

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

COURT NO.1
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Civil Appeal No. 4056-4064/1999

MINERAL AREA DEVELOPMENT AUTHORITY ETC.

Petitioner(s)

VERSUS

M/S STEEL AUTHORITY OF INDIA & ORS

Respondent(s)

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1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** On behalf of all the members of the bar and
2 my own colleagues, we have pleasure in welcoming in our midst Justice Judith Prakash from
3 Singapore, from the Supreme Court of Singapore. We are very happy that, last few months
4 ago, we had the Chief Justice, Justice Sundaresh Menon, sitting with us. Now, we have Justice
5 Judith Prakash who has come for the Delhi International Arbitration Weekend, so she will be
6 doing the keynote address this afternoon.

7

8 **TUSHAR MEHTA:** We welcome Your Ladyship.

9

10 **HARISH SALVE:** On behalf of the bar My Lord, may I extend our warmest welcome to
11 Justice Prakash. Honour and a privilege to address her, even if it is on Indian Constitutional
12 Law.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, Mr. Salve.

15

16 **HARISH SALVE:** May I please, My Lord. When Your Lordships rose for the day yesterday,
17 I had just opened on the heading of construction of Entry 50, and the three elements of Entry
18 50.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Of List II? You can just read it out maybe.

21

22 **HARISH SALVE:** Yes, in fact, My Lord, I have taken the liberty...

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You can actually scan it and upload it on the
25 system. We will all have it.

26

27 **HARISH SALVE:** I have taken the liberty of breaking it down into its elements so it assists
28 in an analysis.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You just have it scanned and uploaded so
31 everybody will have. You'll all have it on the screen on that side and we'll have it on the screen.

32

33 **HARISH SALVE:** I can also email it if that assists.

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35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** He'll just take a moment to upload it.

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HARISH SALVE: I'll be one on addressing My Lords, initially on the basis of this piece of paper.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes, we got it. Mr. Dwivedi you'll have it on your screen also. You'll have it on that screen.

HARISH SALVE: Fantastic.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

HARISH SALVE: The first My Lord, is the entry as it reads. I have just broken it into parts. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development. This is how the entry reads. There are three elements of this entry which Your Lordships will have to consider and the analysis of which three entries, elements of this entry were the bedrock of the decision in *India Cements*. The first is that these are taxes on mineral rights, not on minerals. The second My Lords is, that it is subject to, and I have taken the liberty of placing in bold the words, any limitations. Not limitations per se, any limitations. And the third element is that these are limitations imposed by Parliament, by Law relating to Mineral Development.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

HARISH SALVE: There are alternative formulations, by which, our founding fathers could have written this entry. It should not be read because that's not its language, as taxes on mineral rights subject to limitations imposed by law by Parliament. As the state would want to persuade Your Lordships to read it. But that's not the language. Because, then one would say, "where does Parliament say, 'you shall not impose mineral tax'?"

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

HARISH SALVE: The last alternative formulation I'll come to a little later. Because if the entry is construed -- and this is not an argument *in terrorem* -- if the entry is construed in its plenitude, that the MMDR as it stands today, in no way constraints the state from taxing mineral rights. Then tomorrow, uranium produced can be taxed to death because it'll be the mineral rights.

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But Parliament still has a function. Parliament
2 can certainly control that by imposing [UNCLEAR].

3

4 **HARISH SALVE:** It has done it. It is my point. If...

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Of course, that's your formulation. But,
7 Parliament has, by providing for royalty in Section 9, imposed it. But assuming that... suppose,
8 the alternate formulation, which was accepted in the subsequent judgment, is held to be
9 correct, that will never stop Parliament from...

10

11 **HARISH SALVE:** My Lord, the alternate formulation will.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** For instance, Parliament can still make a
14 bifurcation between the nature of the minerals. Minerals, which are of crucial importance in
15 national security. Parliament can impose different sets of limitations.

16

17 **HARISH SALVE:** I'm sorry, that will again not then fit in Entry 50. Because it must be by
18 Law, relating to Mineral Development, not a law, relating to the 'Taxing power of the state.'
19 The limitation must flow naturally from a Law relating to Mineral Development.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So that goes against you, Mr. Salve. Because,
22 if you see the alternate formulation, which you say that Parliament has not made. The alternate
23 formulation is, 'taxes on mineral rights, subject to limitations imposed by law, by Parliament.'
24 If this was a formulation, then the domain of Parliament would have been much larger.
25 Because all that they had to do is to impose a limitation by law. The limitation, the power of
26 Parliament is much narrower. Because it has to be by law, and it is a law in the interest of
27 mineral development.

28

29 **HARISH SALVE:** I'm sorry My Lord. The point is slightly different. I see what My Lord is
30 saying and in either way, Parliament can say, "a high tax on is counter intuitive to mineral
31 development in limited." So, either way, Parliament could have done it. The point is slightly
32 different.

33

34 **JUSTICE ABHAY S. OKA:** Mr. Salve, you gave the example of uranium. Now suppose
35 Government of India comes out with a law in the legislature, putting constraints on imposing
36 tax on uranium, that will be also a step towards mineral development. That law can be....

37

1 **HARISH SALVE:** I am deeply obliged My Lord. In fact, my submission is going to be -- that
2 is why when Entry 50 was crafted in 35 and continues, what they had in mind was -- and that's
3 clear from the language of the entry, I'm not going on any external material, that when
4 Parliament makes a law relating to mineral development, the architecture of that law may itself
5 impose limitations on what tax you can have on mineral rights. That is why what is the
6 limitation flows from a description. The description is limitations imposed by a law relating to
7 mineral development. So, the test is, if by the kind of law which Parliament has made a tax on
8 mineral rights becomes incompatible with mineral development as contemplated by law
9 relating to mineral development. That right gets limited. It's not as narrow as saying do/don't.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But then you have to demonstrate that the tax
12 on mineral rights is incompatible.

13

14 **HARISH SALVE:** I am deeply obliged. That's the exercise.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** If you are establishing that the tax on mineral
17 rights is incompatible with the very premise of this law, namely the MMDR Act, then of course
18 that is outside their domain.

19

20 **HARISH SALVE:** That's my submission. That's what I have to develop. Your Lordship had
21 My Lord yesterday....

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That submission can't be on a prioritised
24 submission based on the entries. It has to be specifically with reference to the provisions of the
25 central statute. That this central statute clearly evinces an intent to exclude all taxes on mineral
26 rights by....

27

28 **HARISH SALVE:** I My Lord with respect completely accept what My Lord is saying,
29 respectfully.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We have to accept that limitation, we should
32 not read in a very restrictive sense.

33

34 **HARISH SALVE:** That's all that I was....

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** A limitation can also go to the extent of
37 abrogation. Possibly. I mean, we're not -- just for the sake of a hypothesis. But because, if we

1 have the same thing in the context of Article 19 (2) to 19(6). Can a reasonable restriction go all
2 the way to a prohibition? Our Court has said in a given case; a reasonable restriction may go
3 all the way to a prohibition. So, assuming there are limitations an amount of prohibition, that
4 limitation must appear clearly from a law which Parliament has enacted. Not just that, this is
5 contrary to the structure of the law or something like that?

6

7 **HARISH SALVE:** No, I'm sorry, My Lord.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Or the architecture of the law.

10

11 **HARISH SALVE:** Yes. Why I am saying that what Your Lordships have to see, it's not
12 obviously a priority, with respect, My Lord, the Chief Justice is right. First of all, there must
13 be a law relating to mineral development made by Parliament. If Parliament tomorrow says
14 My Lord, I don't need to do it, I'll leave it to the States at Entry 23 to make the laws. End of the
15 matter.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, this is a law relating to mineral
18 development. That's what the law says it is actually.

19

20 **HARISH SALVE:** Not just that My Lord. Parliament can only make a law relating to
21 regulation and development. I'm not now, on the semantics of development and regulation.
22 I'm assuming development includes regulations. How do you have orderly development unless
23 you have regulation? Parliament under Entry 54 and under Entry 54 alone can make a law
24 relating to mineral development. It may or it may not. If it doesn't, it leaves the field open to
25 the States. So there is no a priori. If Parliament takes that step of first of all, exercising its
26 legislative power 246 read with Entry 54 of List I to make a Law of Mineral Development. The
27 words Law of Mineral Development, therefore, is descriptive of the law as its very language
28 suggests. A Law relating to Mineral Development. It's a label and this squares entirely with the
29 language of Entry 54, regulations and development of minerals, mines and minerals. That's
30 the first important element in My Lord, the interpretation of this entry.

31

32 **JUSTICE HRISHIKESH ROY:** The Parliamentary enactment, Mr. Salve is the MMRD Act?
33 It levies royalty on mineral development. Are you saying that it is tax wearing the hat of royalty
34 that is being levied by the Central Government?

35

36 **HARISH SALVE:** That's my third proposition.

37

1 **JUSTICE HRISHIKESH ROY:** You have that proposition?

2

3 **HARISH SALVE:** Yes. I'll tell My Lords why. Let me tell me not what I'm going to develop.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But Mr. Salve, that you already argued before
6 us that royalty is not a tax. You said that royalty is not a tax. That's not your case.

7

8 **HARISH SALVE:** That is why I am saying, answering this question. There is a full-dress
9 answer to this. Where do I get. May I just state my points and then develop each one of them,
10 because I'm sure lot of them each of them will have a lot of areas.

11

12 **JUSTICE B. V. NAGARATHNA:** You may also keep this aspect in mind that the limitation
13 is on the taxing power of the State.

14

15 **HARISH SALVE:** Of course.

16

17 **JUSTICE B. V. NAGARATHNA:** So therefore, what is the limitation that this Parliament
18 can impose on the taxing power of the State. It is not any kind of limitation. Of course, it should
19 be in the context of mineral development. But the limitation is on the taxing power. Which is
20 already there in Entry 50, List II. That context, we cannot also leave aside.

21

22 **HARISH SALVE:** Yes, I am going to be fully developing that.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And another very important thing is that Entry
25 54 does not entrust Parliament with the entirety of the field relating to regulation and
26 development of mines and mineral development. Entry 54 does not give to Parliament the
27 entire universe of that subject, because it still qualifies it by saying to the extent to which.
28 Right? Which recognizes, then an Entry 23 of List II that the States also have power for
29 regulation of mines and minerals development. Once Parliament makes that declaration to the
30 extent of the declaration of the States power under Entry 23 is ousted. But therefore, when we
31 are considering as to whether the taxing power of the States is excluded, as Sister Justice
32 Nagarathna said, we must also bear in mind that the domain which is entrusted to Parliament
33 is not an entire universe but something which is carved out of that universe of regulation and
34 development.

35

36 **HARISH SALVE:** First of all, as far as -- As My Lord the Chief Justice said, and I'm obliged
37 for that expression. I think that it's very helpful to have that expression in mind. There are no

1 a priori limitations. Equally the power of Parliament under 54, I am not saying the law, the
2 power of Parliament under 54 is untrammelled to such extent means they can wipe 23 clean.
3 So, 53. 54 has no limitation. It leaves it to the wisdom of Parliament to decide how much they
4 want to occupy. And it is going to be my submission as has been held by Constitution Benches
5 that the MMDR, both the *avatars*, the old and the new, occupy everything. So, at the first
6 Constitutional level, there is no limitation on what Parliament can occupy. To the extent
7 declared by law, by Parliament, means Parliament can take over pretty much everything and
8 Your Lordships have held that it has.

9

10 **JUSTICE B. V. NAGARATHNA:** That could be with regard to Entry 23, List II in...

11

12 **HARISH SALVE:** Of course. Entry 53. No, My Lord, the Chief. Justice said, it's not
13 untrammelled. I am saying the entry is untrammelled. Parliament may choose to slice off or
14 may take the whole cake or a slice of the cake. And I showed yesterday the trilogy of cases.
15 There are two more, which I have to show you before I switch to interpreting Entry 50, where
16 Your Lordships have said in language which doesn't admit of any ambiguity, that what has
17 been actually taken over on an analysis of the act, is pretty much the whole. Nothing remains,
18 really, for the states to do. So, that's one dimension. So, my starting point is, there are 3
19 elements in 50. And each of them requires a rigorous analysis. If I may just digress for a minute
20 and answer Mr. Justice Roy's question.... Your Lordship asked me. My third submission is
21 going to be, even the expression 'taxes on mineral rights' has to be construed. And it is going
22 to be my endeavour to persuade the court that in the Indian Constitutional context, it means
23 the tax, which is in exaction of a share, right land revenue of the mineral rights, because we
24 decoupled mineral rights from land. It's peculiar to Indian Land Law. Otherwise, mineral
25 rights and land are married. Because of the peculiar way in which Indian Land Law developed
26 and there are 4 cases where Your Lordships have analysed. We decouple mineral rights from
27 land. So, land revenue would not include. Because, this is also impinging on Entry 59,
28 argument, I am just foreshadowing. I'm answering My Lord's question. My third point, is going
29 to be, therefore, 'taxes on mineral rights,' here, must mean an exaction by the state, like land
30 revenue of a share. Because it fell out of 49. Now you can't have taxes on land and 48(d) 'Land
31 Revenue.' Because, minerals are no longer part of the land. So where mineral rights are
32 created, you get an exaction. And if that's the correct contextual interpretation of 'tax on
33 mineral rights' and the MM....

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You said exaction by the state?

36

1 **HARISH SALVE:** 'Of a share of mineral rights.' If that's what, really, 'tax on mineral rights'
2 is. Not Mr. Justice Wanchoo's formulation of any tax on production, et cetera. Then, 'royalty
3 is that exaction'. So, royalty is not a tax, but it is already the share fixed by the MMDR and
4 since that is capped, that is why that context is sort of a paraphrase, it was said that," royalty,
5 that sense is akin to a tax on mineral rights." And then it became the catchphrase, it became
6 "royalty is a tax." So, My Lord, the Chief Justice is right. I'm not saying royalty generically is a
7 tax. That may perhaps be... my limited legal skills don't allow me to go that far My Lord. Maybe
8 somebody may be able to develop that point. I can't. I'm not conceding anybody else's case.
9 My limited intelligence doesn't permit me to develop that point.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Tax... But, it's an 'exaction by the state' of a
12 share of minerals.

13

14 **HARISH SALVE:** Minerals. And if it is construed like that.... And why was this, My Lord,
15 created in '35, is something, I have to address Your Lordship fully. Because, one can't just read
16 the plain language. You have to see, where it came from? How it came? And what are the legal
17 framework, in which, it was introduced? And if you construe it that way, the whole thing just
18 falls into place. Why was Section 25 put into the Act? "Treating royalty and tax in the same
19 breath as an exaction." Why a penalty and a prosecution for non-payment of royalty?

20

21 **JUSTICE HRISHIKESH ROY:** When you speak about, how it came, we cannot also be
22 forgetful of the Constitution Assembly debate, when it was deliberately kept to deem the state's
23 power. The power of taxation...

24

25 **HARISH SALVE:** Yes.

26

27 **JUSTICE HRISHIKESH ROY:** Although a suggestion was made that, it should be brought
28 to the Union Power's List.

29

30 **HARISH SALVE:** I'll tell Your Lordships why? I'm sorry. I'm digressing. Because there's a
31 very [UNCLEAR] argument...

32

33 **JUSTICE HRISHIKESH ROY:** You may address it at the appropriate time, because you
34 talked about time...

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36 **HARISH SALVE:** I must tell, My Lord, why? Because, one idea was, move minerals to the
37 Union List.

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JUSTICE HRISHIKESH ROY: That's right.

HARISH SALVE: They said, no, we will keep minerals the same way. Industries, minerals will be kept to the states, with the overriding power to [UNCLEAR]. In fact, one of the big criticisms that the industries, the declaration in the Industrial Development Regulation Act, '51 pretty much wiped the states clean. That has been the problem.

CHIEF JUSTICE D. Y. CHANDRACHUD: But tell us this Mr. Salve. It may be a conceptual issue. It's not necessarily against you. I just have a doubt. Suppose when the state taxes income.

HARISH SALVE: Yes.

CHIEF JUSTICE D. Y. CHANDRACHUD: Is that to be regarded as an exaction of the income? Or suppose in a State there is a tax, an excise, excise on manufacture, it's not an exaction of the value of the article manufactured. Or suppose they tax corporate profits. Of course, the impact is that we are taking a share of the profits, it is not an exaction of your profit.

HARISH SALVE: Excise was in the old, if you go back to the historical definition of excise duty, the word excise was exacted.

CHIEF JUSTICE D. Y. CHANDRACHUD: Exacted tax. It's an imposition on ...The levy is on the subject. The levy is a tax, an imposed tax on a particular subject, whether it's income or the value of the article manufactured or services rendered now, in the case of the Goods and Services Tax. You can't say the State is exacting. If they tax us for our income, they don't take away our income. It's the tax on the income which you earn.

