

State of Karnataka Vs. Dundamada Shetty

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Court : Karnataka

Decided On : Sep-08-1993

Reported in : ILR1993KAR2605; 1994(3)KarLJ378

Judge : S.B. Majmudar, C.J., ;S.A. Hakeem and ;N.D.V. Bhat, JJ.

Acts : Mines and Minerals (Regulation and Development) Act, 1957 - Sections 4 and 4(1); [Karnataka Land Revenue Act, 1964](#) - Sections 70; Karnataka Minor Mineral Concession Rules, 1969 - Rules 3A, 40 and 62A; Mysore Land Revenue Code, 1888 - Sections 38; Karnataka Land Revenue (Amendment) Act, 1993; [Constitution of India](#) - Articles 31, 136, 141, 254(1) and 254(2)

Appeal No. : W.A. Nos. 71 and 2170 of 1991 etc. and W.P. No. 1047 of 1987 etc.

Appellant : State of Karnataka

Respondent : Dundamada Shetty

Judgement :

S.B. Majmudar, C.J.

1. These group of matters comprised in List-1 and II are referred to a Full Bench pursuant to an order of the Division Bench of this Court consisting of two of us, (SBM, C.J., and NDVBJ) dated 30.7.1993 as according to the Division Bench, there was a conflict between the Decisions rendered by Mr. Chandrakantaraj Urs, in Writ Petition No. 4563/87, and group decided on 14.7.1987 and as confirmed by

the Division Bench of this Court in Writ Appeal Nos.2059-2096/87 and connected matters decided on 2.12.1987, and against which Judgments, several Special Leave Petitions were dismissed by the Supreme Court on the one hand and Judgment of Mr. Justice Doddakalegowda, in NANJANAYAKA AND ETC. ETC. v. STATE OF KARNATAKA AND ORS. etc., : AIR1990 Kant97 and which was the subject matter of pending appeals before a Division Bench on the other. The Division Bench placing reliance on the Decision of the Full Bench of this Court in : AIR1993 Kant306 referred the entire group of these matters to the Full Bench rather than raising and referring for determination only question of law under Section 7 of the Karnataka High Court Act, 1961. Pursuant to the said Order of Reference by the Division Bench, these matters have been placed before the present Full Bench as per the directions of Hon'ble the Chief Justice.

2. In order to appreciate the contours of the main controversies posed for our consideration in these matters, it will be necessary to refer to the back-drop of relevant facts leading to these proceedings.

BACK-DROP OF FACTS:

3. These referred matters, as noted earlier, comprised of various matters listed in two Lists namely, the List No. 1 and List No. 11. So far as List No. 1 is concerned, it consists of four types of matters, namely, (i) Writ Appeals filed by the State of Karnataka against Judgment of Mr. Justice Rajendra Babu, following the Decision of Mr. Justice Chandrakantaraj Urs, (ii) Writ Appeals filed by the original Writ petitioners against the Judgment of Mr. Justice Doddakalegowda, supra, (iii) Writ Petitions filed by occupants of pattalands in Karnataka State which were earlier included in old Mysore State territory, and (iv) Writ Petitions filed by the occupants of Raitwary pattalands situated in Karnataka State, which were earlier comprised in Old Madras State territory. So far as the last two categories of cases are concerned, there are some Writ Petitions wherein the Writ petitioners are occupants of lands being grantees of Government lands under Land Grant Rules. List No. 11 consists of 429 Writ Petitions challenging the vires of the Karnataka Ordinance No. 2/93 as amending Section 70 of the [Karnataka Land Revenue Act, 1964](#) with retrospective effect and also the vires of the consequential Karnataka

Act No. 20/93 amending the very same provision in the very same manner.

4. In all these proceedings, the pivotal question which arises for consideration centers-round the rights of the pattadars occupying the lands which were either situated in Ex-Madras State territory or in Ex-Mysore State territory and which got later on included in the Karnataka State qua the sub-soil minor mineral granite which is found in their respective lands. The original petitioners contend that as they are the occupants of these lands as pattadars, they have got the ownership rights over this sub-soil minor mineral namely, the granite. While the State of Karnataka, on the other hand, contends that these holders of the patta lands have no such ownership rights over the said minor mineral granite and it vests in the State. As a sequester to this main controversy arises a further controversy as to whether these occupants of patta lands are required to follow the gamut of the procedure laid down by Section 4 of the Mines and Minerals (Regulation and Development) Act, 1957, read with the relevant provisions of the Karnataka Minor Minerals Concession Rules, 1969, in so far as they themselves seek to extract the sub-soil minor mineral granite situated in their patta lands. It is this pivotal controversy which has given rise to the conflicting Decisions of this Court rendered by Mr. Chandrakantaraj Urs, *supra*, and Mr. Justice Dodakalegowda, *supra*.

5. By way of historical fact, it may be noted that when Karnataka State was formed under the States' Reorganization Act, 1956, various areas belonging to the erstwhile Mysore State, erstwhile Madras State, erstwhile Hyderabad State and erstwhile Bombay State and Coorg were amalgamated and that resulted in the formation of the Karnataka State. In these proceedings, we are not concerned with the rights of holders of patta lands which were earlier comprised in Ex-Hyderabad State, Ex-Bombay State or in erstwhile Coorg area and therefore, nothing which is stated hereinafter in this Judgment should be treated as even remotely laying down anything concerning the rights of such pattadar land holders holding lands in Karnataka State which were earlier comprised in old Hyderabad State area, Old Bombay State area or old Coorg area in connection with the minor mineral granite situated in their lands vis-a-vis the rights of the State of Karnataka over these minerals.

6. Before referring to the rival contentions canvassed by Counsel for respective contesting parties, we may mention that Mr. Justice Urs, in the Judgment (supra) has taken the view that the occupants of patta lands which were earlier comprised in Ex- Mysore State territory are the owners of minor mineral granite which is found in their lands and they are not liable to follow the regulatory procedure of the Karnataka Minor Minerals Concession Rules, 1969, (hereinafter referred to as 'the concession Rules') in so far as they themselves seek to exploit their own minor mineral granite found in their own lands. While so far as holders of Raitwary patta lands, which were earlier comprised in old Madras State territory are concerned, they are partial owners of sub-soil granite which is found in their lands and they have to follow the procedure of Chapter-V of the Concession Rules. It is also held by Mr. Justice Urs, J., that so far as the occupants of Government lands granted under the Land Grant Rules are concerned, they are not the owners of sub-soil granite found in these lands and hence their petitions were dismissed by Mr. Justice Urs. Mr. Justice Doddakalegowda, - in his Judgment (supra) has on the other hand held that on the advent of Mines and Minerals Act, State of Karnataka lost legislative competence to enact any provision in connection with mines and minerals under Entry 23 of the State List and hence despite Section 38 of the Mysore Land Revenue Code, 1888 and Section 70 of the [Karnataka Land Revenue Act, 1964](#), holders of patta lands in Karnataka State cannot be deemed to be owners of sub-soil granite found in their lands and they had no right to quarry such minor minerals in their lands. The Writ Petitions filed by the concerned Writ petitioners were, therefore, dismissed by Mr. Justice Doddakalegowda. We may also state at this stage that what weighed with Mr. Justice Chandrakantaraj Urs, in coming to his aforesaid view was the fact that in the old Mysore State, there was in force Section 38 of the Mysore Land Revenue Code, 1888 under which, according to Mr. Justice Urs, there was express vesting of sub-soil granite in the occupants of patta lands and these vested rights according to the learned Judge, were saved by Section 70 of the [Karnataka Land Revenue Act, 1964](#). It is this view which did not appeal to Mr. Justice Doddakalegowda, who felt that with the advent of Mines and Minerals (Regulation and Development) Act, 1957, all those statutory provisions got effaced.

7. It is also necessary to mention one subsequent event which has taken place pending these proceedings. The State of Karnataka, issued an Ordinance No. 2/1993 dated 30.1.1993 by which it sought to amend Section 70 of the [Karnataka Land Revenue Act, 1964](#) and which was later on replaced by Karnataka Act No. 20/93 whereunder similar amendment to Section 70 of the [Karnataka Land Revenue Act, 1964](#) was introduced with retrospective effect. The State of Karnataka has laid store on the said amending Act for negating the claim of the original Writ petitioners to the sub-soil minor mineral granite that may be found in their respective patta lands.

8. It is now time for us to refer to the rival contentions placed for our consideration by the learned Counsel for the respective parties.

RIVAL CONTENTIONS:

Preliminary objection:

9. At the outset, Mr. Datar and other learned Counsel appearing for the original Writ petitioners raised a preliminary objection namely, that as Judgment of Mr. Justice Urs, J., was confirmed by the Division Bench of this Court and was further confirmed by the Supreme Court in Special Leave Petition Nos. (Civil) 4627-4666/88 decided on 3.4.1989 by a speaking order, it is not open to this Court to go into the question of correctness of the Judgment of Mr. Justice Urs, and the said Judgment has remained binding on this Court as it has culminated into law declared by the Supreme Court under Article 141 of the [Constitution of India](#). The State of Karnataka cannot be permitted to go behind that Judgment in these proceedings. Replying to this preliminary objection, it was contended by the learned Advocate General, appearing for the State of Karnataka that the order of the Supreme Court in those Special Leave Petitions (supra) was not a speaking order at all. That the Supreme Court has refused to grant Leave to Appeal in those proceedings and even the Judgment of the Division Bench of the High Court, dismissing the Appeals against Mr. Justice Urs's Judgment, was not also a speaking order, and that it is well settled by catena of Decisions of the Supreme Court, to which our attention was invited and to which we will make reference at the relevant time, that if the Supreme Court refused to grant Special Leave to

appeal against Judgment of the High Court and if that order is not a speaking order, then it would not amount to any law declared by the Supreme Court under Article 141 on the point of law which could have been considered by the High Court and therefore, it will be open to this Court to go into the question of validity of Mr. Justice Urs's Judgment as confirmed by the Division Bench of this Court as this Bench is a Full Bench, which can certainly pronounce upon the correctness of the Judgment of the Division Bench of this Court. In rejoinder, the learned Counsel for the Writ petitioners Mr. Datar and other learned Counsel, submitted that the Special Leave Petition order in the present case is a speaking order and it is not open to the High Court to consider as to how much the Supreme Court should speak on a point. When once the Special Leave is refused by a speaking order, the matter ends so far as the High Court is concerned and the Decision approved in such cases cannot be permitted to be reopened by any party before the High Court. In support of this contention a number of Judgments of the Supreme Court were pressed into service. We will refer to them when we will consider the preliminary objection.

RIVAL CONTENTIONS ON MERITS :

10. So far as merits are concerned, it was submitted by the learned Advocate General in support of State Appeals and in opposition to original Writ petitioner's Appeals and Writ Petitions, that the view taken by Mr. Justice Urs, is not correct. He firstly contended that the Judgment of Mr. Justice Urs, is per incuriam as Section 14 of the Mines and Minerals (Regulation and Development) Act 1957 which makes Section 4 of the Act applicable to minor minerals, has not been noticed by Mr. Justice Urs. It was further contended that even that apart, the view taken by Mr. Justice Urs, is not correct. That so far as pattadars holding the lands which were earlier situated in erstwhile Madras State are concerned, they have no right in the sub-soil mineral like granite as they are Raitwary patta lands and so far as such lands are concerned, Mr. Justice Urs, had wrongly relied upon the Decision of the Supreme Court reported in : [1981]2SCR742 , State of Tamil Nadu v. Hind Stone which had assumed that patta holders were the owners of minor minerals. That no question was raised in that case by the State before the Supreme Court that pattadars were not the owners of the minor minerals.

Therefore, there was no occasion for the Supreme Court to adjudicate upon this controversy. On the other hand, the learned Advocate General relied upon a Division Bench Decision of the Madras High Court in Writ Petition No. 11672/89 and connected cases, decided on 12.10.1990. This Decision has taken a view that the holders of Raitwary lands in Ex-Madras State were not the owners of sub-soil minerals, that these minerals vest in the State and unless there is a specific grant of mineral rights to patta holders, they would not be entitled to be the owners thereof.

11. So far as Ex-Mysore State lands are concerned, the learned Advocate General submitted that Section 70 of the Karnataka Land Revenue Act was not correctly interpreted by Mr. Justice Urs, that the said Section only saved those statutory rights of pattadars which were expressly granted by Section 38 of the Mysore Land Revenue Code, 1888. That there was nothing in Section 38 of the Mysore Land Revenue Code to show that thereby any express provision was made for vesting of sub-soil granite in the pattadars-occupants and therefore, there was no corresponding saving of such vested right by Section 70 of the [Karnataka Land Revenue Act, 1964](#). So far as Rule 3A of the Concession Rules was concerned, the learned Advocate General fairly stated that in the present cases as the pattadars were not claiming any lease of the granite found in their lands, but they wanted to exploit those minerals themselves and hence Rule 3A is out of picture. He further submitted that Judgment of Mr. Justice Swami, (as he then was) in W.P.No. 637/85 decided on 6.6.1985 is not applicable to the facts of the present cases as that Judgment was rendered in connection with Rule 3A of the Concession Rules. It was analogous to Rule 8C of the Madras Minor Minerals Concession Rules, as then existing. It was next contended that as per the Common Law Rule, the sub-soil minerals in lands occupied by occupants do not vest in the occupants but continue to vest in the State and unless there is specific grant of such sub-soil minerals to the occupants, they have merely a right to the surface soil of the granted land, which they can cultivate and that in the facts of the present cases, none of the petitioners had contended that there was any express grant of sub-soil minerals like the granite to them under any grant. Referring to the Proviso to Section 38 of the Mysore Land Revenue Code, it was submitted that the said Proviso only granted exemption in connection with granite with the result that

for granite found in the lands of the occupants, the Government at the relevant time would not have power to enjoy and dispose of those granites, meaning thereby the power of the Government for utilising those minerals would remain suspended so long as Mysore provisions operated. But the Proviso never went further and indicated that those minerals would vest in the occupants. Alternatively, it was submitted by the learned Advocate General that even assuming that the pattadars were the owners of minor minerals like the granite, they will still be subjected to the regulatory process of the Act and the Rules. So far as the Act is concerned, he relied upon Section 4 of the Mines and Minerals (Regulation & Development) Act, 1957 and submitted that the Section is very widely worded and it would cover even the self-exploitation of granite by the private owners of the granite and that the term 'Mining Lease' employed in Section 4 should be treated, in context, as amounting to permission or permit. That the interpretation of Rule 8C of the Madras Minerals Concession Rules by the Supreme Court in : [1981]2SCR742 supra, cannot be of any assistance for interpreting Section 4 of the Central Act. The learned Advocate General next contended that cases of self-exploitation of granite by the occupants, even if they are the owners of granite, would be governed by Rule 34 of the Concession Rules and Mr. Justice Urs, J., has wrongly assumed that such exploitation of granite by the occupants-owners was not subject to any regulatory procedure as laid-down by these Rules. In this connection, it was submitted that heading of the Chapter in which Rule 34 was found was not conclusive. In support of that proposition, reliance was placed on certain Judgments, to which we will refer when we will consider these contentions on merits. It was lastly contended by the learned Advocate General that in any case, Judgment of Mr. Justice Urs, will have to be read down in the light of Rule 62A, which has been brought on the statute book and which was not applicable at the time Mr. Justice Urs rendered his Judgment. Therefore, the rights of pattadars to remove the minor minerals like granite from their own land, even assuming that they belong to them, will have to be subject to operation of Rule 62A of the Rules. In connection with the Judgment of Mr. Justice Doddakalegowda, it was submitted by the learned Advocate General that he did not subscribe to the view that on the coming into force of the Central Act, Mines and Minerals (Regulation and Development) Act, 1957, the State Legislature lost

legislative competence to enact on the topic of land or relationship between the State and land tenure holders and also in connection with rights of sub-soil minerals. He however, submitted that ultimate conclusion of Mr. Justice Gowda, was correct when he held that the occupants of patta lands in Karnataka State so far as Ex-Mysore State area and Ex-Madras area were concerned had no right over the sub-soil mineral like the granite.

