difficulty for the Legislature in implementing the sense in which we are asked to construct these words by Mr. Sodhi by saying that every article used in the construction of the power house would be exempted from sales-tax. Words to such effect alone could exempt items like timber or bricks which though used in the construction of the power house can in no sense be said to have been used in the generation or distributon of electric energy. I am in full agreement with the conclusion reached by my learned brother and have no hesitation in answering the question in the negative.

K.S.K.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and Gurdev Singh, JJ.

DR. SHANTI SAROOP AND ANOTHER,—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2198 of 1966.

May 20, 1968.

Mines and Minerals (Regulation and Development) Act (LXVII of 1957)—S. 15— Punjab Minor Minerals Concession Rules (1964)—Rules 20, 21, 34 and 37—Word "royalty" as used in mineral and oil operations—Meaning of—Rules 20 and 21—Payment of royalty under—Whether tax or fee—Royalty recoverable as arrears of land revenue—Whether gives it the character of a tax—Rules 34 and 37—Mining leases granted by persons other than Government—Royalty for such leases—To whom payable—Power of taxation—Whether can be delegated to subordinate authority—S. 15—Authority to frame rules given to the State under—Whether embraces to levy royalty—Rule 20—Whether valid—Constitution of India (1950)—Art. 226—High Court—Whether can determine disputed questions of title.

Held, that word 'royalty' has a well-recognised and defined meaning. As used in Mineral and Oil Operations it means share of produce or profit paid to the owner of the land for granted privilege of producing minerals therefrom and excludes the concept of fee—simple title to minerals in place. Royalty as

originally conceived was portion of mineral extracted or payment for privilege of extracting minerals, or for use of a mine or of land for that purpose and embodies basic idea of payment for use of mine or of premises with acquisition of title to severed mineral as incidental. It is, in essence, the consideration which the owner of a property may receive from those whom he allows the use of that property or entrusts it for exploitation of mineral resources contained therein. (Para 23)

Held, that under rules 20 and 21 of Punjab Minor Minerals concession Rules, 1964, the payment of the royalty to the Government for removing a minor mineral is made a condition of a mining lease and the royalty is to be paid by the lessee or the holder of the mining lease in respect of any minor mineral removed by him from the land leased out to him at the rates specified in the First Schedule to the Rules, which can be revised by the Government under the provisions of sub-rule (2) of rule 20 from time to time. It is thus not a charge or impost on the occupier of the land but consideration payable by holder of a mining lease from the Government for the privilege of extracting minor minerals from the land leased out to him. Royalty under these rules is levied on the minor minerals extracted by the holder of a mining lease. So, if a person is merely in occupation of land which contains minor minerals, he is not liable to pay any royalty, but it is only when he holds a mining lease and by virtue of that extracts one or more minor minerals that he is called upon to pay royalty to the Government where the lease is in respect of the land in which minor minerals vest in the Government. Royalty thus has its basis in the contract between the grantor and the holder of a mining lease, and it is not a compulsory charge for holding such lease but payment to the owner of the minerals for the privilege of extracting the minor minerals computed on the basis of the quantity actually extracted and removed from the leased area. Accordingly royalty is not of the same nature as a tax or a fee. Royalty is more akin to rent or compensation payable to an owner by the occupier or leassee of land for its use or exploitation of the mineral resources contained therein. Merely because the provision with regard to royalty is made by virtue of the rules relating to the regulation of the mining leases and a uniform rate is prescribed, it does not follow that it is a compulsory exaction in the nature of tax or impost. (Para 46)

Held,: that royalty due to the Government, no doubt, can be recovered as arrears of land revenue under rule 53 of the Punjab Rules, but that does not suffice to give it the character of a tax, as under that rule even contract money, fees and other sums due to the Government under these Rules can be recovered in the same manner. (Para 54)

Held, that rule 34 of the Rules clearly provides that Chapter III of the Rules shall apply only to grant of mining leases in respect of the land in which the

minor minerals vest exclusively in a person other than the Government. Under Rule 37(1) the provisions with regard to the royalty contained in rule 20 and rule 21 have been made applicable to mining leases granted by person other than the Government. Royalty in respect of such mining leases for extracting minor minerals has to be paid not to the Government, but to the person granting the lease in whom the minor minerals vest. It thus cannot be said that so far as such leases are concerned, there is any charge or impost levied by the Government. All that the Government has done by framing Rules contained in Chapter III is to lay down certain statutory conditions for the grant of mining leases, to provide for the payment of royalty to persons in whom such minor minerals vest and to fix a uniform rate of such payments. Obivously, it is not a compulsory levy by the Government as it is based on a condition in the mining lease. (Paras 47 and 48)

Held that though the power of taxation vests in the legislature, under certain circumstances it can delegate the same to a subordinate authority, but while delegating it must indicate the policy and guide line for fixation of rates or, at any rate, the ceilings beyond which the taxation is not to proceed. (Para 65)

Held, that since under section 15(1) of the Act in exercise of its power to regulate mining leases, the State is entitled to lay down the conditions for such leases, and its authority to provide for the payment of royalty and to lay down a uniform rate of royalty for a particular mineral cannot be questioned. The Parliament never intended to exclude the authority to provide for payment of royalty while conferring power on the State Government under section 15(1) of the Act to make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith. (Para 69)

Held, that as royalty is not a tax or a fee, its demand under rule 20 of the Punjab Minor Minerals Concession Rules, 1964, framed under the rule-making power of the State Government under section 15(1) of the Mines and Minerals (Regulation and Development) Act, 1957, is perfectly valid and the State Government is competent to charge royalty on minor minerals extracted from the land in which the minor minerals rights vest in it.

(Para 70)

Held, (per Shamsher Bahadur, J) that it is not for the High Court to determine disputed questions of title, and whenever the right of the Government to charge royalty under these Rules is disputed it will have to be established in an appropriate Court that the property in minor minerals does, in fact, vest in the Government. (Para 82)

Petition under Articles 226 *and* 227 *of the Constitution of India, praying that a writ of* certiorari, mandamus *or any other appropriate writ, direction or order*

be issued declaring Rule 20 *of the Punjab Minor Minerals Concession Rules,* 1964, *to be* ultra vires *and unconstitutional.*

R. SACHAR, ADVOCATE, for the Petitioners.

ANAND SARUP, ADVOCATE-GENERAL, HARYANA, for the Respondents.

JUDGMENT

GURDEV SINGH, J.—This order will dispose of 14 petitions under Articles 226 and 227 of the Constitution (Civil Writ No.s 2198 of 1966 and 159, 206, 416, 438, 439, 443; 484; 517; 518; 636; 2547 and 2720 of 1967), in which common questions of law have been raised. Dr. Shanti Sarup Sharma and other petitioners have been engaging in and carrying on the business of manufacture and sale of bricks in various parts of the State of Punjab, as it stood before its reorganisation in the year 1966. All of them hold valid licences to carry on this trade in accordance with the provisions of the Punjab Control of Bricks supplies Order, 1956, and they are running brick-kilns for manufacture of bricks in the lands, of which some of the petitioners are owners, and the other lessees.

(2) In the year 1957 the Parliament enacted the Mines and Minerals (Regulation and Development) Act LXVII of 1957, (hereinafter called the Act) for regulation of mines and development of minerals under the control of the Union. In section 3 of the Act "minerals" are defined to include all minerals except mineral oils. Provisions regarding the prospecting licences and mining leases are contained in sections 4 to 12. Section 13 empowers the Central Government to make rules for regulating grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith. By Section 14 prospecting licences and mining leases in respect of minor minerals have been excluded from the operation of Sections 4 to 13 and the authority to make rules in respect of minor minerals has been given to the State Governments under section 15 of the Act, which is in these words:—

> 15. "(1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith.

(2) Until rules are made under sub-section (1), any rules made by a State Government regulating the grant of prospecting licences and mining leases in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force."

(3) The expression "minor minerals" is defined in Section 3 of the Act in these words:—

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

(4) Availing of the powers delegated under section 15, the Governor of the Punjab promulgated the Punjab Minor Minerals Concession Rules, 1964 (hereinafter refered to as the Rules), published in the Punjab Government Gazette on 2nd May, 1964. Rule 2(b) thereof defined the "Minor Minerals" in the same words as in the Central Act LXVII of 1957. The Central Government by its notification, dated 1st June, 1958 (Annexure R. 1) had, however, extended the definition of the "Minor Minerals" so as to include brick-earth and several other items.

(5) Provision for charging royalty was made in rule 20 and payment of royalty was made one of the conditions of mining leases under rules 21 and 31, providing *inter alia* that the lessee shall pay royalty on minor minerals despatched from the leased area at the rates specified in the First Sshedule. Availing of these provisions, the Punjab Government decided to charge from the brick kiln owners royalty on brick-earth with effect from the 22nd April, 1965, at the rates prescribed in the First Schedule to the rules which came to 0.87 P. per thousand bricks. Instructions were accordingly, issued by the Director of Industries to all District Industries Officers and Assistant District Industries Officers to recover royalty at that rate from the various brick-kiln owners. These instructions are contained in the letter of the Director of Industries, Punjab, dated 25th June, 1965 (marked Annexure Rule 2 in Civil Writ No. 2198 of 1966), relevant portion of which is reproduced below:—

"A representation was submitted by the Punjab Brick Kiln Owners' Association, Hoshiarpur, to the Chief Minister,

Punjab and others, representing against charging of arrears of royalty on clay from them with retrospective effect from 2nd May, 1964, the date from which the Punjab Minor Mineral Concession Rules, 1964, came into force. On a reference made by this office, it has now been intimated by the Director, Food and Supplies, Punjab, that the recovery of royalty on clay should be made from the brick-kiln owners with effect from 22nd April, 1965, from which date the rates on bricks have been enhanced by Government in each district and that, while enhancing the rates of bricks, the element of royalty has been reckoned and placed at Rs. 0.87 per thousand bricks.