HARISH SALVE: I'm sorry. I didn't mean every tax is an exaction. Exaction, by definition, means something which is compelled by law, not something which you do by contract or voluntarily. So, in that sense, it's an exaction by law. But My Lord the share, land revenue for example, when I deal with the *Murthy* aspect of the case, land revenue, for example what is land revenue? It reflects the sovereign share of the produce that was land revenue and when it comes by law it becomes an exaction. So today, a land revenue law is the shares, an exaction by the state of a share. Today, of course, the notion of a State has changed. It's not like a king or a sovereign. Today it's a welfare state, et cetera, et cetera. Conceptually, they remain the same. But this is the third point which I am going to develop about what is exactly a tax on

1 mineral rights in the Indian context? So, there are three independent elements. The first two
2 go together, purely as a matter of interpretation of Entry 50 and the interplay. Yesterday My
3 Lord, the Chief Justice asked me, why are you showing these cases? The interplay between 54,
4 23 and Entry 50. Today My Lord the State and it'll have some bearing when it comes in the
5 context, I'm just mentioning. Today the State is the owner of minerals but it cannot alienate
6 its mineral rights. If the state wants to make a legal framework for alienation of its own mineral
7 rights it can't. Because if it had to make, it could either do it as an owner, if there was no law
8 on the field. Then the law of contract would prevail. Or if the State wanted to make a legislative
9 framework for alienating its ownership right, it would have to reach 2023. Because as an
10 owner, you can't make a law. You would have had to find something in List II and that only
11 place where they would find it is Entry 23. And if 23 is swamped, the State is the owner but
12 has no right to alienate its own mineral rights. So, these are all... Sorry, My Lord, I got a little
13 ahead of myself. Let me come back therefore to the starting point of my submission so that I
14 am able to go down logically. There are three elements therefore, I say in this entry, which
15 require rigorous analysis. The first two go together.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Can you just again formulate them?

18

19 **HARISH SALVE:** In a lighter vein since nowadays, we are all on YouTube when we are
20 arguing here and on social media. My Lord, there is a brown coloured liquid which my
21 daughter has sent, which is for my throat. Because I remember somebody had put up on one
22 of these law websites, 'Counsel drinking coffee'. I wanted to clarify they shouldn't say, he has
23 come from London. He has done what English Barristers do carrying something in the glass.
24 So, My Lords, I'm sorry. There are three elements of Entry 50. I'm sorry.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The analysis?

27

28 **HARISH SALVE:** Yes, My Lord. The first I will...

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Salve, after you formulate it, then we will
31 rise for just two minutes to see our colleague off, and then we'll come back in two minutes.

32

33 **HARISH SALVE:** Of course.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Since we are in the thick of it, you can
36 formulate it, so that you don't...

37

1 **HARISH SALVE:** And that My Lord, is actually set out on this piece of paper. The first is, it
2 is taxes on mineral rights and I've put it on bold because that's what Your Lordship will have
3 to analyse. What is a tax on mineral rights? The second is, what is the kind of limitations,
4 which our founding fathers had in mind when they used the phrase of "great with any
5 limitations". Not just limitations, any limitations. Why did they say, any limitations? And the
6 third is, they did not say by imposed by law, by Parliament. They made it descriptive, by law
7 relating to mineral development.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. Now Mr. Solicitor has added to what your
10 daughter has given you.

11

12 **HARISH SALVE:** Yes. The third element. And the second and third really go together. Any
13 limitations, relating to mineral development. I have to now establish, in order to succeed, that
14 there is a Law relating to Mineral Development, which there is. I don't think there's any caveat
15 on that. And that, such a law imposes those limitations.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The only one thing which we'll add to your
18 second point. "The law imposes those limitations...."

19

20 **HARISH SALVE:** On the tax.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** On the tax on mineral rights.

23

24 **HARISH SALVE:** I want to start with that. In fact, My Lord, that's the point which, for want
25 of a better expression, cuts both ways. I say it cuts my way for the following reason. We know
26 that taxing laws generally operate in a field distinct from laws relating to regulation. We start
27 with that premise. That's an established Constitutional premise. How will then, a limitation
28 looks like on a taxing power if that limitation is to be found in a law relating to mineral
29 development? What kind of limitation are we looking for? It is not a 'tax versus tax limitation.'
30 It's not Parliament saying, "we have shared. Therefore, I will tax it, rather than you taxing it."
31 That's what Your Lordships have held. Now Parliament can tax it. That's a separate argument.
32 I'm going to address and what I call the *Kannadasan* conundrum, on whether they were --
33 the judgment saying because 50 is denuded it lands in '97.... '97 is right or wrong? That's
34 something Your Lordships will have to consider. But let's take it without any of those
35 trappings. What should we be looking for? I start from there. Here you have a taxing law. But
36 then you are told, "look at any limitations which are, which may arise from a law relating to
37 mineral development." Any limitation. So, what are those kinds of limitations which would

1 arise? And that's where, their act, My Lord, offers the answer. Well, if the manner in which the
2 law relating to mineral development is cast, covers all aspects of mineral development,
3 including the share of the State from the resources...

4

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

6

7 **HARISH SALVE:** I'm so sorry My Lords.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, I took down is, the manner in which the
10 law relating to mineral development is cast, includes all aspects of the matter, including the
11 share of the State...

12

13 **HARISH SALVE:** In the mineral resource, that would then, and then a tax on mineral right.
14 And why was all this brought? This was all brought, it was federalized, if I may coin that
15 expression, rather than leave it at the State level because of the uneven distribution of
16 resources.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, the way I formulated it is, if the manner in
19 which the law relating to mineral development is cast, includes all aspects of the matter,
20 including the share of the State in the mineral resource that would exclude the power of the
21 State to seek any further exaction on mineral rights?

22

23 **HARISH SALVE:** Yes, because ultimately, if we take a step back, you may call it tax on
24 mineral rights. What else is it? It is the state monetizing a resource, land, tax on land. The
25 State is not, and for public good. We all know today States levy tax public good, at least in the
26 end, not for enriching the coffers of a ruler, but for public good. So, and today with 9(B) and
27 9(C) sitting there, including local development funding being raised under a law for mineral
28 development.

29

30 **JUSTICE B. V. NAGARATHNA:** But Section 9 is only one kind of exaction?

31

32 **HARISH SALVE:** Of course.

33

34 **JUSTICE B.V. NAGARATHNA:** It is not all encompassing.

35

36 **HARISH SALVE:** 9 is not the complete answer.

37

1 **JUSTICE B. V. NAGARATHNA:** It is only one type. Royalty.

2

3 **HARISH SALVE:** Of course. No, no I'm. Sorry. 9(B), 9(C). Yes, I'm only showing...

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What you're saying. Is that where Parliament
6 wanted that the revenues of the states should be supplemented further....

7

8 **HARISH SALVE:** Yes, it has.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In relation to mineral rights. Then they have
11 been given different types of heads for realisation.

12

13 **HARISH SALVE:** And Parliament has done it. Now, the import....

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 9 includes Royalty. So really, your argument is
16 much more nuanced. You are not saying Royalty excludes the fact that Parliament has imposed
17 a Royalty which can be realized by the state excludes the taxing power, but that where
18 Parliament wanted to create additional heads of revenue for the states, it's doing so.

19

20 **HARISH SALVE:** And, My Lord this has been...

21

22 **JUSTICE ABHAY S. OKA:** Mr. Salve, 9(B) goes to a foundation which is completely
23 independent, and 9(C) goes to a trust.... it doesn't directly go to....

24

25 **HARISH SALVE:** In fact, a lot of the laws, when should see My Lordships which have been
26 struck down, are the 9(B) kinds of laws. Where they created call it Foundation, District Mineral
27 Foundation. You may call it a separate Head by which the State keeps it and uses it for
28 demarcated funds. That's how these cesses work. I'll show My Lord, when I show the State
29 legislation. 9(b) is packed, what the States have been told, you can't do now. I mean subject to,
30 what Your Lordships should take on, case of *Kesoram vs India Cements*. So, my
31 submission is, on a construction of Entry 50. I'm sorry if I take a step back, therefore I should
32 be able to show that, first of all, Parliament has federalized this. Parliament has nothing under
33 Entry 54 and says, I'll leave it to the States. It is left to the States untrammelled.

34

35 A State by itself imposes limitations on mineral development, but that's not good enough for
36 50. Suppose 54 was not there. there you can have under 23. Could I argue that under 23 this
37 is done therefore there is no limitation? No. Imposed by Parliament by law. So, it limits it to a

1 legislation referable to Entry 54. All these My Lord, little pointers in the entry are very
2 important. Why? Because you have now...why was 54 at all there? 54 was put in there because
3 the divide should we take minerals and put it in the Union List? They said no. Even today
4 atomic minerals are still in this List. So, the ownership must remain with the States. The
5 ownership remains with the State. And for the bulk My Lords, the ownership is with the State.
6 Only few, one or two states are the land reform laws have not brought the -- ownership
7 remains. The *Jacob's* case analyses it very well. So, we now created a very strange legal
8 architecture which is a complete departure from the general pattern of land law. We decoupled
9 mineral rights from land. That's peculiar to us. That's why *Murthy* got it completely wrong
10 with saying land includes mineral rights. No. You're saying that, India doesn't and you can't
11 use it as a measure and that's a separate chapter I'll deal with. So, My Lord, when '35 and by
12 the time '35 Act came, because I was checking devolution rules didn't have something like tax
13 on mineral rights. This came in '35. By '35, and *Jacob* analyses this. When the British
14 Government started giving those Zamindari rights, many times the British Government
15 excised out minerals. Why? Because war effort. They needed iron, copper, and most of all, they
16 needed coal. Coal was one of the most precious at that time in 30's. The most precious natural
17 resource. So, in '35 itself they gave it to the Federal system. That if you make this law then your
18 taxing power must comport to any law and mineral development must not dilute or conflict
19 with the law relating to mineral development. And when we have an all-encompassing law of
20 mineral development, and I'll quickly now Your Lordships has seen all the sections, give the
21 headings of all the sections. When you have an all-encompassing law of mineral development
22 to allow a handful of states who have the resources to upset fiscal burdens by taxing those
23 mineral rights clearly drives coach-and-four to the law of mineral development because you
24 must always remember the old adage, the power to tax is the power to destroy. If you have the
25 power to tax, you can even tax as much as you need. It's not a quantitative restriction, it is a
26 qualitative restriction.

27

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

29

30 **HARISH SALVE:** So, My Lords, it is my case and I have to make that good, that Entry 54
31 and the declaration, and the provisions of the MMDR as we find them, have been held to
32 displace... although in theory, it is, 'to the extent.' But the way we analyse MMDR Act, there's
33 nothing left for the states on the ground. They may, in theory, have something available. But
34 if we analyse the provisions of what actually the MMDR occupies, nothing remains. Why?
35 Because, in my respectful submission, the MMDR defines the minerals to which it applies. The
36 only thing left out is if some mineral is not in the MMDR, then you leave it in 23. It defines the
37 rights that can be created in those minerals. The State as the owner has no choice. It can only

1 act under the Union Legislation. It can only grant prospecting licenses and leases in Form K
2 and nothing else. So, it defines exhaustively, the rights that can be created. It defines
3 exhaustively, the 'terms and conditions' on which those rights can be created and subjected to,
4 the state or any owner, for that... but let's focus on where State is the owner. It cannot add one
5 more condition or remove one condition. From the conditions added in the law and in the
6 rules and in the forms, the State cannot say, but I want to protect myself and I want to add one
7 more condition. It defines the fiscal exactions, and I'm deliberately using My Lord, colourist
8 language, I'm not using the word 'tax' consciously, for the grant or creation of these mineral
9 rights. What all can you recover? Surface rents, royalty, dead rents - spells it out in great detail.
10 It lays down My Lord, and this is critical, "the levy," Section 9 says, "you shall pay". There's no
11 choice. If I remove mineral, I shall pay. It's almost like a child... read like a charging section in
12 a taxing law. So, it creates a complete mechanism for the levy, the collection, the recovery, and
13 the penal sanction. Nothing is left.

14

15 **JUSTICE J.B. PARDIWALA:** [INAUDIBLE]...question in a better manner.

16

17 **HARISH SALVE:** Yes.

18

19 **JUSTICE J.B. PARDIWALA:** What we have understood is that, the only role state has to
20 play is to enter into a lease deed. You execute a lease deed, you can't put any other conditions
21 in that lease deed, just assist us. According to you, this act is everything because it is for the
22 development and regulation of the minerals which are being extracted, and not so far as
23 minerals by itself is considered.

24

25 **HARISH SALVE:** Yes, not mines.

26

27 **JUSTICE J.B. PARDIWALA:** Tell us one thing, keep Section 9, in mind.

28

29 **HARISH SALVE:** Yes.

30

31 **JUSTICE J.B. PARDIWALA:** It provides for collection of royalty. If state has only to
32 execute the lease deed and do nothing, who will collect the royalty? And if somebody has to
33 collect the royalty, that amount will go to whom?

34

35 **TUSHAR MEHTA:** Yes. Can I just clarify on that My Lord? Because that's the root question,
36 possibly troubling everyone, that state have not get anything.

37

1 **JUSTICE J.B. PARDIWALA:** Therefore, understood like this that the royalty is also to be
2 collected by state government. But it has to be paid to the Union?

3

4 **HARISH SALVE:** No, no, no, no.

5

6 **TUSHAR MEHTA:** It goes to the state only. The only thing with that happens under this Act
7 is the fixation of the amount...

8

9 **JUSTICE J.B. PARDIWALA:** Why are we going into all other issues. Your argument seems
10 to be that by virtue of sub-clause 3 of Section 9, it is only the Central Government by
11 notification amend the 2nd Schedule.

12

13 **TUSHAR MEHTA:** Correct.

14

15 **JUSTICE J.B. PARDIWALA:** Therefore, the pricing will be in accordance with the 2nd
16 Schedule.

17

18 **TUSHAR MEHTA:** That is the heart of the matter My Lord.

19

20 **JUSTICE J.B. PARDIWALA:** So as to enhance or to reduce the rate at which it shall be
21 payable. Therefore, the argument could be, State cannot recover anything by way of royalty
22 other than the price fixed in the 2nd Schedule.

23

24 **TUSHAR MEHTA:** Yes, My Lord. And there is a reason why, there is a reason why there is
25 a structure, as the Learned Counsel has pointed out. As it is pointed out, and I will give facts
26 and figures, every State has a different mineral resource. Some States are mineral rich, some
27 are completely having no minerals. If it is left to the State Government there might be
28 inequality or non-uniformity in the prices. The Centre also has to match the prices with the
29 international prices. And this exercise of price fix -- of royalty fixation is undertaken and I have
30 all the reports I'll show....

31

32 **HARISH SALVE:** That's very important.

33

34 **TUSHAR MEHTA:** In consultation with the state governments, each State comes and say
35 that we have this mineral, we have this problem. We need this revenue. So, fix it like this. And
36 whatever is fixed...

37

1 **JUSTICE J.B. PARDIWALA:** Mr. Mehta, it is whose case that the royalty which is being
2 recovered by State is not in accordance with the 2nd Schedule?

3

4 **HARISH SALVE:** No, I'm sorry. The point is different. May I continue my answer to My
5 Lord. I'm grateful to my friend for his intervention. Because this is the heart of the matter. It's
6 not just royalty. There are one or two others, but royalty is nine points. What am I
7 endeavouring to show? I'm endeavouring to show that these are limitations on a taxing power
8 of the State. The State Act acts, not *qua* state not *qua* owner. The State is acting as a delegate
9 under Parliamentary Legislation. Collecting the royalty and keeping and then taking the
10 royalty. But that is also under a law made by Parliament. Parliament has stitched up as the law
11 stands today, pretty much the entire area of the operation of mineral rights, including the fiscal
12 burden. And I'm deliberately using colourist language, the fiscal burdens to be placed. And as
13 My Lord was pleased to point out 9(3) and the Solicitor very helpfully intervened to say, there
14 is a whole exercise done at the time of 9(3) to match competing interest, the interests of the
15 State and resources and by definition, interests of some of the States and resources. Not all the
16 States have this resource.

17

18 **TUSHAR MEHTA:** International pricing.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Salve, now, just to go back, you have told
21 us that when we broke a link. The MMDR defines:

22 1) Minerals to which it applies.

23 2) The right that can be created in those minerals.

24 3) The terms and conditions on which those rights can be created and subjected to.

25 4) The fiscal exactions for the grant of creation of the mineral rights. And

26 5) The levy collection, recovery and penal sanctions.

27 That concludes this part or there is something more that you have?

28

29 **HARISH SALVE:** I was therefore responding to what My Lord asked,

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Apart from these five points.

32

33 **HARISH SALVE:** These are the five points.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's all. So, we have not missed anything. So
36 that concludes this enumeration. That's why I just wanted to make sure that we have not
37 missed something .

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HARISH SALVE: If I had been in slightly better health, I would have given a lot of written piece of paper today.

CHIEF JUSTICE D. Y. CHANDRACHUD: That's alright. Many of these things we develop as we dialogue.

HARISH SALVE: Also, I must say the advantage of not having too much in writing is as Your Lordship ask questions. A lot has changed in the last two days in the way I have formulated my thoughts and these are last evening, today morning's thoughts. Because as Your Lordships ask questions, we also sharpen our focus. If I am right and I'll quickly give a list of the sections because Your Lordships have read them in detail so that the point is complete. But if I am right on this, then I submit I have met the threshold of the entry of, it's not a high threshold, I submit, of any limitations not a specific targeted limitation on tax, of any limitations, created by a law, relating to mineral development. Because, if it becomes incompatible and My Lord, Justice Pardiwala, was pleased to ask. 9 says, "you shall collect. This is the rate at which you shall collect. You don't get to fix the rate. And the Union also will fix the rate in consultation with you, but once in 3 years and not more than that." Now why? Because you have federalized this. My Lord, there are states which don't have mineral resources, but which may be close to a port. You want to manufacture heavy metals, you want to manufacture certain chemicals, which are close to a port. You need minerals for that purpose. But you don't have those minerals. Now if, the state from where the minerals emanate upsets the fiscal apple cart by loading taxes, you are distorting the whole endeavour by Parliament to try and federalize the distribution.... and I use distribution in the larger sense.... or mineral resources amongst those who utilize it best.

JUSTICE B. V. NAGARATHNA: But royalty is only one species of exaction. So only royalty and Section 9 -- 9(a) are considered under the Act. There could be variety of exactions. That doesn't mean...

