

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE**

**HON'BLE SHRI JUSTICE RAVI MALIMATH,  
CHIEF JUSTICE  
&  
HON'BLE SHRI JUSTICE VISHAL MISHRA**

**WRIT PETITION No. 2640 of 2004**

**Between:-**

- 1. M/S BIRLA CORPORATION LTD. AN EXISTING COMPANY WITHIN THE MEANING OF THE COMPANIES ACT, 1956, HAVING ITS REGISTERED OFFICE AT BIRLA BUILDING, 9/1, R. N. MUKHERJEE ROAD, KOLKATA (WEST BENGAL) WHICH, INTERALIA, OWNS A CEMENT INDUSTRIAL UNDERTAKING IN THE NAME AND STYLE OF SATNA CEMENT WORKS IN DISTRICT SATNA (M.P.) P.O. BIRLA VIKAS, SATNA-485005 (MADHYA PRADESH)**
- 2. SHRI J.S.BANTHIA, A SHAREHOLDER OF PETITIONER NO.1, R/O. SATNA CEMENT WORKS STAFF COLONY, BIRLA VIKAS, SATNA (M.P.)**

**.....PETITIONERS**

***(BY SHRI KISHORE SHRIVASTAVA- SENIOR ADVOCATE  
WITH SHRI ATUL CHOUDHARI - ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH THR. THE SECRETARY DEPTT. OF MINERAL RESOURCES VALLABH BHAVAN, MANTRALAYA, BHOPAL (MADHYA PRADESH)**

2. **THE COLLECTOR, DISTRICT SATNA  
SATNA (MADHYA PRADESH)**

3. **THE SUB-REGISTRAR, DISTRICT  
SATNA (MADHYA PRADESH)**

.....RESPONDENTS

*(BY SHRI AMIT SETH – DEPUTY ADVOCATE GENERAL)*

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Reserved on : 04.07.2022

Delivered on : 01.08.2022  
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*This petition coming on for hearing this day, **Hon'ble Shri Justice Vishal Mishra**, passed the following:*

**ORDER**

The present petition has been filed challenging the validity of the Circular No.F-19-192/92/12/2 dated 15.03.1993 issued by the Department of Mineral Resources, Government of Madhya Pradesh, Bhopal (M.P.), whereby the procedure has been laid down for computation of the stamp duty exigible, inter alia, for execution of a fresh deed of mining lease prescribed in Form "K" under Rule 31 of the Mineral Concession Rules, 1960.

2. It is the case of the petitioners that the petitioner No.1/Company which is registered under the Companies Act, 1956 owns a Cement Industrial Undertaking in the name and style as M/s. Satna Cement Works, Tehsil Raghuraj Nagar, District Satna in the State of Madhya Pradesh. Petitioner No.2 is the shareholder of the petitioner No.1 carrying on business through the agency of the petitioner No.1. The cement units are registered under the Factories Act, 1948 for using limestone as a major raw material for manufacture of cement. Looking to the

requirement of mineral for production of cement, the petitioner No.1 applied for grant of lease of limestone under the relevant provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as “the MMDR Act”) for an area of 56.27 Hectare in Village Birhauri, Tehsil Raghuraj Nagar, District Satna (M.P.). On 11.02.2004, a fresh lease was granted to the petitioner No.1 in pursuance to the execution of an agreement and registration of mining lease in Form “K” vide letter dated 02.07.2004 (Annexure P/2). He was directed to pay, *inter alia*, a stamp duty of Rs.4,32,00,000/- (Rupees Four Crores Thirty Two Lacs) by considering the anticipated amount of royalty payable at the rate of Rs.40/-per ton likely to be paid per annum in future by the prospective lessee.

3. It is argued that the demand which has been raised by the respondent department is on the higher side and is contrary to the relevant provisions, as the lease and the rent are two different concepts. It is argued that the lease defined under Section 105 of the Transfer of Property Act, 1882 being a transfer of right to enjoy such property is made for a certain time, expressed, implied or in perpetuity on consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms.