According to the provisions of the Punjab Minor Mineral Concession Rules, 1964, Government is entitled to charge royalty *only on that clay which is found in the land wherein mineral rights vest in the Government.*

You are now requested please to re-assess arrears of royalty from all the brick-kiln owners of your district, those who have extracted clay from the land wherein mineral right in respect of clay vest in the Government according to *Wajabul Arz entries,* read with section 42(2) of the Punjab Land Revenue Act, 1887 for the period from 22nd April, 1965, up-to-date. Each brick-kiln owner should also be asked to put in formal application on court-fee stamp of Rs. 1 and deposit application fee of Rs. 10 into Government Treasury under Head "XXIX—Industries Receipts from Minor Minerals" for the quantity of clay excavated by them during the period from 22nd April, 1965, up-to-date. For their future requirements of clay, they should be asked to obtain short term permits in accordance with the provisions of the Punjab Minor Mineral Concession Rules, 1964. For obtaining the list of brick-kiln owners of your district, you should contact the District Food and Supplies Officer concerned at personal level. It may also please be ensured that the arrears of royalty for the period from 22nd April, 1965, onwards are realized from the brick-kiln owners of your district at the earliest. The Director, Food and Supplies, Punjab, is being requested to issue instructions to all the District Food and Supplies Officer in the State to afford all the possible assistance to you in this behalf.

For ascertaining the mineral rights in respect of clay, you should obtain an attested copy of the relevant *Sharat Wajabul Arz*, section 42(2) of the Punjab Land Revenue Act, 1887."

(6) Prior to these instructions of the Government the various District Industries Officers wrote to the brick-kiln owners within their jurisdiction pointing out that the extraction of clay and sand by them for manufacture of bricks without obtaining valid permits constituted infringement of the Punjab Minor Minerals Concession Rules, 1964, and asked them to produce their records for assessment of the royalty. One of such letters constitutes annexure A to Civil Writ No. 2198 of 1966, calling upon the brick-kiln owners to produce their records before the District Industries Officers for assessment of the royalty. Subsequently, various brick-kiln owners were called upon to put in applications for grant of permits in accordance with the provisions of Punjab Minor Minerals Concessions Rules, 1964, for their future requirements of brick-earth. As there was persistent default, the Director, Food and Supplies by his letter, dated 24th September, 1966, wrote to the Circle Officers of his Department in the State, as follows:—

> "As the Industries Department had been experiencing considerable difficulty to effect recoveries of the royalty amount due to be paid by various brick-kiln owners under the Punjab Minor Mineral Concession Rules, 1964, it is advised that you may henceforth insist on the brick-kiln owners applying for renewal of brick-kiln licences to furnish to you a clearance certificate from the District Industries Officers concerned in that regard before effecting renewal of the subject licences."

(7) In fact, in some of the cases, one of which has given rise to Civil Writ No. 2720 of 1967, threat of more stringent action against the brick-kiln owners was held out and the brick-kiln owners concerned were directed to stop further extraction of clay and warned that on their failure to pay royalty from 22nd April, 1965, "the matter will be reported to the police for registration of cases under section 379 of the Indian Penal Code." Being aggrieved by this demand of royalty on brick-earth required for the manufacture of bricks and threat of non-renewal of their licences to carry on the business of brick-making and prosecution, the various petitioners, who are brick-kiln owners, have approached this Court under

Articles 226 and 227 of the Constitution challenging the legality of the demand for royalty and praying for grant of appropriate writs declaring rule 20 of the Punjab Minor Mineral Concession Rules, 1964, as *ultra vires*, and directing the respondents and their subordinates not to take any steps to recover the royalty or refuse the renewal of their licences for non-payment of the royalty.

(8) The contentions raised before us by the learned counsel for the various petitioners in challenging the validity of the imposition and demand of royalty by the State on the brick-earth used by them in the course of their business of manufacturing bricks are as follows:—

(1) Brick-earth is not a minor minerals and is thus outside the purview of the Punjab Minor Mineral Concession Rules, 1964.

(2) Royalty demanded from the petitioners is, in fact a tax which cannot be imposed by a rule-making authority, but only by the legislature making an express provision for the same.

(3) Section 15 of the Act which permits the States to make Rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals cannot be deemed to authorize the rule-making authority to levy the tax in the nature of royalty, as is being done by the respondent States.

(4) It is well-settled that imposition of tax is essentially a legislative function, and the same cannot thus be delegated to the Executive. In this view, the imposition of royalty by rule 20 of the Punjab Rules is unconstitutional and *ultra vires*.

(5) The power to frame rules for regulation cannot cover within its ambit the substantive power to impose a tax like the royalty, which is demanded from the petitioners.

(6) The Rules with regard to the imposition of royalty do not apply to the petitioners as they are either the owners or lessees from private parties of lands from which they are excavating brick-earth for manufacture of bricks, and no royalty can be charged from them, by the State.

(7) In any case, royalty can be demanded only in respect of minor minerals which vest in the State, and since the minor minerals found in the land held by the petitioners for manufacture of bricks do not vest in the State, the demand for royalty is illegal.

(8) Even if rule 20 is held to be valid, no demand for royalty can be made from the petitioners as none of them holds any mining lease or licence from the Government.

(9) The *Shariat Wajab-ul-Arz* do not vest in the Government the minor minerals rights pertaining to the lands belonging to or taken on lease by the petitioner from the various private parties on which they have set up their brick-kilns.

(10) In view of the fact that section 14 of the Act specifically provides that sections 4 to 13 of the Act, which include section 9 relating to royalty, would not apply to minor minerals, no demand for royalty can be made from the petitioners.

(9) In contesting the petitioners, the Advocate-Generals for the respondent States of Haryana and Punjab have urged:—

(1) That royalty is not a tax but a charge made by the owner of the property for exploitation or excavation of the mineral wealth contained therein;

(2) That the power to regulate given to the States under section 15 of the Act includes the power to charge royalty, and thus rule 20 of the Punjab Minor Mineral concession Rules, 1964, is perfectly valid:

(3) That since the power to regulate minor minerals has been delegated to the State by the Parliament and it has been authorized to frame the necessary Rules thereon, the Rules, including rule 20 have been made in valid exercise of that power by the State:

(4) That the fact that the petitioners are the owners or the lessees of the land in no way makes them the owners of the minerals contained therein, and the property in the minerals, including the minor minerals, found in the land acquired by them vests in the State and for exploitation of the same it can issue leases and licences and charge the necessary royalty;

(5) That the *Shariat Wajab-ul-Arz* relating to the petitioners land clearly go to prove that the minor minerals rights in those lands belong to the State;

(6) Even if there be any dispute with regard to such minor minerals rights in the land owned or obtained on lease by the petitioners, that dispute cannot be settled in these proceedings under Articles 226 and 227 of the Constitution and the petitioners be directed to have recourse to their ordinary remedy in a civil Court to establish that they were the owners of the minor minerals.

(7) In any case, even if the minor minerals rights vest in the petitioners, the State Government has the authority and power to regulate the exploitation or excavation of those minor minerals and in exercise of that authority, it is competent to grant permits and licences and to charge the necessary fee, rent and royalty for the same.

(10) The contention that brick-earth is not a minor mineral to which the Act and the Punjab Rules apply is clearly untenable in view of the Central Government notification No. MII-159(18)54-A-II, dated 1st June, 1958, declaring it minor mineral in exercise of its powers under section 3(e) of the Act.

(11) The demand of royalty has been made from the petitioners on the assertion that the minor minerals, including brick-earth, in the land under occupation of the petitioners vest in the State notwithstanding the fact that these lands are owned by private individuals. This right in the minerals claimed by the State is, however, vehemently denied by all the petitioners and they assert that not only the surface of the land occupied by them but also everything contained therein, including minor minerals, vests in the owners of those lands, and thus no royalty can be charged by the State. In support of the claim that the minor minerals rights vest in it, the State has placed on record copies of *Sharat Wajab-ul-Arz* relating to different villages in which the petitioners are running their brick-kiln, and have also relied on sections 41 and 42 of the Punjab Land Revenue Act 17 of 1887, which are reproduced below:—

"41. Rights of the Government in mines and minerals All mines of metal and coal, and all earth-oil and gold washings, shall be deemed to be the property of the Government for the purpose of the State and the State Government shall have all powers necessary for the proper enjoyment of the Government's rights thereto.

42. Presumption as to ownership of forests, quarries and waste lands.— (1) When in any record-of-rights completed before the eighteenth day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied, deserted or waste land, spontaneous produce or other accessory interest in land belongs to the land-owners, it shall be presumed to belong to the Government.

(2) When in any record-of-rights completed after that date it is not expressly provided that any forest or quarry or any such land or interest belong to the Government it shall be presumed to belong to the land-owners.

(3) The presumption created by sub-section (1) may be rebutted by showing:—

(a) from the record or report made by the assessing officer at the time of assessment, or

(b) if the record or report is silent, then from a comparison between the assessment of villages in which there existed, and the assessment of villages of similar character in which there did not exist, any forest or quarry, or any such land or interest,

that the forest, quarry, land or interest was taken into account in the assessment of the land revenue.

(4) Until the presumption is so rebutted, the forest, quarry, land or interest shall be held to belong to the Government."