HARISH SALVE: With great respect, when we talk of taxes on mineral rights, it's a narrower focus. Your Ladyship is right. And we do not... unlike Entry 97, the State doesn't have the competence to conjure up taxes. Parliament can conjure up taxes. As Justice Chandrachud's senior's judgment in one case borrowed an expression which, Justice Venkatachaliah was very fond of, "rag-bag laws." You can have some kind of a tax put in some way... The *Madura*... I think it was *Madura* something judgment where, there was an annuity added in the Income Tax Law, and it was challenged saying, "this goes beyond Entry 84." And this court said, "of

1 course it goes beyond 84. But, so what?" And they borrowed an English expression, "rag-bag
2 law". You can put anything in any law, as long as there's a law and there's a charge and there
3 are the levies and there are the collections, it's good enough. Doesn't matter what label you put
4 on top of it. So, the important point here is, state can't conjure up different exactions.

5

6 **JUSTICE B. V. NAGARATHNA:** With regard to the scheme of exaction of royalty, there is
7 a limitation by the Central Law on the state's power to exact royalty.

8

9 **HARISH SALVE:** Absolutely.

10

11 **JUSTICE B. V. NAGARATHNA:** Full stop.

12

13 **HARISH SALVE:** But it can't exact anything more.

14

15 **JUSTICE B. V. NAGARATHNA:** That is the point, now.

16

17 **HARISH SALVE:** Because, all the terms and conditions, all the terms and conditions, on
18 which the state grants mineral rights are exhaustively enumerated in the act. It cannot add a
19 condition, it cannot remove a condition. And I'm going to show that. If it was just Parliament
20 saying, royalty will be so much. Leaving it open. You could have said, "All right, this is royalty.
21 How about paying me some ground rent also? How about paying me some share also?" No.
22 That's why, My Lord, my... the third... What My Lord, the Chief Justice had... the five points,
23 which I made... it exhaustively sets out the terms and conditions on which these rights are
24 going to be made. So, it doesn't leave it to the state to say, I can add something more.

25

26 **JUSTICE B. V. NAGARATHNA:** 'K' doesn't stop at royalty. Form K, which is the Lease
27 Deed, it says, "Any other levies, fees, et cetera."

28

29 **HARISH SALVE:** Whatever is there, please collect. No problem. You can add to that word.
30 That's my point.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right. Mr. Salve now, I think we've really
33 understood the heart of your submission of what remains? What would you like to...?

34

35 **HARISH SALVE:** A lot remains. I'll tell, My Lord, what all I have to cover? So that Your
36 Lordship will know... I'll stick to my estimated time. I'll finish it off. I have.... the points which
37 I have to cover... I want to, now, My Lord, very quickly... because Your Lordships have seen

1 the sections... make this point good by showing the provisions and correlating them to this
2 point, that, "it exhaustively sets out the terms and conditions." Then I want to show My Lord,
3 one or two cases. I want to show My Lord one or two cases on how this has been understood.
4 Then My Lord, I want to deal with, Your Lordship, asks for judgments on Entry 50. I start by
5 saying none of them... I'm not trying to be facetious, none of them have put it in this way. But
6 at the end, they all say the same. And I do want to then get into the **Kannadasan** because
7 one of the important aspects is, if 50 is denuded does it go somewhere else? Yes. That also
8 Your Lordships, have to see, because in formation of 9, right, nothing should be left out. It has
9 to look at all that had been said on the subject and decide this. Then My Lord I have to deal,
10 and I'm going to come immediately to the next point on, what is the meaning after this on tax
11 of mineral rights? That's an independent argument. And it is going to be my submission that
12 in the Constitutional context you cannot construe it literally, because one has to see the
13 constitutional context and the legal framework on which this was cast. In the constitutional
14 context a tax on mineral rights is a tax which gives the state a share of the mineral produced.
15 And if that is so, and royalty answers the description of a share of what is produced, and in
16 that sense a freeze on royalty by Section 9 operates as a limitation on your tax on mineral
17 rights. So, in that sense, royalty is akin to a tax. I'm not arguing royalty is a tax, per se. That's
18 wrong. At least in my limited intellect doesn't allow me to envision how one can show royalty
19 is a tax. But in the constitutional context, that's how I understand the Entry 50 judgements.
20 And then I will take Your Lordship, through certain parts of **India Cements** and **Kesoram**,
21 and deal with it. So that, will be complete. The second independent heading, which I have to
22 address, which has two dimensions. And I'll finish all that today. Entry 49 and 50, and that's
23 a much simpler argument. Entry 49, I have two answers. When mineral rights are decoupled
24 from land, you can't reach out to Entry 49,
25 to tax mineral rights. If I don't own something, you can't tax it.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You'll also have to deal with the point that,
28 when they are taxing land and using mineral, the mineral as a measure of the time.

29

30 **HARISH SALVE:** And there My Lord, but fortunately for me there is a very helpful recent
31 judgment, which I would count for Your Lordships' acceptance, by a bench of three judges,
32 where My Lord, for customs duty first of all, what I call the **RR Engineering** caveat, which
33 came for the first time where this court said this measure can't be taken to a point where it
34 becomes a substantive tax by itself. And then the **Acer** case, where this got in the context of
35 imposition of customs duty, said something which is non dutiable, cannot be added as a
36 measure of duty. If something is expressly exempt from tax, you can't add it on now. I'm saying
37 something else; my submission is going to be twofold. First of all, my submission is going to

1 be as far as the measure argument goes, if you say you're taxing me on land, you can say your
2 house, the capacity of your house to yield income. That's the principle on which we get the
3 measure, or the capacity of your land to yield crop, or the capacity of your land to do all these.
4 Can you say the capacity of my neighbour's land? I don't own my neighbour's land. If I don't
5 own the mineral, how can you say that the capacity of your land to yield mineral, will be a tax
6 on your land when I don't own the mineral. That's one answer to the measure point. The
7 second and more important point, which I want to argue, which has not been squarely
8 addressed, is in the context of 49, 48, 49, 50. Entries never overlap in law, there may be factual
9 overlap within. When land revenue taxes on land and taxes on mineral rights is separately
10 treated, is it not clear that taxes on land cannot include tax on mineral rights. These are the
11 two *Murthy* arguments.

12

13 This is the two broad areas which I have to cover. I'm not going to take too much time in *India*
14 *Cement Vs. Kesoram*. Because if Your Lordships accept what I'm saying it doesn't matter
15 whether *India Cements* got it right or wrong, if Your Lordship don't accept what I'm saying,
16 it doesn't matter whether *Kesoram* got it right or wrong.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, what should we look at Mr. Salve?

19

20 **HARISH SALVE:** Yes, so my first point to close, that MMDR Act which are the Sections,
21 Your Lordships have seen that. Which are the Sections. Therefore, if I may just enumerate very
22 quickly. Section 4, page 924.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume?

25

26 **HARISH SALVE:** I'm so sorry, Volume IV My Lord. I will very quickly just give the pages.
27 Your Lordships have seen these, actually.

28

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

30

31 **HARISH SALVE:** Section 4. The heading is enough. Prospecting under mining operations
32 under lease. No person can undertake reconnaissance, prospecting, mining except in
33 accordance with the terms and conditions of a permit, prospecting license has may be granted
34 under this Act. So mineral rights are created under this law on terms and conditions
35 sanctioned by this law and under authority of Parliament. That's why I took Your Lordship's
36 time reading those three cases, even whether State makes rules. It makes rules as a delegate
37 of Parliament. So, 4 runs coach-and-four through any suggestion that the State, as the owner,

1 has any elbow room. No elbow room left. They can't have any [UNCLEAR] condition. They
2 can't add any more exactions. And 4(2), at page 925. No mineral concession. Now they've used
3 one word, one phrase rather. No mineral concession shall be granted otherwise, then, in
4 accordance with the provisions of this Act and the rules made there under. So now, all mineral
5 rights are granted under Parliamentary Legislation. It will have some bearing on whether you
6 can then tax these rights.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** To the next provision?

9

10 **HARISH SALVE:** Section 5 at page 936. The choice of a grantee. If Your Lordship sees 5,
11 State Government shall not grant a mineral concession to any person unless A and B provided
12 that in respect of a mineral specified in part A and part B, no mineral concession shall be
13 granted except with the previous approval of the Central Government. So, it's not really the
14 State which is granting. The State is acting under Parliamentary law. And here especially My
15 Lord, we are really concerned with the big minerals A and B are scheduled. It's with consent
16 of Central Government that you can grant the mineral concession. So much for being an
17 owner. Section 6. I won't read it, My Lord, maximum area. See the degree of detail, nothing
18 remains.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Section 6 what page?

21

22 **HARISH SALVE:** I'm sorry. My Learned Friend wanted me to show. I'm sorry to go back.
23 Section 5(2)(b). If Your Lordship turns back to page 936 the last line. No mining lease shall be
24 granted by the State Government

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 5(2)(b)?

27

28 **HARISH SALVE:** Yes. There should be a mining plan. There has to be evidence to show
29 existence of mineral contents, et cetera. (b) is at page 937.

30

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

32

33 **HARISH SALVE:** There is a mining plan duly approved by the Central Government.

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35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the next...?

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37 **HARISH SALVE:** 6, the area.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Page?

HARISH SALVE: Page 937. Don't bother about the details. I'm just showing the big headings.

CHIEF JUSTICE D. Y. CHANDRACHUD: Right.

HARISH SALVE: 7. Page 938. The period.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes. What's the next one?

HARISH SALVE: Then Section 9. It's been read to death. I'll not read it again.

CHIEF JUSTICE D. Y. CHANDRACHUD: Page?

HARISH SALVE: Page 942. And just for convenience, My Lord, Your Lordships may want to note, both 9(1) and 9(3) are at page 942. Your Lordship has seen, I have repeated the point *ad nauseam* about the mandatory nature, blah, blah. The 1st Schedule, just for convenience, My Lord, is at 982. I'm not going to read it. And the only thing, therefore apart from that, of real significance, in the 1st Schedule, is My Lord, one understands, "why the federalization?" If Your Lordship does see that for a minute, at 982... "Coal, lignite, atomic minerals.... I'm sorry to digress.... There was a case pending here. But I can give the facts in a different context. The State of Orissa rich in gold, wanted to give a mining lease to a private company. Big private company. So, it came and said, "I will generate 500 MW of power. I'll give you half. I will set up an aluminium plant, because you have bauxite. 10-million-ton plant, on which you will get GST plus excise, share of excise and it will create 14,000 jobs between these two." State of Tamil Nadu said, we need electricity, we need the coal. Now, if the power of taxation is there, you can tax coal... the state with its mineral rights. What happens? This is the balancing between the competing resources. So, Tamil Nadu needs... It's an industrially developed state. It needs power. It doesn't have to...

CHIEF JUSTICE D. Y. CHANDRACHUD: Mr Salve, we have seen Section 9. We'll just quickly look at the.... if you enumerate...

HARISH SALVE: Yes, so, the Schedule, My Lord, I want you to see atomic minerals, et cetera. See the kind of critical minerals which are there. Then the whole of Chapter 3, page

1 946. This will have some bearing on the second heading on "what is tax on mineral rights?"
2 Just please see the heading, My Lord. And I had made this point yesterday. What flows from
3 it, I will develop today. Procedure for obtaining mineral concession in respect of land in which
4 minerals vest in the Government. So, you recognize, My Lord Justice Pardiwala was pleased
5 to ask me, where did the royalty go? Of course, it goes to the state. Their ownership is not
6 touched but chapter 3 says, "I will tell you the procedure by which you will create mineral
7 rights in yours..."

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right, what is the next one?

10

11 **HARISH SALVE:** Then, My Lord, Your Lordship had already seen 10(b). I'm just....

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We are also taking it down. So, at a glance, we
14 have everything, in one approach.

15

16 **HARISH SALVE:** Exactly. And more important, I thought of the soft pages. So, it is page
17 948.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Page 948.

20

21 **HARISH SALVE:** 10(b)(a), 950. 11(a), Composite Licenses, 955.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Section 11?

24

25 **HARISH SALVE:** 11(a).

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Page 955.

28

29 **HARISH SALVE:** Yes. Then we have. I'm sorry... 11 (b). 11 (b) is atomic minerals.

30

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

32

33 **HARISH SALVE:** 11(b), 11(c)...956, 957, My Lord. Then Section 13, Chapter 4, 958. Rules
34 for regulating the grant mineral concession and the power of 13(1), and My Lord, much was
35 made of this in the judgments I read yesterday, Your Lordship recalls, that the Central
36 Government's power under one they said, forget two, look at one, because two is always
37 without prejudice to generality. Central Government may, by notification of the gazette, make

1 rules for regulating the grant of mineral concession in respect of minerals, and for purposes
2 connected therewith. Maximum the plenitude of the bar. Your Lordship, remembers
3 yesterday, those constitution bench judgments said, 'In the light of this, nothing remains for
4 the state'. I also gave the specific bits of this My Lord, which are relevant, I'm not going to
5 repeat them today. And a similar power is given to the state page 963, and My Lord, I have
6 to...

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Section?

9

10 **HARISH SALVE:** Yes, sorry. Yes, you're right. Section 14 and 15, which are at page 963,
11 'minor minerals'. And My Lord, I have to show, one judgment *Hind Stone*. Your Lordship,
12 said this also is under a central law. Although its, minor mineral left to the state, but even
13 minor minerals are controlled by central law. They leave it to the state to do it, but under the
14 Union Legislation. Then My Lord, we have 15(a) which is for the state government to collect
15 funds. I'd given Your Lordship, 9(b), (c), et cetera. The mirror image of that.....

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where do we get 15(a)?

18

19 **HARISH SALVE:** 15(a) is 965, right at the foot of the page. Now, there is one provision which
20 I did not dwell on yesterday, so, I'll just take two minutes of that. Chapter 5.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where does it begin?

23

24 **HARISH SALVE:** Page 967. Your Lordship knows, earlier there was this controversy about
25 reservation, and the high court held, as an owner you can always say, I will not grant. When it
26 came here, Your Lordship said 'apart from owner, really, the limitation lies in Entry 59 of the
27 old concession rule.' All that is now historical. Please see 967, Section 17. That's a little
28 important. The provisions of this section shall apply in respect of land in which the mineral
29 vests in the government of a state or any other person'. This cuts across both. Then subsection
30 2, 'notwithstanding anything contained in the act, the Central Government, after consultation
31 with the state, may undertake reconnaissance, prospecting or mining operations in any area
32 not already held under a mineral concession and where it proposes to do, it will, in the official
33 gazette, specify the boundaries, state the name of the permit and specify the minerals'. Now,
34 sub-section 3 is very important. Where an exercise of the powers under sub-section 2, the
35 Central Government undertakes reconnaissance prospecting central or mining operations in
36 any area, the Central government shall be liable to pay reconnaissance permit, prospecting
37 fee, royalty, surface rent, dead rent, and the case may be at the rate, which would have been

1 payable under the Act if such reconnaissance prospecting a mining operation had been
2 undertaken by a private person in the mining concession. See the degree of detail they've gone
3 to. That's all that you pay. You can't layer mineral rights tax. If tomorrow Central Government
4 may say we will do this, and it will do it under an operating contract, say, by Coal India. Or by
5 the National Mineral Development Corporation.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right. Which is the next provision?

8

9 **HARISH SALVE:** Can you tax that? You can't.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which is the next provision?

12

13 **HARISH SALVE:** And in this My Lord. I'm sorry, one more thing. 17(3) on the same page.

14

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

16

17 **HARISH SALVE:** My Lord, I'm sorry. Page 967 itself. Para 2. I'm just reading 3. Where the
18 exercise of power under sub-section 2, Central Government... I'm sorry, sub-section 3, when
19 exercise the powers...

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We have read it actually.

22

23 **HARISH SALVE:** I'm sorry, 4 My Lord. The Central Government with a view to enabling it
24 to exercise power, under sub-section 2, may after consultation by notification declare, no
25 mineral concession shall be granted. Now see 17(a), on that very page, which is 967. That's
26 important.

27

28 And I wanted to show something interesting. Yesterday, My Lady asked me the development
29 versus regulation versus conservation. Look at the heading of 17(a) at 967. Reservation of area
30 for purposes of conservation. So, they call it conservation. But if Your Lordship sees 1 and 3. 1
31 and 2. The Central Government, with a view to conserving any mineral and after consultation
32 of the State, may reserve any area not already held under a license, et cetera where it proposes
33 to do so it shall by notification, specify the boundaries and minerals in respect of its land or its
34 reserves. Two is extremely important. The State Government may, and please mark My Lord,
35 with the approval of the Central Government reserve any area not already held under any
36 prospecting license, exploration lease or mining lease for undertaking prospecting or mining
37 operations through a government company or a corporation owned controlled by it and where

1 it proposes to do so, it shall by notification of the gazette, specify the boundaries of such areas,
2 et cetera. So, although you're the owner, the husk of the title remains really. You can't. A state
3 can't even say my company will do it. It has to be with the approval of the Central Government.
4 So first of all, it's under Parliamentary Law, you do it. And then you do it with the approval of
5 the Central Government. Section 18. Just, I've read it fully. Just to give Your Lordship the page
6 969, which is the duty of the Central Government, et cetera. And 18(2)(d) specifically talks of
7 development of mineral resources in any area. Power is very wide. All such steps as maybe
8 necessary. Then My Lord 19 and 20. I won't read them My Lord. My friend wants me to show
9 18(a) that the Government of India can authorize GSI to make investigations. And then page
10 973. 19 again says, any mineral concession granted, renewed, acquired in contravention of the
11 provision of the Act or Rules order shall be void and of no effect. So, 4 say
12 s, these are the terms, and 19 says anything which doesn't comport down to the last detail is
13 void. No elbow room left to the State.

