of which this reference has arisen the sale in question was only voidable.

(20) For the foregoing reasons, I would answer the question referred to this Bench in the affirmative.

NARULA, J.—I concur in the answer proposed by my learned brother Sarkaria, J., as also in the entire reasoning on which it is based.

S. C. MITAL, J.—I entirely agree with my learned brother Sarkaria, J.

K.S.K.

FULL BENCH

Before D. K. Mahajan, Prem Chand Pandit and S. S. Sandhawalia, JJ.

M/S. AMAR SINGH-MODI LAL,—*Petitioner.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ No. 2004 of 1970.

March 25, 1971

Mines and Minerals (Regulation and Development) Act (LXVII of 1957)—Sections 3(e), 14 and 15—Constitution of India (1950)—Seventh Schedule, List 1, Entry 54—Section 3(e)—Whether ultra vires Entry 54—Declaration of "brick earth" as minor mineral by notification under the section—Whether unconstitutional and suffers from excessive delegation of power—Sections 14 and 15—State Government—Whether precluded from levying royalty on "minor minerals"—Minor Minerals Concession Rules (1949)—Rules 20, 28, 37 and 44—Persons not holding prospecting licence or mining lease from the State Government—Whether can be charged royalty—Constitution of India (1950)—Article 226—Writ—Whether can be issued prima facie, subject to the decision of a Civil Court.

Held, (per majority Sandhawalia and Pandit, JJ., Mahajan, J., Contra.) that no taint of unconstitutionality attaches to section 3(e) of Mines and

Minerals (Regulation and Development) Act, 1957, and it does not extend beyond the field authorised by Entry 54 of List 1, Seventh Schedule of the Constitution. (Para 31)

Held, that the word "mineral" defies definition and is susceptible of expansion or limitation. Judicial precedent has, however, invariably accepted a wider connotation of the word. Parliament, therefore, was entitled to and in fact has used the word in its larger signification. This is evident on a cursory reference to the preceding and analogous statutes. In enacting section 3(e) of the Act, Parliament was doing no more than continuing the earlier legislation on the subject with the accepted meaning attached thereto whereby "minor mineral" already included the substances mentioned in the sub-section. Moreover, after the enactment of the Act, by virtue of section 29, the existing rules that is Minor Minerals Concession Rules, 1964, were continued and according to these rules, brick-earth was specifically within the ambit of minor mineral and continued to be so when the notification was issued declaring brick-earth as minor mineral. The notification merely adapted and continued what was already within the ambit of "minor minerals" by virtue of rule 3(ii) of the Rules. A reference to the preamble and the detailed provisions provided in thirty-three sections and schedule of the Act leave no manner of doubt that the legislation has in terms laid down the principle, the policy, the ambit and the scope of the statute. Mere declaration of a substance as a "minor mineral" as envisaged by section 3(e) of the Act does not involve principle or such a high legislative policy that the same cannot be delegated by Parliament to the Central Government. The authorisation by the Parliament to the Central Government to declare minor minerals under the Act is not bad because of excessive delegation of power. Hence section 3(e) of the Act and the notification issued thereunder declaring brick-earth as "minor mineral" does not suffer from any vice of excessive delegation.

(Paras 48 and 54)

Held, that perusal of sections 14 and 15 of the Act makes clear the scheme of the Act which provides that as regards "minerals", the prospecting licenses and mining leases thereto would be governed by the provisions of the Act and the Rules framed by the Central Government thereunder. As regards "minor minerals", the widest power for framing rules in regard thereto have been entrusted to the State Government and this obviously includes the levy of royalty in respect of the prospecting licenses and mining leases granted for exploitation. (Para 52)

Held, that under Rule 20 of Minor Mineral Concession Rules, 1949, royalty can be levied only in connection with a mining lease. Rules 28, 37 and 44 regulate the grant or contract by auction or tender and provide for the conditions of mining lease and the grant of short term permit. These provisions clearly show that unless there is a subsisting contract between the State Government and the persons concerned and unless they hold prospecting licence or mining lease, they cannot be charged royalty by the State Government. (Para 53)

Held, that the extraordinary jurisdiction of the High Court is normally exercised where the basic facts are not in dispute. Where a matter which involves an intricate enquiry into disputed question of facts resolvable only by production of evidence and close perusal thereof, in such a matter the writ Court may stay its hands and relegate the parties to their ordinary legal remedies. Where a dispute on facts arises, it must be determined before a writ it issued. Hence a writ cannot be issued *prima facie*, without first determining the facts and subject to the subsequent decision on merits of civil Courts. (Para 57)

Held, (per Mahajan, J. Contra.) that bricks are made from soil which has a larger proportion of clay. The composition of soil varies from place to place. It is an aggregate of minerals but not a "mineral" in itself. (Para 61)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari, or any other appropriate writ order or direction be issued quashing the impugned order dated 25th October, 1969 issued by respondent No 2,—vide Annexure 'A' and this Hon'ble Court be pleased to declare section 18 ultra vires the Constitution and rules 20, 21, 37 and 53 as ultra vires.

BHAL SINGH MALIK, ADVOCATE AND HIRA LAL SIBAL, SENIOR ADVOCATE, for the petitioners.

J. N. KAUSHAL, ADVOCATE-GENERAL (HARYANA) WITH MR. ASHOK BHAN, ADVOCATE, for the respondents.

JUDGMENT

SANDHAWALIA, J.—Whether "brick-earth" has validly been declared to be a minor mineral by virtue of the Central Government Notification No. G. S. R. 436, dated the 1st of June, 1958, issued under section 3(e) of the Mines and Minerals (Regulation and Development) Act, 1957, is the important and slightly intricate question which primarily calls for determination in these two connected Civil Writ Petitions Nos. 1840 and 2004 of 1970. Identical questions of law and fact arise in these petitions and the learned counsel for the parties are agreed that this judgment shall govern both of them.

(2) The broad outline of the facts is not in dispute. It would suffice to make a reference to the facts in Civil Writ No. 2004 of 1970 only to appreciate the primarily legal contentions which have been raised. The petitioner-firm of Messrs Amar Singh Modi Lal carries

on the business of the manufacture of bricks and is a licencee under the Punjab Control of Brick Supply Order 1956. It installed a brick-kiln on the land which it took on lease from the Gram Panchayat of village Chhapra Tehsil and District Ambala for production of bricks at the rate of 15,000 bricks per year. It is averred that the petitioner-firm is neither a mining lessee nor has entered into any agreement with the Government in that regard nor does it hold any short term permit under the Punjab Minor Minerals Concession Rules, 1964, (hereinafter referred to as the Rules). The District Industries Officer Ambala, however, issued a demand notice vide annexure 'A' demanding Rs. 4,152.86 Paise as royalty from the petitioner-firm on pain of issuing warrants of arrest and attachment in default of payment. This demand notice is impugned by way of writ petition and has been challenged as null and void and the constitutionality of the various provisions of the Mines and Mineral (Regulation and Development) Act, 1957, (hereinafter called as the Act) and the validity of the notifications and the rules framed thereunder have been assailed on a variety of grounds which would be notified in detail hereafter.

(3) In the return filed on behalf of the respondent State of Haryana, three preliminary objections have been first taken. It is stated that the Petition involves intricate questions of fact and is thus not a fit one for the exercise of the extra-ordinary writ jurisdiction. Further that the rights for the extraction of brick earth and clay in the disputed land belong to and vest in the Government and therefore the petitioner had no *locus standi* or a right to bring the writ petition. It is further averred that it has been found as a fact that the petitioner-firm has been charging royalty by issuing cash memos to the consumers for the sale of bricks and has kept the amount of royalty with itself which it was not authorised to do as royalty belongs to the Government.

(4) On merits the position taken up in reply is that the petitioner has unauthorisedly been extracting brick earth from the disputed land since 2nd May, 1964, where the minor mineral rights vest in the Government, without obtaining any short-term permit or lease as required by the Rules and this act is unlawful and illegal under rule 54 of the Rules. It is further averred that the demand notice for royalty due from the petitioner-firm was issued to him impressing upon him that in case of non-payment by a specific date, the same would be recovered as arrears of land revenue under the Rules and despite this

demand notice the petitioner-firm did not attend the office of respondent No. 2 when royalty for the brick earth was to be assessed. The contents of para 4 impugning the validity of the demand notice have been denied, and it has been expressly pleaded that brick earth has been validly declared a minor mineral by the Central Government in exercise of the powers conferred on them under section 3(e) and as regards the vesting of such minor minerals, it is stated that the relevant entries in the wajab-ul-arz (copy attached as annexure R. II) clearly show that all the mining rights in the said village vest and belong to the Government. It has been repeatedly reiterated that all the statutory provisions which have been assailed as unconstitutional and invalid are in fact valid and legal.

(5) These writ petitions were admitted to a hearing before a Division Bench and first came up before my learned brother Pandit J. and myself. However because of the importance and far reaching consequences of the point involved and its impact upon a large number of pending writ petitions on a similar point it was deemed fit that the matter be decided by a larger Bench. That is how these writ petitions are before us.

(6) Ere I consider the main point at issue between the parties I deem it best to clear the ground of a contention, which though in the beginning was in the fore-front of the argument on behalf of the petitioners, it subsequently was relegated entirely to the background and to insignificance. The relevant part of the impugned notification as published in the gazette read as under :—

> "G. S. R. 436.—In exercise of the powers conferred by clause (e) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957), the Central Government hereby declares the following minerals to be minor minerals, namely:—
>
> bolder, shingle, Chalcedony pebbles used for ball mill purposes only, limeshell, kankar and limestone used for lime burning, murrum brick-earth, fuller's earth, bentonite road metal, reh-matti, slate and shale when used for building material."