(12) Section 41 is not of any assistance to the State as brick-earth is not mentioned therein as one of the minerals that vest in the State. No entry from the record of rights prior to 18th November, 1871, has been produced in respect of the land occupied by any of the petitioners, and the copies of *Sharat Wajab-ul--Arz*, which have been produced, all relate to the recent years. On perusal of these documents, we, however, find that brick-earth is not specifically mentioned therein as among the minerals that belong to the Government, and it has been urged on behalf of the petitioners that in absence of such a specific mention under sub-section (2) of section 42, brick-earth and other such minerals have to be presumed to belong to the land-owners. The question with regard to the ownership rights of minor minerals in the lands occupied by the petitioners is a disputed question of fact. Apart from the fact that not sufficient material

has been placed before us to enable us to decide that question, this Court is not the proper forum for going into such questions in exercise of its jurisdiction under Articles 226 and 227 of the Constitution. As has been observed recently by this Court in *Khushal Singh and others* v. *The State of Punjab and others* (1), the jurisdiction of the Civil Court to decide the rival claims of the parties relating to ownership of the mineral rights in the land does not appear to be barred by any provision of law and any party wanting a decision on this point can institute a suitable action in Court according to law. Since in the cases before us the State has not claimed royalty on the minor minerals which do not vest in it and its demand relates to excavation of brick-earth which it claims to vest in itself, I now proceed to examine whether it is legally competent to demand royalty on the brick-earth used by the petitioners in the course of their business of manufacturing bricks, assuming that notwithstanding the fact that the land is owned by the petitioners or their lessors, the minor minerals rights in them vest in the State.

(13) It is argued on behalf of the petitioners that the royalty imposed by the State under the Punjab Rules is, in fact, a tax, that the State in exercise of its power to regulate minor minerals by framing necessary rules under section 15 of the Act has no authority to charge royalty, that the royalty being a tax cannot be levied or imposed except by a specific legislation enacted by the State legislature as it is essentially a legislative function that cannot be delegated to the Executive or exercised by the rule-making authority, and that rule 20 of the Punjab Rules, which empowers the State to charge royalty, is unconstitutional and *ultra vires*. For proper appreciation of the petitioners' contention, it is necessary to first ascertain the nature of the demand of royalty made from the petitioners.

(14) Royalty is not defined either in the Act or the Rules framed thereunder by the Central or the State Government. The meaning of this word has been considered in some judicial decisions, but they are mostly based on different dictionaries. In Roland Burrows' Words and Phrases Judicially defined, Volume IV (1944 edition) at page 605, it is stated:—

> "It is a sound maxim of law, that every word ought, *prima facie*, to be constued in it primary and natural sense, unless a secondary or more limited sense is required by the

(1) I.L.R. (1966) 1 Punj. 166.

subject or the context. In its primary and natural sense 'royalties' is merely the English translation or equivalent of *'regali tates,' Jura regalia,' jura regia,'* ..... 'The subject was discussed, with much fullness of learning, in *Dyke* v. *Walford* (2) where a Crown grant of *jura · regalia,* belonging to the country platine of Lancaster, was held to pass the right to *bona vacantia,*..... It stands on the footing as the right to escheats, to the land between high and low water mark, to felons goods, to treasure trove and other analogous rights." With this statement of the law their Lordships agree, and they consider it to have been, in substance, affirmed by the judgement of Her Majesty in Council in that case."

(15) In Wharton's Law Lexicon (14th edition), it is stated at pages 893:—

"Royalty, payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised."

(16) Stroud's Judicial Dictionary of Words and Phrases (3rd Edition), while dealing with royalties at page 2631, after referring to the Privy Council decision in *Dyke* v. *Walford* (2) (supra), states:—

"In its secondary sense the word "royalties" signifies, in mining leases, that part of the reddendum, which is variable, and depends upon the quantity of minerals gotten (*A. G. Ontario* v. *Mercer* (3) see *Hereon Graville. Nugent* v. *Machenzie* (4) cited RENT; *Listowel* v. *Gibbings* (5) or the agreed payment to a patentee on every article made according to the patent."

(17) The meaning given to royalty in Mozley and Whiteley's Law Dictionary (7th Edition) page 328 is :—

"A *pro rata* payment to a grantor or lessor on the working of the property leased, or otherwise on the profits of the grant or lease. The word is specially used in reference to mines Patents and copyrights."

(2) (1848) 5 Moo. P.C.C. 434, P.C.
(3) 8 App. Ca. 767.
(4) (1900) A.C. 83.
(5) 9 Ir. Com. Law 223.

(18) According to Prem's Judicial Dictionary (Volume IV), 1964 edition, page 1457:—

> "Royalty is *inter alia,* a charge by the owner of minerals from those to whom he gives the concession to remove them, and the charge is on production, the rate being fixed according to weight. *Bheru Lal* v. *State of Rajasthan* (6).

(19) After noticing the meaning given to this word in Wharton's Law Lexicon and Mozley and Whiteley's Law Dictionary, Prem goes on to say:—

> "It, therefore, appears that royalties are payments which the Government may demand for the appropriation of minerals, timber or other property belonging to the Government. Two important features of royalty have to be noticed, they are, that the payment made for the privilege of removing the articles is in proportion to the quantity removed, and the basis of the payment is an agreement. *Surajdin* v. *State* (7). If land is occupied by a person with a right to quarry on payment of royalty such payment being related to the beneficial occupation of the land within the meaning of the term rent, land cess is payable under clause (iii) of Section 74-B. *H. R. Rama Rao* v. *The Collector* (8), *Venkata Ramayya Apparao* v. *Secretary of State* (8A) *Sri Ramalu Pantulu* v. *Province of Madras* (9).

(20) Reference may now be made to Corpus Juris Secundum, Volume 77. At page 542 of that book, it is stated :

> "Royalty or Royalties. The word "royalty" is one of varying meanings, and in its primary and natural sense, is merely the English translation or equivalent of "regalitates," "*jura regalia,*" "*jura regia.*"
>
> The term originated in England, where it was used to designate the share in production reserved by the crown

(6) A.I.R. 1956 Raj. 161.
(7) A.I.R. 1960 Mdh. Pra. 129.
(8) A.I.R. 1957 A.P. 1042.
(8-A) A.I.R. 1948 Madras 197.
(9) A.I.R 1941 Madras 414.

from those to whom the right to work mines and quarries was granted, and the most common use of the term today in this country is with respect to mining leases, conveyances, and reservations, and in this connection is treated in Mines and Minerals.....

Defined generally, the word "royalty" means a share of the product or profit reserved by the owner for permitting another to use the property; the share of the production or profit paid the owner, a share of the product or proceeds therefrom reserved to the owner for permitting another to use the property; the share of the produce reserved to the owner for permitting another to exploit and use the property; a share of the profit, reserved by the owner for permitting another to use the property; the amount reserved or the rental to be paid the original owner of the whole estate."

(21) In the Shorter Oxford English, Dictionary, Volume II, at page 1761, royalty is stated to mean:—

"A payment made to the landowner by the lessee of a mine in return for the privilege of working it. A sum paid to the proprietor of a patented invention for the use of it. A payment made to an author, editor, or composer for each copy of a book, piece of music, etc., sold by the publisher, or for the representation of a play."

(22) The subject of royalty has been dealt with exhaustively in Words and Phrases (Permanent Edition), Volume 37A at page 600, where it is stated as follows:—

"A Royalty is an interest in real estate entitling the royalty-owner to a share in the production of oil, gas or other minerals therefrom ———

A royalty proper is a share of the product of profits reserved by the owner for permitting another to use or develop his property, and both in theory and in practice pre-supposes a lease or production under a lease in order to obtain that profit.

Defined as portion reserved to owner of minerals after another brings the minerals to the surface.....

The word "royalty" as used in contract whereby plaintiff sold mineral interest for a cash consideration and an undivided interest in profits, if any, to be derived from sale of or from royalty received under the lease, would be construed as referring to the mineral interest itself. The word "royalty" as originally conceived was portion of mineral extracted or payment for privilege of extracting minerals, or for use of a mine or of land for that purpose and embodies basic idea of payment for use of mine or of premises with acquisition of title to severed minerals as incidental.

The word "royalty" as used in mining and oil operations, means a share of produce or profits paid to owner of land for granted privilege of producing minerals therefrom and excludes the concept of fee-simple title to minerals in place.

It is common knowledge that the word "royalty" is frequently used to denote an interest in mineral rights (*Melton* v. *Sheed*). The word "bonus," "Rental" and "royalty" used in connection with oil and gas leases are to be construed in the ordinary and popular sense; "bonus" meaning the cash consideration paid or agreed to be paid for the execution of the lease "rental" being the consideration for the delaying drilling operations, and "royalty" being a share of the product or proceeds therefrom reserved to the owner for permitting another to use the property.

"The word "royalty" originated in England where it was used to designate the share in production reserved by the Crown from those to whom the right to work mines and quarries was granted. Such is its proper use today in mineral contracts. It is the price paid for the privilege of exercising the right to explore. If that right is granted by lease-contract it is the whole or part of the consideration for the lease. If that right is granted or reserved by a sale, it is the consideration in part or whole of the sale. Royalty in itself cannot be used to designate the fundamental right which is being dealt with but only to indicate the percentage, the price, the rent the consideration attached to or proceeding out of the right

or that may proceed from it during its existence. The royalty depends upon the continued existence of the right to which it is an appendage. It cannot have a life of its own any more than could interest exist apart from the note or debt to which it is attached. If a party to a contract sells royalty under an existent lease, he is selling a part or the whole of his rent due from the lease upon which his royalty depends. If he sells royalty under an existing servitude, he is selling a part of the produce to issue from the use of that servitude and the royalty sale is dependent upon the life and use of the servitude. If a land-owner sells royalty he is selling the proceeds that may issue from his right to explore for minerals on his own land, which is an inherent part of his ownership of the land. If the land-owner sells his land and the right to explore inherent in the land and reserves royalty, he is reserving a share in the anticipated production to result if and when successful exploration ensues upon the land sold in full ownership.

