the State Legislature. But when once the Parliament makes a declaration by law that it is expedient in the public interest to make regulation of mines and minerals development under the control of the Union, to the extent to which such regulation and development is undertaken by the law made by the Parliament, the power of the State Legislature under entries 23 & 50 of List II are denuded. There the court was concerned with the Mysore Village Panchayats & Local Boards Act, 1959. Thus, it was held that it could not, therefore, be said that even after passing of the Central Act, the state legislature by enacting s. 143 of the Act intended to confer power on the Taluk Board to levy tax on the mining activities carried on by the persons holding mineral concessions. It followed that the levy of tax on mining by the Board as per the impugned notification was unauthorised and liable to be set aside. At p. 306 of the said report, it was held that royalty under s. 9 of the Mines and Minerals Act was really a tax.

To the similar effects are the observations of the High Court of Patna in M. Lal & Ors. v. The State of Bihar & Ors., AIR 1965 Patna 491 at 494. Mr. Krishnamurthy Iyer, however, referred to the decision of this Court in H.R.S. Murthy's case (supra). There under the terms of a mining lease the lessee worked the mines and won iron-ores in a tract of land in a village in Chittor district and bound himself to pay a dead rent if he used the leased land for the extraction of iron ore, to pay a royalty on iron ore if it were used for extraction of iron and in addition to pay a surface rent in respect of the surface area occupied or used. In the said decision the legislative competence of ss. 78 & 79 of the Madras District Boards Act was upheld by which land cess was made payable on the basis of royalty. This Court proceeded on the basis that other cess related to land and would therefore be covered by entry 49 of list II. It was held that land cess paid on royalty has a direct relation to the land and only a remote relation with mining. This, with respect, seems to be not a correct approach. It was further observed that it was not necessary to consider the meaning of the expression 'tax on mineral right' following under Entry 50 of List II in as much as according to this Court, Parliament has not made any tax on mineral rights. This is not a correct basis.

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In H.R.S. Murthy's case (supra), at p. 676 of the report, it was observed by this Court as follows:

> "When a question arises as to the precise head of legislative power under which a taxing statute has been passed, the subject for enquiry is what in truth and substance is the nature of the tax. No doubt, in a sense, but in a very remote sense, it has relationship to mining as also to the mineral won from the mine under a contract by which royalty is payable on the quantity of mineral extracted. But that, does not stamp it as a tax on either the extraction of the mineral or on the mineral right. It is unnecessary for the purpose of this case to examine the question as to what exactly is a tax on mineral rights seeing that such a tax is not leviable by Parliament but only by the State and the sole limitation on the State's power to levy the tax is that it must not interfere with a law made by Parliament as regards mineral development. Our attention was not invited to the provision of any such law created by Parliament. In the context of ss. 78 and 79 and the scheme of those provisions it is clear that the land cess is in truth a "tax on lands" within Entry 49 of the State List."

It seems, therefore, that attention of the Court was not invited to the provisions of Mines and Minerals (Development & Regulation) Act, 1957 and s. 9 thereof. S. 9(3) of the Act in terms states that royalties payable under the 2nd Schedule of the Act shall not be enhanced more than once during a period of 4 years. It is, therefore, a clear bar on the state legislature taxing royalty so as to in effect amend 2nd Schedule of the Central Act. In the premises, it cannot be right to say that tax on royalty can be a tax on land, and even if it is a tax, if it falls within entry 50 will be ultra vires the State legislature power in view of s. 9(3) of the Central Act. In Hingir--Rampur Coal Co. Ltd. v. The State of Orissa (supra), Wanchoo J. in his dissenting judgment has stated that a tax on mineral rights being different from a duty of excise, pertains only to a tax that is leviable for the grant of the right to extract minerals, and is not a tax on minerals as well. On that basis, a tax on royalty would not be a tax on mineral rights and would therefore in any event be outside the competence of the state legislature.