Taking advantage of the absence of a comma between the words "murrum" and "brick-earth", an argument was sought to be raised

that what the notification has declared to be a minor mineral is the peculiar substance called "murrum-earth" when the same was to be converted into bricks. It was argued with some persistence that ordinary brick-earth was not declared by the notification to be a minor mineral and hence was beyond its pale. It was submitted that "murrum" was a substance found entirely in parts of South-India and was non-existent in the Northern region and particularly in the area in which the petitioner-firms carried on the work of brick manufacture.

(7) A slight digression becomes necessary. In appreciating the above argument we found that the word "murrum" was obscure and was of uncertain origin. It did not find mention in many authoritative dictionaries including Webster. Its meaning was hence not clear. In some of the authoritative scientific works also no reference thereto was traceable and consequently we accepted the joint prayer of the learned counsel for the parties to examine expert evidence on this point. The hearing before the Bench had to be adjourned to give the parties adequate opportunity to summon and lead evidence. Accordingly Mr. Indu Mohan Aga, the Mining Adviser in the Department of Mines and Metals of the Government of India, Delhi, was examined on behalf of the respondents whilst A. G. Jhingran, Professor of Geology, Delhi University, gave evidence in support of the petitioner's case. During the course of the testimony of these witnesses, parties took the opportunity to examine them also regarding the precise meaning to be attributed to the word 'mineral'.

(8) Reverting back to the above argument of the petitioner it is evident that it turns wholly on the presence or the absence of a comma between the word "murrum" and "brick-earth". This fact, however, is not a matter which is to be viewed in isolation. Admittedly prior to the enactment of the Act of 1957 and the impugned notification issued thereunder the Mines and Minerals (Regulation and Development) Act of 1948 held the field. Under the said Act the Minor Mineral Concession Rules, 1949 were duly promulgated. Rule 3 (ii) of these Rules described "minor mineral" in the following terms:—

> "3(ii) 'minor mineral' means building stone, boulder, shingle, gravel (limeshell), kankar, and limestone used for lime burning, murrum, brick-earth, Fuller's earth. Bentonite, ordinary clay, ordinary sand, road metal, reh-matti, slate and shale when used for building material."

An examination of the relevant portion of the above shows that a comma existed between the word "murrum" and "brick-earth". A comparison of the notification G.S.R. 436 and the above-quoted rule 3(ii) would show that the latter notification merely adopted and substantially copied the above-said provision in the Rules without any significant change. It is of equal significance that the provisions of rule 3(ii) above-said of the Rules continued to be of validity till the time of its substitution by the impugned notification of 1958. There is, therefore, substance in the contention of the learned counsel for the respondents that the Legislature in issuing the latter notification was not making any policy decision nor making any substantial change in the prior provisions regarding minor minerals and the absence of the comma between the words "murrum" and "brick-earth", was in fact no more than a printer's devil. The omission was characterised as entirely accidental. That this was so is further evident from the fact that subsequently on discovering the error in 1969, a notification G.S.R. 901, dated the 22nd March, with reference to the impugned notification was issued in the following terms :—

"* * * *

In the said notification, for the words "murrum' brick-earth", the words "murrum, brick-earth" shall be substituted."

The obvious intention of the above notification was to rectify the earlier error of the absence of comma between the words "murrum" and "brick-earth".

(9) Counsel for the respondents further relied on the well-known rule of construction that punctuation and commas were not the integral part of the statute. Reference for this proposition was first made to *Lewis Pugh Evans Pugh* v. *Ashutosh Sen and others*, (1) wherein construing a statutory provision, the presence of a comma was entirely ignored. In *Aswani Kumar Ghose and another* v. *Arabinda Bose another*, (2) B. K. Mukerjea J. observed as follows in this context:—

"Punctuation is after all a minor element in the construction of a statute, and very little attention is paid to it by English

(1) A.I.R. 1929 P.C. 69.
(2) A.I.R. 1952 S.C. 369.

Courts, Cockburn C.J. said in *Stephenson* v. *Taylor* (2a) 'On the Parliament Roll there is no punctuation and we therefore are not bound by that in the printed copies'.

* * * *

I need not deny that punctuation may have its uses in some cases but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning of a text, (ibid)."

In *State* v. *Sat Ram Dass*, (3) Falshaw J. (as he then was) speaking for the Division Bench observed as follows:—

"I am, however, of the view that punctuation of a law, generally speaking, does not control or affect the intention of the legislature in its enactment."

No decision to the contrary was cited on behalf of the petitioners and in fact this legal position was not controverted on their behalf.

(10) In this very context it is equally instructive to note the clear testimony of R.W. 1 Indu Mohan Aga on the point—

"Earth can be murrum, clay or soil but we do not say a 'murrum earth'. There is no such substance known to science as 'murrum brick-earth'. There is no definition of murrum brick earth in any standard book."

(11) For the above-said reasons I am of the view that the contention raised on behalf of the petitioners that the notification applied to a peculiar substance known as "murrum brick-earth" and not to ordinary "brick-earth" is wholly untenable and seems to be no more than a mere quibble over a comma, the absence whereof in the impugned notification seems to be no more than an error of omission on the part of the printers.

(12) I now come to the crucial issue which falls for determination in the present case regarding which the parties are arrayed on

(2a) (1861) 1 B & S 101.
(3) A.I.R. 1959 Pb. 497.

opposite sides and on which they have expressly invited a decision on merits. The broad argument on behalf of the petitioners on this main issue runs thus. The power of Parliament to legislate in connection with mines and minerals is governed by entry 54 List I in the Seventh Schedule which is in the following terms :—

> "Entry 54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in public interest."

It is argued that neither in the Constitution nor in the Mines and Minerals (Regulation and Development) Act, 1957, (hereinafter referred to as the Act) has the word 'mineral' been comprehensively defined. That being so, it was contended that the power of Parliament to legislate in this connection is confined to such substances which either in a popular sense or in scientific terminology are minerals and to no others. Parliament hence, it is contended, has no power to legislate under this head as regards things which are not minerals and brick-earth according to the petitioners not being a mineral, therefore neither Parliament nor its delegate can declare it to be a 'minor mineral'. It was vehemently contended that unless a thing is a mineral it could not be designated or declared a minor mineral under the statute or by the notification and, therefore, the declaration of "brick-earth" as such was beyond the competency of both Parliament and its delegate.

(13) The above contention at once brings to the fore-front an issue which lies at the root of the controversy. What is a 'mineral' ? Is it a term of art, having a fixed cannotation? This question, to my mind, admits only of one answer. The word 'mineral' is devoid of definition and is capable of a vast variety of meanings. It is not a term of art, but a common English word which has no fixed connotation. In saying so I am respectfully agreeing on principle with a view which seems to have gained universal legal acceptance and has so long and so unbroken a chain of authority behind it, that it appears futile now to entertain a contrary opinion. In order to refrain from burdening this judgment I propose to refer briefly only to the celebrated English and American authorities bearing directly on this point over the last century. As early as 1888 in the authoritative pronouncement of the

House of Lords in *Lord Provost and Magistrates of Glasgow* v. **Farie,** (4) Lord Watson observed as follows:—

> "Mines' and' minerals' are not definite terms; they are susceptible of limitation or expansion, according to the intention with which they are used."

In *Scott* v. *Midland Railway Company,* (5) Kennedy J. observed as follows:—

> "The word 'minerals' is one which at different times has been used with very different meanings. In some statutes, it has a very restricted meaning, in others a very wide one. In order to determine in each case whether the word is used in a wide or narrow sense we must, as Lord Herschell said in *Glasgow* v. *Farie,* (4) look at the object which the Legislature had in view."

Again Lord Loreburn in *The Caledonian Railway Co.* v. *The Glenboig Union Fireclay Co.,* (6) held as follows:—

> "My Lords the principle of the decision in this House in the *Budhill and Carpalla cases* (7) and (8) seems to me to have been this; the Court has to find what the parties must be taken to have bought and sold respectively, remembering that no definition of 'minerals' is attainable, the variety of meanings which the use of the word 'minerals' admits of being itself the source of all the difficulty."

It is unnecessary to multiply further English authorities as the view above-said seems to have been consistently adhered to in the highest English Court.

(14) An identical view has received ready acceptance in the American Courts as well. The Supreme Court of North Dakota in

(4) 13 A.C. 657.
(5) 1901 1. Q.B.D. 317.
(6) 1911 A.C. 290.
(7) 1910 A.C. 116.
(8) 1910 A.C. 83.

Adams County v. *Smith,* (9) on a consideration of the case law observed as follows:—

> "These cases disclose that the word 'mineral' is not a definite term susceptible to a rigid definition applicable in all instances. It is a term susceptible of limitations or extensions according to the intention with which it is used."

A similar view has been expressed in *Kalberer* v. *Grassham,* (10) by the Court of Appeals of Kentucky and also in *Holloway Gravel Co.,* v. *Mckowen* (11) by the Supreme Court of Louisiann. The matter was authoritatively summed up by Mr. Justice Brown in *Northern Pacific Railway Co.* v. *John A. Soderberg,* (12).