The legal nature of royalty must be grounded upon the contract in which it appears. If it be used within the understanding of the parties to indicate a sale or reservation of the right to extract oil and gas, then it is a servitude by whatever name it may be called, and the established rules connected with this type of servitude rules apply. If it is used in a lease-contract to indicate a proportionate share of the production going to the land-owner or to the lessor of a servitude or to his lessee, the law of lease and sub-lease will be applied. If the word is used in the contract to indicate a passive interest in possible production, without the leasing or production privilege usually inherent in the right, then a new and as yet uninterpreted situation appears, upon which the Court has not declared itself fully."

(23) From all this it is abundantly clear that the word 'royalty' has a well-recognised and defined meaning. As used in Mineral and Oil Operations it means share of produce or profit paid to the owner of the land for granted privilege of producing minerals therefrom and excludes the concept of fee-simple title to minerals in place. In Words and Phrases (Permanent Edition), Volume 37A at page 600, royalty as originally conceived was portion of mineral extracted or

payment for privilege of extracting minerals, or for use of a mine or of land for that purpose and embodies basic idea of payment for use of mine or of premises with acquisition of title to severed minerals as incidental.

(24) Here we may advert to some of the Indian decisions, where the word 'royalty' has come up for interpretation.

(25) In *Bherulal* v. *State of Rajasthan and another* (6), Wanchoo, C.J., (as he then was) while delivering the judgment of the Division Bench observed:—

> "Royalty is *inter alia*, a charge by the owner of minerals from those to whom he gives the concession to remove them, and the charge is on production, the rate being fixed according to weight . . ."

(26) This was a case under the Rajasthan Minor Minerals Concession Rules, 1955. This meaning was accepted by another Division Bench of that Court in *Sethi Marble Stone Industries and others* v. *The State of Rajasthan and another* (10), and royalty was stated to mean a payment made to the owner for the right to exploit his property and it was observed:—

> "It is, therefore, indisputable that it would be open to the State as being the owner of the minerals to charge a royalty whether directly by itself or through a contractor. It further seems to us that a royalty may be charged as so much per weight or on the value of the produce."

(27) It was held that Rajasthan State could charge royalty at the rates fixed by it. In *Surajdin Laxman Lal* v. *State of M. P., Nagpur and others* (11), after referring to the Wharton's Law Lexicon, which was relied upon in the two Rajasthan cases referred to above, it was observed:—

> "It, therefore, appears that royalties are payments which the Government may demand for the appropriation of minerals, timber or other property belonging to the

(10) A.I.R. 1958 Raj. 140.
(11) A.I.R. 1960 M.P. 129.

Government. Two important features of royalty have to be noticed: they are, that the payment made for the privilege of removing the articles is in proportion to the quantity removed, and the basis of the payment is an agreement."

(28) On this basis it was held that a compulsory levy by the Government on all liquor contractors irrespective of the fact whether they availed of the privilege of removing fuel from the protected forest or not, would amount to a 'tax' or a 'cess' which can only be imposed under the authority of law as provided in Article 265 of the Constitution.

(29) The validity of imposition of royalty under the Bihar Minor Minerals Concession Rules, 1964, recently came up for consideration before a Division Bench of Patna High Court in *Laddu Mal and others* v. *The State of Bihar and others* (12). While dealing with the question whether royalty is a tax or a fee, Mahapatra, J., briefly referred to the nature of the demand for royalty in these words:

"Royalty is used in secondary sense to signify that part of the reddendum which is variable and depends upon the quantity of minerals taken out. It is a payment made to the land-owner by the lessee of the mine in return of the privilege of working it. It is different from rent and is a kind of levy in proportion to the minerals worked. Though its origin was riveted in the concept of royal prerogative and sovereignty, in the present context of things, it is an impost by the Government."

(30) Obviously, in characterized royalty as "impost by the Government", the learned Judge was referring to the demand for royalty payable to the Government under the Bihar Minor Minerals Concession Rules, 1964. This observation cannot be taken to apply to royalty payable to a person other than the Government in whom the minor minerals rights may vest. It is on this assumption that royalty was an imposition by the Government that the learned Judge proceeded on to consider whether it was a fee or tax, and held that it was not a fee as distinguished

(12) A.I.R. 1965 Patna 491.

from a tax. In coming to that conclusion it was pointed out that the royalty demanded was not for services accepted by individuals willingly or unwillingly, and the amounts recovered as royalty were merged in the general revenue of the State to be spent for general public purposes.

(31) In *Ajit Kumar Gurey* v. The *State of Bengal and others* (13), Durga Das, Basu, J., dealt with the validity of the demand for royalty made under the West Bengal Minor Minerals Rules, 1959. The decision of that case depended upon the determination of the question whether royalty is a tax or an impost within the meaning of Article 265 read with Article 366(28) of the Constitution. Without adverting to the real meaning or particular nature of the payment demanded on account of royalty, the learned Judge held that it was a tax or an impost. After referring to the Articles 265 and 366(2) of the Constitution, his Lordship observed:—

> "I have no doubt that the royalty which is recoverable from the lessee of a mining lease, under rule 17(1)(i) of the rules, before me is an impost, compulsorily leviable by the State Government on all persons liable to obtain a mining lease with respect to minor minerals and would, accordingly, come within the meaning of a 'tax', under Article 265. The question is whether the Act has authorised this imposition specifically. The answer is clearly in the negative. For section 9, which authorises the imposition of a royalty from the holder of a mining lease, does not extend to mining relating to minor minerals, by reason of Section 14,—
>
> Section 15(1) which empowers the State Government to make rules, 'for regulating the grant of prospecting licence, and mining leases in respect of minor minerals, says nothing about the imposition of royalty and there is nothing else in the Act which provides that the holder of a mining lease shall be liable to pay royalty. Without more, it must be held that rule 17(1)(i) together with Schedule I is not only *ultra vires* because of want of statutory authority but also unconstitutional on account of contravention of Article 265 and the petitioners are not liable to pay it, so long as valid legislative authority for the imposition is not available to the State Government."

(13) Civil Rule No. 433-W of 1963 decided on 8th July, 1964. (Calcutta High Court).

(32) Rule 17(1)(i) to which reference is made by Basu, J., provides:

> "Every mining lease shall include and be subject to the following conditions:—
>
> "The lessee shall pay royalty on all minerals despatched from the leased area at such rate as may be fixed by the State Government within the limits given in Schedule I."

(33) The peculiar nature of royalty, as distinguished from other demands made by the Government, was not noticed in that case, and there is no indication in the judgment whether the demand for royalty, with which Basu, J., was dealing, was in respect of minor minerals vesting in the Government or in persons other than the Government. In coming to the conclusion that it was a tax, the learned Judge was mainly influenced by the fact that royalty was payable to the Government by all persons obtaining mining leases with respect to minor minerals and section 15(1) of the Mines and Minerals (Regulation and Development) Act, 1957, did not specifically empower the State Government to impose royalty.

(34) Though a Division Bench of the Patna High Court had also come to the conclusion that the imposition of royalty by the State Government concerned under the Bihar Minor Minerals Concession Rules, 1964, was a tax and not fee, it, however, held that the imposition was valid and did offend against the provision of Article 265 of the Constitution or section 15 of the Mines and Minerals (Regulation and Development) Act, 1957.

(35) The petitioner's learned counsel has vehemently argued before us that though the Patna High Court was right in holding that royalty demanded was in pith and substance a tax, its decision with regard to the validity of the demand is open to challenge, and the *rule* laid down by Basu, J., in the unreported decision in *Ajit Kumar Gurey* v. *The State of Bengal and others* (13), (supra) is correct and should commend itself to this Court.

(36) In order to appreciate the various contentions raised before us and for proper decision thereon, it is necessary to refer to the relevant provisions of the Punjab Minor Minerals Concession Rules,

1964. These rules, as their Preamble shows, were admittedly framed by the State Government in exercise of the powers conferred on it under sub-section (1) of section 15 of the Mines and Minerals (Regulation and Development) Act, 1957. The Parliament while enacting the Act in exercise of the powers vesting in it under item 54 of the Union List in the Seventh Schedule of the Constitution, however, considered it expendient to leave the grant of prospecting licences and mining leases in respect of minor minerals to the State Governments. Accordingly, section 14 of the Act provides:—

> "The provisions of sections 4 to 13 (inclusive) shall not apply to prospecting licences and mining leases in respect of minor minerals."

(37) Having thus excluded the minor minerals from the operation of sections 4 to 13 of the Act, by section 15 (reproduced earlier); the Parliament authorized the State Governments to make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith, and specifically laid down that until such rules were framed by the State Government, the rules immediately in force before the commencement of the Act would continue in force.

(38) It is in exercise of this power that the Punjab Minor Minerals Concession Rules, 1964, have been framed repealing the Punjab Minor Minerals Rules, 1934, and all corresponding rules that had hitherto been in force.

(39) Under these Rules, in clause (g) of rule 2, "Mining lease" is defined to mean:—

> "A lease to mine, quarry, bore, dig and search for win, work and carry away any minor mineral specified therein."

Clause (i) in the same rule defines "short term permit" as meaning "a permit granted by the Director to extract a certain quantity of mineral for the period specified in the permit.