The Rajasthan, Punjab, Gujarat and Orissa High Courts have held that royalty is not a tax. See. Bherulal v. State of Rajasthan & Anr., AIR 1956 Rajasthan 161-162; Dr. S.S. Sharma & Anr. v. State of
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Pb. & Ors., AIR 1969 Pb. 79 at 84; Saurashtra Cement & Chemicals India Ltd. v. Union of India & Anr., AIR 1979 Guj. 180 at 184 and L.N. Agarwalla & Ors. v. State of Orissa & Ors., AIR 1983 Orissa 210.

It was contended by Mr. Krishnamurthy Iyer that the State has a right to tax minerals. It was further contended that if tax is levied, it will not be irrational to correlate it to the value of the property and to make some kind of annual value basis of tax without intending to tax the income. In view of the provisions of the Act, as noted hereinbefore, this submission cannot be accepted. Mr. Krishnamurthy Iyer also further sought to urge that in entry 50 of list II, there is no limitation to the taxing power of the State. In view of the principles mentioned hereinbefore and the expressed provisions of s. 9(2) of the Mines &

Minerals (Regulation & Development) Act, 1957, this submission cannot be accepted. This field is fully covered by the Central legislation.

In any event, royalty is directly relatable only to the minerals extracted and on the principle that the general provision is excluded by the special one, royalty would be relatable to entries 23 & 50 of list II, and not entry 49 of list II. But as the fee is covered by the Central power under entry 23 or entry 50 of list II, the impugned legislation cannot be upheld. Our attention was drawn to a judgment of the High Court of Madhya Pradesh in Miscellaneous Petition No. 410/83--M/s Hiralal Rameshwar Prasad & Ors. v. The State of Madhya Pradesh & Ors., which was delivered on 28th March, 1986 by a Division Bench of the High Court. J.S. Verma, Acting Chief Justice, as His Lordship then was, held that development cess by s. 9 of the Madhya Pradesh Karadhan Adhiniyam, 1982 is ultra vires. It is not necessary in the view taken by us, and further in view that the said decision is under appeal in this Court, to examine it in detail.

In the aforesaid view of the matter, we are of the opinion that royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature because s. 9 of the Central Act covers the field and the State Legislature is denuded of its competence under entry 23 of list II. In any event, we are of the opinion that cess on royalty cannot be sustained under entry 49 of list II as being a tax on land. Royalty on mineral rights is not a tax on land but a payment for the user of land.

Mr. Krishnamurthy Iyer, however, submitted that in any event, the decision in H.R.S. Murthy's case (supra) was the decision of the Constitution Bench of this Court. Cess has been realised on that basis

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for the organisation of village and town panchayats and comprehensive programme of measures had been framed under the National Extension Service Scheme to which our attention was drawn. Mr. Krishnamurthy Iyer further submitted that the Directive Principle of State Policy embodied in the Constitution enjoined that the State should take steps to organise village panchayats and endow them with power and authority as may be necessary to enable them to function as units of self-Government and as the amounts have been realised on that basis, if at all, we should declare the said cess on royalty to be ultra vires prospectively. In other words, the amounts that have been collected by virtue of the said provisions, should not be declared to be illegal retrospectively and the State made liable to refund the same. We see good deal of substance in this submission. After all, there was a decision of this Court in H.R.S. Murthy's case (supra) and amounts have been collected on the basis that the said decision was the correct position. We are, therefore, of the opinion that we will be justified in declaring the levy of the said cess to be ultra vires the power of the State Legislature prospectively only.

In that view of the matter, the appeals must, therefore, be allowed and the writ petitions also succeed to the extent indicated above. We declare that the said cess by the Act under s. 115 is ultra vires and the respondent State of Tamil Nadu is restrained from enforcing the same any further. But the respondents will not be liable for any refund of cess already paid or collected. The appeals are disposed of accordingly. The special leave petitions and writ petitions are also disposed of in those terms. In the facts and the circumstances of the case, the parties will pay and bear

their own costs.

