CREDAI - MCHI

Additional Chief Secretary (Retd.)
Government of Maharashtra

S. S. Hussain I.A.S. (Ex)
Chief Executive Officer

Ref. No. MCHI/CEO/17-18/201 **June 08, 2018**

Sub: Request for issuing a Circular/ Notification for not insisting upon Royalty for laying of foundation/ basement by Talathi or Collector.

Ref: SC Order passed in Royalty matter in Civil Appeal No. 10717 OF 2014.

Dear

As you are aware, Sir, CREDAI-MCHI an association of Developers having projects mostly in MMR area, works for the cause of common concern arising while developing any project faced by its members. This humble representation is against the grievance/hurdle faced by CREDAI-MCHI, Members, even after the outcome of one of the Supreme Court orders passed in the Royalty matter.

> The royalty order passed by the Hon'ble SC clearly states that, *"According to the learned counsel for the appellant-builders, the earth which is dug up for the purposes of laying of foundation of buildings is not intended for filling up or levelling purposes; digging of the earth is inbuilt in the course of building operations."(Page-5)*
>
> *Page-14, "An excavation undertaken to lay the foundation of a building would not, ordinarily, carry the intention to use the excavated earth for the purpose of filling up or levelling. A blanket determination of liability merely because ordinary earth was dug up, therefore, would not be justified; what would be required is a more precise determination of the end use of the excavated earth; a finding on the correctness of the stand of the builders that the extracted earth was not used commercially but was redeployed in the building operations."*

The intention to reproduce the above paras from the Order is to request the Revenue Department issue a circular/notification in light of the Order passed by SC in the Royalty matter, whereby not to insist for payment of Royalty for foundation/basement by the Talathi or Collector.

CREDAI-MCHI, request for issuing of necessary guidelines to the respective officers as it is not being considered/implemented inspite of SC Orders.

Our sincere request for any personal discussion with our core team members in this regards shall be helpful in putting forth our views before the Authorities.

Yours

(S. S. Hussain)

To,
Shri Manu Kumar Srivastava (I.A.S.)
Additional Chief Secretary (Revenue)
Registration and Stamp
Revenue & Forest Department
Government of Maharashtra
Mantralaya, Mumbai

Maharashtra Chamber of Housing Industry, Maker Bhavan II, 4th Floor,
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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10717 OF 2014
(Arising out of S.L.P. (C) NO. 33002 of 2010)

Promoters and Builders Association of Pune ... Appellant

Versus

The State of Maharashtra & Ors. ... Respondents

WITH

Civil Appeal No. 10718 of 2014
(Arising out of SLP(C) No.34306 of 2010)

Civil Appeal No. 10716 of 2014
(Arising out of SLP (C) No.4571 of 2011)

Civil Appeal No. 10715 of 2014
(Arising out of SLP(C) No.13828 of 2011)

J U D G M E N T

RANJAN GOGOI, J.

1. Leave granted in all the special leave petitions.

2. The appellant in the first batch of appeals before us is an Association representing individual builders of the State of Maharashtra who carry out construction activities in the

normal course of business. The Association and also the individual builders are aggrieved by the judgment of the Bombay High Court dated 8.10.2010, *inter alia,* holding that "excavation activity even for the purposes of laying foundation of the building would still attract rigours of Section 48(7) of the Revenue Code". Under the aforesaid provision of the Code extraction of minerals by any person without assignment of any right by the State Government makes such person liable to penalty, as prescribed.

3. The Nuclear Power Corporation, the second appellant before us is a Government Company engaged in the construction, maintenance and operation of nuclear power station in India. It is aggrieved by the fact that though an issue similar to the one raised by the builders had been raised by it before the High Court the writ proceeding instituted by the Corporation has been dismissed on the ground that statutory remedy under the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as 'the Code') had not been resorted to by the Corporation.

4. The relevant facts may, at the outset, be alluded to.

In the first set of appeals, digging of earth for the purpose of laying of foundation of a building is an integral part of the building activities undertaken by the appellants. According to the appellant-builders, the earth excavated or dug up is redeployed in the building itself at a particular stage of the construction. On the basis that such activity amounts to mining of a "minor mineral" i.e. ordinary earth and that the same is without due permission/lease or assignment of the right to do so, the respondent authorities have invoked the power under Section 48(7) of the Code to levy penalty by the order(s) impugned before the High Court. The challenge having resulted in the findings of the High Court, as extracted above, the present appeals have been filed by the Association of the Builders and also by some of the builders themselves.

5. The facts in the appeal filed by Nuclear Power Corporation of India Limited are largely similar. In consonance with its objects, the Corporation in whose favour

the grant of land was made had carried out digging activities for the purpose of widening of the water channel through which sea water is drawn for the purposes of cooling the nuclear plant in the Tarapur Atomic Power Station. The Corporation categorically denies any commercial use of the extracted earth.

6. On behalf of the appellants it is pointed out that to attract Section 48(7) of the Code, the activity undertaken has to be unlawful. The building operations undertaken by the appellant-builders are pursuant to a final development plan sanctioned under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter for short 'the MRTP Act'). In this regard the attention of the Court has also been drawn to the provisions of Section 2(7) of the MRTP Act which define "development" to mean "carrying out of buildings, engineering, mining or other operations in or over or under, land .....". It is also pointed out that by Notification dated 3.2.2000 issued under Section 3(e) of the Mines and Minerals (Development and Regulation) Act, 1957

(hereinafter for short referred to as 'the Act of 1957') ordinary earth has been declared to be a minor mineral but only if it is used for filling or levelling purposes in construction of embankments, roads, railways, buildings etc. According to the learned counsel for the appellant-builders, the earth which is dug up for the purposes of laying of foundation of buildings is not intended for filling up or levelling purposes; digging of the earth is inbuilt in the course of building operations. The activity undertaken, therefore, cannot be characterised as one of excavation of a minor mineral. Additionally, the provisions of Rule 6 of the Maharashtra Land Revenue (Restriction on Use of Land) Rules, 1968 (hereinafter for short 'the Rules of 1968') has been relied upon to contend that excavation of land for purposes of laying of foundation for buildings do not require any previous permission of the Collector which is otherwise mandated prior to use/excavation of land for any of the purposes covered by the provisions of the Rules of 1968. The definition of 'Mine' in Section 2(j) of the Mines Act, 1952 and the meaning of the expression 'mining operation'

assigned by Section 3(d) of the Act of 1957 has also been pressed into service to contend that mere digging of earth as undertaken by the appellants cannot amount to a mining activity. The learned counsel for the appellants (builders) have alternatively contended that if the appellants are still to be held liable under the provisions of Section 48(7) of the Code, the aforesaid provision itself is liable to be adjudged as constitutionally invalid. The Act of 1957 which is relatable to Entry 54 of List I comprehensively deals with all questions of liability on account of unauthorised/unlicensed mining and the field being wholly occupied by a central enactment, Section 48(7) of the Code is constitutionally suspect being relatable to Entry 23 of List II which is subject to Entry 54 of List I.

7. Insofar as the appeal of the Nuclear Power Corporation is concerned, apart from the common grounds of challenge as in the case of the builders, it is contended that no commercial exploitation of the excavated earth was involved in the process of repair/widening of the water channel; there

was no sale or transfer of the excavated earth and the same was the incidental result of the process of repair/widening of the channel which is an activity in consonance with the grant of the land to the appellant by the State Government. The said grant was made way back in the year 1964 on freehold basis for the purpose of establishing an atomic power station and for maintenance thereof. It is further submitted that the very jurisdiction to levy penalty under Section 48(7) of the Code having been raised in the writ petition filed by the appellants, the High Court was not justified in refusing adjudication on merits.

8. In reply, the State has contended that after the inclusion of ordinary earth in the definition of "minor minerals" by Notification dated 3.2.2000 under Section 3(e) of the 1957 Act, excavation of ordinary earth without authorization under the Act of 1957 would make the appellants liable not only to payment of penalty under the Code but also for criminal prosecution under the Act of 1957. It is contended that mere permission for construction of

buildings; sanction of the development plans or the provisions of Rule 6 of the Rules of 1968 does not absolve the appellants from fulfilling the statutory obligations under the 1957 Act. Such a contention, if accepted, according to the learned State counsel, would have the effect of nullifying the provisions of the 1957 Act insofar as one specie of minor mineral i.e. ordinary earth is concerned. As regards the challenge to the constitutional validity of Section 48(7) of the Code the State contends that the penalty imposed under Section 48(7) is compensatory and in the nature of a civil liability for the loss suffered by the State. Consequently, the challenge is without any substance as the two enactments i.e. the Code and the Act of 1957 operate in different fields. The enactment of the Code is traceable to Entry 18 and 45 of the List II and not Entry 23 of the said List as contended on behalf of the appellants.