(40) The provisions with regard to the grant of mining leases, contracts, and short term permits in respect of minor minerals are contained in Chapters II and III of these rules. Chapter II, which

bears the heading "Grant of mining leases/contracts/short term permits in respect of land in which the minerals vest in the Government, "contains detailed procedure for making applications for such grants, the manner in which those applications are to be dealt with, the terms and conditions on which the leases and permits are to be granted and the obligation and rights of the persons to whom the grants are made. All these provisions from rules 5 to rule 33, however, apply only to permits, contracts and mining leases in respect of lands in which minor mineral rights vest in the Government.

(41) Chapter III bears the heading "Grant of mineral concessions in respect of minor minerals in respect of the land in which minor minerals vest in a person other than the Government". Rule 34 with which this Chapter opens is in these words:—

> "34. *Applicability of this Chapter.*—The provisions of this Chapter shall only apply to the grant of mining lease in respect of the land in which the minor minerals vest exclusively in a person other than the Government."

(42) Though the mining leases under this Chapter are to be granted by the person in whom the minor minerals vest, provision has been made in rules 35 to 45 occurring in this Chapter prescribing certain conditions to which every mining lease shall be subject. To enable the Government to keep itself informed of the mining operations in such private property in which the minor minerals do not vest in the Government, the Rules make provision for submission of certain returns, statements and copies of leases to the Government. Rule 45, with which this Chapter III concludes provides penalty by way of imprisonment and fine for failure of the lessee to furnish documents, information and returns called for by the Government. Sub-rule (2) thereof then lays down:—

> 45(2) "If any person grants or transfers or obtains a mining lease or any right, title or interest therein in contravention of any of the provisions of this Chapter, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both."

(43) Rule 53 authorises the Government to recover any rent royalty, fee, contract money or other sum due to it under these rules

as arrears of land revenue. Rule 54 prohibits the mining operations in any area except under and in accordance with the terms and conditions of the mining lease, contract or permit granted under these rules and contravention thereof is made punishable.

(44) The provisions regarding royalty are contained in rules 20 and 21 of the Punjab Minor Mineral Concession Rules, 1964. Rule 20, which applies only to the mining leases granted before the commencement of these Rules, is in these words:—

"20. *Royalties in respect of mining leases.*—(1) The holder of a mining lease granted before the commencement of these rules, 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 by him from the leased area after such commencement, at the rates for the time being specified in the First Schedule in respect of that minor mineral.

(2) The Government may, by notification in the Official Gazette, amend the First and Third Schedules so as to enhance or reduce the rate at which the royalty shall be payable in respect of any minor mineral with effect from such date as may be specified in the notification, either in respect of the whole State or any specified area:

"Provided that the rate of royalty in respect of any minor mineral shall not be revised more than once during any period of four years."

(45) Rule 21 lays down the conditions on which mining leases are to be granted. Since this rule occurs in Chapter II relating to mining leases, contracts or short term permits in respect of land in which the minerals vest in the Government, the conditions laid down in rule 21 apply to mining leases in respect of land in which the minor minerals vest in the Government. Clause (i) of sub-rule (1) of rule 21 is reproduced below:

"21(1). *Conditions of mining lease.*—Every mining lease shall be subject to the following conditions—

(i)(a) The lessee shall pay royalty on minor minerals despatched from the leased area at the rates specified in the First Schedule:

Provided that the lessee shall pay royalty at such revised rates as may be notified from time to time.

(b) For calculating the royalty the lessee shall submit half-yearly returns for periods ending 30th September, and 31st March, in Form 'G'.

(ii) The lessee shall pay for the surface area occupied by him at such rates not exceeding land revenue water charges and cesses assessable on the land as may be fixed by the Government and specified in the lease deed.

(iii) The lessee shall also pay for every year, such yearly dead rent within the limits specified in second Schedule as may be fixed by the Government and if the lease permits the working of more than one minor mineral in the same area the Government may charge separate dead rent in respect of each minor mineral :

Provided that the mining of one minor mineral does not involve the mining of another minor mineral :

Provided further that the lessee shall be liable to pay the dead rent or royalty in respect of each minor mineral whichever is higher in amount but not both."

(46) From rules 20 and 21 set out above, it will be evident that the payment of the royalty to the Government for removing a mineral is made a condition of a mining lease and the royalty is to be paid by the lessee or the holder of the mining lease in respect of any minor mineral removed by him from the land leased out to him at the rate specified in the First Schedule to the Rules, which can be revised by the Government under the provisions of sub-rule (2) of rule 20 from time to time. It is thus not a charge or impost on the occupier of the land but consideration payable by a holder of mining lease from the Government for the privilege of extracting minor minerals from the land leased out to him. It may further be noticed that the amount demanded as royalty does not become payable merely for the grant of privilege of extracting minor minerals but on actual extraction or taking out such minerals. This is evident from the wording of rule 20 itself as it says that the

royalty is to be paid "in respect of any mineral removed by him (holder of a mining lease) from the lease area." The matter becomes further clear on reference to the First Schedule to the Rules, wherein the rates of royalty payable on various minor minerals is stated in terms of quantity extracted. Under item 5 of this Schedule, royalty payable on brick earth is Re. 0.25 nP. per tonne or Re. 0.35 nP. per cubic meter. From this it is abundantly clear that royalty under these rules is levied on the minor minerals extracted by the holder of a mining lease. So, if a person is merely in occupation of land which contains minor minerals, he is not liable to pay any royalty, but it is only when he holds a mining lease and by virtue of that extracts one or more minor minerals that he is called upon to pay royalty to the Government where the lease is in respect of the land in which minor minerals vest in the Government. Royalty thus has its basis in the contract between the grantor and the holder of a mining lease, and it is not a compulsory charge for holding such lease but payment to the owner of the minerals for the privilege of extracting the minor minerals computed on the basis of the quantity actually extracted and removed from the leased area. Accordingly royalty is not of the same nature as a tax or a fee. It is true that it is not a fee as it is not payment for the services rendered, but if we exclude it from that category, it does not follow that it must be classed as tax. It is in essence the consideration which the owner of a property may receive from those whom he allows the use of his property or entrusts his property for exploitation of the mineral resources contained therein. In that view of the matter, it is more akin to rent or compensation payable to an owner by the occupier or lessee of land for its use or exploitation of the resources contained therein. Merely because the provision with regard to royalty is made by virtue of the rules relating to the regulation of the mining leases and a uniform rate is prescribed, it does not follow that it is a compulsory exaction in the nature of tax or impost.

(47) The Punjab Minor Mineral Concession Rules, 1964, also make provision for grant of mineral concessions in respect of minor minerals found in the lands in which the minor minerals vest in persons other than the Government. These provisions are contained in rules 34 to 45 of Chapter III. Rule 34, with which this Chapter opens, clearly provides that this chapter shall apply only to grant of mining leases in respect of the land in which the minor minerals vest exclusively in a person other than the Government.

Rule 37 lays down the conditions for such mining leases. The relevant clauses of this rule may be reproduced below:—

> 37. *Conditions of mining lease.*—Every mining lease shall be subject to the following conditions:—
>
> (i) The provisions of rules 15, 18(3), 20 clauses (i) to (xv), (xvii) and (xviii) of rule 21(1) and 21(2) shall apply to such leases with the modification that the word "Government" occurring in clauses (ii) to (iv) and (xviii) of sub-rule (1) of rule 21 shall be substituted by the word "lessor".
>
> (ii) .....
>
> (iii) .....
>
> "(iv) If the lessee makes any default in payment of royalty as required by rule 21(1)(i) or commits a breach of any of the conditions of the lease, the lessor shall give notice to the lessee requiring him to pay the royalty or remedy the breach, as the case may be, within thirty days from the date of receipt of the notice and if the royalty is not paid or the breach is not remedied within such period the lessor without prejudice to any proceeding that may be taken against the lessee, determine the lease . . ."

(48) By virtue of clause (i) of this rule, the provisions with regard to the royalty contained in rule 20 and rule 21, to which reference has been made earlier, have been made applicable to mining leases granted by persons other than the Government. It will be noticed that the royalty in respect of such mining leases for extracting minor minerals has to be paid not to the Government, but to the person granting the lease in whom the minor minerals vest. It thus cannot be said that so far as such leases are concerned, there is any charge or impost levied by the Government. All that the Government has done by framing Rules contained in Chapter III is to lay down certain statutory conditions for the grant of mining leases, to provide for the payment of Royalty to persons in whom such minor minerals vest and to fix a uniform rate for such payments. Obviously, it is not a compulsory levy by the Government as it is based on a condition in the mining lease.

(49) In fact, in the course of arguments before us, the Advocate-General of both the States have stated that the royalty demanded

was only in respect of lands in which the minor minerals vest in the Government and not for land in which the minor minerals vest in persons other than the Government. Even in the various notices demanding such royalty it is made clear that the royalty is being charged for minor minerals extracted from the lands in which such minor minerals vest in the Government. It is true that the petitioners have denied that the Government has any minor mineral rights in the land on which they have set up brick-kilns, but the fact remains that the demand for royalty, by which the petitioners feel aggrieved, is made only in respect of the minor minerals which vest in the Government. Most of the contention raised on behalf of the petitioners are based on the assumption that royalty is tax and not a fee forgetting that all payments due to the Government cannot be classed under these two heads, and there may be quite a number of demands and payments due to the Government, which are of an entirely different character. For example, rents payable to the Government in respect of leases of its property can neither be classed as tax nor fee. Royalty is more akin to rent. As has been observed earlier, it is charge made by the owner of minerals for granting the privilege of extracting minerals. The distinction between a tax and other charges has been stated by Hugh Dalton in his Public Finance 4th edition (1957) thus:—

> "A tax is a compulsory charge imposed by a public authority and, as Taussig puts it, 'The essence of a tax, as distinguished from other charges imposed by a Government is the absence of a direct *quid pro quo* between the tax-payer and the public authority.' We have, on the other hand, as an important source of public income, the prices charged by a public authority for specific services and commodities supplied by it, including the prices charged for the use of public property. Generally speaking, these prices are paid voluntarily by private persons, who enter into contracts, express or implied, with public authorities, whereas taxes are paid compulsorily."