> "The word 'mineral' is used in many senses, dependent, upon the context, that the ordinary definitions of the dictionary throw but little light upon its signification in a given case. Thus, the scientific division of all matter into the animal, vegetable, or mineral kingdom would be absurd as applied to a grant of lands, since all lands belong to the mineral kingdom, and therefore could not be excepted from the grant without being destructive of it. Upon the other hand, a definition which would confine it to the precious metals-gold and silver would so limit its application as to destroy at once half the value of the exception. Equally subversive of the grant would be the definition of minerals found in the Century Dictionary, as 'any constituent of the earth's crust;' and that of Bainbridge on Mines: 'All the substances that now form, or which once formed, a part of the solid body of the earth.' Nor do we approximate much more closely to the meaning of the word by treating minerals as substances which are 'mined', as distinguished from those which are 'quarried,' since many valuable deposits of gold, copper iron, and coal lie upon or near the surface of the earth, and some of the most valuable building stone, such for instance, as the Caen stone in France, is excavated from mines running far beneath the surface. This distinction

(9) 23 Northern Western Reporter 2nd Series 873 (N.D.)
(10) 138 S.W.R. 2nd series 940.
(11) 9 Southern Reporter 2nd series 228.
(12) United States Supreme Court Reports 47 Law. Ed. 524.

between underground mines and open workings was expressly repudiated in *Midland R. Co.* v. *Haunchwood Brick and Tile Co.* (13) *and in Hext* v. *Gill,* (14).

The settled judicial view noticed above is laid down in Halsbury's Laws of England as follows:—

"There is no general definition of the word 'mineral'. The word is susceptible of expansion or limitation in meaning according to the intention with which it is used, and the variety of meanings of which it admits is the source of all the difficulty in the attempt to frame any general definition."

(15) Nearer home chief Justice Wanchoo speaking for the Bench in *Bhoor Chand* v. *The State of Rajasthan and others,* (15) after an exhaustive discussion as to the meaning which may be attributed to the word "mineral" had this to say—

"The conclusion at which we have, therefore, arrived is that the term 'mineral' is not as inflexible in its meaning as one ought at first sight suppose and is not necessarily connected with a mine, although it ordinarily is, and its precise meaning in a given case will have to be fixed with reference to the particular context, and in relation to the surrounding circumstances of the particular case."

(16) It is in this context of the nebulousness and the ambiguity of the word "mineral" that the validity or otherwise of the impugned legislation has to be viewed. Did Parliament transcend the bounds of constitutionality and the limits of its own powers in specifying the substances which were to fall in the category of "minor mineral" and to which consequently the legislation was to be made applicable? I would forthwith answer this issue firmly in the negative and would proceed to give my reasons hereafter. It is axiomatic that certainty is a necessary attribute of the law and particularly of the statutory legislation. Parliament or the Central Government as its delegate were, therefore, indeed duty bound to lay down with precision at least the subject matter regarding which

(13) L.R. 29 Ch. Div. 552.
(14) L.R. 7 Ch. 699.
(15) A.I.R. 1957 Raj. 213.

it was intending to legislate in the Mines and Minerals (Regulation and Development) Act, 1957.

(17) I would now proceed to examine in some greater detail the various facets of the contention raised on behalf of the petitioners and the arguments in reply by the respondents.

(18) The core of the argument of Mr. Malik on behalf of the petitioners is that we should lay down a scientific and chemical definition of the word "mineral". He invited us to confine and narrow down the word "mineral", to only such substances which were capable of being described precisely in the shape of a chemical formula. It was argued that the question whether a substance was within the meaning of the word "mineral" as used in an Act of Parliament was not one for law or judicial precedent to decide, but the ultimate test must be either in a Scientific Laboratory or in the opinions of supposed experts in Mineralogy, Geology or Chemistry. Relying on some evidence adduced in the case and also on certain Scientific dictionaries, it was advocated that a substance to be "mineral" must have a definite chemical composition which is reduceable into a formula and any substance which slightly deviates from this acid test cannot be a "mineral" in the eye of law and would consequently be beyond the pale of parliamentary legislation. We were referred to a variety of Scientific and ordinary English dictionaries in support of the above proposition and in substance we are asked by the petitioners to accept a narrow pseudo-scientific definition of the word "mineral".

(19) I regret my inability to agree. It appears to me too late in the day to abandon the wider and comprehensive connotation which has always been attributed to the word "mineral" in favour of a narrow and constricted meaning therefor. This is first so because admittedly the word "mineral" is not a term of art of either Cremistry, Geology or Mineralogy. It is a common English word which has always been judicially construed in a wide amplitude. I find no warrant for reducing its larger import to the limited confiness of a chemical formula. We had repeatedly invited the counsel for the petitioners to cite any authority wherein the word "Mineral" has been circumscribed by a precise scientific definition which he had canvassed. Learned counsel had to fairly concede that in no precedent such a definition or limitation has even been attempted. In fact the unanimous view of authoritative pronouncement on the point would show tre large and the unconfined sense in which the word "mineral" has

always been accepted and used. I would hence advert briefly to the leading English and American cases on the point in their chronological sequence. As early as 1867 Lord Romilly in *Midland Railway Company* v. *Checkley* (16) observed:—

> "Upon the first point I think there is no question. Stone is, in my opinion, clearly a mineral, and in fact everything except the mere surface, which is used for agricultural purposes, anything beyond that which is useful for any purpose whatever, whether it is gravel, marble, fire-clay, or the like, comes within the word mineral, when there is a reservation of the mines and minerals from a grant of land; every species of stone, whether marble, limestone, or ironstone, comes, in my opinion, within the same category."

In Hext v. *Gill,* (14) Lord Justice Mellish laid down as follows :—

> "Many authorities, some at law and some in equity, have been brought before us to show what is the meaning of the word 'minerals'. But the result of the authorities, without going through them, appears to be this; that a reservation of 'minerals' includes every substance which can be got from underneath the surface of the earth for the purpose of profit, unless there is something in the context or in the nature of the transaction to induce the Court to give it a more limited meaning."

Lord Macnaghten in the House of Lords case already referred to in *Glasgow* v. *Farie,* (4) said as follows :—

> "Now the word "minerals' undoubtedly may have a wider meaning than the word "mines'. In its widest signification it probably means every inorganic substance forming part of the crust of the earth other than the layer of soil which sustains vegetable life. * * * *
> Be that as it may, it has been laid down that the word 'minerals' when used in a legal document, or in an Act of Parliament must be understood in its widest signification,

(16) 1867 (4) L.R. 19.

unless there be something in the context or in the nature of the case to control its meaning."

In the American case of *Puget Mill Co.* v. *Duecy,* (17) in the Supreme Court of Washington, Justice Millard speaking for the Court observed as follows in this context :—

"The word 'minerals', standing alone might by itself, under a broad, general, popular definition, embrace the soil, hence include sand and gravel, and all that is to be found beneath the surface."

In view of the above authorities, it is apparent that there is no warrant in the judicial precedent for confining the word "mineral" to a narrow scientific definition and indeed the unanimous weight of precedent is to the contrary.

(20) I would very briefly advert to the variety of English and Scientific dictionaries from which some semblance of support was sought on behalf of the petitioners. Even at the cost of a little repetition one has to hearken to the dictum of Justice Brown of the United States Supreme Court in *Northern P. R. Co.* v. *Soderberg,* (12):—

"The word 'mineral' is used in so many senses, dependent, upon the context, that the ordinary definitions of the dictionary throw but little light upon its signification in a given case."

Only as an illustration of the truth of this view I may refer to only one of the numerous meanings given to the word "mineral" in Webster's New International Dictionary which is as follows :—

"Anything which is neither animal nor vegetable, as in the old general classification of things into three kingdoms (animal, vegetable, and mineral)."

Again in the Random House Dictionary of the English language, one of the meanings given is as follows :—

"Any substance that is neither animal nor vegetable."

(17) 96 Pacific Reporter 2d, 571.

A reference to the other works which were relied upon on behalf of the petitioners yields also a similar result. I am hence of the opinion that a detailed perusal of these dictionaries, whether scientific or otherwise on this point is wasteful because a reference to them only reiterates the wide divergence of meanings attributable to the word "mineral" rather than any precise concept of the same.

(21) Reliance was placed by the learned counsel for the parties on the evidence of two experts examined in the case in support of the view canvassed by either of them. I am, however, of the view that in so far as this evidence is relied upon or is directed to define or attributed a precise meaning of the word "mineral" it is both inadmissible and irrelevant to the issue. What we have to determine in the present case is the meaning of the word "mineral" as used in the Act of Parliament and whether a certain substance comes within the connotation of that word. Obviously the construction of the language uesd in the Act of Parliament is a matter for interpretation by the Court and not one of evidence. I do not think that the *ipse dixit* of Experts or the conflicting views entertained by the can in any way govern the legal acceptation of the word used in the statute. The view which I take is fortified in its entirety by the decision of the Court of Appeal in *Great Western Railway Comvany* v. *Carpalla United China Clay Company, Ltd.*, (18). In that case on the issue whether china clay was a mineral within the meaning of the Act, a mass of evidence consisting of the leading Scientific Experts of the time was examined. Rajecting this testimony out of consideration, Fletcher Moulton L.J. observed as follows:—

> "I reject the whole of the evidence that was given at the trial of this case with regard to china clay being a mineral on two grounds. In the first place I think that such evidence was inadmissible. The question is as to the interpretation, of an ordinary English word in its proper legal acceptation, and that is for the Court, and is not a matter of evidence. The other ground upon which I reject it is that in my opinion the whole of that evidence was directed to a false issue. It consisted in asking mineralogists whether this substance, so well known commercially and so important

(18) 1909 (1) Ch. Div. 218.

industrially, was a mineral. To a mineralogist the question would mean, was it a definite and specific mineral, homogeneous, and possessing known mineralogical characteristics? That is an issue which is perfectly immaterial here. Many of the best-known minerals are mixtures of a large variety of different minerals if that word be used in its strict mineralogical sense, but that does not prevent the well-known mixture being in the eye of the law a mineral. Putting that evidence, therefore, on one side, I say the china clay appears to me, in the ordinary acceptation of the word, to be typically a mineral."