OZA, J. While I agree with the conclusions reached by my learned brother Hon' Mukharji, J. I have my own reasons for the same. The main argument in favour of this levy imposed by the State Legislature is on the basis of Entry 49 in List II of the Seventh Schedule conferring jurisdiction on the State Legislature. The question therefore to be determined is whether the jurisdiction of the State Legislature under Item 49 of List II could be so exercised to impose a cess on the royality prescribed under Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957.

The entries which are relevant for the purpose of determining this questions are:

Entry 54 List I reads:

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"Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

Entry 23 List II reads:

"Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

Entry 49 List II reads:

"Taxes on lands and buildings."

Entry 50 List II reads:

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

The language of Entries 23 and 50 in List I1 clearly subjects the authority or jurisdiction on the State Legislature to any enactment made by the Parliament. Entry 23 talks of regulation and Entry 50 talks of taxes on mineral rights. It therefore could not be disputed that if the cess imposed under section 115 of the Madras Village Panchayat Act is a cess or tax on mineral rights then that jurisdiction could be exercised by the State Legislature subject to the law enacted by the Parliament. The Parliament in Section 9(1) of the Mines and Minerals (Regulation and Development) Act, 1957 has fixed the limits of royality on the mining rights. It was therefore contended on behalf of the State that in fact what is imposed under Section 115 is not a cess on the mining rights or on royality but is a tax on land which clearly falls within the authority of the State legislature in Entry 49 of List II.

Section 9 of the Mines and Minerals (Regulation and Development) Act reads:

"9(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his gent, manager, employee, contractor or sub-lessee from the leased area

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after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager,

employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2A) The holder of a mining lease, whether granted before or after the commence of the Mines and Minerals (Regulation and Development) Amendment Act, 1972 shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workmen does not exceed one-third of a tonne per month.

(3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification.

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years."

It is clear that by this Act alongwith Schedule limits on royality has been fixed and the authority has been given to Parliament alone to vary it and that too not more than once in a period of three years. Admittedly royality as not based on the area of land under mining but per unit of minerals extracted. Section 115 of the Madras Village Panchayat Act reads as under:

"(1) There shall not be levied in every panchayat development block, a local cess at the rate of 45 naye paise on every rupee of land revenue payable to the Government in respect of any land for every Fasli.

Explanation: In this Section and in section 116, 'land revenue' means public revenue due on land and includes water-cess payable to the Government for water supplied

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or used for the irrigation of land, royalty, lease amount for other sum payable to the Government in respect of land held direct from the Government on lease or licence, but does not include any other cess or the surcharge payable under Section 116, provided that land revenue remitted shall not be deemed to be land revenue for the purpose of this Section.

(2) The local cess payable under this Sub-section (1) shall be deemed to be public revenue due on the lands in respect of which a person is liable to pay local cess and all the said lands, the buildings upon the said lands and their products shall be regarded as the security for the local cess.

(3) The provisions of the Madras Revenue Recovery Act, 1864 (Madras Act II of 1864) shall apply to the payment and recovery of the local cess payable under this Act just as they apply to the payment and recovery of the revenue upon the lands in respect of which the local cess under this act is payable.

(4)(a) Out of the process of the local cess so collected in every panchayat development block, a sum representing four-ninths of the

proceeds shall be credited to the Panchayat Union (Education) Fund.

(b) Out of the proceeds of the local cess collected in every panchayat town in a panchayat development block, a sum representing two-ninths of the said proceeds shall be credited to the town panchayat fund.

(c) Out of the balance of the local cess credited in the panchayat development block, such percentage as the panchayat union council may fix shall be credited to the village panchayat fund, and the percentage shall be fixed so as to secure as nearly as may be that the total income derived by all the village panchayats in the panchayat union does not fall short of an amount calculated at 20 naye paise for each individual of the village population in the panchayat union.