(50) The matter has been discussed in greater detail by Taussig in his Principles of Economics, 4th edition, Volume II (1939), page 139, wherein dealing with royalty he states as follows:—

> "The owner of a mine when he leases it to another for working usually gets a royalty a fixed payment of so much

per ton. Royalties naturally vary with the quality of the minerals and the case of their extraction. They are a rough-and-ready way of carving out the economic rent. They are not necessarily in the nature of rent; for where a mine has been found by "prospecting," with all the risk of possible failure, the payment may stand for no real surplus. But where royalties are paid in well-explored countries on minerals whose quality and value are reasonably well-known, they are simply rent. Such seems to be the case with the royalties on English coal mines.

It is argued by some distinguished economists that a royalty is in any case different from rent; or rather that there is on every mine some sort of payment to the owner some revenue for him, and that even the poorest mine will yield a return in the nature of a royalty. The better mines yield in addition a true rent, disguished as a further or ampler royalty payment. The ground for this distinction is that a mine contains a fixed store, and that the owner will not consent to its partial exhaustion unless he received some recompense."

(51) Compulsion in the payment of royalty arises out of the conditions of mining leases and is because of the contract between the grantor of the lease and the lessee, though a condition of payment of royalty is prescribed by the rules framed by the State to regulate the grant of mining leases. Because of this compulsion only, royalty cannot be termed as a tax. While considering the distinction between a 'fee' and a 'tax' in *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (14), B. K. Mukherjee, J., observed:—

"We think that a careful examination will reveal that the element of compulsion or coerciveness is present in all kinds of imposition, though in different degrees and that it is not totally absent in fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fees."

(14) A.I.R. 1954 S.C. 282.

Proceeding further his Lordship said:—

> "The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a special benefit or privilege. Fees confer a special capacity although the special advantage, as for example in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest,—*vide* Findlay Shirras on 'Science of Public Finance', Volume I, page 202. Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit which the individual receives. As Seligman says, it is the special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action,—*vide* Seligman's Essays on Tavation, page 408.".

(52) In *Sri Jagannath Ramanuj Dass and another* v. *State of Orissa and another* (15), adverting again to this matter, B. K. Mukherjee, J., observed:—

> "A tax is undoubtedly in the nature of a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. But the essential thing in a tax is that the imposition is made for public purposes to meet the general expenses of the State without reference to any special benefit to be conferred upon the payers of the tax. The taxes collected are all merged in the general revenue of the State to be applied for general public purposes. Thus, tax is a common burden and the only return which the tax-payer gets is the participation in the common benefits of the State. Fees, on the other hand, are payments primarily in the public interest but for some special service rendered or some special work done for the benefit of those from whom payments are demanded."

(53) In *The Hingir-Rampur Coal Co., Ltd., and others* v. *The State of Orissa and others* (16), Gajendragadkar, J., (as he then was)

(15) A.I.R. 1954 S.C. 400.
(16) A.I.R. 1961 S.C. 459.

while considering distinction between tax, fee and cess; and noticing that there is element of *quid pro quo* between the tax payer and the public authority in the case of fee, said:—

> "It is true that when the Legislature levies a fee for rendering specific services to a specified area or to a specified class of persons or trade or business, in the last analysis such services may indirectly form part of services to the public in general. If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area the fact that in benefitting the specified class or area the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee. Where, however, the specific service is indistinguishable from public service, and in essence is directly a part of it, different considerations may arise. In such a case it is necessary to enquire what is the primary object of the levy and the essential purpose which it is intended to achieve. Its primary object and the essential purpose must be distinguished from its ultimate or incidental results or consequences. That is the true test in determining the character of the levy.

Applying this test to the royalty demanded under the Punjab rules, I am of the opinion, that it cannot be classed as a 'tax'. Though the rates for royalty are prescribed by Rules and payment of royalty is made a condition of the mining leases, the basis for the demand is still the contract or agreement of lease between the parties; royalty for all mining leases is not to be paid to the Government as such but to the person in whom the minor mineral rights vest: the payment is to the owner of the minor minerals for the grant of privilege to extract minor minerals, the liability being that of the person to whom such privilege is granted and computed on the actual quantity of the mineral extracted. All these characteristics of the impugned demand, in my opinion, clearly take it out of the category of 'tax' or 'impost' and thus not hit by Article 265 of the Constitution. The petitioners' contention that the royalty was nothing but a tax as it goes to the general revenues of the State is without any basis, as a copy of the memorandum addressed by the Block Development and Panchayat Officer, Virka to some brick-kiln owners, a copy of which forms Annexures R-5 to Civil

Writ 443 of 1967 clearly states that the royalty is to be credited to the head :

> XXXIX—Industries—Miscellaneous—Other items—Receipts from minor minerals."

(54) Royalty due to the Government, no doubt, can be recovered as arrears of land revenue under rule 53 of the Punjab Rules, but that does not suffice to give it the character of a tax as under that rule even contract money, fees and other sums due to the Government under these Rules can be recovered in the same manner. It may be pointed out that this rule 53 does not apply to royalty due to persons other than the Government and in case of default of payment of such royalty the grantor of the mining lease is left to pursue the ordinary remedy though under the conditions of such lease specified in clause (iv) of rule 37 he has also the right to determine the lease after the notice.

(55) The peculiar nature of royalty and the distinction between it and the tax that I have pointed out above does not seem to have been brought to the notice of the learned Judge either in *Laddu Mal and others* v. *The State of Bihar and others* (12), or in the unreported decision of Basu, J., in *Ajit Kumar Guray* v. *The State of West Bengal* (Supra) (13), and it is because of this basic difference between royalty and tax that I am not inclined to accept the dictum that what is being charged by way of royalty or minor minerals is a tax, and in exercise of its rule-making power under section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, the State Government has no authority to levy it. Here the cases cited on behalf of the petitioners, in which some levies were held to be taxes, may be noticed.

(56) The latest is the decision of their Lordships of the Supreme Court in *Brij Mohan Nayyar* v. *The State of U.P. and others* (17) In that case. the export duty levied by the Government of Uttar Pradesh on molasses exported to Punjab was held to be without authority, as no provision in any statute empowering such levy could be cited on behalf of the State. In *Mrs. K. K. Wadhwani* v. *State of Rajasthan and another* (18), toll levied by Government on passing and re-passing of motor vehicles over a bridge was held to be a tax or impost

(17) Civil Appeal No. 867 of 1964 decided on 20th March, 1967, (S.C.).
(18) A.I.R. 1958 Raj. 138.

without authority. The real basis on which that demand for toll was struck down was that it was not authorized under section 20 of the Rajasthan Motor Vehicles Taxation Act, and even the proposal to levy it did not seem to have been squarely laid before His Highness the Nawab of Tonk, who was then the sovereign authority.

(57) In *Anand Kumar Bindal* v. *Employees' State Insurance Corporation and others* (19), special contribution payable by an employer under Chapter V-A of the Employees State Insurance Act was considered to be a tax on the ground that it was a compulsory exaction recoverable in the event of non-payment as arrears of land revenue, levied by public authority for public purposes and was not payment for services rendered. In *Lower Mainland Dairy Products Sales Adjustment Committee* v. *Crystal Dairy Limited* (20), payments made to the Adjustment Committee by the farmers selling fluid milk, which were to be apportioned by the Committee among the farmers who had sold milk products, were held to be indirect taxes. All these cases are clearly distinguishable, and the only rule that emerges from these decisions is that no tax can be levied without the authority of law the very principle which is embodied in Article 265 of the Constitution.

(58) In view of my opinion that royalty payable under the Punjab Minor Minerals Concessions Rules, 1964, is not a tax, the argument raised on behalf of the respondents that the State Government had no power to levy the tax in exercise of its rule-making powers under section 15 of the Act does not arise. I would, however, like to notice the arguments that have been advanced with regard to the competency of the State legislature to levy such royalty. On behalf of the petitioners, it has been contended that the levy is contrary to the provisions of Article 265 read with Article 366 of the Constitution as there can be no taxation without the authority of law, that a tax cannot be imposed by a rule-making authority or by the executive. that the power to tax is a legislative function, and it cannot be delegated to a subordinate authority, that power to make rules to regulate a certain matter does not include power to levy tax, and that, in any case, since the Act under which power has been conferred on the State to make rules does not contain any guiding factor

(19) A.I.R. 1957 All. 136.
(20) 1933 Appeal Cases 168.

for the impost, the demand for royalty is not valid. Article 265 of the Constitution of India provides:—

> "No tax shall be levied or collected except by authority of law."

(59) In Article 366 (Definitions) "taxation" is defined as including :—

> "The imposition of any tax or impost, whether general or local or special."