Agreeing with the above Lord Justice Fairwell briefly stated as follows:—

"* * *, and I agree with Fletcher Moulton L. J.'s observations as to the inapplicability, both by reason of inadmissibility and irrelevancy, of the greater part of the expert evidence here given."

It is noteworthy that the decision above-said was affirmed by the House of Lords on appeal in carpalla's case (8).

(22) Assuming, however, for a moment's sake that the expert testimony is either admissible or relevant. I find the same to be of no aid whatsoever in either construing the precise meaning to be attributed to the word "mineral" or on the point whether brick-earth would come within that ambit. This is evident from the fact that the learned counsel on either side vied with each other to rely on the testimony of the expert produced by the other side for supporting the argument advanced by each one of them. Professor A. G. Jhingran, was examined on behalf of the petitioners in his cross-examination abandoned the very concept of brick-earth as such and stated as follows:—

"As scientists we say bricks are made from clays and not earth. Earth is a very loose term. It has no scientific meaning. In geology, we do not talk of earth unless it is a reference to fuller's earth and diatomaceous earth. Earth contains clays to make bricks."

This witness was also very guarded in his testimony as to when brick-earth or earth itself can be a mineral. For instance he deposed:—

> "earth is not a mineral but some qualified earths are described as minerals, for example, fuller's earth, diatomaceous earth .....ordinarily, earth from which bricks are made cannot be called a mineral. It cannot be called a mineral because it has no definite chemical composition."

On the other hand R. W. 1 Shri Indu Mohan Aga, on behalf of the respondents had first stated as follows:—

> "The earth is not a mineral. It is the aggregate of minerals. If earth had been a mineral, its consistency at every place would have been the same but that is not so. The consistency of earth varies from place to place. Earth is disintegrated product of rocks. It can be 'murrum ', it can be clay, it can be gravel, soil, etc."

Further this witness deposed regarding brick-earth as follows:—

> "Brick clay and brick earth is a synonymous term. They are loosely synonymous. Brick earth is an aggregate of minerals. But it cannot be said that brick earth is a mineral."

Further this witness proceeded to give the precise chemical composition of brick-earth in the following terms:—

> "The approximate chemical compositions of a good brick-earth is as follows, silica, three-fourths, alumina, one-fifth, calcium, iron, manganese, maganesium, sodium and potassium and various other substances make up the remaining fifth."

In cross-examination this witness took up the position that there was no such thing as ordinary earth and further deposed that the melting point of brick-earth is 14,00° centigrade. The specific gravity of brick-earth will not be uniform throughout. I deem it unnecessary to multiply references to this evidence. Suffice it to say that on each material point it sometimes appeared too directly contradictory. Fortunately I do not feel called upon to reconcile the irreconciliable conflicts of this expert testimony. Perhaps it is equally fortunate

that the construction of parliamentary statutes is to be on a firmer foundation than the shifting sands of the varying and conflicting opinions of the supposed scientific experts.

(23) For the foregoing reasons I find myself unable to accept the narrow, technical and the supposedly scientific limitation suggested by the learned counsel for the petitioners to constrict the meaning of the word "mineral".

(24) An argument which had also been faintly pressed before us was that in its ordinary popular meaning the word "mineral" would not include brick-earth within its ambit. It is first to be kept in mind that herein we are not construing a private deed or grant or a contract but a statutory provision. Therefore, the short answer to the above argument is that in the present case we are construing statutory legislation and the words and language used therein have to be taken in their legal acceptation. This is too settled a connon of interpretation to be deviated from. Lord Macnaghten in *The Commissioner for Special Purposes of the Income Tax* v. *John Frederick Pemsel* (19), had laid down as follows :—

> "In construing Acts of Parliament, it is a general rule, not without authority in this House (*Stephenson* v. *Higginson* (20), that words must be taken in their legal sense unless a contrary intention appears."

In *Chesterman and others* v. *Federal Commissioner of Taxation* (21), Lord Wrenbury expressly reaffirmed the above dictum. Yet again in *Laurence Arther Adamson and others* v. *Melbourne and Metropolitan Board of Works* (22), following the above said two decisions it has again been held that whilst construing Parliamentary statutes it is the general rule that words must be taken in their technical legal sense unless the contrary intention appears. Learned counsel for the petitioners in the present case has not even argued or even remotely pointed to anything which would show that Parliament had a contrary intention to use the word in a sense other than its legal sense.

(19) 1891 A.C. 531.
(20) 3 H.L.C.
(21) 1926 A.C. 128.
(22) A.I.R. 1929 P.C. 181.

(25) Coming now to the specific portion of the statute which are assailed, the frontal attack of Mr. Malik on behalf of the petitioners is first directed against section 3 (e) of the Mines and Minerals (Regulation and Development) Act, 1957. In order to appreciate the contention it is first expedient to set down its provisions:—

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

Mr. Malik first contends that the power of Parliament to legislate under entry 54 of List I of the Seventh Schedule of the Constitution of India is confined only to regulation of mines and development of minerals. It was contented with vehemence that the Parliament under the above said entry was not competent to specifiy "minerals" or declare them to be "minor minerals" for the purposes of the Act. Learned counsel then logically and uncompromisingly proceeded to contend that building stones, gravel, ordinary sand and ordinary clay are not substances which had an invariable chemical composition nor do they satisfy the scientific test of definite physical properties such as a fixed melting point, boiling point, freezing point, density, specific gravity, refractive index, or crystalline form etc. It was argued that these four substances are not "minerals" and the power of Parliament being limited to legislate only regarding minerals, therefore section 3 (e) was *ultra vires* of the Constitution. It was suggested as a necessary corollary that as these four substances were not minerals, therefore, they cannot also be declared to be "minor minerals" by the impugned section.

(26) Examining the first limb of the above argument it appears to me that the contention that Parliament does not have the power to specify or declare the "minerals" or "minor minerals" to which the 1957 Act was to be made applicable despite the wide language of Entry 54 has a touch of pedantry about it. It betrays a kind of doctrinaire approach to the legislative entries which has been repeatedly deprecated by the Supreme Court and in *Navinchandra*

Mafatlal, Bombay v. *Commissioner of Income Tax, Bombay City* (23), it has been laid down as follows in this context:—

> "As pointed out by Gwyer C.J. in —'*United Provinces* v. *Mt. Atiqua Begum*' (24) none of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it.
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> The cardinal rule of interpretation, however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

(27) Reiterating the above rule and relying on *British Coal Corporation* v. *The King* (25) their Lordships again held as follows in *Sri Ram-Ram Narain Medhi and others* v. *The State of Bombay* (26):—

> "It is well-settled that these heads of legislation should not be construed in a narrow and pedantic sense but should be given a large and liberal interpretation."

Identical observations appeared again in *Waverly Jute Mills Co. Ltd. and another* v. *Raymon and Co. (India) Pvt. Ltd* (27) In a full Bench of this Court in *Punjab Distilling Industries Ltd. Khasa* v. *Commissioner of Income-tax, Simla* (28), after pointing out that

(23) A.I.R. 1955 S.C. 58.
(24) A.I.R. 1941 F.C. 16(1).
(25) 1935 A.C. 500.
(26) A.I.R. 1959 S.C. 459.
(27) A.I.R. 1963 S.C. 90.
(28) A.I.R. 1962 Pb. 337.

the various entries in the list are not powers of legislation but fields of legislation, it has been observed as follows :—

> "Thus the legislative field is extensive and the items of legislation include not merely the main purposes but also all ancillary and subsidiary matters which can fairly, and reasonably be said to fall within the scope of a particular Entry. Reference may be made to *United Provinces* v. *Mt. Atiqua Begum* (24). These entries are in the nature of legislative heads and are deemed to be of enabling character. The language of these entries is given wide scope for the main reason that they set up a machinery of Government and may cover the power not only of conferment but also of extinguishment, control, or modification of the rights. The scope of ancillary or subsidiary matters is very extensive."

In view of the above legal position the contention that section 3(e), extends beyond the field authorised by Entry 54 of List 1, appears to me to be wholly unsustainable.

(28) The second limb of argument of Mr. Malik that building-stone, gravel, ordinary clay, and ordinary sand are not minerals and hence cannot be classified as "minor-minerals" by Parliament appear to be equally unsustainable. I have already indicated my reasons in detail for not accepting a constricted technical definition of the word "mineral". The present argument on behalf of the petitioners rests wholly on that tenuous foundation. All that now remains is to make the briefest reference to the leading cases out of the mass of case law in which the above-said substances have been judicially construed to fall within the ambit of the word "mineral". Reference has already been made to the dictum of Lord Romilly as early as 1867 in *Midland Railway Co.'s case* (13), wherein he categorically held that stone was clearly a mineral and every species thereof, e.g., gravel, marble, fire-clay, limestone or ironstone or the like came within the ambit of that word. This view does not seem to have been departed from in the subsequent cases and in fact has found a ready acceptance in the American Courts. In *Northern Pacific Railway Company* v. *John A. Soderberg* (12), the United States Supreme Court held that granite recovered from quarries was a mineral and as such granite quarries were covered by the word "mineral lands".

(29) As regards sand and gravel again Lord Romilly in Earl *Cowley* v. *Wellesley* (29), laid down as follows :—

> "The whole of the gravel or sand on the waste land must be treated as a mine, and each gravel pit as if it were a fresh pit in the mine."