(d) The balance of the proceeds of the local cess collected in the panchayat development block shall be cre-

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dited to the funds of the panchayat union council."

The explanation to sub-clause I is the subject matter of controversy in this case. Sub-clause I provides for levy of 45 naye paise for every rupee of land revenue payable to the Government in the explanation a fiction is created thereby even the royalty payable have been included within the definition of "land revenue". As it provides "royalty, lease amount or any other sum payable to the Government in respect of land." This phraseology has been incorporated by an amendment in 1964 by the Madras Village Panchayat Amendment Act, 1964 Section 13 wherein the explanation to Section 115 was substituted and substituted retrospectively wherein this royalty has also been included in the definition of 'land revenue' and it is on this ground that it was mainly contended that land revenue being a tax on land is within the authority of the State Legislature under Item 49 of List II and therefore the cess which is a tax on land revenue itself or an imposition on the land revenue and hence could not be anything else but a tax falling within the ambit of tax on land as provided by entry 49 List II and it was therefore contended that it would not fall within the ambit of entry 50 List II as if it falls within the ambit of entry 50 of List II, it would be beyond the authority of the State legislature as by passing Mines and Minerals (Regulation and Development) Act, 1957 the Parliament has denuded the State Legislature of its authority to levy any tax on mining rights.

Whether royality is a tax is not very material for the purpose of determination of this question in this case. It is admitted that royality is charged on the basis of per unit of minerals extracted. It is no doubt true that mineral is extracted from the land and is available, but it could only be extracted if there are three things:

(1) Land from which mineral could be extracted.

(2) Capital for providing machinery, instruments and other requirements.

(3) Labour

It is therefore clear that unit of charge of royalty is not only land but land + Labour + Capital. It is therefore clear that if royalty is a tax or an imposition or a levy, it is not on land alone but it is a levy or a tax on mineral (land), labour and capital employed in extraction of the

mineral. It therefore is clear that royalty if is imposed by the Parlia-
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ment it could only be a tax not only on land but no these three things stated above.

It is not in dispute that the cess which the Madras Village Panchayat Act proposes to levy is nothing but an additional tax and originally it was levied only on land revenue, apparently land revenue would fall within the scope of entry 49 but it could not be doubted that royalty which is a levy or tax on the extracted mineral is not a tax or a levy on land alone and if cess is charged on the royalty it could not be said to be a levy or tax on land and therefore it could not be upheld as imposed in exercise of jurisdiction under Entry 49 List II by the State Legislature.

Thus it is clear that by introducing this explanation to Section 115 clause (1) widening the meaning of word 'land revenue' for the purposes of Section 115 and 116. When the Legislature included Royalty, it went beyond its jurisdiction under entry 49 List II and therefore clearly is without the authority of law. But this also may lead to an interesting situation. This cess levied under Section 115 of the Madras Village Panchayat Act is levied for purposes indicated in the scheme of the Act and it was intended to be levied on all the lands falling within the area but as this cess on royalty is without the authority the result will be that the cess is levied so far as lands other than the lands in which mines are situated are concerned but lands where mines are situated this levy of cess is not in accordance with that law. This anomaly could have been averted if the Legislature in this explanation had used words 'surface rent' in place of royalty. Even if the lands where mines are situated and which are subject to licence and mining leases even for those lands there is a charge on the basis of the surface of the land which is sometimes described as surface rent or sometimes also as 'dead rent'. It could not be doubted that if such a surface rent or dead rent is a charge or an imposition on the land only and therefore will clearly fall within the purview of entry 49 List H and if a cess is levied on that it will also be justified as tax on land falling within the purview of entry 49 and it will also be uniform as this cess would be levied in respect of the lands irrespective of the fact as to whether the land is one where a mine is situated or land which is only used for other purposes for which land revenue is chargeable.

R.S.S. Appeal allowed.
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