12. On the other hand, Mr. Shanthi Bhushan, the learned Senior Counsel, appearing for some of the petitioners and Mr. Datar and other learned Counsel appearing for other Writ petitioners, whose Writ Petitions have been referred for our Decision, as well as for original petitioners who are in Appeals before us, contended that so far as occupants of lands in Ex-Madras area were concerned Mr. Justice Urs, himself has held that these holders of Raitwary patta lands had to follow the regulatory provision of Chapter-V of the Karnataka Minor Minerals Concession Rules, 1969 and that is, on the basis that in these sub-soil minerals the State has a share meaning thereby these occupants are not the full owners of sub-soil minerals like granite. They however, contended opposing the contention of the learned Advocate General that so far as these occupants are concerned, it cannot be said that they have no interest whatsoever in the sub-soil mineral rights like granite as the Karnataka Minor Mineral Concession Rules themselves recognize part ownership of minor minerals vesting in the occupants of Raitwary patta lands in Karnataka State which were earlier comprised in Madras territory. They submitted that the Division Bench Judgment of the Madras High Court in W.P.11672/89 would not apply to the facts of the present cases as the said Judgment was rendered by the Madras High Court in the light of Madras Mineral Concession Rules namely, Rules 8A, SB, 8C and 19A which were brought on the statute book of Minor Mineral Rules of Madras on 7.12.1988. That is, as per Rule 19A of the Madras Rules, even for minor minerals in Raitwary patta lands, the procedure of Madras Minor Mineral Concession Rules, had to be followed, whether the minor minerals belonging to the occupants were to be exploited by the occupants themselves or not That the said position was reiterated in para 10 of the Report at page 24 and paragraph 30 at page 36 as well in paragraph 39 at page 46 of the Judgment. That so far as Karnataka Rules are concerned, there is no such Rule like Rule 19A of the Madras Rules. On the contrary, there is Chapter-V

of the Rules. Similar Chapter is not found in Madras Rules as amended. That similar situation like Chapter-V of the Karnataka Rules did exist earlier in Madras Rules, especially Rule 8C, which was on the same lines as Chapter V of the Karnataka Concession Rules. Now Rule 8C is no longer there in the same form in Madras Concession Rules. Therefore, the Division Bench Decision of the Madras High Court is not relevant on the facts of the present cases. It was, accordingly, contended that so far as occupants of lands which earlier comprised in Ex-Madras State are concerned, Chapter-V of the Karnataka Rules will have to be followed by the occupants as they can be treated to have part ownership of the minor minerals like the granite and not full ownership. That this view taken by Mr. Justice Urs, which has held the field through-out and which is acceptable to the petitioners. So far as Ex-Mysore State lands are concerned, it was submitted by the learned Counsel for the Writ petitioners that Section 70 of the [Karnataka Land Revenue Act, 1964](#), in terms provides that any express provision to the contrary found in any law for the time being in force will be saved. That prior to 1964 Act, Mysore Land Revenue Code, 1888 was the law in force and as per Section 38 of the said Code, there was an express vesting of sub-soil granite in the occupants of the lands situated in Ex-Mysore State area and it is this vested right which was saved by Section 70 of the Karnataka Land Revenue Act. That the interpretation put to that effect on this provision by Mr. Justice Urs was correct and called for no interference. Therefore, the occupants of the lands in Ex-Mysore State area now comprised in Karnataka State must be held to be the full owners of sub-soil minor mineral like granite, It was however accepted by the learned Counsel for the original petitioners that this legal position would apply in connection with only those occupants of lands in Ex-Mysore State, who had become such occupants prior to 1964 and would not cover cases of fresh occupants of Government lands after 1964 as for them there was no pre-existing right which can be saved by Section 70 of the [Karnataka Land Revenue Act, 1964](#) and therefore main part of Section 70 of the Land Revenue Act will apply to them. It was made clear that in all these cases, which are before us, the occupants claim ownership rights over minor mineral like the granite on the basis of their occupancy of such lands which was granted during the time provisions of Mysore Land Revenue Code, 1888 were holding the field. So far as such occupants are concerned, it was submitted by the

learned Counsel for the Writ petitioners that there is no question of application of either Section 4 of the Central Act or Rule 34 of the Code as the former would apply in cases where the occupants wanted to lease-out their minor minerals like granite. That in none of the cases before us any such claim is made. So far as Rule 34 is concerned, it was submitted that in the context in which the said Rule is enacted and found, it must be held that it would apply to only those cases where minor minerals belong to the State and not to the occupants. In short, it was submitted that there is no provision either in the Act or in the Minor Minerals Concession Rules governing the situation like the present one where the occupants of patta lands who claim to be the owners of minor mineral like granite want to self-exploit these minerals without creating any lease in connection with such minerals and therefore, Mr. Justice Urs, was right when he held that for extracting such minerals by the owners/occupants themselves, no regulatory procedure of the Act or the Rules could be pressed into service by the State authorities against them. Referring to Rule 62A it was submitted that it is true that the said Rule was enacted after the Judgment of Mr. Justice Urs, but that Rule will not cover the present controversy about the right of the occupants to extract the minerals for themselves. That if at all, the Rule will come into force at the stage when these minerals are removed and transported. That such an eventuality would be posterior to the excavation of the minerals by the occupants and that as and when the occupants want to transport such extracted mineral, Rule 62-A may apply if otherwise, it is validly found to be applicable in a given contingency. It was therefore, submitted that the view of Mr. Justice Urs, in connection with the rights of occupants of patta lands in Ex-Mysore State territory in connection with sub-soil minor minerals like the granite is correct and calls for no interference. It was also submitted that there is no question of the said Judgment being per incuriam as Section 4 of the Central Act is totally irrelevant for deciding the present controversy and therefore, non-consideration of any irrelevant provision would not adversely affect the basis of the Judgment nor would render it per incuriam.

13. The learned Counsel for the original Writ petitioners, however, fairly submitted that so far as holders of lands granted under Government Grant Rules were concerned, as there was express exclusion of sub-soil mineral rights like granite from their grant, they would not be entitled to the benefit of Section 38 of the

Mysore Land Revenue Code read with Section 70 of the [Karnataka Land Revenue Act, 1964](#) and Mr. Justice Urs, himself had dismissed similar Petitions raising identical contentions and therefore, for them they had nothing more to say. However, it was submitted that so far as applicability of Rule 3A was concerned, following the Decision reported in : [1981]2SCR742 , it must be held that Rule 3A was out of picture in the present set of cases where patta land holders were seeking to exploit their own mineral granite and were not claiming to create lease of these minerals in favour of any third party. Therefore, the insistence by the State authorities that even such patta holders before excavating minerals for themselves should also follow the gamut of Rule 3A was totally unauthorised.

14. On the aspect of vires of the Karnataka Ordinance and Karnataka Act, it was submitted by Sri Shanthi Bhushan, the learned Senior Counsel for some of the petitioners and which submissions were adopted by the learned Counsel of other petitioners, that the said provisions are ultra vires relevant provisions of the [Constitution of India](#). Firstly, it was submitted that these amended provisions were repugnant to the law in force in India namely, the Land Acquisition Act. As per the said provisions the vested right of occupants in their sub-soil mineral rights like rights in granite, were sought to be done away with which would be a clear act of acquisition and for such acquisition no compensation whatsoever was to be paid, while under the Central Act, namely, the Land Acquisition Act, not only compensation at market value but in addition 30% solatium was payable. Thus the impugned provision of the Karnataka Act was hit by Article 254(1) of the Constitution being repugnant to the Central Act and the said provision was not saved by Article 254(2) as it was not reserved for President's assent. It was next submitted that the impugned provision was violative of Article 14, as for all other properties compensation was provided under the Central Act while for minor materials like granite, no compensation was provided by the State while seeking to acquire them. There was no basis for giving such hostile treatment to the owners of minor minerals. In this connection, it was further submitted that even if it is assumed that it is an estate acquisition under Article 31A, as the provision was not reserved for President's assent, Article 31A would not save this provision. It would, therefore, be exposed to the challenge under Article 14 and as there was no rational basis for classification between acquisition of minor minerals on the one

hand and acquisition of other properties on the other, the provision would not stand the scrutiny of Article 14 of the Constitution. It was next submitted, placing reliance on second Proviso to Article 31A, that this is a substantive provision which would hit the impugned Act as it sought to acquire the land within the ceiling limit which was under personal cultivation of the occupant and the acquisition of sub-soil minerals would also amount to acquisition of land. It was next contended that as per Section 4 Sub-section (3) read with Section 17(i), 17A(i) of the Central Act even the Central Government will have to give royalty to private owners if their minor minerals are exploited. That the impugned Act without giving any compensation seeks to deprive private owners of their minor mineral rights which are guaranteed under the Central Act and to that extent the impugned provision is even repugnant to the Mines and Minerals (Development and Regulation) Act, 1957. It was lastly contended that even on the ground of legislative competence, the impugned provision would fail as on a correct interpretation of the pith and substance of the provisions of the impugned Act, it should be treated as legislation which was directly linked up with conservation and development of minerals and therefore it would fall beyond the scope of Entry 23 of the State List on account of the fact that the field was occupied by the Central legislation namely, Mines and Minerals (Regulation and Development) Act, 1957. That in substance the impugned provision sought to acquire minor minerals like granite for regulation and development. The State cannot enact such a law which is in pith and substance one for mineral development. It was then contended by Mr. Shanthi Bhushan that even assuming that the impugned provision is valid, retrospective effect given to it is patently bad as it is made effective from 1964 and at that time Article 31 was very much applicable. It came to be deleted from the Constitution by 44th Amendment with effect from 20.6.1979. That the amended provision in substance was giving retrospective effect to the deletion of Article 31 of the Constitution which cannot be done by State Legislature. That no limited retrospective effect can be given as from 20.6.1979 as it would amount to legislation by the Court. It was next contended that the provision giving retrospective effect is not severable from the impugned provision amending Section 70 of the Karnataka Land Revenue Act, as the legislative intention was to retrospectively amend Section 70, that they would not have enacted such

provision only prospectively, as, if that would have been the intention of the Legislature, it would have enacted a separate Act, That there was no occasion for the State to enact such a provision prospectively as it would be open to the State not to effect any future grants or instruments conferring sub-soil mineral rights to the grantees. That therefore, the impugned provision was essentially enacted with a view to doing away with the pre-existing rights of grantees of land so far as sub-soil minerals like granite were concerned. Therefore, the entire provision is liable to be struck-down. Mr. Datar, the learned Counsel appearing for some of the original Writ petitioners submitted that even assuming that the Ordinance and the Act are valid, they cannot affect the Writs of Mandamus which are already granted by the Court earlier. That they will remain operative for the concerned petitioners in whose favour such Mandamus were granted by the Courts, as the impugned provision nowhere seeks to legislatively over-rule the earlier Decisions nor has the State made any effort to get those Judgments reviewed on the basis of the subsequent amendment and therefore, the earlier Judgments and orders operate with full vigour and efficacy.

15. The learned Advocate General replying to the aforesaid contentions centering round the vires of the impugned provisions, submitted that the Ordinance and the Act were clarificatory in nature, that they try to explain the real intention of the Legislature and they do not deal with acquisition of any minor mineral rights, that the Act amounts to withdrawal of concession earlier given and therefore, it does not deal with acquisition. However, the learned Advocate General fairly stated that if the view is taken that by the impugned provision, a pre-existing right in minor mineral is sought to be done away with, it would amount to acquisition and if that is so, the provision is liable to be faulted on the grounds raised by the learned Senior Counsel Sri Shanthi Bhushan.

16. The learned Advocate General next contended that so far as effects of already granted Mandamus are concerned, earlier Decision of Mr. Justice Urs and the Decision of other learned Judges, who had followed the said Decision, are declaratory in nature and the reliefs on the basis of that declaration as granted to the concerned petitioner was only a consequential relief. Therefore, from the date of the enactment of such declaratory law, earlier declaratory reliefs came to an

end in view of the changed statutory scheme. Mr. Datar, the learned Counsel for the Writ petitioners had no quarrel about this legal position, but he submitted that the impugned provision itself was void and of no legal effect.