4. It is argued that Section 9 of the MMDR Act provides royalty in respect of mining lease and Section 9A of the MMDR Act provides dead rent to be paid by the lessee. It is submitted that the ‘royalty’ is charged on any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral

and the dead rent in terms of Section 9A of the MMDR Act is the amount payable to the State Government every year at such rate as may be specified by for the time being in the Third Schedule, for all the areas included in the instrument of lease. A proviso has been added that the holder of such mining lease becomes liable under Section 9 of the MMDR Act to pay royalty for any mineral removed or consumed by him or by his agent.

5. It is argued that the dead rent is being charged in anticipation of the mineral which is to be extracted and is being charged on the basis of royalty, which is not permissible. The cogent reading of all the relevant provisions of the aforesaid statute, Section 9A and Third Schedule under the MMDR Act, Clause 2 Part-V of the mining lease deed in the statutory Form "K", Article 35 of Schedule 1A of Indian Stamp Act, 1899 (herein after referred as "the Act of 1899") or Article 33 of Schedule 1A of the Act of 1899, requires execution and registration of the instant lease in Form "K" on payment of stamp duty on the basis of the annual rent for value of demised land under the lease by considering only annual dead rent. It is submitted that the concept of 'royalty' and the concept of 'dead rent' are two different aspects. Royalty and dead rent are being defined differently. Placing reliance upon a case of **Surajdin Laxmanlal Vs. State of Madhya Pradesh** reported in **AIR 1960 Madhya Pradesh 129**, it is argued that the "royalty has been defined as a pro-rata payment to a grantor or lessor, on the working of the property leased, or otherwise on the profits of the grant or lease". Therefore, the royalties are the payments which the Government may demand for appropriation of mineral or any other property belonging to the Government, meaning thereby, the royalties are being charged towards removal of articles in

proportion to quantity removed, and the basis of the payment is an agreement.

6. Further placing reliance upon the judgment passed by Hon'ble Supreme Court in a case of **H.R.S.Murthy Vs. The Collector of Chitoor and Another** reported in **AIR 1965 SC 177** wherein the concept of expression royalty was considered by Hon'ble Supreme Court. It is pointed out that Hon'ble Supreme Court in the aforesaid case held that 'royalty' which follows the expression 'lease amount' is something other than the return to the lessor or licensor for the use of the land surface and represents as it normally connotes the payment made for the materials or minerals won from the land.

7. Further placing reliance upon paragraph 35 of the judgment passed by Hon'ble Supreme Court in the case of **D.K.Trivedi & Sons and Others Vs. State of Gujarat and Others** reported in **1986 (Suppl.) SCC 20** dealing with the expression dead rent and royalty, it is argued that both the concepts are different. The dead rent payable on a mining lease in addition to royalty so called because it is payable whether the mine is being worked or not. The 'rent' means when a mine, quarry, brick-works, or similar property is leased, the lessor usually reserves not only a fixed yearly rent but also a royalty or galeage rent, consisting of royalties varying with the quantity of minerals, bricks, etc., produced during each year. The fixed rent is called as a dead rent. It is argued that the rent is an integral part of the concept of a lease. It is a consideration moving from the lessee to the lessor for demise of the property to him. The 'royalty' is being calculated on the basis of the mineral which has been extracted whereas, the 'dead rent' is calculated on the basis of the area leased. Thus, both the concepts are different.

8. Counsel appearing for the petitioners has drawn attention of this Court to Section 26 of the Act of 1899 which relates to valuation of the stamp duty on the instruments. In terms of Section 26 of the Act of 1899, if the subject matter of any instrument which is chargeable with ad-valorem duty could not have been ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument. The stamp which is actually used at the date of such execution have been sufficient. It is argued that the stamp duty on the dead rent is being calculated on the basis of the royalty which is required to be paid, but the fact remains that the royalty is totally dependent upon the amount of mineral which is to be extracted and the same cannot be ascertained at the time of execution of an agreement of the lease at initial stage, therefore, charging of the stamp duty on the basis of royalty as a dead rent is not permissible. It is argued that the dead rent as well as the royalty are two different things and the applicability of two different things the 'dead rent' cannot be charged upon the quantity of the mineral which has been extracted. The 'dead rent' is charged only on the area which is being leased out.