This view was followed and reiterated in *Scott* v. *Midland Railway Company* (5) where it is laid down as follows :—

> "The question is whether gravel and sand come within the term 'other minerals'. That 'minerals' in an Act of Parliament or in a legal document *prima facie* includes such a thing as gravel or sand is now clearly settled by the decided cases. And I can see nothing in the nature of the Act or in the context to qualify this wide *prima facie* meaning of the term."

(30) As regards clays Sir George Mellish, in the leading case of *Hext* v. *Gill* (14), while answering the question whether china clay was reserved under the exception of "mines and minerals", observed—

> "I am, therefore, of opinion that china clay is included in the reservation. The only argument against this is that china clay cannot be got without destroying the surface, and that it could not be intended to give power wholly to destroy the surface without compensation. The case of *Bell* v. *Wilson* L.R. 1 Ch. 303, appears, however, to be a direct authority that the mere circumstance that a mineral cannot be got without destroying the surface, though it may be a very strong ground for holding that the owner of the mineral is not entitled to get it, is not a ground for straining the meaning of the word "mineral".

Reference has already been made to *Carpalla's* case (8), wherein the House of Lords affirmed the judgment below that china clay was a mineral. I deem it inexpedient to burden this judgment with references to other cases. A number of leading English cases have held common clay, china clay, London clay, teora-cota clay and fire clay to be well within the meaning of the word mineral.

(29) 1866 L.R. 1 Equity Cases 656.

(31) In view of the above mentioned long line of precedent and also on principle I am unable to hold that any taint of unconstitutionality attaches to section 3(e) of the Act due to the fact that thereby Parliament has specified building stone, gravel, ordinary sand and ordinary clays to be minor minerals.

(32) The argument on behalf of the petitioner then proceeds further that the notification No. G.S.R. 436, in so far as it declared brick-earth to be a minor mineral is *ultra vires* of the Constitution and in any case Parliament could not delegate the power vested in it to the Central Government.

(33) I have on a detailed consideration held above that common substances like building stone, gravel, ordinary sand and ordinary clays are well within the scope of the word "mineral". Admittedly the above four said substances do not satisfy the acid test of a fixed chemical composition or definite physical properties such as an unvarying melting point, boiling point, freezing point, density specific gravity, refractive index etc., which have been advocated on behalf of the petitioners. Once that is so one fails to see why "brick-earth" cannot fall within the ambit of the word "minerals". It is worthy of note that Prof. A.G. Jhingran, produced on behalf of the petitioners himself opined as follows:—

> "As Scientists we say bricks are made from clays and not earth. Earth is a very loose term. It has no scientific meaning. Earth contains clays to make bricks. The term 'brick-earth' will only be used when that particular earth can make bricks."

(34) Again it was conceded before us by the learned counsel for the petitioners that every type of earth is not suitable for brick making. Admittedly if the earth has a large sandy content it is useless for brick making. Equally so if the earth contains a substantive content of gravel no bricks can be made therefrom. Also if there is a rocky base the soil would be unfit for brick manufacture. Speaking positively it was further conceded that the earth to be usable for brick manufacture must have adhesive properties which in turn must be provided by the presence of clay therein. In other words a clayey content is essential in the earth which can be used for the properties of brick making.

(35) Mr. I.M. Aga gave the approximate chemical composition of the brick-earth which would be suitble for specific properties of

brick manufacture. Therefore, it is in-apt to confuse brick-earth with any and every kind of soil.

(36) That judicial precedent has held brick earth and brick clays to be within the ambit of the word "mineral" is again undisputable. I would only briefly refer to some of the leading cases in which it has been so held.

(37) In *Tucker* v. *Linger* (30), it was observed as follows:—

> "Then we have "sand". Sand is certainly a mineral when it is worked at a profit and got by digging beneath the surface. Then "quarries of stone" are inserted because they are open workings. Then comes "brickearth" which is a mineral, and then "gravel pits", which are open workings."

(38) In *The Earl of Jersy* v. *The Guardians of the Poor of the Neath Poor Law Union* (31), it was held that a reservation of mines and minerals included brick earth and clay, which were substances which could be got from underneath the surface of the earth for the purpose of profit.

(39) In *Midland Railway Company* v. *Haunchwood Brick and Tile Company* (13), where the subject-matter of litigation was a bed of clay used for making bricks the same was held to be within the ambit of reservation of mines and minerals.

(40) The decision, however, which directly governs the case and in which the identical point arose and was canvassed at length and answered against the petitioners is the Division Bench judgment of Patna High Court in *Laddu Mal and others* v. *The State of Bihar and others* (32), expressly holding that brick earth is a mineral and its inclusion in the definition of minor mineral is not *ultra vires* of the Constitution. After discussing the whole gamut of the case law on the point including the authorities cited on behalf of the petitioners before us which stand adequately distinguished

(30) 1882 L.R. 21 Ch. D. 18.
(31) 1889, 22 Q.B.D. 555.
(32) A.I.R. 1965 Pat. 491.

therein, the Bench repelled all attacks on the constitutionality of notification No. G.S.R. 436, which is being assailed before us and observed

> "My conclusion is that brick-earth is a mineral and its inclusion in the definition of 'minon minerals' as given in that Act of 1957 (Mines & Minerals Regulation and Development) Act is not *ultra vires* the Constitution, Seventh Schedule."

I wish to say no more that I am in agreement with the principle and the reasoning enunciated in the above-said case.

(41) Two authorities on which heavy reliance was sought to be placed on behalf of the petitioners are clearly distinguishable. *State of West Bengal & others* v. *Jagadamba Prasad Singh and others,* (33), was confined to a very narrow issue as was noticed in the following terms by the Bench itself:—

> "However, as stated above, we are by agreement of parties called upon to deal with one point only, namely as to whether Rule 17(1)(i) read with the relevant entry in Schedule 1 is *ultra vires* or not. If his point succeeds this appeal will succeed, but all other points will be kept open. We now proceed to deal with this point."

Confining themselves to the above point their Lordships held that the word 'clay' is not identical with 'earth' and 'ordinary clay' is not the same thing as 'ordinary earth'. Obviously there can be no quarrel with this proposition. But what is equally obvious is that this is not even remotely the issue before this Bench. The question whether brick earth is a mineral and whether it has been validly declared to be a minor mineral by virtue of notification GSR 436 was not even remotely canvassed, agitated or pronounced upon in the above said Calcutta decision. I fail to see how it can aid the argument on behalf of the petitioners in the present case.

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(33) A.I.R. 1969 Cal. 281.

(42) Mr. Malik repeatedly sought some support from *Waring* v. *Booth Crushed Gravel Company, Limited,* (34). However, all that appears from that case is that construing the language of a particular instrument executed between the parties, with particular reference to its date of execution, it was held upon evidence that therein the words contained for a reservation of "mines", "minerals" and "mineral substances", did not include sand and gravel. That the above said finding was confined to the particular facts and circumstances of the case is obvious from the rule enunciated in this very case and noticed in the following terms in the head note:—

> "The question whether a given substance is or is not a 'mineral' within the meaning of the instrument in which it is mentioned is a question of fact to be decided according to the circumstances of the particular case."

(43) In view of the above discussion I am unable to hold that any constitutional invalidity attaches to the impugned notification declaring "brick earth" to be a "minor mineral".

(44) Only a brief reference is necessary to the faintly pressed contention before us on behalf of the petitioners, that Parliament could not authorise the Central Government to declare minor minerals and that such an authorisation is bad because of excessive delegation of power.

(45) In reply to the above contention Mr. J. N. Kaushal, on behalf of the respondents, first places reliance on *Harishankar Bagla and another* v. *The State of Madhya Pradesh* (35). In that case section 3 of the Essential Supplies (Temporary Powers) Act, 1946, which authorised the Central Government to provide for regulating, prohibiting the production, supply and distribution and the trade and commerce in any essential commodities by an executive order was assailed as *ultra vires* on the ground of excessive delegation. Section 4 of the above said Act was also assailed on the identical ground because it further empowered the Central Government to delegate the above said power to an officer or authority subordinate to the Central Government or to a State Government or its subordinates. This challenge was repelled and both sections 3

(34) 1932, 1 Ch. D. 276.
(35) A.I.R. 1954 S.C. 465.

and 4, were upheld as valid. It was observed first as follows in regard to section 3, above said :—

> "As already pointed out, the preamble and the body of the sections sufficiently formulate the legislative policy and the ambit and character of the Act is such that the details of that policy can only be worked out by delegating them to a subordinate authority within the framework of that policy."

Similarly whilst upholding the *vires* of section 4, aforesaid which authorises the delegate to further delegate its power to its subordinates the Supreme Court, approvingly referred to the observations of the Privy Council in *Shannon* v. *Lower Mainland Dairy Products Board*, (36) :—

> "The third objection is that it is not within the powers of the Provincial Legislature to delegate so-called legislative powers to the Lt. Governor in Council, or to give him powers of further delegation. This objection appears to their Lordships subversive of the rights which the Provincial Legislature enjoys while dealing with matters falling within the classes of subjects in relation to which the Constitution has granted legislative powers."