9. We may proceed to analyse the issues arising by reproducing Section 48(7) of the Code under which the impugned actions have been made.

> "48. *Government title to mines and minerals-*
>
> *(7) Any person who without lawful authority extracts, removes, collects, replaces, picks up or disposes of any mineral from working or derelict mines, quarries, old dumps, fields, bandhas (whether on the plea of repairing or construction of bunds of the fields or on any other plea), nallas, creeks, river-beds, or such other places wherever situate, the right to which vests in, and has not been assigned by the State Government, shall, without prejudice to any other mode of action that may be taken against him, be liable, on the order in writing of the Collector, to pay penalty not exceeding a sum determined, at three times the market value of the minerals so extracted, removed, collected, replaced, picked up or disposed of, as the case may be.*
>
> *Provided that, if the sum so determined is less than one thousand rupees, the penalty may be such larger sum not exceeding one thousand rupees as the Collector may impose."*

10. A plain reading of the aforesaid provision would make it clear that the quintessence of the provision contained in Section 48(7) is extraction/removal of any mineral vested in the State without lawful authority or without a lawful assignment by the State.

11. What is a mineral is not defined either under the MRTP Act or the Code. The said expression is however defined by

Section 2(j) of the Mines Act, 1952 and Section 3(a) read with Section 3(e) of the Act of 1957. As mining activities and operations are regulated by the provisions of the Act of 1957 it is the definition contained in the said Act which will be more relevant for the present. Section 3(a) and Section 3(e) is in the following terms:

> "**Section 3**.—In this Act, unless the context otherwise requires,—
>
> (a) "minerals" includes all minerals except mineral oils:
>
> (b) xxxxx xxxx xxxxx
> (c) xxxxx xxxx xxxxx
> (d) xxxxx xxxx xxxxx
>
> (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;"

12. Ordinary earth has been bought within the fold of a Minor Mineral by Notification of 3.2.2000 issued under Section 3(e) of the Act of 1957. The said Notification is in the following terms:

"NOTIFICATION

GSR (E) – In exercise of the powers conferred by Clause (e) of Section 3 of the Mines and Minerals (Development and Regulation) Act 1957 (67 of 1957), the Central Government hereby declares the 'ordinary earth' used for filling or levelling purposes in construction of embankments, roads, railways, buildings to be a minor mineral in addition to the minerals already declared as minor minerals hereinbefore under the said clause.

(F.No.7/5/99-M.VI)
Sd/-
(S.P.Gupta)
Joint Secretary to the Government of India"
(emphasis supplied)

13. It is, therefore, clear that "ordinary earth" used for filling or levelling purposes in construction of embankments, roads, railways, buildings is deemed to be a minor mineral. It is not in dispute that in the present appeals excavation of ordinary earth had been undertaken by the appellants either for laying foundation of buildings or for the purpose of widening of the channel to bring adequate quantity of sea water for the purpose of cooling the nuclear plant. The construction of buildings is in terms of a sanctioned development plan under the MRTP Act whereas the

excavation/widening of the channel to bring sea water is in furtherance of the object of the grant of the land in favour of the Nuclear Power Corporation. The appellant-builders contend that there is no commercial exploitation of the dug up earth inasmuch as the same is redeployed in the construction activity itself. In the case of the Nuclear Power Corporation it is the specific case of the Corporation that extract of earth is a consequence of the use of the land for the purposes of the grant thereof and that there is no commercial exploitation of the excavated earth inasmuch as "the soil being excavated for "Intake Channel" was not sent outside or sold to anybody for commercial gain".

14. None of the provisions contained in the MRTP Act referred to above or the provisions of Rule 6 of the Rules of 1968 would have a material bearing in judging the validity of the impugned actions inasmuch as none of the said provisions can obviate the necessity of a mining license/permission under the Act of 1957 if the same is required to regulate the activities undertaken in the present

case by the appellants. It will, therefore, not be necessary to delve into the arguments raised on the aforesaid score. Suffice it would be to say that unless the excavation undertaken by the appellant-builders is for any of the purposes contemplated by the Notification dated 3.2.2000 the liability of such builders to penalty under Section 48(7) of the Code would be in serious doubt.

15. Though Section 2(j) of the Mines Act, 1952 which defines 'Mine' and the expression "mining operations" appearing in Section 3(d) of the Act of 1957 may contemplate a somewhat elaborate process of extraction of a mineral, in view of the Notification dated 3.2.2000, insofar as ordinary earth is concerned, a simple process of excavation may also amount to a mining operation in any given situation. However, as seen, the operation of the said Notification has an inbuilt restriction. It is ordinary earth used only for the purposes enumerated therein, namely, filling or levelling purposes in construction of an embankment, road, railways and buildings which alone is a

minor mineral. Excavation of ordinary earth for uses not contemplated in the aforesaid Notification, therefore, would not amount to a mining activity so as to attract the wrath of the provisions of either the Code or the Act of 1957.

16. As use can only follow extraction or excavation it is the purpose of the excavation that has to be seen. The liability under Section 48(7) for excavation of ordinary earth would, therefore, truly depend on a determination of the use/purpose for which the excavated earth had been put to. An excavation undertaken to lay the foundation of a building would not, ordinarily, carry the intention to use the excavated earth for the purpose of filling up or levelling. A blanket determination of liability merely because ordinary earth was dug up, therefore, would not be justified; what would be required is a more precise determination of the end use of the excavated earth; a finding on the correctness of the stand of the builders that the extracted earth was not used commercially but was redeployed in the building operations. If the determination was to return a finding in

favour of the claim made by the builders, obviously, the Notification dated 3.2.2000 would have no application; the excavated earth would not be a specie of minor mineral under Section 3(e) of the Act of 1957 read with the Notification dated 3.2.2000.

17. Insofar as the appeal filed by the Nuclear Power Corporation is concerned, the purpose of excavation, ex facie, being relatable to the purpose of the grant of the land to the Corporation by the State Government, the extraction of ordinary earth was clearly not for the purposes spelt out by the said Notification dated 03.02.2000. The process undertaken by the Corporation is to further the objects of the grant in the course of which the excavation of earth is but coincidental. In this regard we must notice with approval the following views expressed by the Bombay High Court in ***Rashtriya Chemicals and Fertilizers Limited*** Vs. ***State of Maharashtra and Others***[1] while dealing with a somewhat similar question.

[1] AIR 1993 Bombay 144

14. If it were a mere question of Mines and Minerals Act, 1957 covering the removal of earth, there cannot be possibly any doubt whatever, now, in view of the very wide definition of the term contained in the enactment itself, and as interpreted by the authoritative pronouncements of the Supreme Court. As noted earlier, the question involved in the present case is not to be determined with reference to the Central enactment but with reference to the clauses in the grant and the provisions in the Code. When it is noted that the Company was given the land for the purpose of erecting massive structures as needed in setting up a chemical factory of the designs and dimensions of the company, the context would certainly rule out a reservation for the State Government of the earth that is found in the land. That will very much defeat the purpose of the grant itself. Every use of the sod, or piercing of the land with a pick-axe, would, in that eventuality, require sanction of the authorities. The interpretation so placed, would frustrate the intention of the grant and lead to patently absurd results. To equate the earth removed in the process of digging a foundation, or otherwise, as a mineral product, in that context, would be a murder of an alien but lovely language. The reading of the entire grant, would certainly rule out a proposition equating every pebble or particle of soil in the granted land as partaking the character of a mineral product. In the light of the above conclusion, I am clearly of the view that the orders of the authorities, are vitiated by errors of law apparent on the face of the record. They are liable to be quashed. I do so."