14

15 **JUSTICE B. V. NAGARATHNA:** That is all in the context of regulation?

16

17 **HARISH SALVE:** This is mineral development. You call it regulation; you call it
18 conservation. These are labels you can put whatever label you want. That's how Parliament
19 has said, but the important thing is, when they enacted this law, what are the changes they
20 made? From Mines and Mineral Regulation and Development, they made it Mine and Mineral
21 Development and Regulation Act. And then Section 20. I'm sorry. 20(A), 973. 973, 20(A)
22 overriding power, now to the Central Government to give directions. And I had shown My
23 Lords Section 21, the criminal prosecution.

24

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

26

27 **HARISH SALVE:** I'm sorry. 973 is the power to give direction. The blanket power. 20(A).
28 Section 21 My Lord is the penal sanction for non-payment or royalty. 21(1), page 974. Then as
29 I said the entire area of the penal sanction is governed by 22, 23, 23(a), 23(b) power of search,
30 power to do this, et cetera. And even the preventing illegal mining and storage. The state makes
31 rules as a delegate. Entry inspection. So, all the police powers are under this Act. Then My
32 Lord, 24(a) at page 978. I have shown that. Yes. My Lord, I'll not trouble Your Lordships with
33 the details. All the police powers... 22, 23, 24. And then 24(a) is only important. Because it
34 defines "what are the rights and liabilities of a mineral concession holder." And then 25 is the
35 recovery of all sums and that Your Lordship get at page 978. Your Lordships have seen this
36 section. Your Lordship also read the discussion of this section. "Any rent, royalty, tax fee or
37 other sums." So, they treated, Parliamentary understanding is These are all exactions. Rent,

1 royalty, tax whatever it may be. These are all statutory exactions and they are recovered as
2 arrears of land revenue under Section 25.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the next provision?

5

6 **HARISH SALVE:** These are the provisions. And then Your Lordships saw the Concession
7 Rules. They go down to the minutiae. Every little detail is in the Concession Rules. And Form
8 K is page 1644. I don't propose to read it, Your Lordships saw it yesterday, which has all the
9 covenants of the lessor, covenants of the lessee. And I've already made the point. You can't add
10 to or detract from the statutory basis on which these leases are to be granted. Now, if this is
11 the law relating to Mineral Development and if I am right, that it's a complete package,
12 including the fiscal burdens, then it is my submission that, this satisfied threshold of being any
13 limitations imposed by a law limit relating to mineral development on taxes and mineral
14 rights. This is how a regulatory law eclipses a taxing power. My Lord, I don't think... and just
15 for the completeness. Now, just for completing the Constitutional Argument, please see some
16 of the other entries, how taxing powers are shaped? Because none of them require Your
17 Lordships ever to look for any limitation arising out of the Regulatory Provision.

18

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

20

21 **HARISH SALVE:** So, either we divide Legislative powers. For example, we have, in List I,
22 the spread of taxing powers. We have 82 and the corresponding on 46. So, this is dividing
23 Legislative powers. Taxes on income other than agricultural income - taxes on agricultural
24 income. Very different.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 82, List I and Entry?

27

28 **HARISH SALVE:** With Entry 46.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Of List II.

31

32 **HARISH SALVE:** Of List II. Entry 84 with Entry 51 of List 2.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's again division of two?

35

36 **HARISH SALVE:** Division. Entry 86 of List 1. Taxes on capital value, exclusive agricultural
37 land, taxes on agricultural land.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Entry 86 of List 1, with?

HARISH SALVE: Goes with entry... it would go My Lord, with Entry 45, 46... no, not 46. It would go with 45. Then the most specific one My Lord, very interesting is 87, estate duty, other than agricultural land. 48, estate duty on agricultural land.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

HARISH SALVE: So, this is one form of subject division. We have now another form of sharing and we find My Lord, a new model in 246(a).

CHIEF JUSTICE D. Y. CHANDRACHUD: The GST?

HARISH SALVE: The GST. Where both Union and State can impose GST, and both can make laws. The area carved out is interstate. That's in sub-article 2. And there is only one My Lord, which I have found, the only one, possibly, if I have subject to correction. The only one tax in entry list, in Entry List III, which is My Lord, which correlates to Entry 57 of List II and that's a slightly different *mantra*.

CHIEF JUSTICE D. Y. CHANDRACHUD: Entry 57 of List II with?

HARISH SALVE: With Entry 35 of List III.

CHIEF JUSTICE D. Y. CHANDRACHUD: Rates?

HARISH SALVE: Yes. No, My Lord they are taxes on vehicles. This is interesting. Taxes on vehicles with a mechanically propelled, et cetera, use suitable for roads subject to the provisions of Entry 35 of List III.

CHIEF JUSTICE D. Y. CHANDRACHUD: Entry 35 of List III, I think is rates. Right?

HARISH SALVE: My Lord, Entry 35 of List III, is taxes. Mechanically propelled vehicles, including the principles on which such taxes are to be levied. Now My Lord, this is a very interesting power. It's not a taxing power, it is a power to lay down the principles on which tax can be levied. In one sense, it is a limitation on the state's power to tax vehicles.

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

2

3 **HARISH SALVE:** The only other place Your Lordship recalls, where there was this kind of a
4 divide was 286, the old 286. Parliament could lay down principles to determine. That's My
5 Lord, 286(2), and it's still there. Parliament, may formulate principles. So, My Lord, this is
6 possibly the only limitation on a taxing power, that the principles can be laid down in a
7 concurrent list. That's why I argue, I make bold to argue, 50 is *sui generis*, where any limitation
8 which flows from a law relating to mineral development eclipses a taxing power on the mineral
9 rights. That's I complete My Lord, that submission was that far. If there is anything more, I
10 can assist Your Lordship with on this aspect of the matter. There is a connected submission
11 equally important. What is the meaning of tax on mineral rights? My Lord, I've taken the
12 liberty of first trying to finish all the submissions and then read the cases.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Much better. Yes.

15

16 **HARISH SALVE:** If I run out of time, I can always give Your Lordships note of the
17 [UNCLEAR].

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, because really conceptual aspect of the
20 matter.

21

22 **HARISH SALVE:** Subjects. Your Lordships ask questions. We are also able to evolve. The
23 expression tax on mineral rights must draw some sustenance or some colour from its
24 neighbouring entries. And this is not some extraordinary proposition. Your Lordships. have
25 applied this to taxes on betting, gambling and luxury, *noscitur a sociis*. And there are three
26 entries which we find in the State List. Entry 45, land revenue, Entry 49, taxes on land and
27 buildings, and these are untrammelled taxing powers. And then we have our Entry 50. Two
28 things must follow. Land revenue, if I have time, I'll cite the cases otherwise, I'll put them in
29 Court, is a well understood concept. Share of the State in the produce. Its genesis lies in what
30 the British and then the *Zamindars* used to collect from the tenants.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It is a share?

33

34 **HARISH SALVE:** The *lagaan*, that was land revenue started by the British, who started
35 collecting land revenue. So, if you produced that much of the produce, you had to deliver to
36 the superior title. And it sits side by side with an entry of tax on lands and buildings. And in
37 the judgments where the issue arose about wealth tax on land in buildings versus tax on land

1 and buildings or the income tax on rent versus tax on land and buildings, Your Lordships have
2 always understood... the privy council understood the '35 Act and Your Lordships have
3 understood this as land and building as a unit. So, the *Gujarat* case, Lordship held, you can't
4 say on a factory. What goes on in the factory will tax you. So, to tax 'land and building' as a
5 unit. These are inherent to the nature of the tax. Now, look at mineral rights. The Attorney,
6 My Lord, in his submissions, gave Your Lordship the UK duty on mineral rights. Makes perfect
7 sense. Because, where the minerals vests in the owner of the land, the creation of mineral
8 rights is by contract.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Is?

11

12 **HARISH SALVE:** By contract. It's like giving a house on rent. You give your minerals for
13 exploitation. And the State, can tax it and call it a duty on mineral rights. Because mineral
14 rights can be created by the owner. So, where the owner can create mineral rights and monetize
15 mineral rights, the State can tax mineral rights. We have removed -- our founding fathers
16 removed mineral rights from land. Because, if we go by the logic that mineral rights are an
17 integral part of land, then Entry 49 was good enough or even Entry 45 was good enough.
18 "Produce." If you are using it for agriculture, you give one third of your crop. If you're using it
19 to extract mineral, you give some part of your mineral, or if you're giving it to somebody, to
20 extract the minerals, you give some part of your royalty. That would become land revenue. If
21 it was a part of the land. But there are some people who still owe mineral rights. *Jacob's* case,
22 I'm going to show. At the time, I'll show that. So, it's not that this entry was written on -- it's
23 not that the entry was written on water. But the MMDR recognizes that there are two kinds of
24 ways in which mineral rights can create it and it deals with it separately albeit similarly.
25 Mineral rights are created where the State is the owner of the mineral and where other than
26 the state is the owner of the mineral. And this is right from the Concession Rules, Pre-
27 Constitution.

28

29 And therefore, My Lord, reading 50 in the same sense as 45 and 49 - A tax on mineral rights,
30 must be a tax on the monetization of mineral rights by the owner. Now, when the founding
31 fathers My Lord, wrote Entry 50, they didn't know ultimately what shaped the law under 54,
32 whether it will come and if so, in what shape. But today, what we have in place is a legal regime,
33 in which mineral rights are created under a law made by Parliament, by a delegate of the
34 Union, by a delegate created and recognized under a law made by Parliament. That's what
35 Your Lordships, have held in those three cases, that even when the State makes rules for minor
36 minerals, and I'm going to show that *Hind*, case where the granite was upheld. Mr. Chinnappa
37 Reddy held, 23 is out. Entry 23 is out completely. So even though, the state makes laws for

1 minor mineral, it does so under the Union Legislation. So, state is acting purely as a delegate
2 of Parliament and the mineral rights are being created. They are statutory in character. These
3 are statutory grants because you have to obey an order of grant. The lease follows the grant. I
4 showed all the sections yesterday. I don't want to repeat them. So, you pass an order on grant.
5 That order is subject to revision, et cetera, et cetera. Such a statutory grant of mineral rights
6 by law made by Parliament cannot be taxed by the State. It's by its inherent nature. And that
7 also My Lord in one sense, gels with the other point. Therefore, it's subject to any limitations
8 and today, the way the law is, can't even create a right. Parliament virtually My Lord, decides
9 who creates that right. Everything is done with the permission of the Central Government.
10 Everything is done in accordance with forms under Parliamentary law, et cetera, et cetera. All
11 that I've said all morning. So, if Entry 50, is read down contextually, to accord with similar
12 entries and why do I call them similar? And I'm going to show those cases. Mineral rights
13 otherwise are inextricably associated with land. My Lord, there's an interesting passage of
14 what generally mineral rights are.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Salve, how can you postulate that merely
17 because mineral rights are created by an act of Parliament, that they are beyond the taxing
18 power of the state? Where did you get that from?

19

20 **HARISH SALVE:** Yes, I'll tell My Lord.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You said that's a statutory grant and under the
23 law enacted by Parliament cannot be taxed by Parliament...cannot be taxed by the state.

24

25 **HARISH SALVE:** Why I said that? My Lord, there are two or three steps in my submissions.
26 I say that as a matter of interpretation 50, should be read in the same sense as 45 and 49, and
27 should be limited therefore, contextually. I'm not saying it is an absolute proposition of some
28 constitutional immunity. I'm not putting it on that principal. If I'm wrong on my interpretation
29 of course you can tax, subject to the other part, about limitations, I'm saying contextually and
30 Your Lordships have, for example the tax on luxuries. Your Lordship said that contextually,
31 we have to see where tax on luxury, we used to all have taxes on cigarettes and then five Judge
32 Bench struck down taxes on cigarettes. Contextually and applying the principle of *noscitur a*
33 *sociis*, you have to see where it is found and in what context it seeks and how it interplays with
34 other entries. Your Lordship ready down to say it can only be a tax on an activity. I'm invoking
35 that principle. I'm not saying a constitutional immunity.

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 50 should be contextually limited?

1

2 **HARISH SALVE:** Limited where mineral rights are created by the owner and there are areas
3 where mineral rights may be created by the owner, even if they are restricted. If certain
4 minerals are completely left out and they continue to vest in somebody you may have. Today
5 the net is cast so wide by Parliamentary Legislation may not always be so. For example, one
6 step they already...

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But assuming you know, that mineral rights
9 are created by a Central law, the rights vest in the State except where they are vested in a
10 private person. Now, if the rights vest in the State can the State not while creating mineral
11 rights or recognizing mineral rights which will be created in favour of a private party, say that
12 we will tax those mineral rights.

13

14 **HARISH SALVE:** Except here I'm saying, please read that entry where the State as the owner
15 can create mineral rights. If tomorrow we have a legal regime where the state *qua* owner can
16 create mineral rights. It may be able to tax them.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The only distinction here is that the mineral
19 right is created under law enacted by Parliament but it recognizes that the minerals vest in the
20 State therefore the State can demand royalty.

21

22 **HARISH SALVE:** That's why I started by saying this is not a tax on minerals. It's a tax on
23 mineral rights.

24

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

26

27 **HARISH SALVE:** And I am submitting if it is read in the same sense at Entry 45 and 49, that
28 this is a right to tax, the owner alienating or monetizing a right. Because let's take a case where
29 a private person gives a lease, you can tax the owner on the royalty.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, according to you because the State is the
32 owner, you can't tax yourself?

33

34 **HARISH SALVE:** State is the owner. It's a husk of a title which remains of the State. You can
35 do only what act and under Parliamentary law, to give it all those terms and get what you get.
36 And you have virtually no incidence of ownership, exercise of ownership rights remains with
37 the State. Now what I am saying is tax on land and building, tax on land revenue, or rather

1 land revenue, as a tax. These are all on an owner creating rights or exercising rights, enjoying
2 the *usufruct* or allowing somebody to enjoy the *usufruct*. I gave my house on rent; I live in my
3 own house. I cultivate a crop which I share or I give it to a tenant who cultivates the crop and
4 he shares.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But tax on land and building is agnostic to the
7 use which the land or building is put by the owner. There's a fact that you own land or building
8 as a unit is liable to liable to pay the tax.

9

10 **HARISH SALVE:** In other words, it is married to the ownership of land and mineral rights
11 are a facet of land. That one can't deny. Not under the act.

12

13 **JUSTICE B. V. NAGARATHNA:** Under the act, the royalty is on the holder.

14

15 **HARISH SALVE:** I'm sorry. Royalty, I finished that...

16

17 **JUSTICE B. V. NAGARATHNA:** But mineral right [INAUDIBLE] the Government of
18 India Act 1935 was there and the 1948 Act was there.

19

20 **HARISH SALVE:** Yes. In fact, I'm relying on that history.

21

22 **JUSTICE HRISHIKESH ROY:** I find it a little difficult to understand "empty ownership"
23 or just the "husk of an ownership." I think that's the expression you have used. If somebody
24 is the owner, I mean, what sort of a right you would have? That you would only have that right,
25 that the Central Government may wish to give? Although you have a specific entry which
26 permits you to tax. And you've also used an interesting expression, 'federalized' in the context
27 of the uneven mineral wealth of the different states. But at the end of that federalized
28 expression, you put Union of India at the end of it and not the states, when we think of a federal
29 structure?

30

31 **HARISH SALVE:** May I, My Lord, answer both the points? I'm deeply obliged. It helps me
32 crystallize that. Federalized is on the first limb of my argument, about any limitations. And I
33 have finished that point that there is a compact, complete code...

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That is your first submission. You first
36 brought.

37

1 **HARISH SALVE:** But I was going one step further. Nobody has ventured this. I am trying
2 to see if it makes any sense. If we consider 45, 49 akin to 50. Why? Because, these are three
3 connected with land. I am now, My Lords, purely on tax on mineral rights. Because, the Indian
4 structure was such, right from '35, of the Land Laws, not the MMDR. The MMDR has never
5 vested ownership in the State. It is firstly, the British who started decoupling mineral rights
6 from land by saying, "I give you *zamindari*, minus the mineral rights." It is noted in those
7 judgments. Or the Indian *zamindars* who had full right, gave to their tenants, rights other than
8 mineral rights or sometimes they did. Then we had post-Constitution, the spate of Land
9 Reform Laws, all of which took away mineral rights and vested in the State. So, we have
10 effectively decoupled one element of land, i.e. the mineral rights in the land. That's the first
11 step. Recognizing this, the '35 Act put the power to lay a tax on mineral rights, separately, from
12 a tax on land and buildings. In fact, according to me, that's where **Murthy** went wrong. What
13 was it carving out? And if it is read in the same sense as 45 and 49, it then becomes a tax on
14 the owner of mineral rights. How he monetizes them? You may monetize them by enjoying the
15 minerals, or you may monetize them by allowing somebody else to excavate and recover.
16 Whatever you call it dead rent, royalty, share. But, like, 45 and 49, should 50, be limited, where
17 ownership rights to mineral rights, are available. And that doesn't fit with our present
18 statutory landscape for the most. I'm not saying completely. It fits with some bits, where we
19 still have ownership rights in mineral. And if the state wants to tax them, it may stand on a
20 different footing. That's as far as the point goes, but that's the point, because if we understand
21 this *noscitur a sociis*, and I just want to show one thing My Lord, as the starting point of the
22 submission. What are mineral rights? Volume IV(f). This is the general law. I start from here.
23 An interesting point My Lord.

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I mean we've now looked at... just to tell you
25 how I've summarized it. I'm sure my colleagues have the same words. We have said, reading
26 Entry 50 in the same sense as Entries 45 and 49, the tax on mineral rights must be on the
27 monetization of mineral rights by the owner.