17. In the right of the aforesaid rival contentions on behalf of the contesting parties, the following Points arise for our Determination:

1. Whether it is open to the High Court to go into the question regarding correctness of the Judgment rendered by Mr. Justice M.P. Chandrakantaraj Urs, in Writ Petition No. 4563 of 1987 and group decided on 14.7.1987 and as confirmed by the Division Bench of this Court in W.A.Nos.2059 to 2096/87 and others decided on 2.7.1987 in view of the fact that the said Decisions were further confirmed subject to modification by the Supreme Court in Special Leave Petition No. (Civil) 4627 to 4666/88 decided on 3.4.1989?

2. If yes, whether the aforesaid Decision of Mr. Justice Urs as confirmed by the Division Bench is rendered per incuriam or is otherwise erroneous and liable to be over-ruled?

3. Whether the Judgment rendered by Mr. Justice Doddakalegowda in NANJANAYAKA & etc., etc., v. STATE OF KARNATAKA AND ORS. etc., reported in : AIR1990 Kant97 lays down correct law?

4. Whether Karnataka Ordinance 2/93 amending Section 70 of the [Karnataka Land Revenue Act, 1964](#) and the Land Revenue (Amendment) Act, 1992 being not 20/93 are ultra vires the relevant provisions of the [Constitution of India](#) or are otherwise void & inoperative?

5. If the Karnataka Ordinance and Karnataka Act are not ultra vires or void either wholly or in part, what is their effect?

6. Whether holders of patta lands in Ex-Madras State areas forming part of Karnataka State have any ownership rights in granite found in the sub-soil of the lands occupied by them? If yes, whether they have to follow the procedure under Karnataka Minor Mineral Concession Rules, 1969 if they seek to exploit minor minerals themselves ?

7. Whether holders of patta lands in Ex-Mysore State areas forming part of Karnataka State have any ownership rights in granite found in the sub-soil of their lands? If yes, whether they are required to follow any of the procedure laid down by Karnataka Minor Minerals Concession Rules, 1969?

8. Whether holders of patta lands granted under Government Grant Rules have any ownership rights in granite found in the sub-soil of their lands?

9. Whether Rule 3A of the Karnataka Minor Mineral Concession Rules applies in cases where occupant-pattadars being owners of sub- soil minor mineral granite found in their lands seek to exploit their minerals by themselves?

10. What final orders?

Our Answers on the aforesaid Points for Consideration are as follows:-

Point No.1

-

In the affirmative

Point No.2

-

In the negative

Point No.3

-

In the negative

Point No.4

-

In the affirmative as discussed.

Point No.5

-

Does not survive

Point No.6

-

Partial ownership rights. They have to follow Chapter-V of the Karnataka Minor Minerals Concession Rules as well as Rule 62A of the Rules while transporting such quarried granite in so far as Rule 62A applies to such material.

Point No.7

-

They have full ownership rights. They have not to follow any regulatory procedure of Karnataka Minor Minerals Concession Rules, 1969 save and except Rule 62A of the Rule while transporting such quarried granite in so far as Rule 62A applies to such material.

Point No.8

-

No ownership rights.

Point No.9

-

Rule does not apply.

Point No. 10

-

As stated in the final part of
this Judgment.

POINTWISE DISCUSSION:

18. In the light of the arguments of Counsel for contesting parties, it would be necessary to have a look at the relevant statutory settings in the background of which, the aforesaid Points will have to be decided.

STATUTORY SETTINGS :

19. In the 7th Schedule to the [Constitution of India](#) in List I that is, Union List is found Entry 54 to the following effect:

'54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of Union is declared by Parliament by law to be expedient in the Public Interest.'

In List II, that is, the State List is found Entry 23 which reads as under;

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

In the same State List, Entry 18 deals with land and reads as under:

'18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents, transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.'

While in List III, the Concurrent List is found Entry 42 which reads 'acquisition and requisitioning of property.'

The Parliament in exercise of its powers under Entry 54 of the Union List has enacted Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as 'the Mines and Minerals Act' for short). Section 2 of the Act contains

declaration as to expediency of Union control and declares that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided. Section 3 of the Act deals with the definitions. Section 3(a) defines 'minerals' to include all minerals except mineral oils. Section 3(c) of the Act defines 'mining lease' as a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose. Section 3(d) of the Act defines 'mining operation' as any operation undertaken for the purpose of winning any mineral. While Section 3(e) defines 'minor minerals' as building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral. Prospecting licence is defined by Section 3(g) of the Act as a licence granted for the purpose of undertaking prospecting operations. While 'prospecting operations' is defined by Section 3(h) of the Act as any operations undertaken for the purpose of exploring, locating or proving mineral deposits. We shall refer to the relevant provisions of this Act in a later part of this Judgment at appropriate place. As per Section 15 of Mines and Minerals Act, State has got powers to make Rules in respect of the minor minerals. It is not in dispute that granite is a minor mineral. State of Karnataka in exercise of its powers under the aforesaid provisions of the Mines and Minerals Act, has enacted the Rules called, Mysore Minor Minerals Concession Rules, 1969 which are now termed as Karnataka Minor Minerals Concession Rules, 1969. Mining operations in connection with the sub-soil granite in the lands situated in Karnataka State would be governed by these Rules to the extent to which they apply to such operations. Mysore Land Revenue Code, 1888 was enacted by the then Maharaja of Mysore. It was an Act to consolidate and amend the law relating to Revenue Officers and Land Revenue in the whole State of Mysore except Bellary District. Section 38 of the said Land Revenue Code is relevant and it reads as under:

'38. Unless it is otherwise expressly provided by the terms of any grant made, or of any other instrument of transfer executed by the Government for the time being, the right to all precious metals, precious stones, coal and other minerals to be extracted by any process of mining from any lands whatsoever, shall vest absolutely in the Government, and the Government shall, [subject to the provisions

of Mines and Minerals (Regulation and Development) Act, 1948 (Central Act LIII of 1948)], have all the powers necessary for the proper enjoyment or disposal of such rights:

Provided that-

(1) Nothing in this section shall be deemed to apply to limestone, granite and such other ordinary minerals as the Government, by notification in the Official Gazette, may from time to time exempt from the scope of this section;

(2) If, for the purpose of exercising any of the rights referred to in this section either by the Government or by any person acquiring such rights from the Government, any land in the holding or enjoyment of others is required, such land may be acquired in accordance with (the Mysore Land Acquisition Act, 1894), and whenever, in the exercise of the rights aforesaid, any damage be caused to any holder of land by the disturbance of the surface of such land, and such holder and the Government be unable to agree as to the amount of compensation to be paid to such holder for such damage, the same shall be determined in accordance with the procedure prescribed by (the Mysore Land Acquisition Act, 1894).'

This Mysore Code came to be repealed by the [Karnataka Land Revenue Act, 1964](#) by Section 202 Sub-section (1) read with the Schedule to the Karnataka Land Revenue Act. However, it saved any right, privilege, obligation or liability acquired, accrued or incurred under such enactment or law. Section 70 of the [Karnataka Land Revenue Act, 1964](#) is also relevant for the present purpose. It reads as under:

'70. Right to mines and mineral products to vest in Government -Save as otherwise expressly provided under any law in force before the commencement of this Act or under the terms of any grant made or of any other instrument of transfer executed, by or on behalf of the Government for the time being, the right to mines, minerals and mineral products, shall vest absolutely in the State Government and the State Government shall, subject to the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act No. 67 of 1957), have all the powers necessary for the proper enjoyment or disposal of such rights.'

The aforesaid Section 70 of the Karnataka Land Revenue Act was amended with retrospective effect by the impugned Ordinance No. 2/93 dated 30.1.1993 and Amendment Act No. 20/93. Section 2 of the Ordinance reads as under:

'2. Amendment of Section 70 :- In Section 70 of the [Karnataka Land Revenue Act, 1964](#) (Karnataka Act 12 of 1964) for the words 'Save as otherwise expressly provided under' the words 'Notwithstanding anything contained in' shall be and shall be deemed always to have been substituted'.

This Ordinance is replaced by Karnataka Amendment Act 20/93 which amends Section 70 to the same effect. In the light of these statutory provisions, we proceed to consider the aforesaid Points for Determination.

Point No. 1:-

20. As noted earlier Mr. Justice Urs, J., in Writ Petition No. 4563/87 and group decided on 14.7.1987 took the view that the holders of Raitwary pattalands in Karnataka State which were earlier comprised in Madras State territory would be governed by Chapter-V and if such occupants wanted to exploit minor minerals like granite situated in their patta lands, they had to follow the provisions of this Chapter-V of the Karnataka Minor Minerals Concession Rules, 1969. The said Chapter deals with a lands in possession of occupant (Raitwary pattalands etc.,) in which Government have claim only to a share of the mineral. So far as lands in possession of an occupant in areas of Karnataka State which were earlier comprised in Mysore State territory went, Mr. Justice Urs took the view that the occupants are the full owners of sub-soil minor minerals and if they wanted to exploit these minerals themselves, there was no provision in the Karnataka Minor Minerals Concession Rules regulating such exercise and the State authorities could not interfere with such exploitation of minor mineral granite by the occupants themselves. The aforesaid Judgment of Mr. Justice Urs., was carried in Appeal by the State of Karnataka. The said group of Appeals being Writ Appeal Nos. 2057-2096/87 got dismissed by a Division Bench consisting of Mr. Premchand Jain, C.J., & Mr. Justice K. Shivashankar Bhat, J. The order of the Division Bench in these group of Appeals reads as under;

'Heard. No ground for interference is made out. Dismissed.'

Thereafter, the State of Karnataka, carried the matter to the Supreme Court in Special Leave Petition Nos. (Civil) 4627- 4666/88. A Division Bench of the Supreme Court consisting of E.S. Venkataramaiah (as His Lordship then was) & N.D. Ojha, JJ., dismissed the said Special Leave Petitions on 3.4.1989 by passing the following Order;

'If the Government or the authority concerned feels that the licence has been wrongly issued to the respondent, it is open to it to revoke the licence after issuing notice to the licensees concerned. There is no ground for interference with the order of the High Court. These petitions are dismissed accordingly'.

It is in the light of the aforesaid Order of the Supreme Court in Special Leave Petitions, it is contended by way of a preliminary objection by the learned Counsel for the original Writ Petitioners that it is not open to this Court to go into the question of correctness of Judgment of Mr. Justice Urs, as the said Judgment is ultimately confirmed subject to modification by the Supreme Court by a speaking order. The learned Advocate General, on the other hand, submitted that the Order of the Supreme Court in these group of Special Leave Petitions, is not a speaking order nor any law is laid-down by the Supreme Court under Article 141 of the [Constitution of India](#) on the points which were decided by Mr. Justice Urs, and therefore, it is open to this Court to go into the question as to whether the view taken by Mr. Justice Urs is correct or not.

21. In this connection, it may be noted that it is well settled by a catena of Decisions of the Supreme Court that if the Supreme Court refused to grant Special Leave to Appeal under Article 136 against the Judgment of the High Court and Special Leave Petition is disposed of without a speaking order, it will be open to the High Court to reconsider in appropriate proceedings the earlier view propounded in the earlier Judgment of the High Court. In the case of INDIAN OIL CORPORATION LTD. v. STATE OF BIHAR AND ORS., AIR 1986 SC 1780 it has been held as under:

The dismissal of a special leave petition in limine by a non-speaking order does not justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by the Supreme Court. Neither on the principle of res judicata nor on any principle of public policy analogous thereto, would the order of the Supreme Court dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the basis of an uncertain assumption that the issues must have been decided by the Supreme Court at least by implication. Decision of Patna High Court, reversed.

In para 6 of the Report, following the earlier Judgment of the Supreme Court reported in AIR 1978 SC 283, it has been observed as under:

'6. We are clearly of opinion that the view taken by the High Court was not right and that the High Court should have gone into the merits of the Writ Petition without dismissing it on the preliminary ground. As observed by this Court in Workmen of Cochin Port Trust, : (1978) IILLJ161SC , the effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that this Court had decided only that it was not a fit case where special leave should be granted.

This conclusion may have been reached by this Court due to several reasons. When the order passed by this Court was not a speaking one, it is not correct to assume that this Court had necessarily decided implicitly all the questions in relation to the merits of the award, which was under challenge before this Court in the special leave petition. A writ proceeding is a wholly different and distinct proceeding. Questions which can be said to have been decided by this Court expressly, implicitly or even constructively while dismissing the special leave petition cannot, of course, be reopened in a subsequent writ proceeding before the High Court. But neither on the principle of res judicata nor on any principle of public policy analogous thereto, would the order of this Court dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the basis

of an uncertain assumption that the issues must have been decided by this Court at least by implication. It is not correct or safe to extend the principle of res judicata or constructive res judicata to such an extent so as to found it on mere guess work.'

We may also in this connection refer to a Decision of the Supreme Court in THE UNION OF INDIA v. ALL INDIA SERVICES PENSIONERS ASSOCIATION AND ANR., : (1988)IILLJ196SC , which has held that when reasons are given the Decision becomes one which attracts Article 141 of the [Constitution of India](#) and it becomes the law declared by the Supreme Court and shall be binding on all the Courts within the territory of India. It is of course true as contended by the learned Counsel for the respondents, that it is not open to the High Court to consider the question whether reasons given by the Supreme Court on any point are adequate or not. In support of that proposition, the Decision of the Supreme Court in ABDUL REHMAN ANTULAY v. STATE OF MAHARASHTRA AND ORS., AIR 1984 SC 1358, was pressed into service. In para 2 of the Report, it has been observed that when the Decision of the learned Single Judge of the High Court was set aside by the Supreme Court and even if the observation of the Supreme Court in paragraphs 29 & 36 may not be to the liking of the learned Judge, it became the law of the land and it was the duty of everybody including the High Court to obey the order and not try to avoid it. Nor was it open to the High Court to find fault with the same. The learned Advocate General, on the other hand, submitted placing reliance on the Decision reported in : (1995)IIILLJ465SC , Gopala Upadhyay and Ors. v. Union of India and Ors., that for the purpose of attracting Article 141 of the [Constitution of India](#), reference to the Decision under appeal before the Supreme Court would not be justified and what is decided by the Supreme Court has to be found out from the Decision itself. The observation in para 4 of the Report to the following effect were relied upon:

'When a question is answered expressly or by necessary implication we cannot ignore the answer by referring to the decisions appealed against and holding that the real question that must be considered to have been answered was something else. That is not our understanding of the law of precedents. What the Judges expressly decided or what they must be considered to have decided by necessary

implication by reference to the facts stated by the Judges themselves are what constitute precedents.'