18. For the aforesaid reasons all the appeals are allowed, however, with the direction that in the cases of the appellant-builders the respondent-State will be at liberty to proceed further in accordance with the observations contained in this order if it is so advised. So far as the appeal of the Nuclear Power Corporation is concerned the writ petition is allowed and the orders impugned before the High Court are set aside and quashed. In view of our conclusions above, we do not consider it necessary to go into the larger question raised i.e. the constitutionality of the provision of Section 48(7) of the Code which issue is left open for decision in an appropriate case.

.....J.
[RANJAN GOGOI]

.....J.
[R.K. AGRAWAL]

NEW DELHI,
DECEMBER 03, 2014.

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4540-4548 OF 2000

Threesiamma Jacob & Ors. …

Appellants

Versus

Geologist, Dptt. of Mining & Geology & Ors. …Respondents

WITH

CIVIL APPEAL NO. 4549 OF 2000

J U D G M E N T

Chelameswar, J.

1. These appeals are placed before us pursuant to the Order dated 8th December, 2004 of a Division Bench of this Court which opined that the points involved in these and certain other appeals "need to be decided by a three Judge Bench."

2. These appeals arise out of a common judgment rendered in a number of writ petitions by a full Bench of

the Kerala High Court dated 2nd August, 1999 by which all the writ petitions were dismissed.

3. The said full Bench of the Kerala High Court was called upon to examine the question (on a reference by another Division Bench) - whether the owners of *jenmom* lands in the Malabar area[1] are the proprietors of the soil and the minerals underneath the soil - and answered the said question in the negative:

> "Hence, we are of the view that so far as the lands in question are concerned, the minerals belong to the Government..." (para 31)

4. To illustrate the background in which such question arises, we may quote the facts of one of the writ petitions considered by the full Bench as narrated by the full Bench.

> "2. According to the petitioner in this case, her husband obtained jenmon assignment of 2 Acres of granite rocks situated in Dhoni Akathethara Amsom and Village, palakkad Taluk, Malabar. The petitioner's husband obtained the property from the previous jenmy, C.P. Thampurankutty Menon. Thereafter, the petitioner's husband executed a registered gift deed. According to the petitioner, the property was enjoyed by the earlier jenmy and thereafter by the petitioner without any interference from the Government. Due to ignorance of the legal position, the petitioner entered into a lease agreement with the Department of Mining and Geology to conduct quarrying operations in her property. Later on

[1] Parts of Kerala popularly known as Malabar area which earlier formed part of the erstwhile Madras province in the British India

> she realised that it was not necessary to pay any royalty to the Government with regard to the property belonging to her. In the above circumstances, she made a fresh application to the Department for licence. But the respondents failed to provide necessary permits to the petitioner. When she received a notice from the Kerala Minerals Squad directing her to stop the quarrying activities, she gave a reply to reconsider her contention. Thereafter, by Ext. P6, she was informed by the Department to renew the lease."

5. It can be seen from the above that the appellants asserted that they are holders of *jenmom* rights in the lands in question and the State has no legal authority to demand payment of royalties on the minerals excavated by the holder of *jenmom* right.

6. Such a claim of the appellants is based on the belief and assertion of the appellants (1) that the holder of the *jenmom* rights is not only the proprietor of the soil for which he has *jenmom* rights, but also the owner of the mineral wealth lying beneath the soil. (2) that the understanding of the appellants that a claim of royalty can be made only by the owner of the mineral against a person who is excavating the mineral with the consent of the owner.

7. We must straightway record that the second of the above-mentioned propositions regarding the character and legal nature of royalty, (though was considered by this Court on more than one occasion) stands referred to a larger Bench by an Order of reference dated 30th March, 2011 of a three-Judge Bench in *Mineral Area Development Authority & Ors.* Vs. *Steel Authority of India & Ors*., (2011) 4 SCC 450, therefore, we are not required to examine and decide the question. We are only required to examine the amplitude of the rights of the *jenmom* land holders called *jenmis* in the Malabar area of the Kerala State and decide whether a *jenmi* is entitled to the rights of subsoil/the minerals lying beneath the surface of the land.

8. The appellants' case is that a '*jenmi*'[2] holds *jenmom*[3] lands as absolute owner and has proprietary rights over both the soil and subsoil. The *ryotwari* settlement made by the British Government in the Malabar area of the erstwhile Madras Province only obligated the *jenmis* to pay revenue to the State but did not in any way affect their proprietary rights in the lands. Nor did the *ryotwari* settlement have the effect of transferring and vesting the ownership either of the land or the subsoil (minerals) to the State. In support of this submission, the appellants heavily relied on a judgment of this Court in *Balmadies Plantations Ltd. and Anr. v. The State of Tamil Nadu* AIR 1972 SC 2240 and also a standing order of the Board of Revenue of the erstwhile Madras Province dated 19th

[2] The expression *jenmi* etymologically means the holder of *jenmom* rights in a piece of land. Though the expression is defined in some of the enactments pertaining to the present State of Kerala, such definitions are enactment specific but not comprehensive to describe the full legal contours of the *jenmom* rights.

[3] In Malabar the exclusive right to, and hereditary possession of, the soil is denoted by the term jenmam which means birthright and the holder thereof is known as jenmi, jenmakaran or mutalalan. Until the conquest of Malabar by the Mahomedan princes of Mysore, the jenmis appear to have held their lands free from any liability to make any payment, either in money or in produce, to government and therefore until that period, such an absolute property was vested in them as was not found in any other part of the Presidency. The late Sir Charles Turner after noticing the various forms of transactions prevalent in Malabar remarked that they pointed to an ownership of the soil as complete as was enjoyed by a freeholder in England.

These jenmis have been from time immemorial exercising the right of selling, mortgaging, or otherwise dealing with the property. They had full absolute property in the soil. **(Ref. "Land Tenures in the Madras Presidency", S. Sundararaja Iyengar, Second Edition, Page 49-50).**

March 1888 and argued that earlier full Bench decision of the Kerala High Court in *S.* Sabhayogam v. *State of Kerala,* AIR 1963 Kerala 101 required a reconsideration.

9. On the other hand, the State of Kerala took the stand that **subsequent to the extension** of the *ryotwari* settlement to the Malabar area of the erstwhile Madras Province, the *jenmis* ceased to be the absolute owners and proprietors of the lands held by them. The *ryotwari* settlement had the effect of transferring the ownership of subsoil (minerals) to the Government. The *ryotwari pattadars* rights are only confined to the surface.

10. The High Court rejected the contentions of the petitioners. The High Court attempted to distinguish the decision of this Court in *Balmadies Plantations* (supra):

> "Even though there is some force in the contention of the petitioners, the above observations of the Supreme Court are not inconformity with the observations made by the Full Bench (which followed the decision of the Supreme Court in *Kunhikoman's case*), that does not mean that the view taken by the Full Bench is not correct, because it can be seen from paragraph 14 of the above judgment itself that the Supreme Court has observed that in the Kerala case documents were produced and on the basis of the documents, the Court took the view that the

> nature of rights has changed after the Ryotwari settlements."

11. We must confess that we have some difficulty to understand the exact purport of the above extract. Be that as it may. The High Court recorded two conclusions (1) that the earlier full Bench decision of the Kerala High Court in the case of *S.* Sabhayogam *case* (supra) did not require any reconsideration as contended by the petitioners; and (2) the lands in question cannot be classified any more as *jenmom* lands but are lands held on a *ryotwari patta*.

> "The State has produced certain documents to show that the lands are Ryotwari lands. Ext.R1(a) produced will show that there are only two categories of lands, Ryotwari and Inam. Thus, on a consideration of the documents produced by the State and on a consideration of the decisions cited, we are satisfied that the decision reported in S. Sabhayogam v. State of Kerala – AIR 1963 Kerala 101 – does not require reconsideration in the light of the decision of the Supreme Court in Balmadies Plantations v. State of Tamil Nadu – AIR 1972 SC 2240. Hence, we hold that the lands in question are not jenmom lands and they are Ryotwari patta lands."