9. It is submitted that 'dead rent' and 'royalty' are both returned to the lessor in respect to the area which has been leased and dead rent can be described as a minimum amount paid to the lessor but the amount of royalty varied and it is on the basis of the quantity of the mineral extracted or removed from the area leased out. In such circumstances, both cannot be calculated. It is further argued that there may be instances that the lease has been granted and agreement has been executed, but the actual work of extraction of mineral does not take place for a considerable period then in such circumstances, no royalty could be charged. Therefore, it is not possible to ascertain the 'dead rent' on the

basis of the 'royalty'. In such circumstances, considering the provisions of Sections 9, 9A of the MMDR Act and Section 26 of the Act of 1899, the provisions of Article 33 of Schedule 1A of the Act of 1899 be declared as *ultra vires* and unconstitutional and to quash the circular and the demand notice Annexures P/1 and P/2 and has prayed for declaring the proviso to Section 26 of the Act of 1899 as not applicable with respect to execution and registration of new lease deed in form "K".

10. *Per contra*, counsel appearing for the State has vehemently opposed the contention and has argued that the royalty and the dead rent are two different aspects. Royalty is to be charged on the basis of the mineral which has been extracted and the dead rent is to be charged at the very initial stage at the time of execution of agreement. The question that whether the dead rent is to be charged on the basis of the royalty was considered by the Division Bench of the Court in the case of **Steel Authority of India Ltd. Bhilai Vs. Collector of Stamps, Bilaspur** reported in **1986 MPLJ 200** wherein provision of Section 26 Act of 1899, provisions of Minor Concession Rules, 1960 coupled with Article 2 (16) and Section 1A and Article 15 of the Stamp Act of 1899 were taken into consideration and it was held that the dead rent has to be charged in accordance with law on the royalty basis. The aforesaid issue was further considered by the Division Bench in the case of **M/s.BCC Finance Ltd. Vs. State of M.P. & Ors.** passed in Writ Petition No.997 of 2015 decided on 01.04.2016 wherein the Division Bench has again held that the lease documents being value of more than Rs.100/- are compulsorily registerable under Section 17 of the Registration Act and liable to pay stamp duty @ 4% as per Section 1A of Article 33 of the Act of 1899.

11. It is argued that the provisions of Section 26 of the Act of 1899 and the proviso appended thereto, are required to be seen. The proviso clearly says that in case of lease of a mine in which royalty or share of mineral is received as a rent or a part of rent, it shall be sufficient to have estimated such royalty or value of such share for the purpose of stamp duty. It is further contended that the proviso to Section 26 of the Act of 1899 is applicable in the case of mine lease. Both the aforesaid judgments have considered Section 26 of the Act of 1899 and its proviso. He has further drawn attention of this Court to Section 9A of the MMDR Act and has argued that the dead rent is to be paid by the lease holder to the State Government every year at such a rate which has been specified for the time being in the Third Schedule. It is further provided that he shall be liable to pay either such royalty or the dead rent in respect of the area whichever is greater. When he becomes liable under Section 9 of the MMDR Act to pay royalty for the mineral removed or consumed by him, the aforesaid Section was inserted by the Act 56 of 1972 and is applicable with effect from 12.09.1972 and since then the same has been continuously followed.