The above observations, in my view, apply equally well to the present situation. A reference to the Mines and Minerals (Regulation and Development) Act, 1957, the preamble and the detailed provisions provided in the thirty-three sections and the schedule thereof leave no manner of doubt that the legislature has in terms laid down the principle, the policy, the ambit and the scope of the statute. It is idle to contend that the mere declaration of a substance as a "minor mineral" as envisaged in section 3(e) of the Act involves principle or such a high legislative policy that the same cannot be delegated by Parliament to the Central Government. Reliance was again placed on *Pandit Banarsi Das Bhanot and others* v. *The State of Madhya Pradesh* and others, (37), wherein the *vires* of section 6 (1) of the C.P. and Berar Sales Tax Act, 1947, were challenged on

(36) 1938 A.C. 708.
(37) A.I.R. 1958 S.C. 909.

the ground of excessive delegation. The impugned provision empowered the State Government to amend the schedule to the statute by the issuance of a notification. Whilst upholding the *vires* of the Act it was held that such delegation which authorises the State Government to determine the selection of persons on whom the tax is to be levied, the rates at which it has to be charged and the different classes of goods which would come within the ambit was perfectly valid. Even if the observations in the above said *Pandit Banarsi Das Bhanot's case* (37), are construed narrowly as has been suggested in subsequent authorities they seem to fully cover the present case.

(46) Lastly Mr. Kaushal places heavy reliance on *D.S. Garewal* v. *The State of Punjab and another,* (38), in view of the provisions of section 28 (1) of the Act which is in the following terms:—

> "Rules and notifications to be laid down before Parliament and certain rules to be approved by Parliament—
> (1) All rules made and notifications issued by the Central Government under this Act shall be laid for not less than thirty days before each House of Parliament as soon as may be after they are made or issued and shall be subject to such modifications, as Parliament may make during the session in which they are so laid or the session immediately following."

On the basis of this provision it is argued that the impugned notification and the rules framed under the Act have received the sanction of Parliament by having been placed before each House thereof. In this context the following observations in *D.S. Garewal's case* (38), are rightly relied upon.

> "At the same time Parliament took care to see that these rules were laid on the table of Parliament for fourteen days before they were to come into force and they were subject to modification, whether by way of repeal or amendment on a motion made by Parliament during the session in which they are so laid. This makes it perfectly clear that Parliament has in no way abdicated its authority,

(38) A.I.R. 1959 S.C. 512.

but is keeping strict vigilance and control over its delegate. Therefore, reading section 4 along with section 3(2) of the Act it cannot be said in the special circumstances of this case that there was excessive delegation to the Central Government by section 3(1). We are, therefore, of opinion that the Act cannot be struck down on the ground of excessive delegation."

On behalf of the petitioners the above noticed legal position could not be seriously controverted and no authority to the contrary was cited. I am hence of the view that section 3(e) and the impugned notification issued thereunder does not suffer from any vice of excessive delegation.

(47) I have deemed it necessary to notice in detail and repel the many-pronged attack upon the impugned provisions. However, the variety of the arguments and the welter of case law should not deflect us from the central issue—Has Parliament in enacting section 3(e) of the Act crossed the bounds of its power in adopting the legal acceptation of the word "mineral" in its larger signification? Is the declaration of substances as "minor mineral" by Parliament in the above-said section or that of brick-earth by its delegate by virtue of the impugned notification, unconstitutional?

(48) In answering the above question it is first to be kept in mind that a presumption of constitutionality attaches to parliamentary legislation. The burden is heavily upon the party which assails its validity to show that it is unconstitutional. No authority need be referred to for this elementary proposition. Now the word "mineral" defies definition and judicial opinion has with unanimity declined to tread the slippery ground of even attempting an inflexible definition. I would not be so rash even to attempt to do so. This word is susceptible of expansion or limitation and admits of a variety of meanings. As far as judicial precedent is concerned it had invariably over a century accepted a wider connotation of the word. Parliament, therefore, in my opinion was entitled to and in fact used the word in its larger signification. There is nothing to suggest that any constriction of its meaning was intended, on the other hand everything points to the contrary. This is self-evident even on a cursory reference to the preceding and analogus statutes on the subject. The earlier Central and Parliamentary legislation shows that therein the words "mines and minerals" had already been used

in a wider connotation before these were brought on the statute book in the Mines and Minerals (Regulation and Development) Act, 1957. Reference in this context may be made to the definition of the word "mines" in section 3(f) of the Indian Mines Act, 1923:—

> " 'mine' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine.
>
> provided * * * *".

The Indian Mines Act, 1952, which repealed and substituted the Act of 1923 gave even a more extended meaning to the word "mine" in section 2(j) with its sub-clauses. A Division Bench of Calcutta High Court in *Keshardeo Goenka and others* v. *Emperor* (39), whilst construing the word "mine" and making a reference to the leading English authorities which have already been referred to, observed as follows :—

> "The term 'mine' is not a definite term, but is susceptible of limitation or expansion according to the intention in which it is used and its primary signification can always be enlarged if that is the intention of the contracting parties or the legislature."

(49) In the Punjab Minor Minerals Rules, promulgated in 1934, the extended meaning of the word "minerals" was given as follows in the definition:—

> " 'minerals' includes all kanker (calcareous carbonate of lime), stone, marble, gypsum, fire-clay, china-clay, lime-stone, slate, boulders, shingle, gravel, rori and bajri, but excludes coal, the ores of metal, earth oil, gold and salt and all minerals the extraction of which is governed by the Punjab Mining Manual; and it also includes sand in any area or locality which the Local Government may by notification direct;

(39) A.I.R. 1934 Cal. 387.

The Mines and Minerals (Regulation and Development) Act, 1948, is the immediate predecessor of the present statute. It deserves notice that this Act was enacted by virtue of Entry No. 36 in List I of the Seventh Schedule of the Government of India Act, 1935, which is in the following terms:—

> "Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Dominion control is declared by Dominion law to be expidient in the public interest."

The above quoted provisions are in *pari materia* with Entry No. 54 of List 1 of the Seventh Schedule of the Constitution of India under which the impugned legislation has been enacted.

(50) The 1948 Act also did not attempt to give any inflexible definition of the words "mines and minerals" and that an extended meaning was intended is apparent from sections 3 (b) and (c) thereof.

> "3 (b) 'mine' means any excavation for the purpose of searching for or obtaining minerals and includes an oil-well.

"3 (c) 'minerals' include natural gas and petroleum." Sections 5, 6 and 7 of the Act gave wide and extensive powers to the Central Government to frame rules by notification pertaining to varied matters for the purpose of the regulation and development of the mines and minerals. Section 10 provided as follows:—

> "10. *Rules to be laid before the Legislature.*
>
> All rules made under any of the provisions of this Act shall be laid before the Lok Sabha as soon as may be, after they are made."

Pursuant to the powers given by the Act to frame the relevant rules the Mineral Concession Rules, 1949, were duly framed and promulgated after compliance with the provisions of section 10

above-said. That these Rules have remained on the statute book unchallenged till they were supplanted by the 1960 Rules is undisputed. Rule 3 (ii) of the 1949 Rules was as follows:—

> "3 (ii) 'minor mineral' means building stone, boulder, shingle, gravel, limeshell, kankar, and limestone used for lime burning, murrum, brick-earth, fuller earth, bentonite, ordinary clay, ordinary sand, road metal, rehmatti, slate and shale when used for building material."

From the above provision, it is evident that from the year 1949 onwards other things apart building stone, gravel, ordinary clay, ordinary sand and brick-earth were within the ambit of "minor minerals" under the existing statute and the rules validly framed thereunder.

(51) Then came the present Mines and Minerals (Regulation and Development) Act, 1957, which was enacted in view of the differentiation made in the petroleum and other minerals in entries 53 and 54 of List I. At this very stage it is worthy of notice that this statute does not repeal the earlier Act of 1948, but deals with minerals only whilst mineral oils are continued to be dealt with by 1948 Act by virtue of the amendments made therein by section 32 read with the Third Schedule to this Act. The present Act also did not attempt any definition of minerals in section 3 (a) which is in the following terms—

> "3(a) 'minerals' include all minerals except mineral oils."

In enacting section 3 (e) of the present Act declaring stone, gravel, ordinary clay and ordinary sands as "minor minerals", parliament was doing no more than continuing the earlier legislation on the subject with the accepted meaning attached thereto whereby 'minor minerals' aleady included these substances.. Equally significant is the fact that section 29 continued the existing rules (i.e. including the Mineral Concession Rules, 1949) and is in the following terms :—

> "*Existing rules to continue.*—All rules made or purporting to have been made under the Mines and Minerals (Regulation and Development) Act, 1948 (53 of 1948), shall, in so

> far as they relate to matters for which provision is made in this Act and are not inconsistent therewith, be deemed to have been made under this Act as if this Act had been in force on the date on which such rules were made and shall continue in force unless and until they are superseded by any rules made under this Act."

In view of the above provisions, the position that emerges is that after the enactment of the 1957 Act by virtue of the earlier Rules which were continued, brick-earth specifically was within the ambit of a minor mineral and continued to be so till 1st of June, 1958. When the impugned notification was issued on that date, it merely adopted and continued what was already within the ambit of "minor minerals" by virtue of rule 3(ii) of the Mineral Concession Rules 1949. It is thus manifest, that when using the words "mineral" and "minor minerals" in the 1957 Act, Parliament was merely employing known terminology which had been repeatedly used in the previous legislation on the subject. It is a well-settled rule of construction that when the legislature uses a word which has been previously employed and construed in the preceding legislation, it is well aware of its earlier meaning and such a word or words must be deemed to have been used in the same meaning and sense in the subsequent statute. Undoubtedly the earlier 1948 Act (and also the Mines Acts of 1923 and of 1952) and the statutory rules framed thereunder, namely, the Minor Mineral Concession Rules of 1949 had used and understood the word "mineral" in its largest signification. Other things apart brick-earth expressly, as also building stone, gravel, ordinary sand and ordinary clay were deemed well within the ambit of minor minerals by virtue of rule 3(ii) of the 1949 Rules. The Parliament did not provide any comprehensive definition of the word "mineral" in the 1957 Act. There is nothing to indicate that any construction of its larger import was intended. Thus Parliament in enacting the 1957 Act expressly continued and adopted the meaning of the word "mineral" in its earlier legal acceptation. It is in this context that the following observations of the Division Bench in *Laddu Mal and others* v. *The State of Bihar and others,* (32), directly deserve to be recalled:—

> ("The two relevent items in the two Lists in the Seventh Schedule of the Constitution do not appear to have kept any mineral out of the legislative competency of the

Legislatures. It cannot be argued that at the time when the Constitution was made in 1950, brick-earth was not considered to be a mineral in the legislative field. In the Mineral Concession Rules, 1949, the definition of minor minerals included brick-earth. The Constitution makers should be taken to have been aware of that legal concept, when they mentioned 'minerals' in the Lists in the Seventh Schedule.