12. In view of such a conclusion the High Court rejected the submission that the petitioners are entitled to the rights over the subsoil relying upon certain passages from

Secretary of State v. Sri Srinivasachariar, AIR 1921 PC 1, *T. Swaminathan (Dead) and Another v. State Of Madras and others,* AIR 1971 Mad 483, *Sashi Bhushan Misra v. Jyoti Prasad Singh Deo,* AIR 1916 PC 191, *Kaliki Subbarami Reddy v. Union of India*, ILR 1969 AP 736 and *Gangarathinam v. State of Tamil Nadu,* 1990 TNLJ 374; and certain recitals (in Malayalam) made in the *patta* issued to one of the petitioners before it which is translated by the High Court as follows:

> "The assessment shown in the pattayam is the share due to the Government for the agricultural produce on the surface of the property. If minerals are found in the property and the minerals are worked by the pattadar with regard to those properties a separate tax is to be paid in addition to the tax shown in the pattayam."

13. The High Court though referred to the standing order of the Madras Revenue Board dated 19th March 1888, it did not record any conclusive finding on the effect of the said order.

14. Before us the same submissions which were made before the High Court were repeated by both the parties,

therefore, we are not elaborating the submissions made before us.

15. Before we examine the correctness of the judgment under appeal, we deem it necessary to take note of the legal position regarding the rights over minerals as they obtain in England. Halsbury's Laws of England[4] state the legal position:

> *"**19. Meaning of 'land' and cognate terms.** Prima facie 'land' or 'lands' includes everything on or under the surface, although this meaning has in some cases been held to have been restricted by the context. 'Soil' is apt to denote the surface and everything above and below it, but similarly its meaning may be restricted by the context so as to exclude the mines. 'Subsoil' includes everything from the surface to the centre of the earth.....*
>
> *20.....Mines, quarries and minerals in their original position are part and parcel of the land. Consequently the owner of surface land is entitled prima facie to everything beneath or within it, down to the centre of the earth. This principle applies even where title to the surface has been acquired by prescription, but it is subject to exceptions. Thus, at common law, mines of gold and silvery belong to the Crown, and by statute unworked coal which was, at the restructuring date, vested in the British Coal Corporation is vested in the Coal Authority. Any minerals removed from land under a compulsory rights order or opencast working of coal become the property of the person entitled to the rights conferred by the order. The property in petroleum existing in its natural condition in strata is vested by statute in the Crown."*

[4] [Vol.31, 4th Ed. pp.28-29]

16. We are required to examine whether the law of this country and more particularly with reference to Malabar area regarding the rights over the mines and minerals is the same as it obtains in England or different.

17. By the time South India came under control of the British Government, there were in vogue innumerable varieties of land tenures in various parts of South India which eventually came to be called the Madras Presidency. The history of these tenures and how they were dealt under the various laws made either by the East India Company government or the British government (hereinafter in this judgment both the above are referred to as 'British' for the sake of convenience) was examined in detail in two seminal works titled - the Land Systems of British India by Bedan Henry Powell first published in 1892 and Land Tenures in the Madras Presidency by S. Sundararaja Iyengar, published in 1916.

18. Both the above-mentioned works examined the nature and legal contours of various kinds of land tenures in vogue. While Powell's book dealt with the pan Indian

situation, Iyengar's book is confined to Madras presidency alone. Both the books took note of the existence of a land tenure known as *jenmom* in the present State of Kerala.

19. The history of the land tenures in South India and salient features of *jenmon* rights or the rights of a *jenmi* fell for the consideration of this Court on more than one occasion. Two Constitution Benches of this Court had occasion to examine the above questions in *Karimbil Kunhikoman v. State of Kerala* [AIR 1962 SC 723], and *Balmadies Plantations Ltd. and Anr. v. The State of Tamil Nadu* [AIR 1972 SC 2240], wherein their Lordships examined in some detail the nature of land tenures as they existed in the erstwhile Madras province generally and the Malabar area specifically.

20. In the case of *Kunhikoman* (supra), this Court held that there were two varieties of tenures in existence in the erstwhile province of Madras. Those tenures were known as **landlord tenures** and *ryotwari* tenures**.** It was held by this Court that the landlord *tenures* were governed by the various enactments in force from time to time whereas

the *ryotwari* tenures were governed by the standing orders of the Board of Revenue - in other words the orders issued by the Executive Government of the Madras province[5].

21. Eventually, the **landlord tenures** in the erstwhile province of Madras came to be governed by the enactment known as Madras Estates Land Act, No. 1 of 1908 which admittedly did not apply to Malabar area.[6]

22. The Madras Estates Land Act, 1908, which extensively dealt with the rights and obligations of the landlords/landholders owning an estate (popularly known as *Zamindars*) expressly recognises the right of the landholder to reserve mining rights while admitting a *ryot* to the possession of the *ryoti* land.[7] By necessary implication it follows that the landholder had the legal right and title to the minerals/subsoil over the lands

[5] Kunhikoman case – Para 12. …..The usual feature of land-tenure in Madras was the ryotwari form but in some districts, a landlord class had grown up both in the northern and southern parts of the Presidency of Madras as it was before the Constitution. The permanent settlement was introduced in a part of the Madras Presidency in 1802. There were also various tenures arising out of revenue free grants all over the Province (see Chap. IV, Vol. III of Land Systems of British India by Baden Powell) and sometimes in some districts both kinds of tenures, namely, landlord tenures and the ryotwari tenures were prevalent. There were various Acts, in force in the Presidency of Madras with respect to landlord tenures while ryotwari tenures were governed by the Standing Orders of the Board of Revenue.

[6] Para 12 of Kunhikoman (supra) - …..Eventually, in 1908, the Madras legislature passed the Madras Estates Land Act, No. 1 of 1908 …… This Act applied to the entire Presidency of Madras except the Presidency town of Madras, the district of Malabar and …….

[7] Section 7 – **Reservation of mining rights** - Nothing in this Act shall affect any right of a landholder to make a reservation of mining rights on admitting any person to possession of ryoti land.

comprising his estate and he is legally entitled either to grant the mining rights to the *ryot* or withhold the same. This implication which we drew gets fortified by Section 3 of Estates Abolition Act which expressly declares that with effect from the 'notified date' - a defined expression under Section 1(10), the estate with all the assets including mines and minerals shall stand transferred to and vest in the State. If the minerals/subsoil did not belong to the estate holder, there was no need to make an express declaration such as the one made in Section 3(b).[8]

23. Similarly, it can also be noticed that under various enactments abolishing the various lands tenures in South India such as *inams* etc., express provisions were made that the mines and minerals existing in such abolished tenures shall stand transferred to the Government and vest in the Government. See, for example, Section 2-A[9] of The Andhra Pradesh (Andhra Area) *Inams* (Abolition and

[8] Section 3(b) - the entire estate including minor imams (Post-settlement or pre-settlement) included in the assets of the zamindari estate at the permanent settlement of that estate; all communal lands and porambokes; other non-ryoti lands; waste lands; pasture lands; Lanka lands; forests; **mines and minerals**; quarries; rivers and streams; tanks and irrigation works; fisheries; and ferries, **shall stand transferred** to the Government and vest in them, free of all encumbrances; and the Andhra Pradesh (Andhra Area) Revenue Recovery Act, 1864 the Andhra Pradesh (Andhra Area) Irrigation Cess Act, 1865 and all other enactments applicable to ryotwari areas shall apply to the estate;

[9] **2-A. Transfer to, and vesting in the Government of all communal lands, porambokes etc. in inam lands -** Notwithstanding anything contained in this Act all communal lands and porambokes, grazing lands, waste lands, forest lands, mines and querries, tanks, tank-beds and irrigation works, streams and rivers, fisheries and ferries in the inam lands shall stand transferred to the Government and vest in them free of all encumbrances.

Conversion into Ryotwari) Act, 1956. We must remember that Andhra area of the present State of Andhra Pradesh was part of the old Madras Province.