(60) The word "impost" has not been defined in the Constitution, but its accepted meaning is a compulsory levy. Thus, it cannot be disputed that a tax or an impost can be levied or collected only by the authority of law. In *P. J. Joseph* v. *Assistant Excise Commissioner and others* (21), it has been held that law in the context in which it is used in Article 265 of the Constitution means an act of the Legislature and cannot comprise an executive order or a rule without express statutory authority. This decision was affirmed by their Lordships of the Supreme Court in appeal in *The State of Kerala and others* v. *P. J. Joseph* (22), where it was observed that an impost by an executive order which had no authority of law to support it was an illegal imposition. In that case, where in pursuance of an endorsement made by the Government on the reference made to it by the Board of Revenue the excise authorities demanded an additional payment of a commission of 20 per cent on the sale of liquor from a licencee to whom the licences in question had already been granted under the Cochin Abkari Act, and the rules framed thereunder in force on the date of the issue of those licences on his paying the annual fee prescribed, it was held that the imposition of a further duty under section 17 read with section 18 on the licences for sale obviously amounted to an amendment of the provisions of Rule 7 and as a rule or a notification prescribing the levy was not published in the official Gazette as required by section 69, it could not be taken to be an order having the force of law. The case is no authority for the proposition that the word 'law' as used in Article 265 means only an act of legislature and not a rule or regulation made by a competent authority.

(21) A.I.R. 1953 Trav. Co. 146.
(22) A.I.R. 1958 S.C. 296.

(61) In *Demoderan and others* v. *State* (23), it was held that as essential powers of legislation cannot be delegated, the legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct, but it must declare the policy of the law and the legal principles, which are to control any given case and must provide a standard to guide the officials or the body in power to execute the law. It was further observed in that case that the essential legislative function consists in the determination or choice of the legislative policy, and of formally enacting that policy into a binding rule of conduct. Adverting to the provisions of Article 265, it was observed in that case as follows:—

> "It is indisputable, that the imposition or the levy of a tax, is an essential legislative function; this is implied in Article 265 of the Constitution and has been held to be so in *Murli Manohar* v. *State of Uttar Pradesh* (24). The chief charactristics of a tax are of course, its quantum, its incidence meaning the person or class or persons on whom it is imposed, and the mode of its recovery or collection. Thus, in matters of taxation, it is a vital policy, and one in which the legislature is keenly interested from the standpoint of the tax-payer and of the Revenue alike, to fix the per capita tax-burden at a suitable level. To this end the legislature may formulate a policy, either by itself prescribing the rate of taxation or a ceiling to it beyond which it cannot rise or by delegating to an extraneous body in which it has confidence, the power to ascertain and determine the appropriate tax level, by applying principles and standards which may be settled by it. It is obvious, that to support a delegation of that kind, the policy or the principles or the standards evolved must bear an intimate relation to the nature and scope of the power delegated. In testing the validity of the delegation, the attempt must, therefore, be to discover what the legislature has purported to do, and how it has discharged its own responsibility."

(23) A.I.R. 1960 Kerala 58.

(24) A.I.R. 1957 All. 159.

(62) In *Gangaram Surajparkash* v. *The State of Punjab* (25), my learned brother Shamsher Bahadur J., with whom Mehar Singh J. (as he then was) agreed, held that section 5 of the East Punjab General Sales Tax Act 1948 which gave an unlimited power to the executive to levy sales tax at the rate it thought best, was void and unconstitutional. This decision was upheld by their Lordships of the Supreme Court in *Devidass Gopalkrishnan and others* v. *The State of Punjab and others* (26). After referring to the earlier decision of that Court in Calcutta Corporation v. Liberty Cinema (27) Suba Rao C.J., speaking for the Court, observed thus:—

> "If this decision is an authority for the position that the Legislature can delegate its power to a statutory authority to levy taxes and fix the rates in regard thereto, it is equally an authority for the position that the said statute to be valid must give a guidance to the said authority for fixing the said rates and that guidance cannot be judged by stereotyped rules but would depend upon the provisions of a particular Act. To that extent this judgment is binding on us. But we cannot go further and hold, as the learned cousel for the respondents asked us to do, that whenever a statute defines the purpose or purposes for which a statutory authority is constituted and empowers it to levy a tax that statute necessarily contains a guidance to fix the rates; it depends upon the provisions of each statute."

(63) Their Lordships repelled the argument that the doctrine of constitutional and statutory needs would afford reasonable guidelines for the Government to fix the rate and that the principles laid down by the Court in *Calcutta Corporation's case* (supra) would apply. Dealing with the question of delegation, they quoted from their earlier judgment in *Vasantlal Maganbhai Sanianwala* v. *The State of Bombay* (28), (at pages 356 and 357) and observed:—

> "The minimum we expect of the legislature is to lay down in the Act conferring such a power of fixation of rates clear legislative policy or guidelines in that regard."

(25) 14 Sales Tax Cases 476.
(26) 20 S.T.C. 430.
(27) (1965) 2 S.C.R. 477.
(28) (1961) 1 S.C.R. 341.

(64) In *Edward Mills Co. Ltd. Beawar and others* v. *State of Ajmer and another* (29) it was laid down that the primary duty of law-making has to be discharged by the legislature itself, but delegation may be resorted to as a subsidiary or an ancillary measure and a legislature cannot certainly strip itself of essential functions and vest the same in an extraneous authority.

(65) From the various authorities that have been referred to above, it is abundantly clear that though the power of taxation vests in the legislature, under certain circumstances it can delegate the same to a subordinate authority, but it must indicate the policy and guideline for fixation of rates or at any rate the ceilings beyond which the taxation is not to proceed.

(66) The learned Advocate General of Haryana has, however, contended that there is ample guidance on this matter in the Act itself. In this connection, he has referred to section 9 of the Act, which makes a specific provision for royalty, and points out that the rates of royalty being specified in the Second Schedule to the Act, they furnish guidance for the State in fixing rates at which royalty is to be charged on minor minerals.

(67) It has then been argued by the petitioner's counsel that the authority given to the State under section 15 of the Act is "to make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith," and this power does not and cannot embrace the power to levy any tax or impose royalty. Some decisions have been cited in support of the contention that the authority to regulate does not include the power to impose tax or levy any payment. In *Attorney General* v. *Wilts United Dairies* (30), it was held that the levy of money for use of the Crown without the sanction of the Parliament, and which amounted to a tax, could not be made by the Food Controller. Under the statute of 1916 the Food Controller was authorized to regulate the supply and consumption of food and to take necessary steps for maintaining a proper supply of food. Construing the extent of the powers thus conferred on the Food Controller, Lord Buckmaster said:—

> "The powers so given are no doubt very extensive and very drastic, but they do not include the power of levying upon

(29) A.I.R. 1955 S.C. 25.
(30) 127 L.T.R. 822.

any man payment of money which the Food Controller must receive as part of a national fund and can only apply under proper sanction for national purposes. However the character of this payment may be clothed, by asking your Lordships to consider the necessity for its imposition, in the end it must remain a payment which certain classes of people were called upon to make for the purpose of exercising certain privileges, and the result is that the money so raised can only be described as a tax the levying of which can never be imposed upon subjects of this country by anything except plain and direct statutory means."

(68) In *Messrs R.M.D.C. (Mysore) Private Ltd.* v. *State of Mysore* (31) a case arising out of the Mysore Lotteries and Prize Competitions Control and Tax Act, 1951, it was held that by passing a resolution as to control and regulation of prize competitions, the Mysore Legislature had not surrendered to the Parliament the power to tax. These decisions, in my opinion, do not warrant the conclusion that the authority given by the Parliament to the State Government under section 15 of the Act does not entitle them to make provision for royalty. The power conferred on the State Government under this section came up for consideration of this Court in *Khushal Singh and others* v. *The State of Punjab and others* (1). Dealing with the contention that the State can make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals and not for any purpose other than regulating the grant of such licences or leases, R. S. Narula J., delivering the judgment of the Division Bench, observed:—

"Nor do I find any merit in the first contention of Mr. Doabia in this behalf as section 15 authorises making of rules by the State Government not only for the purpose of regulating the grant of prospecting licences and mining leases, but also for the purposes connected therewith. This can include the making of rules for giving a mining lease by whatever name it may be called or by a contract, the consideration of which is determined by a process of a public action."

(69) In this view of the matter, it was held that the Punjab Minor Minerals Concession Rules, 1964, and in particular rules 28,

(31) A.I.R. 1962 S.C. 594.

33 and 61 of these Rules were *intra vires section* 15(1) of the Act. As has been pointed in *Laddu Mal and others* v. *The State of Bihar* (12), stipulations regarding rent and royalty are integral parts of a mining lease and ordinarily form one of the conditions of such a lease. Since it is not disputed that under section 15(1) of the Act in exercise of its power to regulate mining leases the State is entitled to lay down the conditions for such leases, its authority to provide for the payment of royalty and to lay down a uniform rate of royalty for a particular mineral cannot be questioned. The fact that in section 9 of the Act the Parliament has itself made provision for payment of royalty by the holder of a mining lease in exercise of its authority to regulate "mines and minerals development" by virtue of the power vesting in it under item No. 54 of List I of Seventh Schedule of the Constitution, clearly indicates that it never intended to exclude the authority to provide for payment of royalty while conferring power on the State Government under section 15(1) of the Act to make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith. This conclusion is further strengthened by the fact that the Punjab Minor Minerals Rules, 1934, which also contained a provision for payment of royalty were kept alive by subsection (1) of section 15 till the Punjab Minor Minerals Concession Rules, 1964, could be framed .This question was considered at length in *Laddu Mal and others* v. *The State of Bihar* (12) *supra* where Mahapatra, J., observed as follows:—

> "Admittedly, before 1957, when the Mines and Minerals (Regulation and Development) Act was enacted, the State Government had the power to prescribe rules for regulating the extraction of minor minerals,—*vide* section 8—The Mines and Minerals (Regulations and Development) Act, 1948, Rule 4, Mineral Concession Rules, 1949, Royalty was being collected for minor minerals also. So was the position before the Constitution came in 1950. In that context, if the Act of 1957 did not specifically express anywhere the intention to abolish imposition of royalty in respect of minor minerals, it has to be taken that the Parliament took appraisal of the existing law and usage and delegated all powers in that connection to the State Government in respect of minor minerals under section 15. If the Parliament would have wanted really to exclude minor minerals from payment of royalty, it

would have so expressed in section 9, which specifically provides for payment of royalties on all minerals. The exclusion of sections 4 to 13 as mentioned in section 14, in respect of minor minerals appears to be for the sole purposes of conferring all such powers, as covered by those sections."