28

29 **HARISH SALVE:** Yes.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then you said, today mineral rights are created
32 by a delegate setup under a law made by Parliament. The State acts as a delegate of Parliament.
33 Such a statutory grant under a law enacted by Parliament cannot be taxed by the States. Entry
34 50 has to be limited or read down to accord with other entries, Entry 45 and 49. Entry 50
35 should be contextually limited, where mineral rights are created by the owner. The State is left
36 only with a husk of ownership here. Entry 50 should, in other words, be limited, like Entries
37 45 and 49, where ownership of mineral rights is available with the owner.

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HARISH SALVE: Yes. My Lords, this is on the transcript. I'll borrow it and put it in my submissions. I don't think I could have put it better.

JUSTICE HRISHIKESH ROY: I saw that he's reading from shorthand.

HARISH SALVE: May I now quickly finish this point, My Lord?

CHIEF JUSTICE D. Y. CHANDRACHUD: Sorry? It's this shorthand which you pick up with experience as a judge over the years. That's all. It's a long hand.

JUSTICE ABHAY S. OKA: Everybody's shorthand is different.

HARISH SALVE: For some of us who have beautiful handwriting, our long hand looks like shorthand sometimes. My Lord, may I now finish this point very quickly, because I have three or four big points to cover. If Your Lordship just sees the classic statement on what is land revenue, et cetera, there is a very interesting judgment of a division bench of the Madras High Court. It's called *Gopalan vs State of Madras*. Nothing to do with the *D. Gopalan*.

CHIEF JUSTICE D. Y. CHANDRACHUD: What's the citation?

HARISH SALVE: This is, My Lord 19... Just one minute. We got it from the SCC. It's on the screen, My Lord.

CHIEF JUSTICE D. Y. CHANDRACHUD: 71 LW?

HARISH SALVE: Yes, 71... I think it was Madras Law Weekly, page 672.

CHIEF JUSTICE D. Y. CHANDRACHUD: What's the name of the case?

HARISH SALVE: It is *S. Gopalan and State of Madras*.

CHIEF JUSTICE D. Y. CHANDRACHUD: In the compilation what is the page?

HARISH SALVE: This is not in the compilation.

CHIEF JUSTICE D. Y. CHANDRACHUD: Not in the compilation.

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HARISH SALVE: Because when I was thinking of this after the interactions in court, I thought...

CHIEF JUSTICE D. Y. CHANDRACHUD: What do they say, let's see this.

HARISH SALVE: The reason I am citing it My Lord is, it's a good encyclopaedia of the entire land law. So, I get it all in one place.

CHIEF JUSTICE D. Y. CHANDRACHUD: What is the year of the judgment, by the way?

HARISH SALVE: My Lord, this is 1957, I think.

CHIEF JUSTICE D. Y. CHANDRACHUD: *First page pe jaiyega. Scroll nahin kar sakte hain kya? Appearance se bhi pata chalta hain na.*

HARISH SALVE: It is *AIR-58 Madras 539 or 1958(2) Madras Law Journal 117.*

CHIEF JUSTICE D. Y. CHANDRACHUD: *AIR-58 Madras?*

HARISH SALVE: 539.

CHIEF JUSTICE D. Y. CHANDRACHUD: That would be good enough.

HARISH SALVE: My Lord, they've looked for it in the SCC, and this is how it came up. I was told All India Reporter was going to put everything online, but I don't think they put their High Court... Your Lordship sees page 673?

CHIEF JUSTICE D. Y. CHANDRACHUD: ...74. Sovereign is entitled to levy tax on all lands. Such a rights is one of the prerogatives.

HARISH SALVE: My Lord, please ignore the marking. The discussion is at page 673. I'm not going to read the whole thing. Land revenue was challenged. On the left-hand side, lower column. It starts with third line. 'It's well-known system of permanent settlement on Lord Cornwallis is introduced only in a few places in the old Madras Presidency and the board of directors of East India prohibited its extension to the rest of the Presidency. Thereafter,

1 collection of revenue by way of willed settlement or by grant of lease or the will is to a
2 middleman, to a renter, a headsman, et cetera, et cetera.' I'm not going to read the whole...

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Actually, the question was whether this is
5 collection of... assessment in collection of land revenue is violative of Article 265. So, the court
6 says no, this was a power which we inherited in the sovereign even before the Constitution. It
7 was continued by Article 372 and therefore, it's protected.

8

9 **HARISH SALVE:** My Lord, the reason I went to this judgment is it's one of the best
10 discussions of the history and it gives it all in one place rather than going all over the place.
11 Page 674. 'From the very early time, land revenue was recognized the item of revenue for the
12 same Mr. Saundraj Iyengar in land tenures, after referring to the ancient Hindu scriptures and
13 smritis, says that the law givers have laid down most distinctly that the sovereign is entitled to
14 a share of produce on the land for protecting their life.' If Your Lordship has that? And then
15 he discusses the whole lot. I won't read the whole thing.

16

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

18

19 **HARISH SALVE:** It will be of assistance to Your Lordships because it puts it all in one place.
20 So, land revenue, tax on land, all this have their historical origins in a share, and that is why
21 till 35, even under the devolution, there was no such thing like tax on mineral rights

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes Mr. Salve?

24

25 **HARISH SALVE:** This is for that first part. If Your Lordships at any point need me to develop
26 further, but I'm going at a little trot because I want to finish today. And also, My Lord,
27 interesting passage in *Moopil Nair*. The famous *KT Moopil Nair* known for its Article 14
28 propositions. It is Volume V, page 175. I just want to read one sentence. At this is... I'm sorry.
29 This is **(1961) 3 SCR 77**, at page 183 para 8, about 6-7 lines from above My Lord. 'The Act in
30 terms claims to be a general revenue settlement of the State, ordinarily a tax on land or land
31 revenue is assessed on the actual or potential productivity of the land sought to be taxed.'
32 That's the point which I was making.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where is that para?

35

36 **HARISH SALVE:** I'm so sorry. It's para 8 at page 183.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And which line?

2

3 **HARISH SALVE:** About six lines from the top. 'The Act in terms...'

4

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

6

7 **HARISH SALVE:** '...claims to be a general revenue settlement of the State. Ordinarily a tax
8 on land or land settlement revenue, is assessed on the actual or potential productivity of the
9 land sought to be taxed.' In other words, the tax is reference to income actually made, or which
10 could have been made with due diligence, and therefore, is levied with due regard to the
11 incidence of taxes. This is My Lord, the general notion of tax on land, of land revenue, because
12 I made a broad statement. My Lord, I have to make it good, if that's how it is understood. The
13 rest then My Lord, Their Lordships, discuss about if you have a flat rate, then how it violates
14 Article 14. Now changing tracks, a little. Now, where do mineral rights sit, in all this?

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because the entry uses the expression in the
17 plural, 'mineral rights'.

18

19 **HARISH SALVE:** Rights.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It doesn't say, 'mineral right'. So, it's really a
22 conglomeration of all the rights to minerals which are in here to a person.

23

24 **HARISH SALVE:** My Lords, that's very important. And otherwise, but for the kind of legal
25 system which sort of evolved in India, mineral rights were an integral part of land. Your
26 Lordship, sees the passage from *Megarry*. It's in Volume IV(f).

27

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

29

30 **HARISH SALVE:** PDF 2. I'll just read four or five lines. This is the standard textbook, the
31 law of real property. 'There is an ancient maxim, *cuius est solum, eius est usque ad coelum et*
32 *ad inferos*, meaning the owner of the soil is presumed to own everything up to the sky and
33 down to the centre of the earth. It has been criticized, but the presumption that remains firmly
34 a part of English law encapsulating in simple language, the proposition of law, which is
35 commanded general acceptance. Above the surface the development of powered flight, will
36 make it impossible to apply the presumption literally. The owner's rights and airspace above
37 the land extend only to such height as necessary for ordinary use and enjoyment of the land.

1 As regards the rights beneath the surface, the maxim applies and the owner is presumed to
2 own the minerals beneath. For practical purposes, the rights downwards are unlimited. There
3 must obviously be some stopping point as one reaches the point at which the physical features
4 such as pressure and temperature, render the concept of strata, belonging to anybody so
5 absurd that it's not worth arguing about. As to the land itself, the owner and fee simple is
6 *prima facie* in possession of, and therefore, entitled to any chattel which is not the property of
7 any known person, which is found, under or attached to the land, in a field or in the bed of a
8 canal.' I have to stop here for a minute. There's one story which Mr. Parasaran used to tell with
9 great delight. He said the landlord lent a big piece of land out in *Satya Yuga*. The tenant, while
10 ploughing the land, discovered a pot of gold. He went to the owner and said this doesn't
11 belong... this doesn't go with the land, this is yours. And the landlord said, I have given you
12 the land and all it yields, so it is yours. They went to the king. By the time they went to the
13 king, *Kalyuga* had come, so they changed their pleadings. The tenant argued, actually, you're
14 right, it's mine. The landlord said no sorry, I got it wrong, it's mine. So, I always tell this story
15 about *Kalyuga* and *Satya Yuga*. The next para. The next line, My Lords. 'The rule also applies
16 to any unattached chattel, found on the land.'

17

18 'The rule also applies to any unattached chattel found on the land, but only if the chattel is
19 found, et cetera, et cetera.' Then about accretion to land, you're entitled... The para 3.014, a
20 little lower down on the page, PDF page 3, 'An owner can divide the land horizontally or any
21 way he likes. He/she can dispose of the minerals under the surface or on the top of a floor of
22 buildings to make them separate properties. But unless some contrary intention is show, the
23 grant will normally pass the owner's whole interest in the space above and below the land.
24 Thus, for example, a lease will give the tenant a right to the airspace above the land debt, et
25 cetera.' Now, this is the general law, and this law also applies in India, except where there has
26 been a statutory intercession.

27

28 **JUSTICE HRISHIKESH ROY:** The lease will give the tenant the right to the airspace above
29 the land.

30

31 **HARISH SALVE:** Correct. Also, minerals.

32

33 **JUSTICE HRISHIKESH ROY:** So, if he wants to fly kites, he can do so.

34

35 **HARISH SALVE:** He can. But not planes. The law, My Lord, in India is also the same, and
36 we get that, My Lord, from a judgment of this Court in *Jacob and Ors. Vs Geologist*,

1 *Department of Mining, 2013 (9) Supreme Court Cases*, page 725. I'll come to that
2 judgment in a moment. But Your Lordships may just note it down.

3

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

5

6 **HARISH SALVE:** And that's in Bundle 5(a), page 831. I'll come to that in a moment, My
7 Lord. Therefore, my submission is, now look at the collocation of entries. Because of this
8 peculiarity as *Gopalan* explains, of Indian law, how it is evolved, we took out mineral rights
9 and said 'tax on land revenue and mineral rights. If the three are understood in the same sense,
10 then everything falls into place. Today, we have My Lord, where Parliament has almost
11 nationalized and federalized the entire system, and for good reason. The economic impact,
12 and the Solicitor is going to deal with that, Your Lordship will see, it's huge. If the price of iron
13 ore goes up, Indian steel disappears from the market. We had reached a point, when at one
14 stage, because of all the environment problems, when Goa closed another mine, and Your
15 Lordships dealt with those applications. People said we'll import steel. The import of steel had
16 to open, because if you don't allow steel, then other downstream industries start closing. You
17 can't starve the country of steel. And steel became priced out because some of the mines closed,
18 for environment reasons. And then, Indian iron ore got priced up. And then, Indonesia enters
19 the market. Today in one sense, the world has become a very small economic space, and that
20 is why this tight control. You can't fiddle with any one element of these economics. The whole
21 picture gets distorted. It's like a jigsaw puzzle. So, My Lord, my submission is, if it is construed
22 in the same sense, then a lot of this also falls away. I've made the point.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, if you construe it in the same sense, what
25 is the sequitur then?

26

27 **HARISH SALVE:** If therefore... Then My Lord, where there is an ownership, and in exercise
28 of that ownership, mineral rights are exploited, you of course, can tax. So, if today, My Lord,
29 there is a sliver left, but there is still something left. Some private owner giving it, earning
30 royalty. If the State says, look, I don't get any share in this. You are the private owner are
31 exploiting mineral rights. Maybe you're following some rules. I don't know. I am not
32 appearing, but I can see the point there that you can tax us. But where? And that is why My
33 Lord is very important. Our law has always treated from '49, state ownership as a separate
34 chapter of the MMDR where the mineral vests in the State. It's for this reason.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So according to you, tax on mineral rights
37 cannot be imposed where the minerals vest in the State?

1

2 **HARISH SALVE:** Vest in the State and the State itself is creating the mineral rights now as
3 a delegate of Parliament as well. That's the point. Now, what happens then to the taxing entry?
4 And I have to deal with logically at this point. So that we are done with Entry 50. What I call
5 the *Kannadasan* conundrum.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What happens if the mineral rights, of course,
8 vest in the State albeit in recognition by an act of Parliament and the State farms out those
9 mineral rights or it farms out some portion of the mineral rights. Can it not impose a tax?
10 Because this is acting in a dual capacity. In farming out the mineral rights, it's acting as the
11 owner of the minerals. In taxing it, it's exercising its sovereign power of taxation.

12

13 **HARISH SALVE:** The problem is if the tax on mineral rights is conceptually the share of the
14 State in the mineral rights or the share in the share of what the owner earns from the mineral
15 rights, then once the rights are with the State itself, what it earns is by farming out those
16 mineral rights.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right, but the State is farming out those
19 mineral rights. When it farms out the mineral rights, can it not demand, extract a share in
20 what the private person or the third party earns from the state by saying I'll tax that? Taxation
21 has no... It doesn't have a logical basis. Taxation is always... it's really in that sense fiction of
22 the law. Right?

23

24 **HARISH SALVE:** I see the point where its... If tomorrow the State was acting purely in a
25 contractual capacity and wearing two hats, one the sovereign taxing power and one as a
26 contracting party. Today it doesn't do that, but tomorrow if it were to do that and it was left
27 free to do that, there may still be a conceptual problem. And let me just state the point. I don't
28 want to overstate it. Let me just state the point. If I am right in my understanding of the
29 collocation of the three entries, 45, 49, 50, a tax on mineral right is where the State is taking
30 from the owner a share of what the owner earns. Now the State it when, the 100% vests with
31 the State, there is nothing to take. What the beneficiary of a lease then gets is what the State
32 has bestowed on him. There's no further share. Now I have finished. One last bit remains. It
33 all goes back to the nature of the tax. Now I come to the last limb. Your Lordships had asked...
34 It's a very important question to ask. If we are right, especially the first limb of 50 that,
35 assuming the State could have taxed where even where it creates rights, et cetera. The
36 limitation is what takes away the right of the State to tax. Then what happens to the taxing
37 power? My understanding of the Constitution and principles will be the taxing power sits

1 where it sits. It doesn't vest in Parliament. There is a view taken by this Court that it does by
2 two judges. I must show that judgment. How far it goes and how far Your Lordships find it of
3 assistance is quite another matter. This is Volume V(c), page 114.

4
5 Your Lordships will, of course read the judgment. Let me just tell My Lord, what this judgment
6 is about. In 1991 after **India Cements**, all the states faced the prospect of making refunds
7 and a question arose where is the money going to come from. So, Parliament brought a
8 validating law, validating this. That law was challenged on various grounds, including
9 legislative competence. The first ground My Lord, on which most of the attention was
10 bestowed doesn't need to trouble us today, because that was on the ground the usurpation of
11 judicial power, whether there was a proper validation. Put that to one side. The Union there
12 relied on **Jaora Sugar**, para 27, which Your Lordship, will find at page 136. And **Jaora**
13 **Sugar** was where the State imposed tax on sugarcane entering the factory and sought to
14 justify it as a land revenue. Your Lordship struck it down saying, sugarcane entering a factory
15 is not in the care of the state. It's not in List II. Now, if it is not in List II, Parliament can always
16 make that case. So, **Jaora**, Parliament validated that. Your Lordship said, we held, it is not in
17 List II. If you hold, it is not in List II, Parliament can always validate.

18
19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, then it is as if, it is deemed to have been
20 imposed by Parliament there.

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22 **HARISH SALVE:** Yes, and by 97.

23
24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's right.

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26 **HARISH SALVE:** Now, relying on **Jaora**, this law is upheld. Here it is not that it is not in
27 the State List. Here it is in the State List but subject to limitation. So, what happens to this
28 taxing power, till those limitations are in play? That unfortunately, is not addressed squarely,
29 but the judgment, since it deals with the question of legislative power... I thought Your
30 Lordship should see this, para 27 at page 136. 'The validity of the sugarcane cess validation
31 was questioned in **Jaora**. The contention of the learned Counsel for the Appellant Petitioner
32 is that if Parliament wanted to impose the levies which are earlier imposed by state
33 enactments, were declared incompetent, Parliament must impose the levy, as has been done
34 by Section 3 of the Validation Act, et cetera.' That was one My Lord, that's more on the form
35 of how the validation should have been brought in place. The third contention and My Lord,
36 where we really come in... sorry fifth, page 141.