24. *State of Andhra Pradesh* v. *Duvvuru Balarami Reddy & Ors.*[10] was a case where the respondents before this Court secured a lease of a piece of land in an *inam* village (shrotriem) and sought to carry on mica mining operation and applied for permission from the State of Andhra Pradesh under the Mineral Concession Rules, 1949 made under the Mines & Minerals Regulation & Development Act, 1948. The question was whether the lessor (shrotriemdar) had rights over the subsoil/minerals and whether he could pass rights therein by a lease.[11] A Constitution Bench of this Court examined the rights of the *Inamdar* under the legal regime that existed in the Madras province and came to the conclusion on the basis of a decision of the Privy Council[12] that every *Inamdar*

[10] AIR 1963 SC 264

[11] The main question therefore that falls for decision in these appeals is whether shrotriemdars can be said to have rights in the minerals. (para 7)

[12] This matter has been the subject of consideration by the Madras High Court on a number of occasions and eventually the controversy was set at rest by the decision of the Judicial Committee in Secy. Of State for India v. Srinivasachariar, 48 Ind App 56 : (AIR 1921 PC 1). That case came on appeal to the Judicial Committee from the decision of the Madras High Court in Secy. Of State for India v. Srinivasachariar, ILR 40 Mad 268 : (AIR 1918 Mad 956). The controversy before the Madras High Court was with respect to a shrotriem inam which was granted by the Nawab of Carnatic in 1750 and had been enfranchised by the British Government in 1862. (para 7)

necessarily did not own the subsoil rights. Such right depended upon the terms of the original grant – *Inam*. It, therefore, follows that in a given case if the original grant of *Inam* specifically conveyed the subsoil rights (by the grantor), the *Inamdar* would become the owner of the mineral wealth also.

25. The necessary inference is that the British recognised that the State had no inherent right in law to be the owner of all mineral wealth in this country. They recognised that such rights could inhere in private parties, at least *Zamindars* and *Inamdars* or *ryots* claiming under them in a given case.

26. Coming to the *ryotwari* tenures, this Court held that they were governed by the standing orders issued from time to time by the Revenue Board. Under the *ryotwari* system land was given on lease by the government to the

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The Judicial Committee held that the grant of a village in inam might be no more than an assignment of revenue, and even where there was included a grant of land, what interest in the land passed must depend on the language of the instrument and the circumstances of each case. The Judicial Committee also considered the standing orders of the Board of Revenue of 1890 and 1907 which have been referred to by the appeal court in the judgment under appeal. This decision thus establishes that the mere fact that a person is the holder of an inam grant would not by itself by enough to establish that the inam grant included the grant of sub-soil rights in addition to the surface rights and that the grant of sub-soil would depend upon the language used in the grant. If there are no words in the grant from which the grant of sub-soil rights can be properly inferred the inam grant would only convey the surface rights to the grantee, and the inam grant could not by itself be equated to a complete transfer for value of all that was in the grantor. (para 8)

ryot under a *patta*. Noticing the salient features of the *ryotwari* system as explained in various authoritative works, this Court opined that "*though a ryotwari pattadar is virtually like a proprietor and has many of the advantages of such a proprietor*", such *pattadar* was never considered a proprietor of land but only a tenant.[13]

27. We must remember that in the case of *Kunhikoman* (supra), the petitioners did not claim any adjudication of their rights as holders of *jenmom* lands. On the other hand, the appellants asserted that they were holders of *ryotwari pattas* issued according to *ryotwari* settlement in

[13] Para 13 of Kunhikoman (supra) – ……The other class of land-tenures consisted of ryotwari pattadars which were governed by the Board's Standing Orders, there being no Act of the legislature with respect to them. The holders of ryotwari pattas used to hold lands on lease from Government. The basic idea of ryotwari settlement is that every bit of land is assessed to a certain revenue and assigned a survey number for a period of years, which is usually thirty and each occupant of such land holds it subject to his paying the land-revenue fixed on that land. But it is open to the occupant to relinquish his land or to take new land which has been relinquished by some other occupant or become otherwise available on payment of assessment (see Land Systems of british India by Baden-Powell, Vol. III, Chap. IV S. II, p. 128). Though, theoretically, according to some authorities the occupant of ryotwari land held it under an annual lease (see Macleane, Vol. I Revenue Settlement, p. 104), it appears that in fact the Collector had no power to terminate the tenant's holding for any cause whatever except failure to pay the revenue or the ryot's own relinquishment or abandonment. The ryot is generally called a tenant, of Government but he is not a tenant from year to year and cannot be ousted as long as he pays the land revenue assessed. He has also the right to sell or mortgage or gift the land or lease it and the transferee becomes liable in his place for the revenue. Further, the lessee of a ryotwari pattadar has no rights except those conferred under the lease and is generally a sub-tenant at will liable to ejectment at the end of each year. In the Manual of Administration, as quoted by Baden Powell, in Vol. III of Land Systems of British India at p. 129, the ryotwari tenure is summarized as that

"of a tenant of the State enjoying a tenant-right which can be inherited, sold, or burdened for debt in precisely the same manner as a proprietary right, subject always to payment of the revenue due to the State".

Though therefore the ryotwari pattadar is virtually like a proprietor and has many of the advantages of such a proprietor, he could still relinquish or abandon his land in favour of the Government. It is because of this position that the ryotwari pattadar was never considered a proprietor of the land under his patta, though he had many of the advantages of a proprietor.

the erstwhile State of Madras under the revenue Board Standing Order. This Court further recorded:-

> *".....it is not in dispute that the ryotwari system was introduced in the South Canara District in the earlier years of this century"*

28. The question before this Court was whether the holder of such a *ryotwari patta* could be called the holder of an estate within the meaning of the Kerala Agrarian Relations Act and therefore, precluded by Article 39A of the Constitution to claim the benefit of the fundamental rights under Articles 19(1)(d) and 31 of the Constitution.

29. The legal nature of the rights of a *jenmi was* considered in greater detail in the case of *Balmadies Plantations* (supra). At para 6 of the said judgment, the Constitution Bench recorded:-

> *"6. .....Originally the janmis in Malabar were absolute proprietors of the land and did not pay land revenue. After Malabar was annexed by the British in the beginning of the 19th century, the janmis conceded the liability to pay land revenue....."*

30. This Court took note of a decision of the Madras High Court in *Secretary of State v. Ashtamurthi* [(1890) ILR 13 Mad 89][14] where the Madras High Court recorded:-

[14] In the said case, the Madras High Court had to deal with the rights of a jenmi whose lands were leased out to a third party by the Collector (State) without reference to the jenmi and when the tenant defaulted in the payment of revenue, property was attached and sold under the provisions of the Madras Revenue Recovery Act. The jenmi successfully challenged the legality of such a sale.

> ".. At the annexation of Malabar in 1799, the Government disclaimed any desire to act as the proprietor of the soil, and directed that rent should be collected from the immediate cultivators. Trimbak Ranu v. Nana Bhavani (1875) 12 Bom HCR 144 and Secretary of State v. Vira Rayan (1886) ILR 9 Mad 175 thus limiting its claim to revenue. Further in their despatch of 17th December 1813 relating to the settlement of Malabar the Directors observed that in Malabar they had no property in the land to confer, with the exception of some forfeited estates. This may be regarded as an absolute disclaimer by the Government of the day of any proprietary right in the janmis' estate. .... ."

31. This Court in *Balmadies Plantations* case (supra) quoted with approval the above extracted passage from *Ashtamurthi's* (supra) judgment.

32. It was specifically argued on behalf of *Balmadies Plantations* that by virtue of a resettlement which took place in 1926, the *jenmom* rights were converted into *ryotwari* tenure. This Court on examination of the relevant standing orders reached the conclusion that the effect of the Resettlement of 1926 was to retain the *jenmom* estates and not to abolish the same and convert into *ryotwari* estates.[15]

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[15] **Para 11 of Balmadies (supra)** …….. It would appear from the above that the effect of the resettlement of 1926 was to retain the janmam estates and not to abolish the same or to convert them into ryotwari estates. There was merely a change of nomenclature. Government janman lands were called the new holdings, while private janmam lands were called the old holdings. In respect of janmabhogam (janmi's share) relating to Government janman lands, the order further directed that the amount to be paid to the Government should include both the taram assessment and janmabhogam. It is difficult, in our opinion, to infer from the above that janmam rights in the lands

33. But neither of the cases dealt with the question whether a *jenmi* is entitled either before or after the abovementioned settlement of 1926 to the subsoil rights or minerals in the land held by him. Therefore, we are required to decide the same.

34. In *Balmadies Plantations case* (supra) this Court took note of two facts – (1) that originally *jenmis* of Malabar area were absolute proprietors of the land; and (2) when Malabar area was annexed, the British expressly disclaimed the proprietorship of the soil. These conclusions were recorded on the basis of *Ashtamurthi* case (supra).