* * * *

* * * *

Yet the inclusion of brick-earth in the statutory Rule in our country should raise an Inference that our Constitution makers and legislators understood and used the expression in that meaning."

In the ultimate analysis, therefore, I am of the view that no taint of unconstitutionality attaches to either section 3 (e) of the Act or to the impugned notification G.S.R. 436 in so far it has declared "brick-earth" to be a "minor mineral".

(52) Learned counsel for the petitioners is again on an equally tenuous ground when he contends that because of section 14 of the Act, the State Government is precluded from levying royalty in respect of "minor minerals" and to frame rules in regard thereto. It is contended that as the provisions of section 9 have been made inapplicable in the context of "minor minerals" no royalty can be levied. The above-said contention appears to stem from some misapprehension regarding the provisions of section 14 when read in isolation. Obviously sections 14 and 15 of the Act have to be read together and these provisions are in the following terms:—

"S. 14. *Sections* 4 *to* 13 *not to apply to Minor Minerals.*—

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

S. 15. *Power of State Governments to make rules in respect of minor minerals.*—(1) The State Government may, by notification in the official Gazette, make rules for

regulating the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith;

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

Cursory perusal of the above-said provisions makes clear the scheme of the Act which appears to provide that as regards minerals the prospecting licences and mining leases thereto would be governed by the provisions of the Act and the Rules framed by the Central Government thereunder. As regards "minor-minerals" the widest power for framing rules in regard thereto have been entrusted to the State Government and this obviously would include the levy of royalty in respect of the prospecting licences and mining leases granted for their exploitation. The identical argument raised before us was repelled in the following terms in the *Laddu Mal's case* (32):—

"* * * If the Parliament would have wanted really to exclude minor minerals from payment of royalty, it would have so expressed in section 9, which specifically provides for payment of royalties on all minerals. The exclusion of sections 4 to 13 as mentioned in section 14, in respect of minor minerals appears to be for the sole purposes of conferring all such powers, as covered by those sections on the State Government, in respect of minor minerals."

The above observations have been approved by a Division Bench of this Court in *Dr. Shanti Saroop and another* v. *The State of Punjab and others,* (40).

(53) Though, I have held against the petitioners on the point of vires of the impugned provisions and the power to levy royalty, learned counsel for the petitioners, however, seems to be on a firm and unassailable ground on another point. It is contended on behalf

(40) I.L.R. (1969) 1 Pb. and Haryana 680—A.I.R. 1969 Pb. and Haryana 79.

of the petitioners that they neither held a prospecting licence nor are they mining licencees or holders of a short term permit for the purposes of exploiting "minor minerals". It is argued that under rule 20 of the Punjab Minor Mineral Concession Rules, 1964, the royalty can be levied only in connection with a mining lease. In substance the argument is that unless there is a subsisting contract between the petitioners and the State Govrnment, no question of levying royalty under the Rules can arise. Reference is made to Rules 28, 37 and 44 in this regard which regulate the grant of contract by auction or tender or provide for the conditions of mining lease and the grant of short term permit. It is plausibly argued that as the petitioners have not executed any contract or agreement of the nature above-said they are not liable for the payment of any royalty.

(54) With disarming fairness Mr. J.N. Kaushal on behalf of the respondent-State concedes that he has no answer to this contention raised on behalf of the petitioners. It is admitted that no agreement or contract is subsisting between the respondents and either of the petitioners. The legal position that unless there is such a subsisting contract no royalty can be levied is not controverted on behalf of the State. Consequently Mr. Kaushal fairly states that in the present two cases, he cannot support the levy of the royalty and also the validity of the notices issued against the petitioners for its recovery. In terms it has been stated that on this point the two petitions are entitled to succeed. In view of the above-said concession both these petitions must succeed on this narrow point and have to be allowed. The impugned notices for the recovery and the levy of royalty are hereby quashed. However, in view of the intricate and difficult question which arose for determination, I would make no order as to costs.

(55) Before parting with the case it is essential to advert to two equally vital issues arising in this case, which were repeatedly pressed before us. On behalf of the petitioners a persistent demand was made that the Bench should consider the wajib-ul-arz of the three villages to which these petitions pertained and on their basis alone determine whether the "minor minerals" in these estates vest in the State or not. Mr. J.N. Kaushal, however, on behalf of the respondent-State cannot be pinned down to the evidence of the wajib-ul-arz only and would lead evidence to rebut the presumption, if any, which may arise in favour of the other party. Relying

on section 42 (3) of the Land Revenue Act, it was rightly contended that the presumption created by the record-of-rights under sub-clause (2) is a rebuttable one and sub-clause (3) itself provides for the mode for rebutting the same. Learned counsel hotly disputed the claim and the title of the petitioners to the "minor minerals" in the estate. It was further submitted that after the concession notice above-the point was no longer in issue and learned counsel did not argue the same.

(56) In view of the fact that the position taken up by the parties discloses an intricate dispute on facts in regard to the title and claim to the "minor minerals" and in view of the concession already noticed above, the point is hardly in issue and also because we do not have the benefit of an argument on behalf of the respondent, I do not feel called upon to pronounce on this contention raised on behalf of the petitioners. In the above context, a further argument vehemently pressed by Mr. R.N. Mittal on behalf of the petitioners is that in case we do not deem it necessary to determine finally as to in whom the "minor minerals" vest then at least a writ in favour of the petitioners be issued *prima facie* prohibiting the respondents from interfering in the "minor minerals" in these estates and the State be directed to establish their claim to the "minor minerals" in a civil Court and secure its verdict in its favour. Reliance for this contention is placed on *Gram Sabha and Gram Panchayat Kiratpur* v. *State of Punjab*, (41), decided by Tuli J., wherein a direction of the nature prayed for was issued.

(57) I am unable to appreciate the unusual prayer that a writ may issue *prima facie* subject to the decision of a Civil Court or other proper forum on merits subsequently. The claim of title to the "minor minerals" and the evidence upon which it is based is categorically controverted on behalf of the respondents, not only that they wished further to rebut the same by leading evidence. There is thus a clear dispute on facts. It appears axiomatic to me that the extra-ordinary jurisdiction of the writ Court is normally exercised where the basic facts are not in dispute. It has been repeatedly held that a matter which involves an intricate enquiry into disputed question of facts resolvable only by production of evidence and a close perusal thereof is one in which the writ Court may well stay its hands and relegate the parties to their ordinary legal remedies. Equally settled

(41) C.W. 2146 of 1969 decided on 2nd Feb., 1970.

it is that there is no jurisdictional bar and the High Court in a fit case may itself examine evidence and determine the disputed question of facts for the purpose of issuing a writ. What, however, appears to be elementary is that where a dispute on facts arises, it must be determined before a writ issues. It appears unusual to me that this Court should proceed to grant a writ *prima facie* (without first determining the facts on which the parties are at issue) and subject to the decision of a subordinate Court after determination of those disputed question of facts followed by a decision on merits. Apart from the fact that such a course does not appear to be appropriate my attention has also not been drawn to any binding precedent which would warrant such a procedure. In the authority relied upon on behalf of the petitioners, reliance is sought to be placed on three judgments to which reference is made hereafter. However, on a perusal of these authorities. I am unable to find in them any basis for the kind of the peculiar relief repeatedly sought for on behalf of the petitioners. It is worthy of notice that in *Dr. Shanti Saroop Sharma* v. *State of Punjab and others*, (40) the writ petitions were wholly dismissed without any further direction. It was observed as follows :—

> "The question with regard to the ownership rights of minor minerals in the lands occupied by the petitioners is a disputed question of fact. Apart from the fact that no sufficient material has been placed before us to enable us to decide that question, this Court is not the proper forum for going into such questions in exercise of its jurisdiction under Articles 226 and 227 of the Constitution."

Similarly in *Khushal Singh and others* v. *The State of Punjab and others*, (42), the Bench laid down as follows :—

> "(iii) that any dispute between the parties as to correctness or otherwise of this or any other Wajab-ul-arz or other Revenue record or any disputed question of title should be got determined by the aggrieved party in an appropriate action in an ordinary civil or Revenue Court as the case may be, and none of these things can be decided in our writ jurisdiction."

(42) I.L.R. (1966) 1 Pb. 166.

In the *Punjab and Haryana Shora Factory, Gohana* v. *State of Haryana and others* (43), both the writ petitions were dismissed on the preliminary objection without determining the merits thereof. Neither of the above authorities, therefore, are a warrant for the contention that a writ of prohibition to interfere may be issued with the direction that one of the parties should establish its right in a proper forum. The learned Single Judge has observed that such a course had been adopted by some other Single Benches though they were not expressly referred to. We had pointedly asked Mr. R. N. Mittal, learned counsel for the petitioner but he was unable to bring to our notice any other decision. With greatest deference to Tuli, J., if the decision in the *Gram Sabha and Gram Panchayat, Kiratpur's case* (41) , seeks to lay down that a writ may issue without resolving disputed questions of facts and subject to a subsequent decision on merits by the Civil Court, then I would respectfully beg to differ from that view. Nor do I think that it is the province of the Court of writ jurisdiction to tender advice or direct the litigants before it as to which one of them should go to the Civil Court first or the mode or manner of the legal remedies any one of them may choose to adopt.