In the light of the aforesaid settled legal position, we have to see whether the Supreme Court while dismissing the Special Leave Petitions arising from the Judgment of Mr. Justice Urs and as confirmed by a non-speaking order of the Division Bench of this Court, has laid down law on any point under Article 141 of the [Constitution of India](#). It is obvious that if the Supreme Court has spoken on the point, it would be law declared under Article 141 and it will not be open to this Court to go into the question afresh. But if on the other hand, no such law is declared by the Supreme Court on any point covered by Mr. Justice Urs's Judgment, it would be certainly open to this Bench to go into the question in the present group of matters which are based on fresh causes of action which have arisen due to the interference by the State authorities with the occupants' rights for carrying on mining operations qua the minor mineral granite in their lands. It is obvious that as these group of matters are based on separate causes of action which have arisen after the order of Mr. Justice Urs, question of bar of res judicata would not arise. The short question is whether the question can be reconsidered or whether in view of declaration of law by the Supreme Court under Article 141 such inquiry is foreclosed before this Court. As noted earlier, Mr. Justice Urs had decided in connection with the rights of occupants of patta lands qua sub-soil minor mineral granite. This question was examined by Mr. Justice Urs in connection with two types of patta lands as seen earlier. So far as Ex-Mysore State territory lands are concerned, the Supreme Court in the Special Leave Petition order has not made any observations save and except dismissing the Special Leave Petitions by observing that no ground for interference is made out. So far as Raitwary patta lands situated in Ex-Madras State territory, now comprised in Karnataka State, were concerned, presumably with reference to application of Chapter-V the Supreme Court has observed that it will be open to the Government to revoke the licences after issuing notice to the licensee concerned if it is felt that the license is wrongly issued to the concerned respondent. Thus though the order of the Supreme Court in Special Leave Petitions makes these observations, it cannot be said that Supreme Court has expressly or even by necessary implications, spoken on any moot point whether

the occupants of patta lands in Karnataka State which were earlier forming part of old Mysore State or Ex-Madras State had proprietary rights in the sub-soil mineral granite or not. On these points, the order of the Supreme Court in Special Leave Petitions can be said to be a non-speaking order. It is of course true that even if on a given point the Supreme Court had spoken in even in a few lines, it would be the law declared by the Supreme Court under Article 141 of the Constitution. But on none of these points in controversy between the parties anything is spoken by the Supreme Court, so as to become the law declared by the Supreme Court. As laid down by the Supreme Court in *GOPALA UPADHYAYA AND ORS. v. UNION OF INDIA AND ORS.* supra, we cannot refer to what is stated in the Judgment under Appeal before the Supreme Court with a view to finding out what is the law declared by the Supreme Court on the given point. In other words, the question as to whether law is declared by the Supreme Court under Article 141 of the Constitution will have to be ascertained only by reading the Judgment of the Supreme Court and the Judgment of the Supreme Court alone. A bare reading of the Order of the Supreme Court in the Special Leave Petitions does not give any clue as to what was the law the Supreme Court was declaring on the main points in controversy between the parties. Consequently, it must be held on the facts of the present cases that the Decision of the Supreme Court rejecting the Special Leave Petitions cannot be said to be a speaking order declaring any law under Article 141 of the [Constitution of India](#) on the Points raised for our Consideration in the present group of matters. The preliminary objection raised by the learned Counsel for the respondents-original Writ petitioners, therefore, has to be overruled. Point No. 1 is, therefore, answered in the affirmative.

POINT NO.2:

22. So far as the correctness of the Judgment of Mr. Justice Urs is concerned, at the outset it was submitted by the learned Advocate General for the State that the said Judgment is per incuriam as it has not considered Section 14 of the Mines and Minerals (Regulation & Development) Act, 1957 read with Section 4 thereof. Now it is true that as per Section 14 of the said Act as amended by Mines and Minerals (Regulation and Development) Amendment Act 1986, Act No. 37/1986, provisions of Sections 5 to 13 (inclusive) shall not apply to quarry leases, mining

leases or other mineral concessions in respect of minor minerals. Prior to the amendment, the provisions of Sections 4 to 13 (inclusive) were not made applicable, to quarry leases, mining leases or other mineral concessions in respect of minor minerals. The result is that Section 4 of the Act has been made applicable in respect of minor minerals for the aforesaid purpose. That aspect of the matter is certainly not considered by Mr. Justice Urs. Therefore, we have to see, whether consideration of Section 4 would have made any difference to the conclusions reached by Mr. Justice Urs. Section 4 of the Mines and Minerals Act provides as under:

'4. (i) No person shall undertake any prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder:

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Division of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State, Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of Section 617 of the Companies Act, 1956.(2) No prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under Section 18, undertake prospecting or mining operations with respect to any minerals specified in the First Schedule in any area within the State which is not already held under any prospecting licence or mining lease.'

A mere look at the said provision shows that it puts an embargo on any prospecting or mining operations in any area by any person except in accordance with the terms and conditions of a prospecting licence or, as the case may be, a mining lease. It is no doubt true that the term 'no person' would include even an

occupant of a patta land, who may be claiming to be the owner of the sub-soil minor mineral like the granite found in his land. But the prohibition contained in Section 4(1) is that such person cannot undertake any mining operation in any area, meaning thereby even in an area of land occupied by him, save except and in accordance with the terms and conditions of prospecting licence or a mining lease. As seen earlier prospecting licence is defined by Section 3(g) as a licence granted for the purpose of undertaking prospecting operations. Prospecting operation has been defined by Section 3(h) of the Act as any operation undertaken for the purpose of exploring, locating or proving mineral deposits.

In the present cases, we are not concerned with any prospecting operations by the pattadars. Therefore, what remains for application of Section 4(1) is a mining lease and mining lease has been defined by Section 3(c) of the Act as a lease granted for the purpose of undertaking mining operations, includes a sub-lease granted for such purpose. It therefore, becomes clear that Section 4 Sub-section (1) refers to any person and seeks to control the mining operations in any area, which may include patta lands by such persons who are outsider lessees. Mining lease necessarily pre-supposes a lessor and a lessee. It is not possible to agree with the contention of the learned Advocate General that the term 'mining lease' as employed by Section 4(1) should be read as 'mining permission.' That, with respect, would amount to rewriting the provision. Therefore, it must be held that Section 4(1) will cover cases where even a patta holder seeks to create a lease of minor mineral like granite, which may be belonging to him and which may be situated in his land. If such an occupant wants to give a lease of such minor mineral for the purpose of exploitation to any third party, lessee, he has to follow the provision of Section 4(1) of the Mines and Minerals Act. This conclusion of Mr. Justice Urs is well sustained on the language of Section 4(1). It is further supported by the connotation of the word 'mining lease' as defined by Section 3(c) which would include even a sublease granted for such purpose. It is obvious that sub-lease can be granted by the lessee, who is other than the lessor, who is the owner of the mineral. If the learned Advocate General's contention is accepted, then the entire definition of 'mining lease' under Section 3(c) would be rendered otiose. In fact, this very view on the interpretation of Section 4(1) was taken by a Division Bench of the Gujarat High Court in the case of AMRITLAL NATHUBHAI

SHAH AND ORS. v. UNION GOVERNMENT OF INDIA AND ANR., : AIR1973 Guj117 . In that case, the Division Bench of Gujarat High Court consisting of Mr. P.N. Bhagwati, C.J. and Mr. D.A. Desai, J. (as they then were), while interpreting Section 4(1), observed that Section 4(1) will apply only to a person who is not the owner of the minerals and who can therefore obtain a mining lease from the owner. If a statute provides that no person shall do a particular act except on a particular condition, it is, prima facie, natural and reasonable to understand the Legislature as intending such persons, as, by the use of proper means, may be able to fulfil the condition; and not those who, though called 'persons' in law, have no capacity to do so at any time, by any means, or under any circumstances, whatsoever since a person who is the owner of minerals cannot obtain a mining lease for carrying on mining operations to win his own minerals; he cannot be brought within the words 'no person' in Section 4(1). Where the State Government is the owner of the minerals, it is not precluded by Section 4(1) from undertaking any prospecting or mining operations. For arriving to the aforesaid conclusion, reliance was placed by the said Division Bench on an earlier Division Bench Decision of Gujarat High Court in the case of JILUBHAI v. A.J. THAKKAR, (1967) 8 Guj LR 705 holding that the words 'no person' in Section 4(1) must, therefore, be held to be inapplicable to the State Government and hence the State Government is outside the scope of the restriction enacted in Section 4(1). Learned Advocate General submitted that the aforesaid Decision of the Gujarat High Court proceeded on two grounds namely, (1) that Section 4(1) would not apply to the owner of a mineral who wants to exploit the mineral himself, and (2) that the State was not a person within the meaning of Section 4(1) and that this Decision was confirmed by the Supreme Court in AMRITLAL NATHUBHAI SHAH AND ORS. v. UNION GOVERNMENT OF INDIA AND ANR., : [1977]1SCR372 , wherein the Appeal was dismissed by the Supreme Court, The Supreme Court confirmed the Decision on the second point that is the State was not a person within the meaning of Section 4(1). Therefore, the interpretation of Section 4(1) as arrived at by the Division Bench of the Gujarat High Court on the first ground namely, that the owner cannot create a lease in favour of himself and therefore, is out of Section 4(1) cannot be said to have been approved by the Supreme Court. Now it is no doubt true that the Supreme Court has confirmed the Decision on the second

point. But nowhere in the Report of the Judgment of the Supreme Court, we find any dissenting voice so far as the first ground which appealed to the Gujarat High Court goes. It must, therefore, be held that the Decision on the first point as rendered by the Gujarat High Court also received implied approval of the Supreme Court. Even that apart, on the construction of Section 4(1), according to us, no other view is possible and we, respectfully concur with the view expressed by the Gujarat High Court on this aspect.

23. We may also usefully refer in this connection to another Decision of the Supreme Court in the case of State of Tamil Nadu v. Hind Stone Etc. Etc. supra. In that case, the Supreme Court was concerned with the validity of Rule 8C of Tamil Nadu Minor Mineral Concession Rules, 1959 framed under Section 15 of the Mines and Minerals Act, 1957 being the very Act which contains Section 4. Rule 8C of T.N.Mines and Minerals Concession Rules, reads as under;

'8-C. Lease of quarries in respect of black granite to Government Corporation, etc.

(1) Notwithstanding anything to the contrary contained in these rules, on and from 7th December 1977 no lease for quarrying black granite shall be granted to private persons.

(2) The State Government themselves may engage in quarrying black granite or grant leases for quarrying black granite in favour of any corporation wholly owned by the State Government.

Provided that in respect of any land belonging to any private person, the consent of such person shall be obtained for such quarrying or lease.'

Interpreting this Rule, the Supreme Court speaking through Chinnappa Reddy, J. observed in para 15 of the report as under:

'15. There are, however, a few appeals in which the applications were not for the grant or renewal of leases to quarry black granite in Government lands but were for permission to quarry black granite in Patta lands in which the right to minerals belonged to the applicants-private owners themselves. Apart from the fact that Rule 8C occurs in a group of Rules under Section II which bears the head

'Government lands in which the minerals belong to the Government' while the rules relating to lands in which the right to minerals belongs to private owners are dealt with in Section III, the language of Rule 8C is clear that it cannot have any application to lands in which the right to minerals belongs to the applicants themselves. Rule 8C is only concerned with leases for quarrying black granite and it cannot, therefore, have any application to cases where no lease is sought from the Government. In the case of lands in which the right to minerals belongs to private owners and those owners seek permission to quarry black granite the applications will have to be dealt with under the relevant rules in Section III of the Tamil Nadu Minor Mineral Concession Rules. Rule 8C, it may be noted, does not impose a general ban on quarrying black granite but only imposes a bar on the grant of leases for quarrying black granite.

Appeals and Special Leave Petitions which arise out of applications for grant of permission to quarry black granite in the Patta lands belonging to the applicants themselves, have therefore, to be dismissed. The result is, Special Leave Petitions Nos.9257, 9259, 9260, 9271, 9273 to 9282 and 9284 of 1980 are dismissed and Special Leave Petitions Nos.9234 to 9248, 9250 to 9256, 9258, 9261 to 9270, 9272, 9283, 9285, 9286, 9288, 9289 and 9290 of 1980 are granted and Appeals allowed. Civil Appeals Nos.2602 to 2604 of 1980 are allowed. There will be no order as to costs. Order accordingly.'

The aforesaid Decision, therefore, is a clear authority for the proposition that when a provision under the relevant Rules tries to regulate a lease for quarrying a mineral, it would not cover the cases where the owner of the mineral himself wants to exploit the mineral without creating any lease in favour of third party. It must, therefore, be held that application of Section 4 of the Act, is totally ruled out for deciding the present controversy between the parties. If that is so, Section 4 would become irrelevant for such purpose. Therefore, non consideration of an irrelevant provision by Mr. Justice Urs, would not render his Judgment per incuriam. The contention of the learned Advocate General, in this connection, therefore, has to be rejected.

The learned Advocate General, however, was right when he contended that for deciding whether Mr. Justice Urs' Judgment laid down good law or not the matter would be at large before this Full Bench, even though the Judgment was confirmed by a non-speaking order by the Division Bench of this Court. Therefore, we can look into this aspect of the matter, even leaving aside the question whether the Judgment was rendered per incuriam or not. We accept this submission of learned Advocate General. Hence, we proceed to consider the question whether the Judgment of Mr. Justice Urs, contains any error of law or not. Now to recapitulate, Mr. Justice Urs, considered the rights of pattadars over the minor minerals granite situated in the sub-soil of their lands. Cases of such pattadars who are occupying the lands situated in Ex-Madras State territories were dealt with by Mr. Justice Urs and he also dealt with the rights of pattadars holding lands in Ex-Mysore State territories.

