

**The Associated Cos. Ltd. Vs. State of Karnataka and Another**

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**Court :** Karnataka

**Decided On :** Mar-02-1994

**Reported in :** AIR1995Kant182; ILR1994KAR1059

**Judge :** S. Rajendra Babu and ;B.K. Somasekhara, JJ.

**Acts :** [Constitution of India](#) - Article 226; [Karnataka Land Revenue Act, 1964](#) - Sections 80

**Appeal No. :** Writ Petn. No. 8500 of 1980

**Appellant :** The Associated Cos. Ltd.

**Respondent :** State of Karnataka and Another

**Advocate for Def. :** Ajay Kumar Patil, Govt. Pleader

**Advocate for Pet/Ap. :** G.S. Naganand, Adv.

**Judgement :**

ORDER

**Rajendra Babu, J.**

1. This petition is filed under Art. 226 of the Constitution questioning the correctness of an order made in the appeal by the Karnataka Appellate Tribunal in Appeal No. 324 of 1978 affirming an order made by the Special Deputy

Commissioner, Gulbarga, who in turn affirmed the order made by the Tahsildar levying certain land revenue in respect of the lands which are in occupation of the petitioner where mining activities are being carried out for the purpose of their cement factory.

2. Petitioner's challenge to the demand is principally based on the agreement entered into between the petitioner and His Exalted Highness Nizam of Hyderabad on 18-1-1951. Clause (6) thereof reads as follows:

'Clause 6: Royalty. The Company shall pay to Government a royalty of 4 ahrias of the Indian currency per ton of cement manufactured and this royalty shall be in lieu of all quarries and other rights conceded, to the company by the Government. If other articles than cement are manufactured out of raw materials enumerated by clause 2(a) of this Agreement, a reasonable royalty thereon shall be levied by the Government if they so decide.'

3. Though several contentions have been raised in the petition and principally based on the decisions of this court in AIR 1966 Mys 278 and AIR 1966 Mys 304, that part of the agreement is given up, obviously for the reason that the said decisions have been reversed by the Supreme Court in AIR 1983 SC 762. The contentions advanced before us are two fold. Firstly, it is contended that royalty itself is collection of certain amount on the minerals extracted from the land in question and is therefore a share paid to the Government in respect of produce of the land. It is also contended that Land Revenue is also a kind of share in the produce of the land to which the Government is entitled to receive and royalty itself being the return received from the produce of the land payable for the minerals in the land, land revenue cannot be again levied. It is alternatively contended that clause (6) itself provides that the petitioner was liable to pay to the Government royalty as stipulated in Cl.(6) referred to earlier in lieu of quarries and other rights conceded to the company by the Government. It is submitted that the royalty contemplated herein is the amount paid in lieu of all quarries and other rights conceded to the company by the Government.

4. It is urged on behalf of the State that royalty and land revenue are two different concepts altogether. While the royalty is a share of the produce of the land, land

revenue is a tax on the lands and in this context, reliance is placed by both sides on India,, Cement Ltd. v. State of Tamil Nadu, : [1991]188ITR690(SC) .

5. In order to appreciate the contentions urged on behalf of the either side on this aspect of the matter, it is necessary to look to the dicta laid down in India Cement Ltd.'s case. At para 21 thereof, the distinction between the Land Revenue and the royalty is noticed. It is clearly stated therein that what was sought to be collected in that case was cess on royalty which was impermissible and cannot be sustained because land revenue and royalty are distinct concepts. Again, in para 23 thereof, it was noticed that no tax could be levied or is leviable under the Act if no mining activities are carried on. Hence, it is manifest that it is not related to land as a unit which is the only method of valuation of land under Entry 49 of List II, but is relateable to minerals extracted. As long as the land revenue levied in the present case is not relateable to the minerals extracted or royalty proper inasmuch as royalty is payable on a proportion of the minerals extracted. In this context, it may also be necessary to note there are different aspects of levies which can be made by the State and this position has been explained fully by the Supreme Court in Express Hotels v. State of Gujaral : [1989]178ITR151(SC) , wherein the Supreme Court explained on different aspects of an activity or on different facets levies could be made. In those cases, Hotel receipts tax was levied by the Union, while the State levied luxury tax for certain categories of hotels. Both the legislations were sustained by resort to this principle of aspect legislation. On the aspect of the mining activity, royalty is collected and on the aspect of land being held, land tax can be levied. The two enactments, one relating to levy of royalty and another relating to land revenue operate in different fields. Thus, both royalty as well as land revenue could be collected by the State. In that view of the matter, We do not think, it would be appropriate to accept the contention on behalf of the petitioner that royalty payable by concept would include the land revenue thereof.

6. Now, it is to be seen whether clause (6) exempts from payment of land revenue. Under Section 80 of the Land Revenue Act, all lands whether applied to agricultural or other purposes is liable for payment of land revenue under the Act except to the extent it is wholly exempted under the provisions of any special contract with the Government or any provisions of the Act or any other law for the

time being in force. In this case, it cannot be construed that clause (6) provides for an exemption from payment of land Revenue. What is provided under the clause is in relation to the activities pertaining to the quarries and other rights conceded thereto and no more. Therefore, the land revenue becomes payable and the clause cannot be construed in the manner suggested on behalf of the petitioner and that contention also has got to be rejected.

7. However, the learned counsel for the petitioner raised a contention as to the scope and extent of power under Entry 54 of List I and Entry 23 of List II of the VII Schedule to the Constitution and contended that the power of regulation of mines and mineral development belongs to the State as long as a declaration is made by the Parliament by law and to the extent the same is regulated or controlled by the Parliament, the State's Legislative power is denuded. This aspect has been elaborately dealt with in India Cement Ltd. case : [1991]188ITR690(SC) itself and the relationship between the various entries have also been discussed and it has been noticed that by reason of the Parliament making a law, it will not take away the right of the State to levy tax unless that right is specifically excluded for such a right is available under Entry 50 of List II. But, we are not concerned with taxation on minerals or mining activity. What we are concerned in the present case is levy of land revenue which clearly falls under Entry 45 of List II for a tax on mineral rights would ordinarily refer to tax on extraction of minerals. Such a tax would not include tax payable on the land which has no relation to the activity of extraction of minerals. In that view of the matter, we do not find substance in this contention either.

8. The petitioner having failed on all the contentions, this petition is liable to be dismissed. However, it has to be noticed that the demand raised in this petition pertains to an extent of 900 acres of land. It appears, the petitioner had on an earlier occasion succeeded before this court in Writ Petition No. 2781 of 1970 disposed of on 1st Feb. 1973. In any event, 'the demand raised long back cannot be enforced. Now, the appropriate course for the authorities is to raise appropriate demand in the light of the law' declared by us and also bearing in mind the earlier decision of this Court between the parties. Subject to what is stated above, petition is dismissed. Rule discharged.

9. Petition dismissed.

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