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

2

3 **HARISH SALVE:** Para 34 and 35. 'It is argued,' very idea behind MMRD was to bring about
4 uniformity in taxes, royalties. It's true that is, but that doesn't mean Parliament cannot create
5 an exception. Uniformity in rates of taxes and objectives set out in MMRD Act, it is not a pre-
6 condition to a law made by Parliament under 51, nor a limitation on Parliament's power. If
7 Parliament is enunciated, the principle also creates an exception. Precisely what has been done
8 in the instant case. The impure enactment is both an addition and exception to Section 9 of
9 the MMRD Act.' This is very important. So, they now brought 9 and tax on power. 'The fifth
10 contention of the learned Counsel for the Appellant's Petitioners is equally misconceived.
11 Parliament has already denuded the legislature of their powers to levy tax on minerals, in
12 hearing in them by making the declaration contained in Section 2 of the MMRD Act.' Now My
13 Lords will know why I'm coming to the judgment towards the end of my submission. I have
14 not relied on the declaration. I have put my points on a slightly different footing. But this is
15 how this Court has seen it. Sri Sanghi argued... if I may just pause here, because now let me
16 tell My Lord quite candidly, what I'm driving towards. I'll tell My Lord, why honestly... My
17 Lord, I am going to... I'm sorry. I'm at the end, I'm going to suggest one way out of this, what
18 I call the **Kannadasan** conundrum, is that seven judges held a particular way that was acted
19 upon. It came to rest. **Kesoram** made a mistake by unsettling that provision. I am coming to
20 it in the end of my submission, because I wanted to first satisfy Your Lordships that on
21 principle also, we are right. But if that is done, then all this landscape need not be disturbed.
22 But if one tests each proposition here, we don't know where this is going to end up, because
23 this is pulling all the strands apart. But just see how Your Lordships put it. 'Sri Sanghi argued
24 that the denotation is not absolute, but only to the extent provided in the MMRD Act. Section
25 9, Counsel submitted, is one of the facets of the extent of denigration. 9, it is submitted, sets
26 out the rates of royalty and also the states rates of royalty can be revised, if Section 9 is to be
27 amended either directly or indirectly, a fresh declaration in terms of Entry 54. This contention
28 assumes that, notwithstanding the declaration and, (2) the States still retain the power to levy
29 taxes on the minerals, over and above those prescribed, in the MMRD Act, and that a fresh
30 declaration is called for whenever such subsisting State is so and so. The supposition flies in
31 the face of the decision of **India Cements** and **Orissa**. That decisions are premised on the
32 assumption that by virtue of the declaration, the States are denuded of the power to levy taxes.
33 It is for this reason that the State enactments were declared incompetent insofar as they
34 purported to taxes/cesses on minerals. The denudation of the States is not partial. It is total.
35 It cannot levy any tax or cess on minerals so long as the declaration in (2) stands. Once the
36 denudation is total, there is no occasion or necessity
37 for any further declaration of denudation of a repeated declaration.'

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CHIEF JUSTICE D. Y. CHANDRACHUD: Mr. Salve, perhaps, the problem which confronted the bench was that seven... *India Cements* was binding on them.

HARISH SALVE: Yes.

CHIEF JUSTICE D. Y. CHANDRACHUD: They were a bench of two. They had to take *India Cements* as it is. There was a Validation Act, and there was a challenge to the validity of that act. So, when they formulated whether the States are denuded the power of imposing taxes and minerals, they go by *India Cements* and then lead it to...

HARISH SALVE: There is one area... With respect, Your Lordship is absolutely right. But there is one area where it creates a problem. The area is, if there is a limitation made by Parliament, Parliament can limit the State's taxing power. Can Parliament exercise that taxing power? And a question which Your Lordship asked right from the beginning - Where does Parliament get the power to lay this tax? And if Parliament doesn't get the power to lay this tax, they can't validate this tax. Now, that's a conceptual problem. And, this judgment goes on the footing, that because that States can't, the Parliament can. That's all it says. There is no discussion.

CHIEF JUSTICE D. Y. CHANDRACHUD: Because if the denudation is right, that field is not shifted to Parliament. It's just that the States lose it. Except then, that there was a... if it's a denudation... Possibly, if it's a denudation of the power of the States under Entry 50, conceivably, it might then go to Entry 96.

HARISH SALVE: That can be the only...

CHIEF JUSTICE D. Y. CHANDRACHUD: Entry 97. Including a State... including a tax not falling in any of the lists. Of course, Entry 97 covers an area where the subject does not belong to any other entry. Here the subject belongs to an entry but that subject is denuded from the power of the State.

HARISH SALVE: The language of 97...

CHIEF JUSTICE D. Y. CHANDRACHUD: 97 is very different.

HARISH SALVE: Serious problems. Yeah, because it says, 'any tax not mentioned in...'

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JUSTICE B. V. NAGARATHNA: Not mentioned in...

CHIEF JUSTICE D. Y. CHANDRACHUD: This is mentioned.

JUSTICE B. V. NAGARATHNA: List I or List II.

HARISH SALVE: Mentioned, but limited.

CHIEF JUSTICE D. Y. CHANDRACHUD: But limited.

HARISH SALVE: Now, conceptually, how it flies.

CHIEF JUSTICE D. Y. CHANDRACHUD: And nobody has challenged all those provisions for a district mineral fund and everything. All that will come into very serious difficulty.

HARISH SALVE: This was followed up in another judgment. Just see that one of 2001(7) SCC 358, Volume V(e), page 2. I am not inviting Your Lordship to reverse this. Please don't misunderstand me. I only said this is the *Kannadasan* conundrum and to complete my argument, I must show these. This judgment held the... I'm sorry, it is in Volume V(e), page 2.

CHIEF JUSTICE D. Y. CHANDRACHUD: V(e)?

HARISH SALVE: Where three judges heard. They did not reverse the principle of the law. They only said this cannot apply to future recoveries. It only saves the past.

JUSTICE HRISHIKESH ROY: Where is the page number 160?

HARISH SALVE: I'm so sorry, this is in Volume V(e), page 2. And in this My Lord, *Kannadasan* principle is upheld but they said this cannot apply to future recoveries. And that discussion, Your Lordship will find page 35 of the PDF. The discussion, in fact, begins at page 34 *Placitum C.* 'Parliament never conferred any right on the State Government to make any levy of collectures which has not been collected or collectible. Parliament merely conferred life to the void statute by fictional reenactment.' And please mark the words, 'granting legislative competence for the limited purpose.' 'So, the State would not be called to refund the cess already collected and the circumstances do not find much faults in the contention

1 [UNCLEAR] but the enduring nature of the law and we hold the provision of the state laws.
2 You have validated on the act and we are alive till 04-04-'91 having expired. There's no
3 authority under the law, the state could raise any demand. Conclusion in **Kannadasan** to
4 the contrary therefore, must be held to be not correct. **Orissa Cement** the court, though
5 declared the levy of cess to be unconstitutional, further directed, there will be no direction to
6 refund. Any amount collected unto the date on which the levy in question has been declared
7 unconstitutional. This date so far as Bihar is concerned with the date of the judgment, 04-04-
8 '91. In Orissa, it was '89. In Madhya Pradesh, it was '86. It was held that any cess collected
9 after the dates by the respective states, has to be refunded, to obviate the aforesaid difficulty,
10 particularly Orissa and Madhya Pradesh. Though the difficulty is not there in Bihar, the
11 Parliament came forward with the Validation Act. It is true, as Mr. Dwivedi contended, that...
12 contended that, there was no necessity for including the Bihar Act, since Parliament was
13 enacting, but since several state laws were re-enacted to the date of the judgment, thought to
14 have fit of the legislation effective, but for a limited purpose so the state would not be liable to
15 refund any tax. We find sufficient force in the contention of Mr. Venugopal, that the law never
16 existed after 04-04-'91 and consequently so and so.' That is dealt with. Then again, para 21,
17 around... just below *Placitum* f, My Lord, after citing **Jaora**, it says, 'Dr. Singhvi is also right
18 in his submission that this Court in **Kannadasan** drew a wrong analogy from
19 **Gangopadhyay** and erroneously held provision therein identical to the Validation Act. 2(1)
20 of the Validation Act, having used up to 04-04-'91, it unequally indicates, what is validated the
21 process of levy and collection after that date itself.'

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, they overruled **Kannadasan**?

24

25 **HARISH SALVE:** To this extent. But the basic principle is upheld. The validation is upheld.
26 Only Sir, it's validated up to 04-04-'91. Now, quite frankly, My Lord, it was, completely lacking
27 in legislative competence. Only way to do it is to dilute the limitation, but not Parliament
28 imposing the tax. What they have done is, Parliament imposing the tax. That's what
29 **Kannadasan** upheld and that was upheld. The District Mining Officer case doesn't go back
30 on that. That's the point about 50. I'm done with Entry 50. My Lord, there are some more cases
31 about denudation, et cetera. I... If Your Lordship permits me, in the closing written note, I'll
32 give the passages in those citations?

33

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

35

36 **HARISH SALVE:** That's some of the ground which I need to cover today.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, Mr. Salve.

2

3 **HARISH SALVE:** Now My Lord, the next point. If I'm right on 50, does 49 help the State? It
4 can't, in my submission. The point is simple and short.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's your decoupling argument?

7

8 **HARISH SALVE:** Yes. So, one thing is then clear.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That land tax on land, according to you, cannot
11 include tax on mineral rights?

12

13 **HARISH SALVE:** So that's very clear.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But they would argue that the...

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17 **HARISH SALVE:** The measure.

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19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's the measure and not the levy.

20

21 **HARISH SALVE:** I come immediately to the measure.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ... is on land [UNCLEAR].

24

25 **HARISH SALVE:** That's why I said. The first part is easy and one must construe 49 and 50
26 in separate compartments. Because 49 is on one aspect of land, 50 is on another aspect of land.
27 We can mix the two. Sorry, I shouldn't have used the word, 'aspect', My Lord. It has created a
28 lot of confusion in our Constitution. 49 is on land, 59 is on mineral rights which are not a part
29 of land levy. It took five of Your Lordships to exorcise the ghost of the Canadian Aspect Theory
30 in [UNCLEAR] tax. So, let's not go there again. 49 is tax on land and 50 is tax on mineral
31 rights. Now, why is tax on mineral rights separate from tax on land? The decoupling argument.
32 If something is not a part of land, how can it be a measure for a tax on land? This is nothing
33 new. Your Lordships have dealt with these problems. Tax on machines, value of machines, can
34 you add that to the value of land for a factory? You can't.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But Mr. Salve, when there is a challenge to the
37 validity of a measure, as opposed to a challenge to the validity of a levy...

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HARISH SALVE: Yes...

CHIEF JUSTICE D. Y. CHANDRACHUD: ...the test is not as strict. So long as the measure has some broad nexus with the character of the levy, it is sustained.

HARISH SALVE: Correct. Now, here I'm saying, the character of the levy here, is on land, anything which has a nexus with land. But something which has been removed from the land, legally, conceptually, how can it provide you a measure? And Your Lordships have dealt with these. Machinery. Machinery fixed on land...

CHIEF JUSTICE D. Y. CHANDRACHUD: Again, what has been removed... assuming that Entry 49 does not include mineral rights, and that may be plausible, because once there's a separate entry, you can't lead that entry into Entry 49.

HARISH SALVE: Exactly.

CHIEF JUSTICE D. Y. CHANDRACHUD: So, you proceed on that postulate. But, in Entry 49 when it speaks of tax on land, that refers to a levy.

HARISH SALVE: Yes.

CHIEF JUSTICE D. Y. CHANDRACHUD: So long as the levy is on land as a unit, the Legislature has a wide discretion to choose amongst various alternatives for determining the measure and the ratio of which the levy can be imposed.

HARISH SALVE: It is far too well settled to be argued.

CHIEF JUSTICE D. Y. CHANDRACHUD: And, insofar as that measure is concerned, the measure need not be a measure in the constitutional sense.

HARISH SALVE: It has a nexus.

CHIEF JUSTICE D. Y. CHANDRACHUD: So long as it has a nexus.

1 **HARISH SALVE:** Now, My Lord, where something... where mineral rights are legally a class
2 apart, they are no part of the land. How do they then have nexus to the value of the land? That's
3 the point.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright.

6

7 **HARISH SALVE:** If I use My Lord, land for parking aircrafts, can you say the cost of the
8 aircraft will be my measure for taxing the land? You can't. You can say the rent you are getting
9 for parking the aircraft, that I will take. But can you say, I'll add the value of the aircraft to the
10 value of the land and 5% of that? You can't. The necessary legal nexus is missing. If I am right,
11 if I'm right in the first part of my argument, that there is a decoupling... I am the owner of the
12 land. I have zero right to mineral, and the owner of the mineral has zero right to my land. The
13 State owns the mineral, I own the land. You are telling me; I'll tax you on the land. On what
14 basis?

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You know, Mr Salve, actually, this may not be
17 a correct way of reading the purpose. Both Entry 49 and Entry 50 give complete and exclusive
18 jurisdiction to the States to impose a tax on land and a tax on mineral rights. Absent Entry 50,
19 a tax on mineral rights would have been comprehended within Entry 49.

20

21 **HARISH SALVE:** Yes.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right? Now, the reason why they decoupled,
24 so to speak, Entry 50 from Entry 49, was because they wanted to subject a tax on minerals to
25 the limitation imposing power of Parliament under Entry 54 of List I. Otherwise, it's not as if
26 the power to impose those two taxes are given to two different legislatures. The Legislature is
27 one and the same.

28

29 **HARISH SALVE:** Let's test the first part. Let's assume 59 is not on the statute. Let's assume
30 50 is not on the statute. There was a tax on land and buildings. I own a plot of land on which
31 I've made a house and under it was found that under my building, there is iron ore. Can you
32 include that in my value? No, because that doesn't belong to me. It can't be a measure for
33 taxing my land.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But if the ownership of the mineral...

36

1 **HARISH SALVE:** If the ownership is in me, of course, it does. So, if I do not own the mineral,
2 you can't tax it as a tax on land unless a statutory lessee has no right to land. If I am right on
3 decoupling. Surface rights, of course, you can tax. Surface rights, as you very carefully call
4 them. A surface rights is hypothesis, are not rights to the mineral. Today My Lord, we all own
5 homes. Who knows what you find under our homes. Today minerals which are found, which
6 yesterday were considered worthless, today become very valuable. With fracking who knows
7 who has oil under their house. Now do any of us own it? No, because we only have the right to
8 live on the land, or if you have a big track of land to do farming, to do whatever. You have land
9 for whatever... surface purpose. You can park your cars, you can park, you can give it for
10 parking aircrafts, you can give it for parking trucks. You can do it for whatever you want. And
11 whatever I earn out of that, whatever is the capacity of that to yield income, any facet, you can
12 use any of that as a measure. Of course. But some right which I do not have in that land.
13 Whatever right to anything which is below that. How can that be a measure for taxing me on
14 the land conceptually? And Your Lordships have dealt with this. So, wherever Your Lordships
15 have held... let's take the land cases. The capacity of a heir-determinant to yield income,
16 [UNCLEAR] Ragyara. I own a house. I may not give it on rent, but it doesn't have the capacity?
17 Of course it has the capacity. I can give it on rent. If I My Lord, own as in the **Jacob** situation.
18 I own 50 hectares which has a minor mineral in it. The **Jacob** situation and somebody says, I
19 will tax you on that basis. Of course, you can. You can text me in 49 saying land, including the
20 capacity to yield subject to my 49, 50 arguments. I'm on the measure. But if I do, if there has
21 been an effective decoupling by which I have zero right title or interest to the minerals, that
22 mineral is no longer part of land.

23 That miner

24 al in law has ceased to be part of land. I am the owner of the land. Is there any doubt? No. I
25 have full title to the land. But my full title to the land doesn't mean I have a right to exploit the
26 mineral because mineral that is separate head, have vested in the State. How can that be a
27 measure of tax on land where the minerals are vesting in the State? Where they don't vest in
28 the state, yes, Sir. It is a different consideration and that is where the measure breaks because
29 then it has lost nexus with the land. It has lost that connection.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You are relying on ***R R Engineering?***

32

33 **HARISH SALVE:** ***R R Engineering and Bombay Tyre.*** At which point you levy? How
34 you collect... everything, you have full latitude.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's see ***R R*** and then ***Bombay Tyre***, how
37 it's put there.

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HARISH SALVE: In fact, also a recent case.

CHIEF JUSTICE D. Y. CHANDRACHUD: That 2013.

HARISH SALVE: Yes.

CHIEF JUSTICE D. Y. CHANDRACHUD: I fe2021.

HARISH SALVE: Yes, 2021. *Acer*.

CHIEF JUSTICE D. Y. CHANDRACHUD: *Acer*, Customs Act.

HARISH SALVE: Yes. May I just show that, those one or two cases? This is another. My Lord, Volume V(f) is *R R Engineering*, page 24. And if Your Lordship will permit me, I'm trying to come straight to the relevant paras. Para 16 at page 6.

CHIEF JUSTICE D. Y. CHANDRACHUD: Page?

HARISH SALVE: Page 6, paragraph 16. I'm reading the bits which they rely on, and then the caveat, which I rely on.

CHIEF JUSTICE D. Y. CHANDRACHUD: Sorry. What's in Volume V(f), what is the page, actually?

HARISH SALVE: Page 24.

CHIEF JUSTICE D. Y. CHANDRACHUD: Page 24.

HARISH SALVE: I'm so sorry. This will be page... para 16 will be on page 30.

JUSTICE ABHAY S. OKA: Para 16 will be at page 30 PDF.