(70) In view of the fact that in the legislation concerning the regulation and grant of mining leases provision for royalty like that of rent has always existed, and the condition regarding payment of royalty is a common and usual term of mining leases, I do not find it possible to accept the contention that the Parliament did not intend to authorize the State Government to make provision for royalty on minor minerals in exercise of its rule-making power under section 15(1) of the Act. This coupled with my earlier finding that the royalty demanded under the Punjab Minor Minerals Concessions Rules, 1964, is not a tax, the rule 20 thereof, which alone has been attacked in these petitions, cannot but be declared as perfectly valid. I thus find that the State of Punjab has the authority to charge royalty on minor minerals extracted from lands in which the minor minerals rights vest in it. The respondent-State has not claimed any right to charge royalty in respect of minor minerals that vest in persons other than the Government nor is it entitled to demand royalty in respect of minor minerals extracted from such lands.

(71) As has been noticed earlier, there has been a serious dispute in all the petitions before us regarding the ownership of the rights in minor minerals found in the land occupied by the petitioners, and that dispute cannot be settled in these proceedings as this Court is not the proper forum for going into such disputed questions of fact under Articles 226 and 227 of the Constitution. The rival claims of the parties to the ownership of the minor minerals in question can be settled by appropriate proceedings in a Court of law.

(72) As a result of the foregoing discussion, I find that all the petitions must fail, and I would, accordingly, dismiss the same, leaving the parties to bear their own costs.

SHAMSHER BAHADUR, J.—I agree generally with my learned brother and would like to add a few words of my own.

(74) The objection raised by all the learned counsel for the different petitioners that section 15 of the Mines and Minerals

(Regulation and Development) Act, 1957 (hereinafter called the Act) does not empower the State Government to ask for royalties is hereby tenable. Under entry No. 54 of List I in Seventh Schedule of the Constitution it is the Parliament which has the power to make legislation for "regulation of mines and minerals development to the extent to which such regulation and under the control of the Union is declared by Parliament by law to be expedient in the public interest." Under clause (e) of section 3 "minor minerals" means "building stones, gravel, ordinary clay, ordinary and other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral". By a notification of the Central Government of 1st June, 1958, 'brick earth' has been declared to be a "Minor Mineral" and under section 15 of the Act, it is the State Government which may "by notification in the Official Gazette, make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith". Sections 4 to 9 deal with the general restrictions on undertaking prospecting and mining operations. These provisions generally deal with minerals and under sub-section (1) of section 9:—

> "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 by him from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral."

(75) Under sub-section (2) of the same section:—

> "The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed by him from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral."

(76) The Second Schedule can be amended by notification of the Central Government provided that the maximum rate of 20 per cent of the sale-price of the mineral at the pit's head is not exceeded and that the enhanced rate of royalty for any mineral cannot take place more than once during any period of four years.

(77) Sections 10 to 12 deal with the procedure for obtaining prospecting licences or mining leases in respect of land in which the minerals vest in the Government. Section 13 deals with the power of the Central Government to make rules in respect of minerals and under clause (i) of sub-section (2), for "the fixing and collection of dead rent, fines, fees or other charges and the collection of royalties in respect of—

(i) prospecting licences,

(ii) mining leases,

(iii) minerals mined, quarried, excavated or collected."

(78) The counsel for the petitioners rely very strongly on section 14 which says that:—

> "The provisions of section 4 to 13 (inclusive) shall not apply to prospecting licences and mining lease in respect of minor minerals."

(79) It is sought to be spelled from what is said in section 14 that the State Government has been deprived of the power to charge royalties in respect of minor minerals for regulation of whose prospecting licences and mining leases it has been given the power to make rules. If the royalty could be asked only in respect of minerals and not minor minerals, such intention could have been made clear in section 9. As stated in section 9, royalty is paid in respect of mineral removed by a lessee from the leased area. It is to be noted that sub-section (2) of section 15 specially saves the rules which had been in existence before the commencement of the Act. As stated in sub-section (2):—

> "Until rules are made under sub-section (1) any rules made by a State Government regulating the grant of prospecting licences and mining leases in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force."

(80) It is not in dispute that before the Punjab Minor Minerals Concessions Rules, 1964 (hereinafter called the Rules) were made on 25th of April, 1964, there were in existence the Punjab Minor Minerals Rules of 1934 and there was a provision in the Rules that the Collector could charge royalties at the rates specified. As emphasised by Gurdev Singh, J., Chapter II of 1964 Rules deals with

grant of mining leases in respect of land *in which the minerals vest in the Government*, while Chapter III, from rules 34 to rule 45, deals with grant of mineral concessions in respect of minor minerals in respect of the land in which minor minerals vest in a person other than the Government. The scale of royalties is fixed only with respect to such leases where the minor minerals vest in the Government. I am in agreement with the reasoning of the Division Bench of the Patna High Court in *Laddu Mal* v. *The State of Bihar* (12) that :—

> "Unless there be any compelling reason to think that the Parliament wanted to exclude the minor minerals from the imposition of any royalty whatsoever, section 15 cannot be read to mean such exclusion from the powers of the State Government. The scheme of the Mines and Minerals Act is that the Union Government is given power by the Parliament, to modify the rates of royalty for all minerals except the minor minerals and everything was left to the State Government in respect of minor minerals. The scope of the rule-making power of the State Government, as provided in section 15(1), is identical with that of the Central Government, as given in section 13(1) and it includes the power to prescribe the rates of royalty."

(81) As observed by Mahapatra, J., speaking for the Court :—

> "Had the Parliament wanted really to exclude minor minerals from payment of royalty, it would have expressed their intention in section 9 which specifically provides for payment of royalties on all minerals. The exclusion of section 4 to 13 as mentioned in section 14, in respect of minor minerals, is for the sole purpose of conferring all such powers as covered by those sections, on the State Government, in respect of minor minerals."

(82) The concept of 'royalty' which has been discussed in elaborate detail by Gurdev Singh J., implies of necessity, that it is a charge by the owner of minerals from those to whom he gives the concession to remove them. Section 9 also talks of royalty being paid in respect of minerals removed from the area of the mining operations. The State Government, as is made clear in the Rules,

charges royalty only from such owners or lessees who are excavating brick earth and where the property in this minor mineral vests in the State Government. Manifestly, the State Government has not taken upon itself to charge royalty for use of brick earth anywhere and everywhere. It is only from such areas where this minor minerals vests in the Government that the right to charge royalty is made. It has been emphasised in the letters issued by the State Government to the lessees that the *Shariat Wajab-ul Arz* is to be examined in every case to find out whether the property in the minor mineral vests in the State Government. As held in *Khushal Singh and others* v. *The State of Punjab and others* (1), the jurisdiction of the Civil Court to decide the rival claims of the parties relating to ownership of the mineral rights in the land does not appear to be barred by any provision of law and any party wanting a decision on this point can institute a suitable action according to law. The State Government itself has not claimed royalty on the minor minerals which are not owned by it. In the last analysis, it is not for this Court to determine disputed questions of title and wherever the right of the Government is controverted it will have to be established in an appropriate Court that the property in minor minerals does in fact vest in the Government.

(83) Looked in the perspective that the royalty is to be charged at specified rates in respect only of minor minerals vesting in the State Government and only when the brick earth is being used, it cannot be said that it is in the nature of a tax. In the words of Mr. Justice B. K. Mukherjea in the Supreme Court decision of *The Commissioner, Hindu Religious Endowments, Madras,* v. *Sri Lakshmindra Thiratha Swamiar of Sri Shirur Mutt* (14) :—

> "A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. This definition brings out the essential characteristics of a tax as distinguished from other form of imposition which, in a general sense, are included within it. The essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax-payer's consent and the payment is enforced by law. The second characteristics of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax."

(84) The royalty, along with receipts from minor minerals, as observed by Gurdev Singh J., is credited under the head: "XXXIX—Industries—Miscellaneous" and is levied only on those who are using brick earth where its property vests in the Government. The element of compulsion is thus limited and a user of brick earth whose property does not vest in the Government does not have to pay royalty. I do not think that the levy of royalty in such a situation is a tax and in agreement with my learned brother, I consider that it is appropriately in the nature of a rent.

(85) The various cases, to which our attention has been invited by Mr. Bhagirath Dass, Mr. Tuli, Mr. Sachar and other learned counsel, do not deal exactly with the situation with which we are confronted in this case, and in agreement with my learned brother, I would dismiss these petitions, leaving the parties to bear their own costs.

K. S. K.

APPELLATE CIVIL

Before H. R. Sodhi, J.

GURDIAL SINGH,—*Appellant*

versus

SOWARAN SINGH AND ANOTHER,—*Respondents*

Execution Second Appeal No. 546 of 1968

July 15, 1968.

Code of Civil Procedure (Act V of 1908)—*S.* 144—*Claim of restitution under*—Bona fide *purchaser for value—Whether to be allowed to suffer—Decree or order varied or reversed by a Court of concurrent and competent jurisdiction—Restitution—Whether can be claimed under the section—Such restitution—Whether can be granted under section* 151.

Held, that the rule of equity embodied in section 144 of the Code of Civil Procedure enabling the Court to direct that the parties be placed in the same position which they would have occupied but for the decree is subject to the