12. It is argued that proviso to Section 26 of the Act of 1899 specifically deals with the situation of levy of stamp duty and it is required to be read independently. Similarly Entry 38 of Schedule 1A which is appended to the Act of 1899 which specifically provide for the purpose of article royalty to be treated as the rent for computation of the stamp duty in cases of mining lease. It is argued that the aforesaid provision was in existence since its perception of enactment and in the year 2015, the clarification by way of an explanation has been incorporated. The explanation does not leave out any doubt on the issue for the purpose of computation of stamp duty to be levied on the



registration of mining lease. The proviso to Section 26 of the Act of 1899 would be applicable and computation of the stamp duty is to be quantified on the basis of anticipated royalty to be paid on mining lease for the period in question. It is further contended that at the time of filing of an application for grant of lease and prior to executing a document, a declaration has to be made that how much extraction of mineral can be made from the proposed area to be leased out. On the aforesaid basis, the calculation towards the royalty is being made and the dead rent has been charged on the basis of the royalty. It is argued that the dead rent is a minimum guaranteed amount to be paid to the State Government once the mining lease agreement is being executed. There are instances that the mining lease is being executed and no extraction of any mineral has been carried out for a considerable long period. It does not give any liberty to the lease holder not to pay any dead rent to the Government. He is required to pay the dead rent on the anticipated royalties. The dead rent is charged on the total area which is being leased out. It is not sure that from the whole leased out area the mineral has been extracted therefore, dead rent and royalty are two different things.

13. It is pointed out that in the case of **D.K.Trivedi & Sons and Others (supra)**, Hon'ble Supreme Court has considered the concept of royalty and dead rent and has defined the same. Hon'ble Supreme Court has held that the dead rent has "a minimum guaranteed amount of royalty per year payable, as per rules or the agreement under the mining rules, meaning, thereby, a lessee is under obligation to pay the surface rent, dead rent and royalty to the lessor are usual covenants to be found in the mining lease. Hon'ble Supreme Court has further considered the object and reason of Legislative Bill, 83 of 1972 for inserting provisions Section 9A of the MMDR Act with a view to prohibit the Central Government

from enhancing the date of dead rent more than once during the period of four years. In such circumstances, provisions of Section 9A of the MMDR Act are rightly being inserted.

14. It is argued that for declaring proviso as *ultra vires*, the personal grievances cannot be taken into consideration as a proviso has been added to Section 26 of the Act of 1899 and the same has to be dealt independently as has been held by Hon'ble Supreme Court in the case of **Motiram Ghelabhai (dead) through LRs & Ors. Vs. Jahan Nagar (dead) through LRs & Anrs.** reported in (1985) 2 SCC 279. Further placing reliance upon the judgment passed in the case of **Keshavji Ravji & Co. Vs. CIT** reported in (1990) 2 SCC 231 with respect to an explanation being inserted as explanation 6 to the Entry No.38 Schedule 1A appended to the Act of 1899, it is argued that the explanation generally speaking the meaning of a certain phrase, the expression contained in a statutory provisions. He has prayed for dismissal of the writ petition.

15. Heard the learned counsel for the parties and perused the record.

16. It is the case of the petitioners that the royalty and the dead rent are two different aspects. The dead rent cannot be charged only on the basis of royalty, as the dead rent is to be charged at the very initial stage at the time of executing leased documents, whereas, the royalty is to be charged on the basis of the mineral which has been extracted from the lease area.

17. Relevant provisions dealing with the aforesaid aspect are Sections 9 and 9A of the MMDR Act which was inserted by the Act 56 of 1972 with effect from 12.09.1972 as well as Section 26 of the Act of 1899 are required to be seen.

***“9. Royalties in respect of mining leases.—***

*(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything*

*contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any 1[*mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee*] from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.*

*(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any 2[*mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee*] from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral. 2[(2A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.]*

*(3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification: 3[*Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of 4[three years].*”*

**“9A. Dead rent to be paid by the lessee.—**

*(1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, pay to the State Government, every year, dead rent at such rate, as may be specified, for the time being, in the Third Schedule, for all the areas included in the instrument of lease: *Provided that where the holder of such mining lease becomes liable, under section 9, to pay royalty for any mineral removed or consumed by him or by his agent, manager employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty, or the dead rent in respect of that area, whichever is greater.**

*(2) The Central Government may, by notification in the Official Gazette, amend the Third Schedule so as to enhance or reduce the rate at which the dead rent shall be payable in respect of any area covered by a mining lease and such enhancement or reduction shall take effect from such date as may be specified in the notification: Provided that the Central Government shall not enhance the rate of the dead rent in respect of any such area more than once during any period of 2[three years].”*