Rights of pattadars holding lands comprised in Ex-Madras State territories:-

24. We shall first deal with the reasoning which appealed to Mr. Justice Urs so far as rights of pattadars over minor minerals granite situated in their lands which were earlier situated in Madras State area were concerned. For these pattadars, he took the view that as they were patta-holders of Baitwary lands situated in Ex-Madras State territories, they would be governed by Chapter - V of Karnataka Minor Minerals Concession Rules, 1969, which were framed by State of Karnataka in exercise of powers under Section 15 of Mines and Minerals (Regulation & Development) Act, 1957. Now a look at the said Rules, shows that it comprises of seven Chapters. These Rules are framed by the Karnataka State for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. Let us see what are those regulatory provisions as found in this Minor Mineral Concession Rules. Chapter-II deals with grant of quarrying lease in respect of land in which minor minerals belong to Government. Chapter-III deals with grant of quarrying lease in respect of lands in which Minor Minerals belongs to private persons. Chapter-IV deals with grant of quarrying permits in respect of lands in which minerals belong to Government. Chapter-V deals with lands in the possession of an occupant (A Ryotwari-Pattadar, etc.,) in which Government have claim only to a share of the

mineral. Chapter-VI deals with grant of mining leases by public auction. Chapter-VII deals with miscellaneous provisions like revision etc., It becomes at once clear therefore, that so far as lands in possession of occupant-ryotwary pattadar are concerned, the Government have claim only to a share in the mineral, meaning thereby, the pattadar-occupants of Ryotwary patta in Ex-Madras State lands would also have a share in such sub-soil minerals in their patta lands. There is no regulatory provision in the Minerals Concession Rules enacted by the State of Karnataka which deals with any lands in possession of Ryotwary pattadar in Ex-Madras area wherein the State claims to have full ownership of sub-soil minerals. Mr. Justice Urs was therefore right, when he took the view that only Chapter-V of the Karnataka Minor Minerals Concession Rules, would apply to such occupants of Ryotwary patta lands in Ex-Madras State territory situated in Karnataka State and by the thrust of Chapter-V, the State is said to have recognised at least partially the ownership claim of such ryotwary pattadars in the sub-soil minor minerals as the State does not claim full ownership thereof. This reasoning, which appealed to Mr. Justice Urs, is fully borne-out by Chapter-V as enacted by the Karnataka State while promulgating Minor Mineral Concession Rules, 1969 and cannot be found fault with from any angle, it is also pertinent to note that Mr. Justice Urs has also in this connection, heavily relied upon the Decision of the Supreme Court in : [1981]2SCR742 , supra especially para 15 thereof, which we have extracted in extenso earlier. The learned Advocate General was right when he contended that the aforesaid Decision of the Supreme Court only held that Rule 8C of the Tamilnadu Minor Minerals Concession Rules as applicable then, would not apply to a case where ryotwary patta-holder, wanted to himself quarry black granite situated in his own lands and the ownership of granite was not in dispute before the Supreme Court. However, that Decision itself holds that when a private owner seeks permission to quarry black granite, the relevant provision to be followed is Section III of Tamil Nadu Minor Mineral Concession Rules. We are informed that Section III of Tamil Nadu Minor Mineral Concession Rules as applicable then is analogous to Chapter-V of the Karnataka Minor Minerals Concession Rules. Consequently, it cannot be said that Mr. Justice Urs was not justified in placing reliance on the aforesaid Decision of the Supreme Court while holding on the first question that the pattadar who is the owner of a minor mineral

granite situated in his patta land which was earlier comprised in Madras area is required to follow the provisions of Chapter-V of the Karnataka Minor Mineral Concession Rules; and in further holding that in such minor minerals situated in their patta lands, the State would only have a share in the minerals and not full ownership.

The learned Advocate General submitted in : [1981]2SCR742 , the Supreme Court was concerned with only interpretation of Rule 8C and had assumed that patta holders were the owners of the minor minerals, that there was no occasion for the Supreme Court to adjudicate upon this controversy. To that extent, the learned Advocate General was right. However, as seen earlier once the Supreme Court applied Section III of Tamil Nadu Minor Mineral Concession Rules to the claim for exploitation of minor mineral black granite situated in the lands occupied by such pattadars in Madras area and when that Section of Madras Rules is *pari materia* with Chapter-V of the Karnataka Minor Minerals Concession Rules, it cannot be said that Mr. Justice Urs was not justified in reaching the conclusion that said Chapter-V will govern the case where occupants-pattadars of Ryotwary pattalands situated in Karnataka State, which were earlier comprised within Madras State, had to follow the procedure laid-down by Chapter-V of the Karnataka Minor Minerals Concession Rules only.

25. The learned Advocate General then relied upon a Division Bench Decision of Madras High Court in W.P. 11672/89 and group decided on 12.10.1990. That decision, has of course, taken a view that holders of Ryotwary pattalands are not the owners of the sub-soil minerals and that those minerals vest in the State, and unless there is a specific grant of mineral rights to patta- holders, they would not be entitled to be owners thereof. However, a close look at the said Decision shows that as found in page-10 paragraph-8 Rules, 8-A, 8B, 8-C and 19-A were brought on statute book of Minor Minerals Concession Rules of Madras on 7.12.1988. As per Rule-19A even for minor minerals in patta lands the procedure of Rules had to be followed, whether minor minerals belonging to the occupants were to be exploited by the occupants themselves or not. It is in the light of these Tamil Nadu Minor Mineral Concession Rules, 1959, that the Division Bench of the Madras High Court, reached the aforesaid conclusion. This aspect is also reiterated in

para 10 at page 24 and para 30 at page 36 of the Judgment and at page 34 at para 27 of the Judgment. Because of Rule 19-A of Tamil Nadu Minor Mineral Concession Rules, 1959, even an occupant of a patta land in Madras territory, for exploitation of minerals situated in his own land, had to follow Rule 19-A procedure. It is pertinent to note that provisions similar to those contained in Chapter-V of Karnataka Minor Minerals Concession Rules, 1969 now do not exist in Madras Rules. So far as we are concerned, Chapter-V of the Karnataka Minor Minerals Concession Rules clearly provides part ownership of sub-soil mineral rights in the occupants patta-holders of ryotwary patta lands in Karnataka State and which lands were earlier comprised in ex-Madras territory. Consequently, on such a different scheme of Rules, as applicable in Karnataka State, the ratio of the Decision of the Division Bench of Madras High Court, as aforesaid, cannot be pressed into service, The learned Advocate General, then took us to a Decision of the Supreme Court in the case of STATE OF ANDHRA PRADESH v. DUWURU BALARAMI REDDY AND ORS., : [1963]1SCR173 . In that case, the Constitution Bench of the Supreme Court, relying upon the Decision of the Privy Council in AIR 1921 PC 1, has held that the mere fact that a person is the holder of an inam grant would not by itself be enough to establish that the inam grant included the grant of sub-soil rights in addition to the surface rights; the grant of sub-soil rights would depend upon the language used in the grant. If there are no words in the grant from which the grant of sub-soil rights can be properly inferred, the inam grant would only convey the surface rights to the grantee, and the inam grant could not by itself be equated to a complete transfer for value of all that was in the grantor. It is difficult to appreciate as to how that Decision is of any assistance to the learned Advocate General. It is nobody's case here that pattalands holders were granted occupancy rights under any grant, like inam grant. If the source of right of the pattadaras is traced to any express grant, then naturally the terms and conditions of the grant would be the repository of the rights conferred on them qua sub-soil right as well as the surface rights so far as the granted lands are concerned. In the present cases, the pattadars are seeking their rights to sub-soil minerals on the basis of Chapter-V of Karnataka Minor Minerals Concession Rules, 1969, framed by Karnataka State. It is these Rules, themselves recognise that in such lands in possession of an occupant of ryotwary patta land, Government claims only a share

in the mineral, meaning thereby, Government does not claim full ownership. These statutory Rules, found in Chapter-V of Karnataka Minor Minerals Concession Rules are, therefore, the repository of the acknowledged rights of such patta-holders occupants atleast partially in the sub-soil minor minerals like the granite found in their pattalands. We may also, in this connection, refer to a Decision of the Supreme Court, to which our attention was invited by Sri Shanthi Bhushan, the learned Senior Counsel for some of the petitioners, in the case of RAJA ANAND BRAHMA SHA v. THE STATE OF UTTAR PRADESH AND ORS, : [1967]1SCR373 , wherein at page 1088 paragraph 13, it has been laid-down by the Supreme Court that prima facie the owner of a surface of the land is entitled ex jure to everything beneath the land and in the absence of any reservation in the grant, minerals necessarily pass with the rights to the surface (HALSBURY'S LAWS OF ENGLAND, 3rd Edn. Vol.26, P.325). In, other words, a transfer of the right to the surface conveys right to the minerals underneath unless there is an express or implied reservation in the grant. Mr. Holla, the learned Counsel appearing for some of the Writ petitioners, in this connection, also invited our attention to SALMOND'S JURISPRUDENCE, 11th Edn., Para-111 at page 415 to show that ownership of land also implies ownership of minerals in the sub-soil upto the centre of the earth. He submitted that as per Common Law there is no dichotomy between rights to surface-soil and rights to sub-soil. The learned Advocate General, on the other hand, submitted that these principles may apply only when full ownership rights are conferred in connection with the surface soil to the occupant and if the occupant has become the full owner of the land under any document of transfer in his favour, then the said document would entitle him, in the absence of any restriction contained in the document, to the ownership of sub-soil minerals found up to the centre of the earth. That, such is not the situation in the present cases, as there is no document in favour of the concerned occupants. To that extent, the learned Advocate General is right. However, as discussed earlier, the recognition of partial ownership of sub-soil minor minerals like granite in favour of the occupants of Ryotwary pattalands situated in Karnataka State, which were earlier comprised in Madras State by Chapter-V of the Karnataka Minor Minerals Concession Rules, puts the matter beyond any controversy and by the enactment of the aforesaid statutory Rules comprised in Chapter-V, it has to be held that the

State of Karnataka recognised the partial ownership of sub-soil minor minerals like granite vesting in the occupants of such ryotwary pattalands. In view of this conclusion, the submission of the learned Advocate General that at common law all sub-soil minerals in occupancy lands vest in the State unless specifically vested in any occupant by an express grant loses its efficacy. It is obvious that even assuming it to be so, by enactment of such a statutory Rule, it was perfectly open to the State to vest such rights in sub-soil minor mineral in the occupant pattadars. Therefore, the conclusion reached by Mr. Justice Urs, so far as such occupants are concerned by holding that they had part ownership of the sub-soil minor mineral like the granite situated in their pattalands, cannot be faulted from any angle and has to be accepted as correct. It may be noted that Rule 39 found in Chapter-V of the Karnataka Minor Minerals Concession Rules, seeks to regulate even quarrying of minor mineral like granite by part owner of the mineral. Rule 39 of the aforesaid Rules, provides that the occupant may remove any minor mineral on a small scale for his own use for a specific bonafide domestic or agricultural purpose provided that he has no intention of continuing quarrying operations indefinitely and provided further that the land is not in any way rendered less fit for cultivation than before. Rule 40 of the Rules found in Chapter-V deals with rates and royalty. The removal of any mineral on a large scale or for other than bonafide domestic or agricultural purposes shall be subject to the payment of royalty at the rates prescribed in the specified Schedule I. It is obvious that even if the occupant, that is, raitwary pattadar wants to remove any minor mineral like the granite situated in his land and in which he has part ownership or a share of ownership and if that removal of mineral is on a large-scale for other than domestic or agricultural purposes, he has to follow the gamut of Rule 40 found in Chapter-V of the Rules. It must, therefore be held that Mr. Justice Urs was perfectly justified in the light of the aforesaid statutory Rules framed by Karnataka State that these regulatory procedure would imply; (i) that occupants of ryotwary pattadars in Ex-Madras area and Bellary District will be treated to be part-owners of sub-soil minor minerals found in their pattalands, (ii) if they want to quarry such minerals on a large-scale or for other than domestic or agricultural purposes, they have to follow the procedure laid-down by the Rules found in Chapter-V. In view of these conclusion of ours, it cannot be held, as submitted by the learned Advocate

General, that the ryotwary patta land holders of lands which were earlier situated in Madras State area, have no right whatsoever in the sub-soil minor minerals found in their pattalands. It is also not possible to agree with the extreme contention canvassed by the learned Advocates for the original Writ petitioners that such pattadars were full owners of sub-soil minor minerals found in their lands. They must be treated to be part owners of such sub-soil minor minerals found in their pattalands.

RIGHTS OF PATTADARS IN EX-MYSORE STATE AREA:

26. So far as Ex-Mysore State area lands are concerned, the learned Advocate General submitted that Mr. Justice Urs had relied upon the provisions of Section 38 of Mysore Land Revenue Code, 1888 read with Section 70 of the [Karnataka Land Revenue Act, 1964](#). It was the contention of the learned Advocate General that before Section 70 of the [Karnataka Land Revenue Act, 1964](#) can be pressed in service, it must be shown that under the Mysore Code, which came to be repealed by the Karnataka Act, 1964, there was any express provision for vesting of granite in the pattadars. The learned Counsel for the respondents contended to the contrary. We, therefore, have to turn to the relevant provisions of the Mysore Land Revenue Code, 1888. A mere look at Section 38 of the Act shows that it seeks to declare that rights of all precious metals, precious stones, coal and other minerals to be extracted by any process of mining from any lands whatsoever, shall vest absolutely In the Government. When this provision is read in the light of the definition of land as found in Section 3 Sub-section (3) of the Mysore Code, it becomes clear that 'land' includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. It cannot be seriously urged that right to extract sub-soil mineral cannot be considered to be in connection with benefits to arise out of land or the things attached to the earth. Sub-soil minerals are obviously attached to the earth. Because of the main part of Section 38 of the Mysore Code, it was statutorily recognised that these minerals will vest absolutely in the Government. To this general sweep of Section 38 is the Proviso (1) with which we are concerned, which states that nothing contained in Section 38 of the Code shall be deemed to apply to lime-stone, granite and such other ordinary minerals as the Government, by notification in the official Gazette,

may from time to time exempt from the scope of the Section. It is obvious that the Proviso carves a different field of its own and excludes it from the sweep of the main Section. Main Section sought to vest absolutely all sub-soil minerals in the Government in any land what-so-ever which would include even patta lands. But the exception as carved out by the Proviso saves from its main sweep lime-stone granite and such other ordinary minerals. This Proviso recognises that lime-stone and granite are to be considered to be ordinary minerals and there would also be other ordinary minerals as the Government, by notification in the Official Gazette, may from time to time exempt from the scope of the Section. Granite, therefore, is by express terms of the 1st Proviso to Section 38 exempted from being vested absolutely in the Government. That necessarily means, that it remains vested in (third) persons other than the Government. It cannot be that vesting of sub-soil minerals can be in a state of suspended animation, i.e., not vesting in State and also in turn not vesting in the occupants of lands wherein they are situated. That would obviously mean that they would vest in the occupants of the land. It is not possible to agree with the contentions of the learned Advocate General that this Proviso to Section 38 of the Mysore Code does not provide for any express vesting of granite in the occupants of patta lands and that it only fettered the rights and power of the Government to deal with the minor minerals like granite as an owner so long as Mysore Code operated. The learned Counsel for the petitioners relied on the Decision of the Supreme Court in *S. SUNDARAM PILLAI ETC. v. V.R. PATTABIRAMAN & GROUP*, : [1985]2SCR643 especially para 42 of the Report to highlight the scope and ambit of the proviso to a Section. It reads as under:

'42. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.'