D. K. MAHAJAN, J.

(58) I have gone through the judgment prepared by my learned brother Sandhawalia, J. I agree in the ultimate conclusion, but I do not agree with his conclusion that brick earth is a mineral.

(59) The evidence of the experts is clear. R. W. 1 Shri Indu Mohan Aga stated :—

> "Mineral, generally, is an inorganic substance having a definite chemical composition or range of chemical composition and also certain measurable physical properties .....
>
> The earth is not a mineral. It is the aggregate of minerals. If earth had been a mineral, its consistency at every place

(43) C.W. 3405 of 1968 decided on 6th February, 1969.

would have been the same but that is not so. The consistency of earth varies from place to place. Earth is a disintegrated product of rocks.....

Brick clay and brick earth is a synonymous term. They are loosely synonymous. Brick earth is an aggregate of minerals. But it cannot be said that brick earth is a mineral.....

Question.—Is it correct that the properties of a chemical compound can never vary ?

Answer.—Yes.

Question.—A chemical compound must have definite physical properties such as melting point, boiling point, freezing point, density specific gravity, refrective index, water absorption per 100 gms., and its constituent elements are definite and in definite properties throughout the world. It must have a crystalline form of many types. What have you to say?

Answer.—Yes, it is true ..... The specific gravity of brick earth will not be uniform throughout. It will change. Brick-earth has no refrective index. Brick earth has no crystal form."

(60) The next expert produced by the petitioner, P.W. 1 Professor A. G. Jhingran stated :—

"Earth by itself is not a mineral * * * Mineral is an inorganic substance with a definite chemical composition, sometimes variable within a definite range. It has definite physical properties and internal structure which is revealed through X-ray. Ordinarily, earth from which bricks are made cannot be called a mineral. It cannot be called a mineral because it has no definite chemical composition."

(61) It will thus appear that according to the experts, at best, brick-earth is an aggregate of minerals. A mineral has a specific characteristic which distinguishes one mineral from another. See in this connection Thorpe's Dictionary of Applied Chemistry (fourth edition) Volume VIII, where at page 143, it is stated thus :—

> "No two substances possess the same crystal structure, so that a metrical definition of the unit of pattern of a given mineral is unique for that mineral. It is to be expected therefore that the photographic records of diffraction spectra upon which the X-ray analysis is based should themselves constitute precise identifications. The unit-cell dimensions are diagnostic, and a rotation photograph of a crystal of a known mineral about a known axis gives a two-dimensional array of spots of varying intensities, forming a standard for identification."

Bricks are made from soil which has a larger proportion of clay. The composition of soil varies from place to place. That is why it is aptly stated that it is an aggregate of minerals. But then the human body is also an aggregate of minerals. But, no one can say that it is a mineral. Similarly, from the fact that brick-earth is an aggregate of minerals one cannot jump to the conclusion that brick-earth is a mineral.

(62) No assistance can be drawn from English decisions where certain substances, though not minerals, have been held to be minerals. It is well-settled that British Parliament is supreme and it can artificially make a substance minerals when it is not, but that is not the case so far as the Indian Parliament is concerned. Its power is circumscribed by the Constitution of India. The relevant entries in the Seventh Schedule, List I and List II are 54 (Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest) and 23 (Regulation of mines and mineral development subject to the provision of List I with respect to regulation and development under the control of the Union) respectively. Therefore, Parliament can only pass legislation

regarding regulation of mines and mineral development. Similarly, the State Legislature can, subject to entry 54 in List I, legislate regarding regulation of mines and mineral development. There has to be a mineral about which legislation can be made under either of the two entries.

(63) The object of the Mines and Minerals (Regulation and Development) Act 1957, is to regulate the exploitation of minerals. When bricks are made, no mineral is being exploited. The resultant product is a brick and it is also not a mineral. It is well-known that bricks are made from the top soil, i.e., agricultural soil where crops are grown. This soil is dug to a maximum depth of four or five feet and out of this bricks are made. The soil has minor contents of a variety of minerals, but no mineral as such is extracted from the soil. I find it difficult to come to the conclusion that brick-earth is a mineral merely because certain decided cases have taken the view that brick-earth is a mineral.

(64) For these reasons, I have not been able to reconcile myself with the view taken by my learned brother that brick-earth is a mineral.

(65) I am also not prepared to agree with my learned brother that the question whether the brick-earth in the present cases vests in the Government should be left open. As a last resort, Mr. Jagan Nath Kausal, learned Advocate-General placed the argument before us that the entries in Wajib-ul-arz are rebuttable and, therefore, he should have the opportunity to rebut them. We asked the learned counsel to tell us with what evidence the entries could be rebutted and the learned Advocate-General was unable to give any satisfactory reply on this matter. An offer was also made to him that we would be prepared to examine any evidence indicated by him for the purpose of rebutting the Wajib-ul-arz entry. It is well-known that the Wajib-ul-arz are made at the time of settlement and after due enquiry, and a presumption of correctness attaches to them.

(66) It will be proper at this stage to examine the stand taken by the petitioner and the State. The case of the petitioner and the reply to it by the State are to be found in paragraph 10(o) and (p) of

both the petition and the written statement. The same are set down below :—

Averment	Reply
10. That the order of recovery made by respondent No. 2 is illegal, without jurisdiction on the following grounds :—	10. The contents of this para of the writ petition are denied as wrong. Proper procedure for recovery of arrears of royalty as per rule 53 of the Punjab Minor Mineral Concession Rules, 1964, has been adopted. Sub-paras are replied as under :—
(o) That it is well-settled proposition of law that in cases where the Sharayat Wajib-ul-arz had been completed after 18th November, 1871, and it had not been specifically mentioned in the said Sharayat Wajib-ul-arz that the brick-earth was one of the minor minerals which belonged to the Government, it shall be presumed to belong to the land-owners, and that in such cases whenever the question is raised, it will have to be established by the Government in an appropriate court that the property in the Minor Minerals (brick-earth) does in fact vest in the Government and in this case there is no such entry in Sharayat Wajib-ul-arz that the property in the brick earth will vest in the Government.	(o) In reply to ground (o) it is submitted that reply filed by the State in its para No. 3 is reiterated. The words of the Wajib-ul-arz are wide enough to include all the minerals and the minerals to be found in future vest in the State Government. The averment made in this sub-para is wrong and denied. The petitioner has not established his rights to the minor mineral in question.
(p) That Rules 20 and 21 and 37 of the Rules are **ultra vires** of section 15 of the Act.	Ground (p) of the petition is denied. The matter has already been set at rest by this Hon'ble High Court in Civil Writ No. 2198 of 1966.

(67) It will be clear from the pleadings that no evidence is indicated by which the State proposes to rebut the entry in the Wajib-ul-arz. In fact, the State has taken its stand on the interpretation of the Wajib-ul-arz. It will not be out of place to mention that the lands in question are owned by private individuals and the manufacturers of bricks take those lands on lease from them to extract earth for the purpose and after they have exhausted the earth the lands go back to the owners. Therefore, in the ultimate analysis, the entire case hinges on the interpretation of the Wajib-ul-arz. The Wajib-ul-arz in all these cases are in identical terms and reference need only be made to the Wajib-ul-arz of Mauza Chhapra, Had Bast No. 112, prepared in the Settlement of 1917-18:—

Sr. No.	Heading of the Para	Contents of the Para
11.	Rights of the Government in respect of ownership of Nazul or jungles, unclaimed or unpossessed or abandoned or *ghair-abad* land or quarries of stone or ruins or old buildings or spontaneous growth over the land and other additional benefits accruing therefrom situate within the *Muhal*.	In our village there is no jungle, un-claimed or Banjar or unpossessed land, over which the Government may have rights. But the entire Nazul property or quarries of stone, limestone kankar, black stone of every kind, which may be found above or below the soil, together with the ruins, old buildings spontaneous growth over the land and other agricultural rights pertaining to the land are owned by the Government. No regard was paid to them in this settlement at the time of assessment, with the exception the Government has got a right to use our land for purposes of excavation or storage or carriage of the above articles. But if by doing so, some loss is caused to us in our cultivation, the Government shall give compensation to the extent of the loss or damage caused to us.

(68) It will be clear from the plain reading of the Wajib-ul-arz that only the *nazul* land vests in the State, or quarries of stone, limestone, *kankar* and black stone of every kind which may be found above or below the soil vest in the Government. The land in question is not nazul land. There is no mention of brick earth or earth belonging to private owners vesting in the Government. Therefore, it is obvious that brick earth does not vest in the State.

(69) Reference may also be made in this connection to section 41 of the Land Revenue Act which is in these terms :—

> "41. All mines of metal and coal, and all earth-oil and gold washing shall be deemed to be the property of the Government for the purposes of the State and the State Government shall have all powers necessary for the proper enjoyment of the Government's right thereto."

(70) In my opinion, the Wajib-ul-arz leaves no manner of doubt that the brick earth in the present cases does not vest in the State and, therefore, the State has no right to levy royalty thereon. It is common case that royalty can only be levied on minerals which vest in the State.

(71) With the above observations, I agree with the ultimate conclusion of my learned brother that these petitions should be allowed with no order as to costs.

P. C. PANDIT, J.—(72) I agree with Sandhawalia, J.

K. S. K.

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