**26. Stamp where value of subject-matter is indeterminate.—**

*Where the amount or value of the subject-matter of any instrument chargeable with ad valorem duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount of value for which if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient: 54 [Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—*

*(a) when the lease has been granted by or only behalf of 55 [the Government], at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the Government under the lease, or*

*(b) when the lease has been granted by any other person, at twenty thousand rupees a year, and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease:]*

*Provided also that where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution”.*

18. From the perusal of the aforesaid provisions of the MMDR Act, it is seen that the holder of the mining lease is required to pay royalty on the mineral extracted or removed by him from the leased area whereas, the dead rent in terms of Section 9A of the Act of MMDR Act is to be

ascertained at the time of execution of the leased documents, irrespective of the fact whether the extraction is being carried out by the lease holder or not. The dead rent is the minimum guaranteed amount which is required to be paid to the Government in lieu of the area which has been leased out. The question which arises for consideration is for termination of the dead rent amount to be paid to the Government. The petitioners contention is that the dead rent cannot be charged on the basis of the royalty amount because royalty being a subsequent event which depends upon the extraction of a mineral from the leased area. A lease holder is required to make payments towards the royalty against the leased land. A proviso has been added that where the holder of the mining lease would become liable, under Section 9 of the MMDR Act to pay royalty for any mineral removed or consumed by him from the leased area shall be liable to pay either such royalty or dead rent in respect of that area whichever is greater. Meaning thereby, the lease holder is required to make payments towards the dead rent every year to the Government but as soon as the amount of royalty is more than the dead rent then he is liable to pay royalty amount. Section 26 of the Act of 1899 clearly provides that in cases of mining lease, the stamp duty is to be charged on the basis of the estimated royalty value at the time of executing the lease deed. The Collector on behalf of the Government is required to ascertain the amount of stamp duty on the leased document.

19. Hon'ble Supreme Court in the case of **D.K.Trivedi & Sons and Others (supra)** has considered the expression 'royalty' and 'dead rent' as under:-

*"Royalty" is defined in Jowitt's "Dictionary of English Law", Second Edition, at page 1595, inter alia, as :*

*"Royalty, a payment reserved by the grantor of a patent, lease of a mine or similar right, and payable proportionately to the use made of the right by the*

grantee. It is usually a payment of money, but may be a payment in kind, that is, of part of the produce of the exercise of the right. See Rent.

“36. "Royalty" is defined in Wharton's "Law Lexicon" Fourteenth Edition, at page 839, as :

"Royalty, payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised.

The definition of "royalty" given in Black's "Law Dictionary", Fifth Edition, at page 1195, is as follows :

"Royalty. Compensation for the use of property, usually copyrighted material or natural resources, expressed as a percentage of receipts from using the property or as an account per unit produced. A payment which is made to an author or composer by an assignee, licensee or copyright holder in respect of each copy of his work which is sold, or to an inventor in respect of each article sold under the patent. Royalty is share of product or profit reserved by owner for permitting another to use the property. In its broadest aspect, it is share of profit reserved by owner for permitting another the use of property....

In mining and oil operations, a share of the product or profit paid to the owner of the property.....

In *H.R.S. Murthy v. Collector of Chittor and Anr.*, [1964] 6 S.C.R. 666, 673 this Court said that "royalty" normally connotes the payment made for the materials or minerals won from the land.