35. *Ashtamurthi case (supra)* itself relies upon an earlier decision of the Madras High Court in *Secretary of State v. Vira Rayan [(1886) ILR 9 Mad 175]*[16] wherein the High Court found that the land in dispute appertains to the District of Malabar and recorded as follows:-

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in question were extinguished and converted into ryotwari estates. The use of the word Janmabhogam on the contrary indicates that the rights of janmis were kept intact.

[16] It was an appeal decided by a Division Bench of the Madras High Court (Sir Charles A. Turner, Kt., Chief Justice, and Mr. Justice Muttusami Ayyar). The appeal arose out of a suit filed by the State seeking declaration that certain lands (forest lands) which were the subject matter of dispute in the said suit were the property of the government and a consequential injunction restraining the defendants from in any way interfering with the rights of the Government. The defendants asserted their proprietary rights over the lands in dispute.

" .....and we agree with the Judge that there is no presumption in that district and in the tracts administered as part of it, that forest lands are the property of the Crown. At the commencement of the century it was the policy of the Government to allow all lands to become private estates where that was possible. Despatch of Lord Wellesley quoted in Baskarappa v. The Collector of North Canara [I.L.R., 3 Bom., 550]. The despatch and order of the Governor-Gneral in Council on the annexation of Malabar, dated the 31st December 1799 and the 18th June 1801, have not been adduced, but their purport appears from the despatch of the 19th July 1804, quoted in Vyakunta Bapuji v. Government of Bombay [12 Bom. H.C.R. 144]. It was intimated that it never could be desirable that the Government itself should act as the proprietor of the lands and should collect the rents from the immediate cultivators of the soil. When in 1808 the Board of Revenue suggested that an augmentation of revenue might be derived from waste lands reserved, they were informed that the Government did not look to any advantage of that nature beyond the benefit of increasing the amount of the public taxes in proportion to the existing taxes of the country (Fifth Report, Appendix 30, page 902. Revenue and Judicial Selection, Volume I, p. 842). It will be seen that at that time the Government so far from abrogating the Hindu law intended to assert no proprietary right to the waste, but limited itself to its claim to revenue. At the time Malabar came under British rule, all the forests were claimed as private property (I.R.R., 3 Bom. 586). In their despatch of 17th December 1813, relating to the settlement of Malabar, the Directors observed that in Malabar they had no property in the land to confer, with the exception of some forfeited estates Revenue Selection, Volume I, p. 511). Although a different policy was subsequently pursued in other districts, and, especially in more modern times, rules have been framed for the sale of waste lands, there is nothing to show that any such change was notified in Malabar up to a period much later than that at which there is considerable evidence to show that the respondents Nos. 1 and 2 were in possession of and recognised as proprietors of the lands they claim by Government officials...."

36. This Court in *Balmadies Plantations* case (supra) after taking note of the above legal position with reference to the *jenmom* lands of Malabar rejected the contention that as a result of the resettlement of 1926, *jenmom* rights stood converted into *ryotwari* estate.[17]

37. We have already taken note of the legal position with respect to the minerals obtaining subsoil in the lands held under landlord tenures (*zamindari or inam estates),* and also the law of England, we find it difficult to believe with respect to *ryotwari* tenures in the British India and particularly the Madras province, the government assumed the ownership of the subsoil. On the contra, there is positive evidence in the Board Standing Order No. 10 dated 19.03.1888[18] (hereinafter referred to as BSO

[17] Para 11. …. It would appear from the above that the effect of the resettlement of 1926 was to retain the janmam estates and not to abolish the same or to convert them into ryotwari estates. There was merely a change of nomenclature. Government janmam lands were called the new holdings, while private janmam lands were called the old holdings. In respect of janmabhogam (janmi's share) relating to Government janman lands, the order further directed that the account to be paid to the Government should include both the term assessment and janmabhogam. It is difficult, in our opinion, to infer from the above that janmam rights in the lands in question were extinguished and converted into ryotwari estates. The use of the word 'Janmabhogam' on the contrary indicates that the rights of janmis were kept intact.

[18] **RESOLUTION – dated 19th March 1888, No. 277.**

In supersession of the existing Standing Order, the following is issued as Standing Order No. 10 :-

1. The State lays no claim to minerals -

No.10) that the State did not claim any proprietary right over the mineral wealth obtaining in lands held over a *ryotwari patta* or in *jenmom* lands in Malabar. The State/British in express terms declared by the said order dated 19.03.1888 that while "it lays no claim" at all to minerals

> (a) In estates held on sanads of permanent settlement
> (b) In enfranchised inam lands
> (c) In religious service tenements confirmed under the inam rules on perpetual service tenure.
> (d) In lands held on title – deeds, issued under the waste land rules, prior to 7th October, 1870, in

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G.O. 26th May, 1882, No. 511 (Notification, paragraph 1).

(a) In estates held on sanads of permanent settlementG.O. 28th October 1882 No.1181(b) In enfranchised inam lands

G.O. 28th April 1881 No.861(c) In religious service tenements confirmed under the inam rules on perpetual service tenure.

(d) In lands held on title – deeds, issued under the waste land rules, prior to 7th October, 1870, in which no reservation of the right of the State to minerals is made.

2. The right of the State in minerals is limited in the following cases to a share in the produce of the minerals worked, commuted into a money payment, if thought necessary, by Government, in like manner with and in addition to the land assessment :-

G.O. 8th October 1883 No.1248.(a) In lands occupied for agricultural purposes under ryotwari pattas G.O. 23rd January 1881 No.121(b) In janmom lands in MalabarG.O. 16th December 1881 No.1384

Persons intending to work minerals in those lands should give notice of their intention to the Collector of the district, specifying the lands in which they intend to carry on mining operation and should pay in two half-yearly instalments a special assessment for minerals in addition to the land assessment at the following rates:-

		Per acre (Rs.)
1.	For mining for gold	5
2.	For mining for metals other than gold	2
3.	For mining for diamonds and other precious stones	15
4.	For mining for coal, lime-stone or quarrying for building stone … (Such rates as may be fixed by the Board from time to time	

The rates will be doubled if mining operations are carried on without giving notice to the

Board's proceedings dated 10th July 1882 No.1751Collector. The special assessment will be entered in the patta granted for the land and collected under the provisions of Act II of 1834 Madras. No charge will be made for merely prospecting for minerals in patta lands if mines are not regularly worked. No remission will be granted in respect of any land rendered unfit for surface cultivation by the carrying on of mining operations. This rule does not of course afeet in any way the right which all holders of lands on patta possess of digging wells in their lands and of disposing of the gravel and stones which may be thrown up in the course of such excavation.

> which no reservation of the right of the State to minerals is made.

the State/British claimed a limited right in minerals w.r.t. lands

> *(a) occupied for agricultural purposes under RYOTWARI PATTAS",*
>
> *(b) JENMOM LANDS IN MALABAR"*

[emphasis supplied]

38. The limited right claimed is "to a share in the produce of the minerals worked, if thought necessary by government." That right was exercised by the same order with reference to gold, diamonds and other metals and w.r.t. minerals like coal etc. it was left to the discretion of the government to be exercised from time to time. By necessary implication, it follows that the State recognised the legal right of the land holder to the subsoil metals and minerals – whatever name such right is called – proprietary or otherwise.

39. In view of BSO No. 10 referred to above, we need not unduly trouble ourselves with the metaphysical analysis whether *jenmom* rights still subsist in lands of Malabar area or whether they are converted into *ryotwari* lands.

Apart from the legal implication of BSO No.10 with respect to Malabar, this Court had already opined that British never claimed proprietary rights over the soil and *jenmis* were recognised to be the absolute owners of the soil. It is obvious from the BSO No.10 that the British never claimed any proprietary right in any land in the Old Madras Province whether estate land and therefore both *ryotwari pattadars* and *jenmis* must also be held to be the proprietors of the subsoil rights/minerals until they are deprived of the same by some legal process. Even if we accept the conclusion recorded in the judgment under appeal that the lands in question have been converted to be lands held on *ryotwari* settlement, the conclusion recorded by us above w.r.t. subsoil/mineral rights will still hold good for the reason that even in the lands held on *ryotwari patta* the British did not assert proprietary rights.

40. Nothing is brought to our notice which indicates that the British intended and in fact did deprive the *ryotwari* land holders of the right to subsoil/minerals. Subsequent to 19th March, 1888, no law to the contra is brought to our notice. Nor any law made by the Republic of India is

brought to our notice. Though we notice laws to the contra w.r.t. the lands held under landlords tenures.