We agree with the learned Counsel for the petitioners that First Proviso to Section 38 of the Mysore Code would squarely fall in category 1 & 3 enumerated by the Supreme Court in that Decision. In this connection, we may refer to one submission of Mr. Datar, Senior Counsel for the original Writ petitioners. It was contended that in Old Mysore State territories, the Land Revenue Code was holding the field since 1888 till 1964. For all these 76 years, State of Mysore had clearly declared that granite vested in the pattadars. Even the State of Karnataka accepted that position after these territories became part of Karnataka State. He also invited our attention to Government of Mysore Publication 'Exploitation of Minerals in Mysore' 1916 Edition Schedule F/2 in connection with Section 38 and submitted that Government had given up claim in favour of the pattadars. He also invited our attention to Mysore Revenue Manual, page 83, Section 2 which stated while interpreting Section 38 of the Mysore Land Revenue Code that this was an express concession in favour of the pattadars. He therefore submitted that vesting of granite in pattadar under Section 38 of the Mysore Code was never disputed. We agree with this submission. It is obvious that State of Mysore treated Section 38 with the first Proviso to be the repository of the vested rights of pattadars in sub-soil minor mineral granite. Even apart from what ex-Mysore State thought, a conjoint reading of Section 38 with the First Proviso necessarily leads to the very same conclusion that there was an express vesting of sub-soil minor minerals in the pattadars holding lands in Ex-Mysore State territories. The learned Advocate General, in this connection, submitted that as Section 38 of the Mysore Code itself shows there was a possibility of certain minerals, even major minerals being vested in the pattadars by express grant and that is why there is a specific provision in Section 38 of the Code that unless it is otherwise expressly provided by the terms of the grant or of any other instrument of transfer executed by the Government for the time being, the right to all precious metals, precious stones,

coal and other minerals to be extracted by any process of mining, from any lands whatsoever would vest absolutely in the Government. He submitted that how can there be a grant by the State unless a mineral is vested in the State? To that extent, he is right. But the question is what is the scope and ambit of Section 38 atleast from 1888 as read with the Proviso. As we have discussed earlier, the said provisions clearly indicate that atleast from the date of enactment of Section 38 of the Mysore Code in 1888, so far as minor minerals like granite were concerned, the State did not claim absolute vesting in itself and on the contrary, exempted these minor minerals from the sweep of Section 38, meaning thereby, the State did not claim any right in such minor minerals and of necessity recognised the rights of occupants of lands qua sub-soil minor mineral like granite which was found in their lands. It can, therefore, be said that by Section 38 of the Code atleast from 1888 when this Mysore Code came into force in Ex-Mysore State territory, there was an express statutory vesting of sub-soil mineral like granite in the pattadars. No fault can be found with the reasoning of Mr. Justice Urs on the interpretation of Section 38 which proceeds on these lines.

27. Now remains the question as to what is the effect of Section 70 of the [Karnataka Land Revenue Act, 1964](#). As noted earlier, on the coming into force of Section 70 of the Act, rights to Mines and Mineral products were statutorily vested in the Government absolutely save and except as otherwise expressly provided by any law in force before the commencement of the Act. It cannot be seriously disputed that Mysore Code of 1888 was a law in force before the coming into force of Section 70 of the [Karnataka Land Revenue Act, 1964](#). In fact Section 202 of the Act itself showed that enactments shown in the schedule were repealed. Mysore Land Revenue Code 1888 is mentioned at serial No. 9 in the said schedule. Thus, it was repealed by the [Karnataka Land Revenue Act, 1964](#). Till repeal, therefore, it was the law in force. We have seen that as per Section 38 of the Mysore Code right to minor mineral like granite situated in the sub-soil of the patta lands remained vested with the occupants of the land in Ex-Mysore State territory. These vested rights were expressly saved by Section 70 of the Karnataka Land Revenue Act which was enacted in 1964. Therefore, it must be held that even after coming into force of the [Karnataka Land Revenue Act, 1964](#), so far as the occupants of patta lands in Ex-Mysore State lands territory which were

subsequently comprised in Karnataka State were concerned, rights over the minor mineral granite found in the sub-soil of their patta lands continued to vest in them. They obviously vested in them as full owners as there was no statutory provision reducing any extent of full ownership in these minor minerals like granite which was conferred by Section 38 of the Mysore Code atleast from 1888. This conclusion to which Mr. Justice Urs reached on a conjoint reading of Section 38 of Mysore Code and Section 70 of the [Karnataka Land Revenue Act, 1964](#) is well sustained on the aforesaid scheme and cannot be said to be suffering from any error. Once that conclusion is reached, it becomes obvious that all the occupants of the patta lands in Ex-Mysore State territory, which were later included in Karnataka State were the absolute owners of sub-soil minor minerals like granite found in their lands. If that is so, they were entitled to carry on mining operation themselves in connection with their own minor mineral granite and for such operations, there is no provision in Karnataka Minor Minerals Concession Rules, 1969 to regulate such an exercise as we have already seen while considering Chapter-wise scheme of Karnataka Minor Minerals Concession Rules. In this connection learned Advocate General, however, submitted that Rule 34 found in Chapter-IV will apply even to such cases. When we turn to Chapter-IV, we find that it deals with grant of quarrying permits in respect of lands in which minerals belong to Government. Once a conclusion is reached that minerals like granite situated in the patta lands which were earlier comprised in Mysore territory do not belong to Government, but to the pattadars, the very heading of Chapter-IV would exclude its operation qua such minerals and their exploitation. The learned Advocate General submitted that Chapter heading is necessarily not conclusive of the scope and ambit of the Rules which follows. For that purpose he invited our attention to Decisions in the COMMISSIONER OF INCOME TAX v. AHMEDBHAI UMARBHAI AND COMPANY, : [1950]181ITR472(SC) & in : AIR1990 Kant97 , Nanjanayaka v. State, supra at page 113 paragraph 35. No doubt it is true that the heading of the Chapter may not necessarily cut-down the scope of the main provision. But even independently of the heading, when we turn to Rule 34, on which great reliance was placed by the learned Advocate General, we find that interpretation canvassed by him is not possible on the express language of Rule 34. Rule 34 reads as under:-

'34. Grant of quarrying permits. - (1) On an application made to him in Form 1 the Competent Officer may grant a quarrying permit to any person to extract and remove from any specified land within his jurisdiction any minor mineral not exceeding in quantity 1000 tons under any one permit on payment to the Competent Officer of royalty calculated at the rates specified in Schedule I and also on payment of such land revenue and cesses as may be assessable on the lands:

Provided that the Competent Officer may for reasons to be recorded in writing refuse to grant such permit.(2) A quarrying permit granted under rule 34 shall be in Form J.

(3) A register of quarrying permit shall be maintained by the Competent Officer in Form K.'

Rule 34 itself contemplates that the quarrying permit under Rule 34 will be in Form J. When we turn to Form J, we find condition No. 5 which states that if a major mineral is found during quarrying operations, it shall be reported to the Competent Officer within a week's time after such discovery. As per condition No. 8, the permit holder shall have no right over the quarry material and other property lying in permit area after the expiry of the permit. Meaning thereby that only during the period of the permit, the permit-holder would have right over the quarried material on payment of prescribed royalty. As per condition No. 12, if any excess quantity over that permitted is found to be removed the material shall be confiscated and the permit holder shall be liable for punishment under the provisions of the Mysore Minor Minerals Rules, 1969. These conditions would not have been attached to Form J issued under Rule 34(2) if the permission was to be granted in connection with minor mineral granite belonging to the permit-holder. When we turn to Rule 35, we find application form prescribed for quarrying permit that is, Form J. Requirements of the application form are found in Clause (ii) of the application pro-forma. Condition No. 7 of the requirement deals with the question whether royalty on the material has been paid, if so, give details. Condition No. 13 requires that if the land is an occupied land, occupant's letter of consent has to be enclosed. Then follows Rule 36 which lays down that every application for a quarrying permit shall,

if the lands from which the minor mineral is to be extracted, are occupied or private lands; be accompanied by a letter from the occupant or the owner of such lands to the effect that he has no objection to the extraction of the mineral by the applicant. This means that the applicant would not be the owner of the minor mineral. As per Rule 37 Sub-rule (2) it is provided in case of breach of any of the conditions subject to which the permit is granted, the Competent Officer, may cancel the permit. On cancellation of the permit, the minor minerals lying on the land from which they are extracted shall become the property of the Government. Meaning thereby that once the permit itself is cancelled, the right of the permit holder to carry on mining operation qua permitted quantity of minor mineral would cease. All these Rules found in Chapter-IV, therefore, clearly indicate that the permit contemplated is in connection with the minerals belonging to the Government and not to the permit-holder. All the Rules found in Chapter-IV would clearly indicate that they will apply in cases where minor minerals belonging to the Government were to be quarried under quarrying permit. The heading of the Chapter cannot be said to be a surplusage or superfluous. It is not therefore, possible to agree with the contention of the learned Advocate General that Rule 34 can be applied even in cases where the owner of a minor mineral situated in his patta land wants to remove the same after himself quarrying it and has to apply for grant of quarrying permit for that purpose. Rule 34 itself provides that quarrying permit will be granted on payment of royalty specified in Schedule-1. That also shows that the mineral removed under the permit would be belonging to the Government otherwise, there would be no occasion to pay royalty. In this connection, the learned Advocate General submitted that royalty is a tax and for minor minerals also there is a provision to levy royalty, for which Section 15 Sub-section (3) of the Mines and Minerals (Regulation and Development) Act, 1957 was pressed in service. All that Sub-section (3) of Section 15 of the Act states is that the holder of a mining lease or any other mineral concession granted under any Rule made under Sub-section (1) shall pay royalty in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the Rules framed by the State Government in respect of minor minerals. On the very language of Section 15(3) of the Act, it becomes obvious that holder of the mining lease or other mineral

concession will be liable to pay royalty only in connection with those minerals which would belong to the Government from whom he takes lease and even sub-lessees are contemplated to bear the burden of royalty. In this connection, learned Advocate General referred to a Constitution Bench Decision of the Supreme Court in THE INDIA CEMENT LTD. ETC. ETC v. STATE OF TAMIL NADU ETC., which held that royalty on mineral rights is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature because Section 9 of the Central Act covers the field and the State Legislature is denuded of its competence under Entry 23 of List II of Schedule 7 of Constitution. It has to be noted that this Judgment is on a different question viz., as to whether it is within the legislative competence of State Legislature to enact a law imposing cess on royalty. We are concerned with the question whether in the context of Chapter IV of the Minor Minerals Concession Rules, liability to pay royalty would cover cases where a mineral permit granted under Chapter IV is to be utilised, if at all by owners of the minor mineral themselves. For that purpose, the context in which the liability to pay royalty has been provided clearly shows that the permit holder while removing the mineral belonging to the State Government has to pay royalty at the prescribed rates. It is, therefore, not possible to agree with the contention of the learned Advocate General that Rule 34 of the Minor Minerals Concession Rules will apply to a case where pattadar of a land situated in Ex-Mysore State territory, now comprised in Karnataka State, desires to himself quarry sub-soil minor mineral granite belonging to him and situated in his patta land. Consequently, it must be held, agreeing with Mr. Justice Urs's view that for such an operation, there is no regulatory provision found in the Karnataka Minor Mineral Concession Rules, 1969. As a result of the aforesaid discussion, it must be held that the view taken by Mr. Justice Urs and as confirmed by a Division Bench of this Court and as against which Decision, the Supreme Court refused to grant Special Leave is correct and proper and is neither rendered per incuriam nor is it otherwise erroneous or liable to be over-ruled. Our answer to Point No. 2 is, therefore, in the negative.

POINT NO.3:

28. So far as this Point is concerned, we may have a look at the reason which appealed to the learned Single Judge, Sri S.G. Dolddakale Gowda, J. in Nanjanayaka and Anr. v. State of Karnataka. The learned Judge has held that pattadars in the erstwhile State of Mysore and in Kollegal Taluk which has become part of Mysore District on reorganisation do not have absolute right to win minor minerals. Their right to excavate minor minerals can only be in accordance with the provisions of the Act and the Rules. Hence, they cannot claim right to quarry black or pink granite in their land as such quarrying by private persons is prohibited under the Rules. In this connection, it cannot be said by relying on the proviso to Section 38 of the Mysore Land Revenue Code, which exempted lime stone, granite and such other ordinary minerals as the State Government may notify from time to time and Madras Board Standing Order, that their vested right to quarry these minor minerals remain unimpaired. As soon as the legislative field was covered by enacting an Act, i.e., Mines and Minerals Act, 1957 under Entry 54 of List I, there remained no power with the State either to exempt or to continue exemption. The view of the learned Single Judge is that once the Central Act got enacted the entire field was covered and the State Government lost legislative competence to enact in connection with regulation of rights of the occupants on the one hand and the State on the other, and therefore, after 1957, Mysore Land Revenue Code of 1888 got effaced and similarly Land Revenue Act, 1964 also became totally incompetent so far as they enacted on the topic of minor minerals in the State of Karnataka. It is interesting to note that even the learned Advocate General appearing for the State of Karnataka did not subscribe to this view and submitted that enactment of the Central Act did not denude the Karnataka State Legislature of power to enact law pertaining to the regulation of the rights of pattadars in minor minerals in their lands vis-a-vis the rights of the State of Karnataka over these minerals. The learned Advocates for the original petitioners also contended on the same lines. In our view, the said stand taken by the learned Advocate General as well as the learned Counsel for the original Writ petitioners is well justified. In fact, this question is no longer resintegra as in the light of the very same Central Act, the Supreme Court had an occasion to consider whether the State would still retain power to regulate the ownership of minerals and whether Entry 23 of the State List got totally circumscribed on account of the enactment of

the Central Act by the Parliament and whether that affected the operation of other relevant Entries like Entry 18 in the State List and Entry 42 in the concurrent list. In the case of *STATE OF HARYANA AND ANR. v. CHANAN MAL ETC.*, : [1976]3SCR688 , the Supreme Court had an occasion to consider whether the Haryana State Legislature had legislative competence to enact Haryana Minerals (Vesting of Rights) Act, 1973 despite the Central Act, namely, the Mines and Minerals (Regulation and Development) Act, 1957 holding the field. Negating the contention that the State had lost legislative competence on account of the Central Act, the Supreme Court speaking through Mr. Justice M.H. Beg, (as he then was) observed as follows:-

'The provisions of the Central Act (i.e. the Mines and Minerals (Regulation & Development) Act, show that, subject to the overall supervision of the Central Government, the State Government has a sphere of its own powers and can take legally specified actions under the Central Act and rules made thereunder. Thus the whole field of control and regulation under the provisions of the Central Act cannot be said to be reserved for the Central Government.'