In Halsbury's "Laws of England", Fourth Edition in the volume which deals with "Mines, Minerals and Quarries", namely, volume 31, it is stated in paragraph 224 as follows:

"224. Rents and royalties. An agreement for a lease usually contains stipulations as to the dead rents and other rents and royalties to be reserved by, and the covenants and provisions to be inserted in, the lease..... "

The topics of dead rent and royalties are dealt with in Halsbury's "Laws of England" in the same volume under the sub-heading "Consideration", the main heading being "Property demised; Consideration". Paragraph 235 deals with "dead rent" and paragraph 236 with "royalties". The relevant passages are as follows :

*"235. Dead rent. It is usual in mining leases to reserve both a fixed annual rent (otherwise known as a 'dead rent', 'minimum rent' or 'certain rent') and royalties varying with the amount of minerals worked. The object of the fixed rent is to ensure that the lessee will work the mine; but it is sometimes ineffective for that purpose. Another function of the fixed rent is to ensure a definite minimum income to the lessor in respect of the demise.*

*If a fixed rent is reserved, it is payable until the expiration of the term even though the mine is not worked, or is exhausted during the currency of the term, or is not worth working, or is difficult or unprofitable to work owing to faults or accidents, or even if the demised seam proves to be non-existent.*

*"236. Royalties. A royalty, in the sense in which the word is used in connection with mining leases, is a payment to the lessor proportionate to the amount of the demised mineral worked within a specific period."*

*In paragraph 238 of the same volume of Halsbury's "Laws of England" it is stated :*

*"238. Covenant to pay rent and royalties. Nearly every mining lease contains a covenant by the lessee for payment of the specified rent and royalties.*

*Rent is an integral part of the concept of a lease. It is the consideration moving from the lessee to the lessor for demise of the property to him. Section 105 of the Transfer of Property Act, 1982, contains the definitions of the terms "lease", "lessor", "lessee", "premium" and "rent" and is as follows :*

*"105, Lease defined. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.*

*Lessor, lessee, premium and rent defined. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."*

*In a mining lease the consideration usually moving from the lessee to the lessor is the rent for the area leased (often called surface rent), dead rent and royalty. Since*

*the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called "royalty". It may, however, be that the mine is not worked properly so as not to yield enough return to the lessor in the shape of royalty. In order to ensure for the lessor a regular income, whether the mine is worked or not, a fixed amount is provided to be paid to him by the lessee. This is called "dead rent".*

*"Dead rent" is calculated on the basis of the area leased while royalty is calculated on the quantity of minerals extracted or removed. Thus, while dead rent is a fixed return to the lessor, royalty is a return which varies with the quantity of minerals extracted or removed. Since dead rent and royalty are both a return to the lessor in respect of the area leased, looked at from one point of view dead rent can be described at the minimum guaranteed amount of royalty payable to the lessor but calculated on the basis of the area leased and not on the quantity of minerals extracted or removed."*

20. The Division Bench in the case of **Steel Authority of India Ltd. Bhilai (supra)** had an occasion to consider the similar issue wherein after a detailed discussion, the Division Bench has arrived at the conclusion that a proviso appended under Section 26 of the Act of 1899 is attracted in the case of mining lease and rent of the dead rent is to be ascertained only on the basis of the estimated royalty value. While considering the aforesaid Article 35 of the Act of 1899 was taken into consideration by the Division Bench is as follows :-

*"The actual controversy between the parties is really to the applicability of (he proviso in section 26 relating to mining leases. Admittedly, royalty is payable under the mining lease and effect of the relevant statutory provisions read along with Part V of the instrument of lease in Form K is that the lessee is "liable to pay either such royalty or*



*the dead rent in respect of that area, whichever is higher. " This obviously is the consideration for the lease or, in other words, "rent" due thereunder from (he fesse to the lessor. Dead rent is to be paid in respect of the area within the mining lease and royalty is paid on the quantity of mineral extracted and removed according to the prescribed rates. Where no excavation and removal of the mineral is done, dead rent alone is payable; but in case of excavation and removal of the mineral royally is to be paid. It is clear that the higher of the two amounts is to be paid as consideration or, in other words, "rent" under the lease. The meaning of "royalty" is well settled. "royalty" in the present context means the payment made "to the owner of minerals for the right of working the same on every ton or other weight raised. " Royalty is a payment to the lessor proportionate to the amount of the mineral worked; it is paid in addition to dead rent and surface rent and is a normal feature of mining leases. This is the meaning of "royalty" stated in Surajdin Laxman V/s. State of M. P. (1960 MPLJ 39) and B. B. Saha v. State Govt. of M. P. , Bhopal (1969 M. P. L. J.128) on the basis of references mentioned therein.*