41. Article 294[19] of the Constitution provides for the succession by the Union of India or the corresponding State, as the case may be, of the property which vested in the British Crown immediately before the commencement of the Constitution. On the other hand, Article 297[20] makes an express declaration of vesting in the Union of India of all minerals and other things of value underlying the ocean.

> "297. All lands, minerals and other things of value underlying the ocean within the territorial waters or the continental shelf of India shall vest in the Union and be held for the purposes of the Union."
>
> [as originally enacted[21]]

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[19] 294 - As from the commencement of this Constitution –

(a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and

(b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,

Subject to any adjustment made or to be made by reasons of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.

[20] Section 297 was amended by the Constitution (Fortieth Amendment) Act, 1976.

[21]

297 – Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union

(1) All lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union.

(2) All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union.

(3) The limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zones, of India shall be such as may be specified, from time to time, by or

The contradistinction between both the articles is very clear and, in our opinion, is not without any significance. The makers of the Constitution were aware of the fact that the mineral wealth obtaining in the land mass (territory of India) is not vested in the State in all cases. They were conscious of the fact that under the law, as it existed, proprietary rights in minerals (subsoil) could vest in private parties who happen to own the land. Hence the difference in the language of the two Articles.

42. The above conclusion of ours gets fortified from the fact that under the Mineral Concession Rules, 1960 framed by the Government of India in exercise of the powers conferred in Section 3 of the Mines & Minerals Regulation & Development Act, 1957, different procedures are contemplated and different sets of rules are made dealing with the grant of mining leases in respect of the two categories of lands in which the minerals vest, either in the Government or in a person other than the Government. While Chapter 4 of the said rules deals with the lands where the minerals vest in the Government,

under any law made by Parliament.

Chapter 5 deals with the lands where the minerals vest in a person other than the Government. Correspondingly, the Minor Mineral Concession Rules made by the State of Kerala also recognises such a distinction in Chapters V and VI.

43. In those areas of the Old Madras Province to which the Estates Land Act applied, the minerals came to be vested in the State by virtue of the subsequent statutory/declarations (which are already taken note of). But with reference to those areas where the above-mentioned Act had no application, such as the Malabar area of the Old Madras Province, which is now a part of the State of Kerala, or areas where the *ryotwari* system was in vogue, the proprietary right to the subsoil should vest in the holder of the land popularly called *pattadar* as no law in the pre or post constitutional period is brought to our notice which transferred such right to the State.

44. We must also hasten to add that even with reference to those areas of Old Madras Province, whether the *ryots* securing *pattas* pursuant to the abolition of the estates under the Estates Abolition Act, 1948 etc., would be

entitled to subsoil rights or not is a question pending in other matters before this Court. Whether the *patta granted* pursuant to the provisions of the Estate Abolition Act etc., would entitle the *pattadar* to subsoil/mineral rights or is confined only to surfacial rights is a matter on which we are not expressing any opinion in this case. We are only dealing with the legal rights of the *pattadars* holding lands under the *ryotwari* system of the Old Madras Province, i.e. other than the lands covered by the Estates Land Act – Inam Lands.

45. That leaves us with another aspect of the matter. We are required to examine the correctness of the conclusion recorded by the High Court on the basis of the four judgments referred to in para 12 (supra) that a *ryotwari pattadar* is not entitled to the subsoil (minerals) in his patta land.

46. The first decision relied upon is *Secretary of State v. Sri Srinivasachariar,* AIR 1921 PC 1. In our view, the reliance placed by the High Court on the abovementioned judgment is wholly misplaced. It was a case where the holder of shrotriem inam granted some 160 years prior to

the decision "by the Government that existed prior to the British Government" claimed that the shrotriemdas had unfettered rights to quarry stone in the shrotriem village without payment of any royalty. The Privy Council held that the rights of the shrotriemdas depended upon the language and terms of the original grant. We have already noticed that the said judgment was considered and relied upon by this Court in *Duvvuru Balarami Reddy case* (supra). What is important in the present context is that the issue in *Sri Srinivasachariar* (supra) is not with reference to any claim of subsoil rights in a land held under *ryotwari patta*. Whatever was decided in that case is wholly inapplicable to the rights of a *ryotwari pattadar*. Nowhere it was laid down in the said decision that irrespective of the nature of the tenure – all mineral wealth in this country vested in the Crown or the State.

47. The next case relied upon by the High Court is *T. Swaminathan (Dead) and Another v. State Of Madras and others,* AIR 1971 Mad 483. A passage[22] occurring in the said judgment was relied upon in support of the conclusion

[22] So, as a ryotwari pattadar, he has every right to the use of the surface of the soil, but his proprietary right, if any, in our view, does not extend to the minerals of the soil. It was a well established proposition that all minerals underground belonged to the Crown, and now to the State, except in so far as the State has parted with the same wholly or partly in favour of an individual or body.

that a *ryotwari pattadar* has no right to the subsoil/minerals. It is unfortunate that the Madras High Court opined that it is a well established proposition that all minerals underground belong to the Crown and now to the State. Such a statement of law is recorded without any explanation whatsoever nor examination of any legal principle. From our discussion so far, we have already reached the conclusion that neither in England nor in this country, at least in the Old Madras Province, during the British regime, there was any such established proposition of law that all the minerals belong to the Crown. On the other hand, the available material only leads to an inevitable conclusion otherwise.

48. The next case relied upon by the Kerala High Court is *Sashi Bhushan Misra v. Jyoti Prasad Singh Deo,* AIR 1916 PC 191. This decision once again dealt with the rights of an inamdar particularly an inam which was not part of the Old Madras Province. Therefore, the decision is wholly irrelevant in deciding the rights of a *ryotwari pattadar* especially in the Old Madras Province.

49. We are only sorry to notice that the next case relied upon by the Kerala High Court according to the judgment under appeal is ILR 1969 AP 736 titled *Kaliki Subbarami Reddy v. Union of India.* We searched in vain to secure this judgment. Though there is a case reported by the abovementioned cause title, which was decided in 1979 i.e. AIR 1980 AP 147 : 1980 (1) APLJ 117. At any rate, in the light of our earlier discussion, the observation[23] relied upon by the judgment under appeal, allegedly from the above case, should not make any difference.

50. Equally the observations[24] made in the case of V. *Gangarathinam v. State of Tamil Nadu,* 1990 TNLJ 374 is without any basis.

51. The other material which prompted the High Court to reach the conclusion that the subsoil/minerals vest in the State is (a) recitals of a *patta* which is already noted by us earlier (in para 12) which states that if minerals are found in the property covered by the *patta* and if the *pattadar* exploits those minerals, the *pattadar* is liable for a

[23] "Not a single case has been cited before us in which it was held that a ryotwari pattadar is the owner of sub-soil rights".

[24] "from the extracts given above, we do not think that it is possible to arrive at any other conclusion except to hold that the State is the owner of the minerals underneath the surface. Therefore, we agree with the learned Advocate General that the State is the owner of the minerals".

separate tax in addition to the tax shown in the *patta* and (2) certain standing orders of the Collector of Malabar which provided for collection of seigniorage fee in the event of the mining operation being carried on. We are of the clear opinion that the recitals in the *patta* or the Collector's standing order that the exploitation of mineral wealth in the *patta* land would attract additional tax, in our opinion, cannot in any way indicate the ownership of the State in the minerals. The power to tax is a necessary incident of sovereign authority (imperium) but not an incident of proprietary rights (dominium). Proprietary right is a compendium of rights consisting of various constituent, rights. If a person has only a share in the produce of some property, it can never be said that such property vests in such a person. In the instant case, the State asserted its 'right' to demand a share in the 'produce of the minerals worked' though the expression employed is right – it is in fact the Sovereign authority which is asserted. From the language of the BSO No.10 it is clear that such right to demand the share could be exercised only when the *pattadar* or somebody claiming

through the *pattadar,* extracts/works the minerals – the authority of the State to collect money on the happening of an event – such a demand is more in the nature of an excise duty/a tax. The assertion of authority to collect a duty or tax is in the realm of the sovereign authority, but not a proprietary right.