'It cannot be said that the provisions of the Central Act would be really unworkable by mere change of ownership of land in which mineral deposits are found. Courts have to judge the character of the Haryana Act by the substance and effect of its provisions and not merely by the purpose given in the statement of reasons and objects behind it. The object and effect of the Haryana Act was to acquire proprietary rights to mineral deposits in 'land'. Its provisions, however, do not mention leasehold or licensee rights. Obviously, this is so because these rights are governed by the Central Act.'

'In view of Section 16(1)(b) of the Central Act as it now stand after amendment in 1972, Parliament, itself contemplated State legislation for vesting of lands containing mineral deposits in the State Government. Parliament did not intend to trench upon powers of State Legislatures under Entry 18 of List II, read with Entry 42 of List III. Again in view of Section 17 of the Central Act, there was no intention to interfere with vesting of lands in the States by the provisions of the Central Act.'

In view of this settled legal position, therefore, it becomes clear that the contrary view taken by the learned Single Judge S.G. Doddakalegowda, J., cannot be sustained and has to be treated to be impliedly over-ruled. Once that happens, it must be held that the final conclusion to which Mr. Justice Doddakalegowda, reached that because the Mysore Land Revenue Code, 1888 and the [Karnataka Land Revenue Act, 1964](#) became inoperative and otiose, the pattadars in erstwhile State of Mysore and Kollegal taluk did not have any ownership right to win minor minerals cannot be sustained and must be held to be erroneous. The third Point, therefore, will have to be answered in the negative.

POINT NO.4:

29. This takes us to the consideration of the Karnataka Ordinance 2/93 and the Karnataka Act 20/93 as amending Section 70 of the [Karnataka Land Revenue Act, 1964](#) with retrospective effect. As the Karnataka Ordinance has been replaced by the Karnataka Act 20/93 which holds the field, it will be apposite to refer to the relevant provisions of Karnataka Act, themselves. By Section 2 of the Amendment Act, Section 70 of the Karnataka Land Revenue Act 1964 is sought to be amended as already seen earlier. Consequently, the amended provisions of Section 70 of the Act now reads as under:

'70. Right to mines and mineral products to vest in Government: Notwithstanding anything contained in any law in force before the commencement of this Act or under the terms of any grant made or of any other instrument of transfer executed, by or on behalf of the Government for the time being, the right to mines, minerals and mineral products, shall vest absolutely in the State Government and the State Government shall, subject to the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act No. 67 of 1957), have all the powers necessary for the proper enjoyment or disposal of such rights.'

As noted earlier, this amended provision is deemed to have been always substituted in Section 70 of the parent Act. Net effect of this amendment is that whatever may be the provision that expressly provides in a contrary manner regarding vesting of minor mineral in any one under any law in force before the commencement of [Karnataka Land Revenue Act, 1964](#) or under any terms of a

grant or other instrument, despite such provision, the State of Karnataka will be the absolute owner of mines and minerals which would obviously include minor mineral like granite. It is pertinent to note that there is no provision like Proviso (1) to Section 38 of the Mysore Land Revenue Code, 1888 in Section 70 of the Karnataka Land Revenue Act. We have already seen earlier that because of the then existing saving clause in Section 70 of the [Karnataka Land Revenue Act, 1964](#) read with the earlier existing Section 38 of the Mysore Land Revenue Code, 1888, the pattadars holding land in Ex-Mysore State territory which were comprised in Karnataka State had full ownership rights over the sub-soil minor minerals like the granite found in their lands. By the impugned amendment to Section 70 of the [Karnataka Land Revenue Act, 1964](#), brought about with retrospective effect, the saving clause from the very inception is now substituted by non obstante clause meaning thereby, that whatever mineral ownership rights which a pattadar earlier held in the sub-soil minor mineral like the granite in his land the said right would stand divested and would be treated to have been vested in the State of Karnataka from the coming into force of the Karnataka Act No. 12/1964 from the very beginning of its enactment. It must, therefore, be held that by the impugned provision amending Section 70, ownership rights of the pattadars in minor mineral like granite have been completely done away with and that too, with retrospective effect from 1964, that is the year in which [Karnataka Land Revenue Act, 1964](#) come into force. In the light of the aforesaid thrust of the impugned provision the question of vires of this provision will have to be considered.

30. Mr. Shanti Bhushan, the learned Senior Counsel appearing for some of the Writ petitioners and whose submissions have been adopted by the other learned Counsel appearing for some of the petitioners, raised for our consideration the following contentions on the question of vires of this provision:

(i) That the impugned ordinance and the Act are ultra vires the powers of the Karnataka State Legislature and beyond its legislative competence.

(ii) In any case, these impugned provisions are void as per Article 254(1) of the [Constitution of India](#) as they are repugnant to the Central Act, namely, the Land

Acquisition Act, which is holding the field, so far as acquisition of private property is concerned and as the impugned provisions were not reserved for President's assent, they are not saved by Article 254(2).

(iii) The impugned provisions are violative of Article 14 inasmuch as they seek to deprive the ownership of sub-soil minor mineral granite so far as pattadars are concerned without providing any compensation while for acquisition of all other types of properties, there is provision under the Central Act, namely, the Land Acquisition Act for giving not only compensation at market value, but also a solatium of 30%. Thus only patta-holders owners of minor minerals have been given hostile treatment by the State and therefore, the provisions are totally unreasonable and hit by Article 14 of the [Constitution of India](#). That even if it is assumed that this is an estate acquisition, covered by Article 31A, as they are not reserved for President's assent, Article 31A would not save these provisions.

(iv) The impugned provisions are also hit by the second proviso to Article 31A which is a substantive provision, as by the impugned provisions, acquisition of land below, the ceiling limit which was in personal cultivation of the occupant was sought to be effected. Acquisition of sub-soil mineral rights is also acquisition of land in which they were situated and such an acquisition is violative of second Proviso to Article 31A.

(v) The impugned provisions are also repugnant to the Mines and Minerals (Regulation and Development) Act, 1957, which is a Central Act, inasmuch as Section 4 Sub-section (3) of the Central Act read with Section 17(i) & 17A(i) thereof gives power to the State Government and Central Government respectively to exploit the minerals belonging to private parties on payment of royalty to the private owners. While the impugned provisions seek to totally deprive the ownership rights of such occupants over their minor minerals without paying them any compensation or royalty and thus the provisions of the impugned Act are repugnant to the Central Act, 1957 also.

(vi) In any case, retrospective effect sought to be given to the impugned Section 70 of the [Karnataka Land Revenue Act, 1964](#) is totally ultra vires as it in substance, seeks to retrospectively effect from 1964 the deletion of Article 31 of

the [Constitution of India](#), which was deleted by the 44th Constitutional Amendment with effect only from 20.6.1979. Private property could not be acquired without compensation with effect from 1964 as the impugned provisions have sought to do. Therefore, the impugned provisions as enacted are totally still born.

(vii) That it is not possible to effect severance of the provision regarding retrospective effect from the rest of the impugned provisions as the intention of the Legislature while amending Section 70 retrospectively was to enact a provision which necessarily took-away the ownership rights of property in every sub-soil minor mineral which vested in the occupants pattadars prior to 1964 under the Mysore Land Revenue Code, 1888. That if Karnataka Legislature wanted to prospectively take away those rights, then it would have enacted a separate law, but that was not done. Consequently, the entire provision must be declared to be null and void. It will not be possible for the Court to restrict the retrospective effect of the impugned provision from 20.6.1979 on which date, Article 31 was deleted from the Constitution by 44th Amendment as that would amount to Constitutional amendment on the part of the Court.

(viii) It was lastly contended that in any view of the matter, the impugned ordinance and the impugned Act amending Section 70 of the [Karnataka Land Revenue Act, 1964](#) cannot adversely affect the operation of Writs of Mandamus which were already issued by the High Court in earlier proceedings.

The learned Advocate General appearing for the State of Karnataka has opposed these contentions and has submitted that there is nothing wrong with the impugned provisions.

31. Having given our anxious consideration to the various contentions raised on the question of vires of the impugned provisions, we have reached a conclusion that these impugned provisions, are clearly hit by Article 254(1) of the Constitution and are therefore void. Hence, we have not thought it fit to consider the other submissions of Mr. Shanti Bhushan, the learned Senior Counsel, for getting these provisions declared ultra vires. However, the question of legislative competence, which goes to the root of the matter, is required to be considered by us. In short, we will only consider the first two grounds canvassed by Mr. Shanti Bhushan and

as adopted by other learned Counsel for attacking these impugned provisions.

LEGISLATIVE COMPETENCE:

32. So far as this aspect is concerned, as discussed by us while considering Point for Determination No. 3 itself, we have seen that such provisions cannot be beyond the legislative competence of the State legislature. We have already referred in detail to the Decision of the Supreme Court in : [1976]3SCR688 in this connection. In fact Mr. Shanti Bhushan, learned Senior Counsel for some of the petitioners, clearly stated that in view of the Decision of the Supreme Court in : [1976]3SCR688 question of legislative competence has to be decided against the petitioners. But his contention was that the Decision of the four learned Judges Bench of the Supreme Court, which decided the case reported in : [1976]3SCR688 , had not properly appreciated the Decision of the Constitutional Bench of the Supreme Court in the case of BAIJNATH KEDIA ETC., v. THE STATE OF BIHAR AND ORS., : [1970]2SCR100 . It was submitted that the Constitutional Bench of the Supreme Court in : [1970]2SCR100 supra had already held in paragraphs 18 & 20 of the Report that the Central Act, namely the Mines and Minerals (Regulation and Development) Act 1957, had occupied the field of conservation and development of minerals and therefore, the State Legislature would have no jurisdiction or competence to enact any law touching upon this field and hence the State legislation would be beyond the scope of Entry 23 of the State List, that this was an acquisition of minerals for regulation and development of minerals and therefore, State cannot enact law which in pith and substance was for mineral development and regulation. We are afraid we cannot countenance this contention as four learned Judges Bench which decided the case in State of Haryana and Anr. v. Chanan Mal etc had in terms referred to Constitution Bench Decision of the Supreme Court in : [1970]2SCR100 supra. In para 25 of the Report, their Lordships have taken a view that despite Central Act holding the field, the State Legislature was not deprived of Legislative Competence to enact any law regarding the ownership of minor minerals under Entry 18 of the State List read with Entry 42 of the Concurrent List. That is the law declared by the Supreme Court which is binding to this Court under Article 141. Mr. Datar learned Senior Counsel for some of the Writ petitioners in this connection had a very ingenious

argument to offer. He stated that in the Decision reported in : [1976]3SCR688 , supra, the Bench of four learned Judges, in paragraphs 21 & 23 of the said Judgment at page 1661, had wrongly assumed that there were two separate cases with which they were dealing while in fact, in para 20 of the Report, their Lordships have referred to the Decision in the case of STATE OF WEST BENGAL v. UNION OF INDIA, : [1964]1SCR371 only. However, in paragraph 22 at page 1250, the Constitutional Bench, which decided the case reported in : [1964]1SCR371 had listed contention No. 7 while at para 68 at page 1265 of the report, answer was given against the said contention. Yet, the Bench of four learned Judges, which decided the case in State of Haryana v. Chanan Mai , assumed that answer to contention No. 7 was given in favour of the contesting party. It is difficult for us to appreciate this contention. Once the Supreme Court in State of Haryana v. Chanan Mal, has declared the law under Article 141 of the [Constitution of India](#) on the Legislative competence of State Legislature in enacting the legislation regarding regulating and vesting ownership of mineral rights and once it is held that such a statutory provision enacted by the State would be covered by Entry 18 of the State List read with Entry 42 of the Concurrent List, it is not open to this Court to go into the question whether that declaration of the law by the Supreme Court was in any way affected by any alleged error in the said Judgment. Hence save and except noticing this contention, we cannot deal with it. It must, therefore, be held that the first ground of attack of Mr. Shanti Bhushan, learned Senior Counsel for petitioners for attacking the Legislative Competence of Karnataka State Legislature, which enacted the impugned provision, is devoid of any substance and must be rejected.

33. That takes us to the second ground of attack raised by Mr. Shanti Bhushan, learned Senior Counsel. He submitted that if once it is held that under Mysore Land Revenue Code, 1888 by virtue of Section 38 First Proviso, ownership of minor minerals like granite vested in the pattadars occupying the land in Ex-Mysore State and once it is held that even occupants of Ryotwary patta lands in Ex-Madras State territory which were later on comprised in Karnataka State had partial ownership in the sub-soil minor minerals in their lands, these ownership rights could not be destroyed by the impugned provision by amending Section 70 of the Karnataka Land Revenue Act, retrospectively from 1964 without providing

for any compensation and that the said provisions would be repugnant to the Central Act, Land Acquisition Act which is the law in force. Learned Advocate General appearing for the State of Karnataka, on the other hand, submitted that by the impugned provisions, what was implicit was made explicit and that it was merely an explanatory provision but was not confiscatory in nature. It is not possible to agree with this contention of the learned Advocate General. While discussing Point No. 2, we have already taken the view that the occupants of patta lands in Ex-Mysore State territory later comprised in State of Karnataka had full ownership rights over minor mineral like granite situated in their lands while occupants of patta lands in Ex-Madras State territory later comprised in Karnataka State had partial ownership rights over the minor minerals found in their lands. These proprietary rights were certainly tried to be done away with by the impugned provisions and that too, retrospectively from 1964 when Article 31 was very much in the Constitution. These provisions, therefore, were clearly repugnant to the Central Act i.e., Land Acquisition Act.