HARISH SALVE: 30. I'm sorry, My Lord, later on uploaded it so the pagination changed.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

1 **HARISH SALVE:** It may be and is so often, that a tax on circumstances and property levied
2 on the basis of income which the assessee receives from a professional trade calling of that
3 property. That is however not inclusive on the nature of a tax. It is only as a matter of
4 convenience, that income is adopted as a yardstick or measure for assessing the tax. As pointed
5 out In Re: A reference under the Government of Ireland Act, the measure of the tax is not the
6 true test of the nature. Correct. No caveat with this. Therefore, while determining the nature
7 of a tax, though the standard on which the tax or levy may be a relevant consideration, it is not
8 a conclusive consideration. One must have regard to the real nature, its pith and substance,
9 which must determine into which category it falls. Applying the test, the tax and circumstances
10 will fall, in the category of a tax on a man's financial position, his status taken as a whole,
11 including what may not be properly comprised, under the term property and at the same time
12 ought not to escape assessment. Look at this My Lord, if a doctor is taxed with a premise, that
13 you are a lawyer, poor doctor might go bankrupt. The quotation finds place in the judgment of
14 Malik, Chief Justice in the full bench, in district board of Farrukhabad. The formulation which
15 learned Chief Justice would appear to have extracted from another source and he has put in
16 within quotes is similar as Pandit Ram Narayan. "Assessee challenged validity to pay tax on
17 circumstances and property in 14(1)(f) on the ground, he did not reside in the jurisdiction of
18 the town committee at Kara, and under Rule 3, it was invalid. The court, after referring
19 approvingly to Farrukhabad, particularly to the statement given to the tax did not matter nor
20 to be considered the pith and substance. That My Lord is that. Please see paragraph 20, page
21 32. Entry 49 of List II refers to taxes on land and buildings, while Entry 60 refers to tax on
22 profession, trades callings and employment. Having already considered the true nature of a
23 tax on circumstances and the property whereof the opinion any event and at least referable to
24 49 and 60, the profession, trade calling and employment, which is a person occupies, and the
25 land and building which please mark My Lord, which he owns, determines that status which
26 he occupies. The impugned tax is a composite tax, one of its components being the
27 circumstances of the assessee. By circumstances, it meant his financial position, his status as
28 a whole, which depends on the income from lands and buildings. It is that view which was held
29 by a full bench of Allahabad in *Muzaffarnagar and Jugal Kishore*. [UNCLEAR] who
30 spoke for the court observed, it is clear from the very nomenclature of the tax, it was on
31 composite character, et cetera. Then Your Lordships, cite the usual cases and paragraph 22 is
32 where My Lord for the first time, the red flag is raised. While doing so, we would like to utter
33 a word of caution. The fact that one of the components of the tax, that is the component of
34 circumstances, is referable to other entries should not be construed as conferring an unlimited
35 charter on the local authority, to impose disproportionately excessive levies who are subject to
36 the jurisdiction. An excessive levy on circumstance will tend to blur the distinction between a
37 tax on income and a tax on circumstance. Income will then cease to be a mere measure of

1 yardstick of the tax and will become the very subject matter. Here My Lord, you say 50% of
2 the royalty you pay breaches this principle also. I mean, you levy the same tax and a mineral
3 tax, you say it fails. Okay, how about. Entry 49? As a measure, you can't hop from one foot to
4 the other like this. And this My Lord was cited and forms the basis of ***Bombay Tyre (1984)***
5 ***1 SCC 467.***

6
7 Volume V(a) page 251. Page 262, My Lord, para 9 sets out the contention of the Union. See the
8 last seven lines of para 9. According to him, "Although excise is a levy on the manufacturer of
9 goods, it is open to Parliament to adopt any basis for determining the value of an excisable
10 article, and that the measure of assessing the levy need not correspond", please mark the words
11 carefully worded, "completely to the nature of the levy, and no fault can be found with the
12 measure, so long as it bears a nexus with the charge". And this test, My Lord, is discussed fully,
13 para 14, on page 265. I'll just read these three paras and then I'm done with this point. "We
14 now move to a different dimension, the conceptual consideration of the measure of tax. Section
15 3 of the Excise Act provides for the levy of excise. It charges the charge... it creates the charge
16 and defines the nature i.e. the levy on excisable goods produced or manufactured in India, and
17 mentioned. Section 4 provides a measure by reference to which the charge is levied. The duty
18 of excise is chargeable with reference to the value of the excisable goods, and the value is
19 defined in express terms. It has long been recognized that the measure employed for assessing
20 a tax must not be confused by nature". Then My Lord, the famous ***Rallia Ram***, where the tax
21 on lands. Over the page is ***Atma Ram Budhia*** where a tax on passengers was assessed as a
22 rate on fares and freights payable by the owner. Clearly, My Lord, there is a nexus. "The Court
23 repelled the contentions of the tax to the tax on income. It pointed out, though the measure of
24 the tax is by the fares and freights, it does not cease to be a tax on passengers". If I may just
25 pause here for a minute. In all these cases, Your Lordships will find, the challenge was not that
26 there is no nexus. The challenge was, this measure actually makes it a different kind of a tax.
27 So, if you put it on the income I have from fares, it becomes an income tax. Or, if you put it on
28 the rent, then under the Income Tax Act also, the annual letting value is income, so it becomes
29 a charge on Income Tax. So, the nature of the tax undergoes a change. Your Lordships said no.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** See page 267, the last para, "It is apparent,
32 therefore..."

33

34 **HARISH SALVE:** Yes. And after ***RR*** is cited...

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** They cite ***RR***.

37

1 **HARISH SALVE: RR, Hingir-Rampur.** And then My Lord, lasts three lines puts it pithily.
2 'Any standard which maintains a nexus with the essential character of the levy, can be regarded
3 as a valid basis for assessing the measure of the levy". I accept this. I'm saying, please apply
4 this in the context in which I have put it. And, one important case which goes the other way in
5 our favour, is **2004 (8) SCC 173, Acer.** Page 2. It is volume V(f), page 2. Question was, My
6 Lord, set out in para 5. What the Commissioner held is, that the value of the cost of the
7 operational software installed by the assessee on computer before clearance, is included in the
8 assessable value.

9
10 Paragraph 21 onwards, My Lord, at page 15. Sorry. Yes. At page 11. I'm sorry. I'm not going to
11 read them. There's a full discussion. Then the interpretation of a taxing statute. Then My Lord
12 the discussion begins from paragraph 51 at page 15. Your Lordships trace this and paraphrase
13 55 is what I rely on. Because we borne in mind Central exercise cannot be equated with Sales
14 Tax. They have different connotations and apply in situations. Central excise is chargeable on
15 excisable goods and not on goods which are not excisable. Thus, goods which are not excisable
16 if transplanted into goods which is excisable would not altogether make the same excisable
17 good so as to make the assessee liable to pay the excise duty. Excise duty would be leviable on
18 goods which answer the definition of goods. A machinery provision in 4 and that too expiration
19 by way of transaction value can neither override the charging provision nor by reason thereof.
20 Goods which is not excisable. This is the principle. ...would become excisable only because one
21 is fitted into the other. This was considered again, in **(2018) 7 Supreme Court Cases 233**
22 *gracie* where they went into tax and measure and page 926 onwards.

23
24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Of volume?

25
26 **HARISH SALVE:** I'm sorry. Volume V(a) starts at page 909 where **Bombay Tyres** is
27 reiterated. And para 17 makes important reading. Your Lordship turns to para 17 at page 926.
28 The measure for the purpose of the levy is the price charged in respect of a transaction, which
29 was necessarily the answer. Included in the narration that enriched the value till its clearance
30 of permissible. Additions to the price which can be taken into account to determine value as
31 well as the transaction value, which under the amended section so and so. While traditions are
32 being judicially held to be permissible under the old act, the very same heads are statutorily
33 engrafted by the amendment. The price charged for the manufacturer article at the stage when
34 the article enters into the steam of trade in order to determine the value of the transaction for
35 computation of excise does not come into the essential conflict with the essential character or
36 nature of the levy. The measure is the value and the value is related to price. And the price is
37 charged at the stage of clearance and that's how Your Lordships upheld it. And My Lord other

1 passages are cited. The attempt was to say **Bombay Tyres** is wrongly decided. Your
2 Lordships held it. And para 23 is important. 929 para 23, where **Acer** is dealt. With this would
3 bring us into consideration of the decision of this court in **Acer**. The details need not detain
4 us. Software which are duty free items and could be transacted as software came to be
5 combined with the computer software, which was a dutiable item for clearance. The revenue
6 sought to take into account the value of the software for the purpose of transaction. The court
7 negated the standard, the revenue taking the view that when software, as a separate item was
8 not dutiable in the inclusion in hard disk, the computer cannot alter the duty liability so as to
9 permit the addition of the price value of software. It is understood that the decision in the
10 context **Acer** has to be understood. The observations in para 84 to the effect that the
11 transaction value would be subject to the charging provision will have to be viewed in the
12 context of a situation where the value of a non-dutiable item was sought to be added to the
13 value of a dutiable item for purpose of determination of transaction of the composite. This is
14 the limited context in which the subservience of 4(3)(d) [UNCLEAR] was expressed. If so
15 understood, we do not see how 84 is in conflict with **Bombay Tyres**. So, five judges upheld
16 the **Acer** bench. You can't tax something, and here it's worse My Lord. Here I don't even own
17 that, I've made the point. We don't even own those minerals.

18

19 Now, My Lord **Murthy**. Let me very quickly deal with why I say therefore **Murthy** is wrongly
20 decided and was rightly overruled in **India Cements**. In page, Volume V, page 296. I'm sorry.
21 Page 302. Now in this **Hingir-Rampur** citing, because what they had done is by defining
22 royalty, as part of land cess it was done. Page 301, para 9. I'm sorry page 307, para 9. It will be
23 seen, there is no resemblance, between the provision of the Orissa Act and the two decisions
24 for which the cess under 78, 79 which we are concerned. 78, 79 have nothing to do not concern
25 to the development of mines and minerals. The proceeds of the land cess, under 92 are to be
26 credited to the district fund et cetera, et cetera. The funds to be used under Chapter 7 with 112
27 starts for everything necessary conducive to the health, safety, education, of inhabitants and
28 amenities of the local area and everything incidental to the administration, including the
29 particular matter which are mentioned therein. First of all, now My Lord, this again is a field
30 which gets squarely occupied, by the law. It will thus be seen that there is no connection
31 between the regulation and development of mines and minerals under the Central Act in levy
32 and correction of land cess. With great respect My Lord, this is too narrow a reading. Plainly
33 wrong, because if the Act actually covers this field, then even by incidental encroachment, the
34 area gets covered. Then My Lord, para 10.

35

36 “It was really [UNCLEAR] that the land cess was really a tax on mineral rights”. Then Entry
37 50 is set out. “Parliament... and that the Central Act, also under which taxes and fees might be

1 levied, brought into play last portion of the entry. As a result, power to impose the tax was not
2 available after 48 and 57. In this connection, Mr. Ram Reddy pointed out that as the impugned
3 cess was payable only in the event of the mining lessee winning the mineral and also paying
4 the royalty when no minerals were extracted, it was in effect a tax on the minerals won, and
5 therefore on mineral rights. We are unable to accept this argument. When a question arises as
6 to the precise head of legislative power under which a taxing statute has been passed, the
7 necessary enquiry in truth and substance is the nature of the tax. No doubt, in a sense, but in
8 a very remote sense, it has relationship with mining, as also the mineral won from the mine
9 under a contract, on which royalty is payable on the quantity of mineral. But that does not
10 stamp it as a tax on extraction of the mineral or on the mineral right. It is unnecessary for the
11 case to examine what exactly is a tax on mineral rights, seeing that such a tax is not leviable by
12 Parliament but only by the State, and the sole limitation on the power... it must not interfere
13 with a law made by Parliament. Our attention was not invited to the provision of any such law
14 enacted by Parliament. In the context of 78 and 79, it is clear that the land cess is in truth a
15 "tax on lands" within Entry 49. Under Entry 78 of the Act, the cess is on occupied land of
16 whatever tenure. The basis of the "annual rent value" i.e., the value of the beneficial enjoyment.
17 This being the basis of the tax and disclosing its true nature". And then, My Lord, the last line
18 is, "When land is held under a mining lease, that which the occupier is willing to pay is
19 accordingly treated as the 'annual rent value' of the property". My Lord, this is wrong in law.
20 I don't become the owner of the mineral. It's a lease to work and win mineral. As I don't become
21 the owner of the land. And the decoupling of mineral from land was not an argument
22 presented, and therefore not an argument dealt with. Such a rent value would include not
23 merely surface right, but dead rent, as well as royalty. That's the only reasoning. None of the
24 points which I have invited Your Lordship to consider. Land cess. How can it be on minerals
25 under a Central... No, My Lords, nothing. What was argued was, it can't be. And they said no.
26 If you occupy it, you have the mineral rights. You don't have it as an owner of land, and the
27 mineral rest in somebody... My Lord, all these points were not presented. Now, My Lord, I
28 come to **India Cements**. And I submit, it was rightly decided. It's in Volume V, page 115.
29 Sorry, 1151. Sorry. Yes.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume?

32

33 **HARISH SALVE:** V, page 11...It begins at page 1145. Oh, sorry. 1151. As I read **India**
34 **Cements**, it lays down the following points. I'm going to try and paraphrase the points and
35 then quickly read the judgment. The first and the most important point it holds is that Section
36 9 of the MMDR caps royalty. And if you impose this tax, you are indirectly increasing royalty.
37 I don't think that point can be disputed. You are, and that Your Lordship will find in paragraph

1 23 at page 1165. May I just show that very quickly? In **Buckingham Carnatic** this court
2 reiterated **Non** and held that Entry 49 was confined to a tax that was directly on land as a unit.
3 I have not cited all these cases. I can put them in a note for Your Lordships. All the points
4 which I said on first principle. But all the cases are here. Now, if it is land as a unit, second gift
5 tax officer in Mangalore, **Nazareth** had held, the tax on gift of land is not a tax imposed on
6 land, but only on the user, namely the transfer of gift. That is how they distinguish it. And in
7 **Dhillon**, the court approved **Non** as well as **Nazareth**. So therefore, land as a unit is now an
8 accepted principle. In **Bhagwan Das Jain** the court made a distinction between levy of
9 income from house property should be income and house property, et cetera, et cetera. It is
10 therefore not possible to accept Mr. Krishnamoorthy Iyer's submission that a cess on royalty
11 cannot possibly said to be a tax or an impost on land. Mr. Nariman is right that royalty which
12 is indirectly connected with land cannot said to be a tax directly on land of the unit. A measure
13 of, legitimate measure and this proposition I submit is plainly right. In this connection
14 reference may be made to the differentiation between the different types of taxes for instance,
15 professional tax. In Western India it was held that an entertainment tax is dependent on
16 whether there would or would not be a show on cinema house. If there was no show. There
17 was no tax. It cannot be a tax on profession or calling professional tax does not depend on the
18 exercise of profession, but only concerns with the right to practice. It appears that in the
19 instant case no tax can be levied if no mining activities are carried on. Now, that's the tax under
20 question. Hence it is manifest that it is not related to land as a unit, which is the only method
21 of valuation under Entry 49 of List II, but is referable to minerals extracted. Royalty is payable
22 on a proportion of the mineral extracted. It maybe you mentioned that the act does not choose
23 dead rent as a basis. Hence there cannot be any doubt that the impugned legislation and pith
24 and substance is a tax on royalty and not a tax on land. This is plainly right. This is one
25 dimension. This is Entry 49. Then My Lord, Entry 50 is called into aid. And Your Lordships
26 accept. If Your Lordship sees the last five lines. Even though minerals are a part of the state
27 list they are treated separately.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where did you get that?

30

31 **HARISH SALVE:** I'm. So sorry. Para 24, page 1116 about four lines from....Even though
32 minerals are part of the state list, they are treated separately and therefore, the principle that
33 the specific excludes the general must be applied. And Your Lordship cite a case, **Waverley**
34 **and Raymon** where it has held that Entry 49 cannot possibly include minerals. These are all
35 well settled principles and this proposition is further developed, in paragraph 25. In this
36 connection, the learned Attorney General for the Union submitted that, in order to sustain the
37 levy, the power of the legislatures to be found within one or more of the entries, the levy in

1 question has to be a tax or fee or imposed if it is neither tax or fee, it should be under the
2 entries. The expression 'land according to the significance', has indefinite extent both upward
3 and downward and surface of the soil would exclude not just the face, but everything, so and
4 so. The minerals which are under the earth can, in certain circumstances, fall under the
5 expression land, but as tax on mineral rights is expressly covered by 50 of List II, if it is brought
6 under the head taxes under 49 of List II, it would render 50 redundant. Attorney General is
7 right in contending, that entry should not be so construed so as to make any one entry
8 redundant. It was further argued that pith and substance, the taxes fell in 50, it would be
9 controlled by legislation under 54(1). With respect, My Lord, what's wrong with this? It's
10 absolutely right. Unfortunately, everybody got fixated with that royalty is a tax, royalty is not
11 a tax. Then My Lord, **Murthy** is cited. No. I'm sorry. Para 27. I'm so sorry. My Lord, para 27
12 cites the **Mysore** case. And please see from third line. Speaking for one of us, said, that
13 combined reading of 23 and 50 of List II and 54 established as long as Parliament does not
14 make a law of its power under 54, the powers of the State under 23 and 50 would be exercised.
15 Once Parliament makes a declaration, it is expedient in public interest make a regulation of
16 mines and minerals, to the extent which said mineral regulation is undertaken by law, the
17 power of the State under 23 and 50 are denuded. The court was concerned with the Mysore
18 Village Panchayat Act, that it was held, it could not buy the act by passing, the State legislature
19 by enacting 143 intended to confirm power on the *Taluka* Board to levy tax on mining
20 activities, carried on by person holding mineral concessions. It followed levy of tax by the
21 Board on impugned notification authorized. At page 306 it was held that royalty under Section
22 9 and mineral was really a tax. It was really in the nature of a tax, and I've made elaborate
23 submissions, My Lord on exaction. That's what really it is. If it's a share of the State, it's an
24 exaction. So that's why it is akin to a tax. So, the similar effects are the observations of the High
25 Court in the State of Bihar that actually, that line should have gone above. Then My Lords
26 starts **Murthy**. **Murthy** is a separate point. And **Murthy** is cited in para 29.