52. On the other hand, it appears from the judgment under appeal that the State of Kerala itself produced the BSO No.10 referred to (supra). Unfortunately, neither the content of the said order nor the legal effect of the said order has been examined by the High Court and the High Court with reference to the said order made a cursory observation as follows:

> "The State has also produced the proceedings of the Board of Revenue, dated 19th March, 1888 as Ext.R1(L). By that proceedings, standing order No.10 is issued in supersession of the existing standing order. It categorises four kinds of lands. The first head is the estates held on sanads of permanent settlement, second is the enfranchised inam lands and the third is the religious service tenements conferred under the inam rules on perpetual service tenure and the fourth is the lands held on title-deeds, issued under the waste land rules, prior to 7th October 1870, in which no reservation of the right of the State to minerals is made."

53. The only other submission which we are required to deal with before we part with this matter is the argument of the learned counsel for the State that in view of the scheme of the Mines and Minerals (Development and Regulation) Act, 1957 which prohibits under Section 4[25] the carrying on of any mining activity in this country except in accordance with the permit, licence or mining lease as the case may be, granted under the Act, the appellants cannot claim any proprietary right in the sub-soil. In our view, this argument is only stated to be rejected.

54. Mines and Minerals Act is an enactment made by the Parliament to regulate the mining activities in this country. The said Act does not in any way purport to declare the proprietary rights of the State in the mineral wealth nor

[25] **4. Prospecting or mining operations to be under licence or lease : -** (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder]:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement.

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government Company within the meaning of Section 617 of the Companies Act, 1956.

does it contain any provision divesting any owner of a mine of his proprietary rights. On the other hand, various enactments made by the Parliament such as Coking Coal Mines (Nationalisation) Act, 1972 and Coal Bearing Areas (Acquisition and Development) Act, 1957 make express declarations under Section 4 and 7 respectively[26] providing for acquisition of the mines and rights **in or over the land** from which coal is obtainable. If the understanding of the State of Kerala that in view of the provisions of the Mines and Minerals Development (Regulation) Act, 1957, the proprietary rights in mines stand transferred and vest in the State, it would be wholly an unnecessary exercise on the part of the Parliament to

[26] **Section 4 of Coking Coal Mines (Nationalisation) Act, 1972 – 4(1)** On the appointed day, the right, title and interest of the owners in relation to the coking coal mines specified in the First Schedule shall stand transferred to, and shall vest absolutely in, the Central Government, free from all incumbrances.

(2) For the removal of doubts, it is hereby declared that if, after the appointed day, any other coal mine is found, after an investigation made by the Coal Board, to contain coking coal, the provisions of the Coking Coal Mines (Emergency Provisions) Act, 1971, shall, until that mine is nationalized by an appropriate legislation apply to such mine.

Section 7 of Coal Bearing Areas (Acquisition and Development) Act, 1957 – 7(1) If the Central Government is satisfied that coal is obtainable in the whole or any part of the land notified under sub-section (1) of section 4, it may, within a period of two years from the date of the said notification or within such further period not exceeding one year in the aggregate as the Central Government may specify in this behalf, by notification in the Official Gazette, give notice of its intention to acquire the whole or any part of the land or of any rights in or over such land, as the case may be.

(2) if no notice to acquire the land or any rights in or over such land is given under sub-section (1) within the period allowed thereunder, the notification issued under sub-section (1) of section 4 shall cease to have effect on the expiration of three years from the date thereof.

make laws such as the ones mentioned above dealing with the nationalisation of mines.

55. Even with regard to the minerals which are greatly important and highly sensitive in the context of the national security and also the security of humanity like uranium - the Atomic Energy Act, 1962 only provides under Section 5[27] for prohibition or regulation of mining

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[27] **Section 5 - Control over mining or concentration of substances containing uranium**

(1) If the Central Government is satisfied that any person is mining or is about to mine any substance from which, in the opinion of the Central Government, uranium can be or may reasonably be expected to be, isolated or extracted, or is engaged or is about to be engaged in treating or concentrating by any physical, chemical or metallurgical process any substance from which, in the opinion of the Central Government, uranium can be or may reasonably be expected to be, isolated or extracted, the Central Government may by notice in writing given to that person either --

(a) require him in conducting the mining operations or in treating or concentrating the substance aforesaid to comply with such terms and conditions and adopt such processes as the Central Government may in the notice, or from time to time thereafter, think fit to specify, or

(b) totally prohibit him from conducting the mining operations or treating or concentrating the substance aforesaid.

(2) Where any terms and conditions are imposed on any person conducting any mining operations or treating or concentrating any substance under cl. (a) of sub-section (1), the Central Government may, having regard to the nature of the terms and conditions, decide as to whether or not to pay any compensation to that person and the decision of the Central Government shall be final :

Provided that where the Central Government decides not to pay any compensation, it shall record in writing a brief statement giving the reasons for such decision.

(3) Where the Central Government decides to pay any compensation under sub-section (2), the amount thereof shall be determined in accordance with section 21 but in calculating the compensation payable, no account shall be taken of the value of any uranium contained in the substance referred to in sub-section (1).

activity in such mineral. Under Section 10[28] of the Act, it is provided that the Government of India may provide for compulsory vesting in the Central Government of exclusive rights to work those minerals. The said Act does not in any way declare the proprietary right of the State.

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(4) Where any mining operation or any process of treatment or concentration of any substance is prohibited under clause (b) of sub-section (1), the Central Government shall pay compensation to the person conducting the mining operations or using the process of treatment or concentration and the amount of such compensation shall be determined in accordance with section 21 but in calculating the compensation payable, no account shall be taken of the value of any uranium contained in the substance.

[28] **Section 10 - Compulsory acquisition of rights to work minerals**

(1) Where it appears to the Central Government that any minerals from which in its opinion any of the prescribed substances can be obtained are present in or on any land, either in a natural state or in a deposit of waste material obtained from any underground or surface working, it may by order provide for compulsorily vesting in the Central Government the exclusive right, so long as the order remains in force, to work those minerals and any other minerals which it appears to the Central Government to be necessary to work with those minerals, and may also provide, by that order or a subsequent order, for compulsorily vesting in the Central Government any other ancillary rights which appear to the Central Government to be necessary for the purpose of working the minerals aforesaid including (without prejudice to the generality of the foregoing provisions)--

(a) rights to withdraw support;

(b) rights necessary for the purpose of access to or conveyance of the minerals aforesaid or the ventilation or drainage of the working;

(c) rights to use and occupy the surface of any land for the purpose of erecting any necessary buildings and installing any necessary plant in connection with the working of the minerals aforesaid;

(d) rights to use and occupy for the purpose of working the minerals aforesaid any land forming part of or used in connection with an existing mine or quarry, and to use or acquire any plant used in connection with any such mine or quarry; and

(e) rights to obtain a supply of water for any of the purposes connected with the working of the minerals aforesaid, or to dispose of water or other liquid matter obtained in consequence of working such minerals.

(2) Notice of any order proposed to be made under this section shall be served by the Central Government--

56. Similarly, the Oilfields (Regulation and Development) Act, 1948 deals with the oilfields containing crude oil, petroleum etc. which are the most important minerals in the modern world. The Act does not anywhere declare the proprietary right of the State.

57. For the above-mentioned reasons, we are of the opinion that there is nothing in the law which declares that all mineral wealth sub-soil rights vest in the State, on the other hand, the ownership of sub-soil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. In the instant appeals, no such deprivation is brought to our notice and therefore we hold that the appellants are the proprietors of the minerals obtaining in their lands. We make it clear that we are not making any

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(a) on all persons who, but for the order, would be entitled to work the minerals affected; and

(b) on every owner, lessee and occupier (except tenants for a month or for less than a month) of any land in respect of which rights are proposed to be acquired under the order.

(3) Compensation in respect of any right acquired under this section shall be paid in accordance with section 21, but in calculating the compensation payable, no account shall be taken of the value of any minerals present in or on land affected by the order, being minerals specified in the order, as those from which in the opinion of the Central Government uranium or any concentrate or derivative of uranium can be obtained.

declaration regarding their liability to pay royalty to the State as that issue stands referred to a larger Bench.

……J.
(R.M. LODHA)

……J.
(J. CHELAMESWAR)

……J.
(MADAN B. LOKUR)

New Delhi;
July 8, 2013.