34. It is difficult to appreciate the contention that these provisions can be said to be only explanatory in nature. On the contrary, they are remedial in nature. In this connection, it will be profitable to refer to the Statement of Objects and Reasons appended to the Bill which sought to introduce the amending Act in the Assembly. It reads as under:-

'It was considered necessary to amend Section 70 of the [Karnataka Land Revenue Act, 1964](#) in order to prevent illegal quarrying, mining of granites and other minor minerals carried on in the patta or hiduvati lands in several parts of the State and to vest the rights over the minor minerals in the Patta lands, with the State Government.

Under the saving provision in Section 70 of the [Karnataka Land Revenue Act, 1964](#) the Pattaholders were continuing mining operations in the Patta, hiduvali lands in certain parts of the State, even without payment of the royalty to the State Government.

In order to regulate the valuable granite and other minor minerals and to maintain ecological balance it was considered necessary to amend Section 70 of the

[Karnataka Land Revenue Act, 1964](#) suitably.'

This clearly shows that the Legislature wanted to introduce the Bill by which ownership rights of minor minerals like granite which were vesting in the pattadars had to be divested and were sought to be vested in the State and with that end in view, the amending provision was sought to be enacted. Once that is so, inasmuch as it sought to divest these minor mineral ownership rights from the pattadar and vest in the State, it was a clear act of acquisition. Once that conclusion is reached, result is obvious. It directly conflicts with and becomes repugnant to the Central Act, the Land Acquisition Act which is the law in force for the entire Nation. It is pertinent to note the acquisition of property is in the Concurrent List being Item No. 42 in List III. When on this topic in the Concurrent List there is already Central law in force and if State law is enacted on the topic of acquisition of a given type of property and if it is sought to be acquired without giving any compensation, it will be clearly repugnant to the Central Act regarding acquisition of private properties which guarantees payment of compensation at market value and also 30% solatium. That would directly attract Article 254 Sub-article (1) which states that if any provision of a law made by the Legislature of a State is repugnant to any provision of law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall to the extent of the repugnancy, be void. In that view of the matter, the impugned provisions will have to be declared to be void as per Article 254(1) of the [Constitution of India](#). It is also to be noted that the extent of repugnancy is complete and not partial as the impugned provision of Section 70 of the Karnataka Land Revenue Act wholly deals with the subject of acquisition of minor mineral rights in granite which were till then vesting in the pattadars. It may be noted that sub-Article (2) of Article 254 cannot save this law as it was never reserved for consideration of the President and has not received his assent. The learned Advocate General has no quarrel on this factual aspect. His only effort was to show that this was not an Act which had anything to do with Entry 42 of the Concurrent List as it had nothing to do with

acquisition. We cannot agree as discussed earlier. It is now well settled that even restriction on any existing proprietary right of any type would itself amount to acquisition. In this connection, it will be profitable to refer to one Decision of the Supreme Court, to which our attention was invited by Mr. Achar appearing for some of the petitioners. In the case of DEEPCHAND AND ORS. v. STATE OF UTTAR PRADESH AND ORS., : AIR 1959 SC648 , it is clearly held by the Supreme Court that if right to use property is impaired, it amounts to acquisition of such right by the State. It cannot be seriously urged that by the amendment Act, right of the holder of minor mineral granite namely the occupant is now tried to be impaired or done away with. There is, therefore, no escape from the conclusion that the impugned provisions of the Ordinance and the Act are void in the light of Article 254(1) of the [Constitution of India](#) and are not saved by Article 254(2) thereof. They would also be void in the light of Article 31 of the [Constitution of India](#) as existing in 1964, as the amending provision is sought to be brought into force retrospectively from 1964. Second ground of attack raised by Mr. Shanti Bhushan against the impugned provisions of the Ordinance and the Act is found to be having substance and this ground must be upheld. Under these circumstances, as noted earlier, it is unnecessary for us to undertake the exercise of considering the other grounds of attack raised by Mr. Shanthi Bhushan, learned Senior Counsel, for challenging the impugned provisions. As the impugned provisions are found to be null and void the question of their effect, if any, on the earlier Mandamus issued by this Court would not survive. Therefore, we have not thought it fit to go into the question and the contention raised by the learned Advocate General on that aspect namely, that the earlier Mandamus were declaratory in nature and if the legal frame-work under which they were issued, has undergone a change, the future effect of such Mandamus would not survive. We have, therefore, left that question open. As a result of the aforesaid discussion, Point No. 4 will have to be answered in the affirmative by holding that the impugned ordinance and the impugned amending Act are void as per Article 254(1) of the [Constitution of India](#) and are not saved by Sub-article (2) thereof.

POINT NO.5:

35. This Point will not survive in view of our answer to Point No. 4. It is answered accordingly.

POINT NO.6:

36. In view of our discussion on Point Nos. 2 & 3, this Point will have to be answered by holding that holders of patta lands in Ex-Madras State areas which later formed part of Karnataka State, have partial ownership rights in granite found in the sub-soil of their lands occupied by them. The State has also a share in these minerals and hence the holders of these patta lands will have to follow the provisions of Chapter-V of the Karnataka Minor Minerals Concession Rules, 1969, even if they themselves want to exploit the granite found in the sub-soil of their lands. They have also to follow the provisions of Rule 62A of the said rules at the stage at which they seek to transport granite quarried by them from their own lands. This is on the assumption that Rule 62A validly applies to such exercise of transporting the concerned quarried granite. We also make it clear that we are not called upon to examine the legality of Rule 62A of the Rules as enacted and therefore, we have not expressed any opinion on this aspect. All that we say is that when the owner of a minor mineral granite which is covered by the sweep of Rule 62A is sought to be transported by its owner after quarrying it himself, then at the stage of transport of such minor mineral granite, he will have to follow the procedure of Rule 62A as existing on the statute book and whose legality is not in challenge before us.

POINT NO.7:

37. The first part of this Point will have to be answered in the affirmative in the light of our answer to Point Nos.2 & 3. We have already held agreeing with Mr. Justice Urs that for the purpose of such quarrying of minor minerals by the owners themselves, no regulatory procedure of the Karnataka Minor Minerals Concession Rules, 1969 shall be applicable. However, at the stage of transporting of such quarried granite, Rule 62A of the Rules will have to be complied with insofar as the said Rule applies to the said exercise. This will also be subject to our observation that the legality of the said Rule was not challenged before us and we have expressed no opinion thereon.

POINT NO.8:

38. So far as this Point is concerned, it was fairly stated by the learned Advocates for the petitioners that so far as the holders of patta lands granted under Government Grant Rules are concerned, sub-soil rights over minor mineral like granite found in these granted lands were reserved by the State which effected the grant at the relevant time. That is the precise reason why Mr. Justice Urs dismissed the Writ Petitions filed by such grantees of patta lands who claim to be the owners of the sub-soil mineral found in their lands. We find that the aforesaid conclusion to which Mr. Justice Urs reached is quite justified and cannot be found fault with. It must, therefore, be held that the holders of patta lands granted under Government Grant Rules have no ownership rights in the granite found in the sub-soil of their lands. This is of course on the basis that the holders claim such right in the sub-soil granite on the basis of the pattas granted to them under the Government Grant Rules and not independently thereof. Point No. 8 is, therefore, answered in the negative.

POINT NO.9:

39. So far as this Point is concerned, a mere look at Rule 3A shows that it will not cover a case where the owner of sub-soil minor mineral granite wants to exploit it himself by quarrying the same. It is clearly stated in Rule 3A that it deals with lease of quarries in respect of black and pink granite etc. Sub-rule (1) thereof reads as under:-

3A(1). Notwithstanding anything to the contrary contained in these Rules, no lease for quarrying black, pink, red, green, yellow or multicolored granite shall be granted or renewed:

(i) in the case of land belonging to Government, except in favour of persons who require them for the existing granite cutting and polishing industry situated in the State of Karnataka or who have a distinct industrial programme for utilisation of the said minor mineral in a cutting and polishing unit within the State of Karnataka.

(ii) in the case of land belonging to private persons, except in favour of persons who require them for their existing granite cutting and polishing industry situated in the State of Karnataka or who intend to set up industry for cutting raw granite blocks or who have distinct industrial programme for utilisation of the said minor mineral in a cutting and polishing unit within the State of Karnataka.

It becomes, therefore obvious that if a pattadar who is the owner of the granite does not want to create lease for quarrying this granite and himself wants to exploit the same by quarrying it, he is not required to follow the gamut of Rule 3A of the Karnataka Minor Minerals Concession Rules. In fact this aspect was fairly conceded by the learned Advocate General. Even otherwise, on the express language of Rule 3A, no other view is possible. We have a Judgment of learned Single Judge of this Court Mr. Justice Swami (as he then was) in WP.637/85 decided on 6.6.1985, Veeramadhu v. Deputy Commissioner who has taken this very view. For coming to that conclusion Mr. Justice Swami heavily relied upon the Decision of the Supreme Court in State of Tamilnadu v. Hind Stone etc., supra and held that Rule 8C of Tamil Nadu Minor Mineral Concession Rules, 1959 which was interpreted by the Supreme Court is in pari materia with Rule 3A of the Karnataka Minor Minerals Concession Rules, 1959, and hence it cannot apply to cases where the owners of minor minerals want to exploit the mineral without entering into any lease transaction qua this mineral. This view of Mr. Justice Swami was confirmed by the Division Bench of this court consisting of Mr. Premchand Jain, C.J. & Justice Shivashankar Bhat, J., in Writ Appeal No. 260/86 and others, on 2.11.1987, Deputy Commissioner v. Veeramadhu. The aforesaid view of Mr. Justice Swami, J., is well sustained on the language of Rule 3A and cannot be found fault with from any angle. It was therefore, rightly confirmed by the Division Bench in the aforesaid Decision. Point No. 9, therefore, will have to be answered in the negative.

POINT NO. 10

40. Now, we have arrived at a stage where we will have to take final stock of the situation in the light of our answers to the nine main Points which had arisen for our consideration. So far as group of matters listed in List-I are concerned, the

following Order will have to be passed:

1. 1) In the light of the reliefs granted to the original Writ petitioners and subject to the riders, attached to the declarations issued in their favour, as indicated hereinafter, Writ Appeals filed by the State of Karnataka against the Decision of Mr. Justice Rajendra Babu, following the Decision of Mr. Justice Urs are dismissed.

2) Writ Appeals filed by the original Writ petitioners against Judgment of Mr. Justice Doddakalegowda will stand allowed similarly in the light of the reliefs granted to the original Writ petitioners and subject to the riders, attached to the declarations issued in their favour, as indicated hereinafter.

3) Writ Petitions filed by occupants of patta land in Ex-Mysore State territory now situated in Karnataka State and who are not holders of lands granted under Government Grant Rules shall stand allowed to the extent of reliefs granted to them subject to the rider attached to declarations issued in their favour as indicated hereinafter.

4) Writ Petitions filed by the occupants of Ryotwary patta lands in Old Madras area now comprised in Karnataka State will also stand allowed to the extent of the reliefs granted to them subject to the riders attached to declarations issued in their favour as indicated hereinafter.

5) In all these matters indicated in sub-Paras 1 to 4 the original petitioners will be entitled to the following declarations and consequential reliefs;

(a) The holders of patta lands situated in Ex-Mysore State territory now comprised in Karnataka State and who are not holders of lands granted under Government Grant Rules are the full owners of sub-soil minor mineral granite situated in their patta lands and they are entitled to quarrying operations by themselves qua these minor mineral granite without any restrictions from the State authorities under the Minor Mineral Concession Rules, 1969 subject to the rider that they have to follow Rule 62A of the aforesaid Rules at the stage of transporting their quarried granite in so far as the said Rule would apply to such material sought to be transported.

(b) Holders of patta lands in Ex-Madras State territory now situated in Karnataka State and who are not holders of lands granted under Government Grant Rules, are declared to be having a share in sub-soil minor mineral granite situated in their patta lands and if holders of these lands want to quarry minor mineral granite themselves they have to follow the procedure laid-down by Chapter-V of the Karnataka Minor Minerals Concession Rules, 1969 and the State Authorities shall not interfere with their aforesaid rights if all the requirements of Chapter-V are fulfilled by them. This is however, subject to the rider that they have to follow Rule 62A of the aforesaid Rules at the stage of transporting their quarried granite in so far as the said Rule would apply to such material sought to be transported.

(C) It is further declared that when the occupants of the aforesaid lands seek to quarry sub-soil minor mineral granite from their land without creating any lease for the same they are not required to follow the provisions of Rule 3A of the Karnataka Minor Minerals Concession Rules, 1969. Still however, at the stage of removal of the quarried granite they will have to follow the procedure of Rule 62A of the said Rules to the extent it is applicable to the concerned quarried material.

(d) The State Authorities are restrained from interfering with the exercise of the aforesaid rights by the concerned petitioners.

II. The Writ Petitions filed by holders of lands under grants effected in their favour under the Government Land Grant Rules, will stand dismissed.

III. So far as group of matters listed in List No. 11 are concerned, the following order is passed:

All these Writ Petitions, in so far they have challenged vires of the Karnataka Ordinance 2/93 and the Karnataka Act No. 20/93 as amending Section 70 of the Karnataka Land Revenue Act 1964, will stand allowed by holding that the aforesaid Ordinance and the Act are void under Article 254(1) of the [Constitution of India](#) and they are struck down accordingly. IV. The concerned petitioners, whose Petitions have been allowed, will be entitled to all consequential reliefs flowing from the declarations made hereinabove in their favour, in accordance with law.

V. In all these matters, there will be no order as to costs.

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