27
28 But what is important is just above para 29. The court says, after My Lord, citing **Murthy**,
29 "This with respect seems to be not a correct approach. It was further observed that it was not
30 necessary to consider the meaning of the expression 'tax on mineral right' flowing under Entry
31 50 inasmuch as according to this Court, Parliament has not made a tax on mineral rights. This
32 is not a correct basis." And with respect, Your Lordships are right in saying so. Then **Murthy**
33 is cited. And para 30 says, "It seems therefore the attention of the Court was not invited to the
34 provision of the MMDR, and Section 9 and 9(3) in terms states that, royalties shall not be
35 enhanced more than so on, so. Therefore, a clear bar on the State Legislature taxing royalty so
36 as", now My Lord, please mark these words if Your Lordships don't mind, "In effect, amend
37 the Second Schedule of the Central Act. This is what, in my submission really, is the heart of

1 the matter. Then what happens to the limitation. My Lord, Justice Pardiwala was pleased to
2 put to me, look at 9(3), then all this. 9(3) and all is of so much academic use. And if this is the
3 proposition, I submit this is clearly right, and there is no typo in this. In the premises, it cannot
4 be right to say that the tax on royalty can be a tax on land. Even if it is a tax on land, it falls in
5 Entry 50 will be *ultra vires*. In *Hingir-Rampur...* Then My Lord *Hingir-Rampur...* What
6 happens is Mr. Justice Wanchoo says it's excise duty. Now, for that, the last three lines it says
7 on that basis... please mark the word 'that basis', a tax on royalty would not be a tax on mineral
8 rights, and would be outside competence of Legislature. So, the fallacy, Mr. Justice Wanchoo,
9 on the one hand saying it is excise duty, but in the next breath saying royalty is a tax on mineral
10 rights, is brought out here. It's not that Your Lordships are saying royalty is not akin to tax.
11 There's no typo here. This is the criticism of Wanchoo's J's dissent. Then the next paragraph,
12 "It is contended by Mr. Krishna Murthy, State has the right to tax minerals. Further, contended
13 tax will not be irrational, to correlate to the value of the property and make some kind of
14 annual, et cetera. In view of the provision of the Act", Act here with the MMDR, "as noted, this
15 submission cannot be accepted". And then they refer to 9(2) and said, this field is fully covered.

16

17 **JUSTICE J.B. PARDIWALA:** 34 is important.

18

19 **HARISH SALVE:** 34 is very important. In the aforesaid view of the matter... the aforesaid
20 view is para. 32, the limitation and the effect of the MMDR Act. Your Lordships say that we
21 are of the opinion that royalty is a tax. And such a cess on royalty being a tax on royalty beyond
22 the competence". Because tax in the sense of being an exaction. Now, My Lord, this may not
23 be the best way to express it. But it was said in that sense. My Lord, this phrase, 'tax on
24 royalties' has become over... Yes, straight away My Lord. I'm sorry. Yes, My Lord, immediately.
25 Yes.

26

27 **JUSTICE J.B. PARDIWALA:** On royalty. Being a tax on royalty, is beyond the competence
28 of the State Legislature, because Section 9 of the Central Act covers the fee, and the State
29 Legislature is denuded of its competence under Entry 23 of List II.

30

31 **HARISH SALVE:** Now why does... I'm sorry.

32

33 **JUSTICE J.B. PARDIWALA:** In any event. How do you construe these words, 'in any
34 event', we are of the opinion that cess on royalty cannot be sustained under Entry 49 of List II
35 as being a tax on land. And then in the same breath the Court says, "Royalty on mineral rights
36 is not a tax on land, but a payment for the user of land".

37

1 **HARISH SALVE:** Yes, straight away, My Lord, may I answer? There are two separate parts
2 to 34.

3
4 **JUSTICE J.B. PARDIWALA:** Correct.

5
6 **HARISH SALVE:** And unfortunately, they got telescoped. For purposes of Entry 49, the land
7 in the sense, by for mineral rights, not for land as a unit. So, the 49 logic is separate.
8 Unfortunately, the 49 and 50 got mixed up in para 34. Because I have to answer two cases. Is
9 this sustainable under 50? Is this sustainable under 49? And that's why I have
10 compartmentalized my case very clearly on 50 and on 49. As far as 50 is concerned, I have
11 made two broad submissions. One is a little wider, which is picked up in that one sentence.
12 You can't indirectly get past the MMDR. We had argued this elaborately on this very premise,
13 that this is a complete tight coded act. We are right or we are wrong that's really what was
14 upheld in the earlier paras. This is indirectly jacking up. It's, you are revising royalty rates and
15 therefore this limitation is perished. And Your Lordship will also mark the Attorney General's
16 arguments, which are cited with acceptance that you can't do it because this is limited. So, My
17 Lord, that is really the answer to 50. The answer to 49 is different because the tax is different.
18 It's a tax on land. The one aspect which I have put before My Lord is not reflected here-the
19 decoupling point. That's not reflected in so many words. But what Your Lordships are saying
20 is tax on land as a unit. The Non principle. SC Non affirmed in *Dhillon*. If it is a tax on land
21 as a unit, the state saying royalty for use of the minerals, how is it a tax on land as a unit? That's
22 the last sentence. Unhappily put, I accept that. There is a separate answer to Entry 49. There
23 is a separate answer to Entry 50. Because the two taxes are different.

24

25 **JUSTICE B. V. NAGARATHNA:** If under paragraph 34, the expression, 'Royalty is a tax'
26 is substituted by the expression royalty is an exaction then that conundrum would go
27 automatically.

28

29 **HARISH SALVE:** Exactly, tax in a loose sense.

30

31 **JUSTICE B. V. NAGARATHNA:** Because Section 9 has automatically it has already
32 encompassed within itself, imposition of royalty.

33

34 **HARISH SALVE:** That's right and that is really the heart because one has to read the earlier
35 paras also where the court has developed this at length. You can't have exaction twice over. I
36 had written out and I'll polish it and give it, a note on my understanding of *India Cements*
37 and how there is a little mix up here and there on different paras but there's no contradiction

1 into that on the essential features of the point. Unfortunately, the spotlight has shown this one
2 sentence. Royalty is a tax; Royalty is not a tax. At one place they say it's a tax and one place
3 they say it's not a tax. Let's add the word cess and correct. That's not the way to do it. But in
4 any case, nine of Your Lordships have heard these now and heard this at length. So ultimately,
5 in one sense, none of these really is of a system beyond a point of understanding what exactly
6 went on.

7

8 **JUSTICE B. V. NAGARATHNA:** And also in paragraph 34, there is no reference to Entry
9 50.

10

11 **HARISH SALVE:** Yes,

12

13 **JUSTICE B. V. NAGARATHNA:** They refer it only to Entry 23.

14

15 **HARISH SALVE:** No, My Lord. So, My Lord to conclude, therefore, and I must stay within
16 my time. My Lords, I'll stay within the discipline of my time. There are a number of judgments
17 which I will add, I will put in a note because those... My Lord at two places, para. 32-33 which
18 I have read Entry 50, is expressly dealt with. It says in view of the aforesaid. Now the aforesaid
19 is para 32, 33 where entries are expressly referred, Entry 50.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** They said field is covered by the Central
22 Legislation, by virtue of 9, Section 9(2) and therefore the provisions of Entry 50 are not
23 authorized.

24

25 **HARISH SALVE:** That's the heart of the judgement My Lord. And there are two broad
26 principles in *Kesoram*. I don't need to read them. Let's forget all this. Do Your Lordship find,
27 My Lord, I come back to... I'm closing in two minutes because I must stay within my time. Do
28 Your Lordships find, that there is the test of any limitation, by a law meant for mineral
29 development, is that satisfied? If the answer is 'no', then the right is untrammelled. If the
30 answer is 'yes', then the right under Entry 50, or the power of the State under 50, that would
31 feel to that extent stands denuded...

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You really have argued the matter's first
34 principle now? And we are sitting in a combination of 9.

35

36 **HARISH SALVE:** That's why, My Lord, I didn't want to spend too much time on this. The
37 second is, my point on what is tax on mineral rights? The construction of the entries in context.

1 If I win on either of those, we are right and if we fail on both, then My Lord, this field is
2 available to this court. I would only close by saying one thing. Your Lordships have always
3 applied a broad and massive test to a measure. A broad and massive test, not a pin-pointed
4 narrowed focus beam. But equally, My Lord, Your Lordships have to be sensitive in all humility
5 I say this, to the compelling needs of the development of minerals in today's India. The
6 Solicitor is going to give Your Lordships facts and figures. Today My Lord, fiscal impositions,
7 and I'm deliberately using a colourless expression. Fiscal impositions on minerals as
8 important as those which Your Lordships find in Schedule One, can distort the entire
9 development plan of the country. And why I say distort, because it's not uniform. If Parliament
10 imposes something, it's uniform. Parliament knows, I'm adding this burden, doesn't matter
11 whether you're in Tamil Nadu or doesn't matter whether you're in Orissa or doesn't matter
12 whether you are in Bengal. And revenues are distributed uniformly, either directly or
13 indirectly. But My Lord, allowing an over broad elbow room in Entry 49 through the device of
14 a measure, being broadly equivalent or through 50, by reading limitations narrowly, in my
15 very respectful submission, run counter to the legislative intent of MMDR 57, but also to the
16 vision of the Founding Fathers, who recognized, that it is extremely important that minerals
17 as against land, minerals should be controlled by the Union.

18

19 I have My Lord finished. One last point I need to make, unrelated to this. Now, there is a
20 question of royalty on oil, and tax on royalties on oil. There is My Lord a bigger question that
21 arises. If in Entry 1, oil is treated separately from minerals, in Entry 2 will minerals include
22 oil? That's a huge point, but nobody has dealt with it. I don't know whether Your Lordship, it's
23 not a question referred and I don't know whether Your Lordships would even want to enter
24 that field, right now. Private oil companies shouldn't be allowed to hijack this reference, to
25 getting its questions...

26

27 **TUSHAR MEHTA:** My Lord, the Ministry of Petroleum and Natural Gas has said two things.
28 Apart from others, I'll advert to that, that petroleum and natural gas is covered under Entry
29 53. It has no corresponding entry, My Lord in the Second Schedule, number one. Number two,
30 it is also covered by a step...

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We are not inclined to widen the references.
33 It's a reference before 9. We also...

34

35 **TUSHAR MEHTA:** Separate enactments also, like MMRD.

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** If we go into issues,

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TUSHAR MEHTA: MMRD Act is a different legislature.

HARISH SALVE: That private oil company wants to hijack this, declaration. GST.

ARVIND P. DATAR: No unfortunately, I'm not going to hijack anything. What happened was, Section 6(a) is identical to 9. What Your Lordship holds in 9 will apply to 6(a). There is no difficulty in...

CHIEF JUSTICE D. Y. CHANDRACHUD: We'll decide the issue in reference. We are not going to go into broader issues without a proper canvas, without proper arguments.

HARISH SALVE: My Lords, High Courts have not dealt with it, forget benches of this Court.

ARVIND P. DATAR: I'm not trying to hijack anything. I only said 6(a). If Your Lordship doesn't want to read it, it's perfectly fine. I only wanted to say that 6(a) is similar to 9. What Your Lordship holds in 9, will apply to 6(a), number one.

CHIEF JUSTICE D. Y. CHANDRACHUD: I think this argument requires an appropriate bench.

RAKESH DWIVEDI: This oil field issue has come to Your Lordships by way of a transfer petition.

ARVIND P. DATAR: Yes.

RAKESH DWIVEDI: This special appeal is still pending in the High Court, but that has been transferred here.

CHIEF JUSTICE D. Y. CHANDRACHUD: So, we'll send it back to the Allahabad High Court?

ARVIND P. DATAR: Yes.

RAKESH DWIVEDI: Not Allahabad My Lord, Assam.

ARVIND P. DATAR: It's Rajasthan and Assam.

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TUSHAR MEHTA: My Lord, as a matter of fact... as a matter of...

CHIEF JUSTICE D. Y. CHANDRACHUD: Mr. Dwivedi, I was also taken by the fact that you are appearing...

RAKESH DWIVEDI: I'm appearing as a Respondent. I didn't touch upon it because I didn't know whether Your Lordships will be inclined to take it.

TUSHAR MEHTA: As a matter of fact, MMDRA starts...

CHIEF JUSTICE D. Y. CHANDRACHUD: It's a transferred petition.

RAKESH DWIVEDI: In any case, Mr. Datar has to open on that, so...

TUSHAR MEHTA: My Lords may keep it here. Let it be decided here. There is no difficulty. Nine-judge combination may not examine. The 'entry' is different, 'act' is different.

CHIEF JUSTICE D. Y. CHANDRACHUD: So just referring, we'll de-link that transfer petition.

ARVIND P. DATAR: Can you just wait for a minute, My Lord.

CHIEF JUSTICE D. Y. CHANDRACHUD: Then, that bench will decide to send it back to the High Court or...

HARISH SALVE: Correct. Correct.

ARVIND P. DATAR: Now, My Lord, I'll just submit. Your Lordship will just wait. I'm not going to argue against anybody. I'm not saying that. The other interesting point is, oil has been separately taken out...

CHIEF JUSTICE D. Y. CHANDRACHUD: Alright we'll see.

ARVIND P. DATAR: Just keep it.

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now just one... housekeeping issues. We will
2 give one day now for the remaining counsel on this side to argue the matter.

3

4 **TUSHAR MEHTA:** My Lord, I would take one session, that's all.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right. What we will...

7

8 **TUSHAR MEHTA:** I will take one session.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What we will do is this, the same *mantra* as
11 we normally follow in all other cases.

12

13 **TUSHAR MEHTA:** I can assure Your Lordships...

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The remaining counsel, please, including the
16 Solicitor, ration the time.

17

18 **TUSHAR MEHTA:** Yes. We will not repeat or...

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We'll give you the whole of Tuesday to
21 conclude the arguments on this side. We'll then give Mr. Dwivedi one counsel in rejoinder
22 please, on Wednesday, and that's it. Mr. Dwivedi, we will hear you in rejoinder. We'll give you
23 a day in rejoinder and...

24

25 **RAKESH DWIVEDI:** I'm grateful My Lord. One day's submission.

26

27 **ARVIND P. DATAR:** And, one more thing My Lord. As far as some cement, they've also been
28 tagged along. There are two cement companies, *Dalmia Cements* and *Ramco Cements*.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Tell us...

31

32 **ARVIND P. DATAR:** ...right. That can be go later?

33

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

35

36 **ARVIND P. DATAR:** And on this question of entry, I just want to make submissions...

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** On Thursday evening, with a miscellaneous
2 day to follow, I don't think our receptivity about de-linking matters is very high.

3

4 **ARVIND P. DATAR:** Just one last thing, My Lord. I'm just making a submission on
5 harmoniously reading 49 and 50.

6

7 **TUSHAR MEHTA:** No, that is to be argued on...

8

9 **ARVIND P. DATAR:** I'm going to argue, I'm going to take analogy of sales tax. Your Lordship
10 has to give me ten minutes on that. How Parliament and State Laws are valid.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We'll hear whoever has to argue...

13

14 **ARVIND P. DATAR:** Because My Lord what happens...

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ... subject to one underlying ground rule, which
17 is that, we are all going to conclude everybody on this side by Tuesday. Wednesday, one day
18 for the...

19

20 **TUSHAR MEHTA:** Keep it a little elastic without keeping...

21

22 **ABHISHEK SINGHVI:** If Your Lordship is keeping Thursday in reserve, give us half day
23 extra on Wednesday. Let this side...

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thursday, all the benches have to go back to
26 their regular work. We have enough regular work to do on Thursday for all the benches.
27 Wednesday evening at 04:00 we'll conclude.

28

29 **TUSHAR MEHTA:** My Lord, the difficulty is this.

30

31 **RESPONDENT COUNSEL:** Some more time on this.

32

33 **TUSHAR MEHTA:** My Lord, we are not arguing anything repetitively. There will be no
34 repetition. It's a nine-judge combination. My Lord, if anything is decided, it will have
35 ramifications.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In all Constitution benches, we have strictly
2 stuck to time.

3

4 **HARISH SALVE:** My Lord, there is one thing I will say. I have, with a few years at Your
5 Lordships' bar now, seen one thing. If you hold the judge's interest, time is never a constraint.

6

7 **TUSHAR MEHTA:** My learned friend is right. Even I have appeared before Your Lordships,
8 Your Lordships don't stop.

9

10 **RESPONDENT'S COUNSEL:** The only liberty we're seeking is, just in case.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Subject... There is no 'just in case'. If there are
13 Supreme Courts in the world which give half an hour for a written argument... for an oral
14 submission, surely one day, for people who are arguing after three days of arguments on one
15 finding.

16

17 **TUSHAR MEHTA:** New point. My Lord, let's not waste Your Lordship's time on that.

18

19 **RESPONDENT'S COUNSEL:** All fresh points to assist the Court, My Lord. All fresh points.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** One day. One day, Tuesday. Tuesday evening,
22 we are closing. Please meet in advance and divide and ration.

23

24 **TUSHAR MEHTA:** We have done that. We have done that.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** One day for this side. Wednesday, Mr.
27 Dwivedi, we are going to have only one argument in rejoinder. Otherwise, it becomes
28 impossible with interveners and everybody coming in.

29

30 **RESPONDENT'S COUNSEL:** I'm really pleading for a small...

31

32 **ABHISHEK SINGHVI:** ... Thursday in hand. Kindly give us that Thursday. I know Your
33 Lordship is keeping Thursday in hand, My Lords.

34

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END OF DAY'S PROCEEDINGS