*5 It would be useful to refer to the definition of "lease" in section 2 (16) of the stamp Act wherein an inclusive definition is given stating that it means a lease of immovable property. The expression "lease" used in the Stamp Act has, therefore, to be understood as defined in section 105 of the Transfer of Property Act in Chapter V relating to leases of immovable property. The definition of "lease" in section 105 of the Transfer of Property Act shows that it is a transfer of a right to enjoy such property in consideration of a price paid and that the consideration given by the lessee to the lessor under the lease, called by whatever name, is the "rent". It is, therefore, obvious that the royalty payable under the mining lease by the lessee to the lessor is the "rent" or at least a part of the rent payable under the mining lease. The primary contention on behalf of the petitioners that royalty is not "rent" or a part thereof is clearly untenable. This view is fully supported by the decisions in Low cv- to. V/s. Jyoti Prasad : (A. I. R.1931 PC 299) and Tarkeshwar Sio Thakur Jiu V/s. B. D. Dey and Co. (A. I. R.1979 S. C.1669 ).*

*6 section 26 of the stamp Act applies when the value of the subject-matter is indeterminate and ad valorem duty is chargeable on the instrument. The amount of royalty*

*payable under a mining lease cannot, therefore, be ascertained at the date of its execution. Royalty is payable where it is higher than the dead rent according to the terms of the lease itself and, as already indicated, royalty being consideration for the lease, it is rent or at least a part of the rent payable under the lease. These characteristics of an instrument of mining lease being beyond controversy and royalty being the "rent" or part of the rent in the case of a mining lease, section 26 of the stamp Act including the proviso therein is clearly attracted and it cannot be said that the rent is fixed by such lease so as to apply Article 35 (a) alone and exclude the applicability of section 26. The proviso in section 26 is enacted specifically for mining leases under which royalty is to be paid and if the petitioners contention is accepted, it would not only be contrary to the settled meaning and concept of royalty payable under a mining lease but it would also render this part of section 26 as a legislative exercise in futility. Clause (a) of the Proviso also provides for calculating the amount or value of the subject-matter on the basis of estimated royalty likely to be payable under the lease. The mode of determining the value of subject-matter in such cases where the same cannot be ascertained with precision at the date of the execution of the instrument has also been provided in section 26. It cannot, therefore, be doubted that section 26 of the stamp Act clearly applies."*

21. From the perusal of the aforesaid judgments of the Division Bench as well as Hon'ble Supreme Court, it is apparently clear that there is a distinction between royalty and the dead rent and proviso to Section 26 of the Act of 1899 is clearly attracted in the case of mining lease.

22. Another judgment passed by the Division Bench in the case of **M/s.BCC Finance Ltd.(supra)** has again considered the similar issue taking into consideration the relevant provisions of Section 26, Article 33 in Schedule 1 of the Act of 1899 dealing with the lease, Clause 2 (6)(7) of the Act of 1899 and Section 17 of the Registration Act read with Section 2(16) of the Act of 1899 and has arrived at the conclusion that any lease being above the value of Rs.100/- is compulsorily registerable

under Section 17 of the Registration Act and is liable to pay stamp duty @ 4% as per Schedule 1A of Article 33 of the Act of 1899, meaning thereby, the amount of stamp duty payable under the lease deed at the time of execution has to be ascertained in terms of relevant provisions of the Act of 1899 as well as Section 17 of the Registration Act and also provisions of MMRD Act and proviso to Section 26 of the Act of 1899 is applicable to the cases of mining lease. Thus, it is apparently clear that the dead rent is required to be calculated only on the basis of ascertained royalty to be charged from the lease holder at the very initial stage. Hon'ble Supreme Court in the case of **Motiram Ghelabhai (dead) through LRs & Ors (supra)** has also considered the Section 26 of the Act of 1899.

23. Counsel appearing for the State has brought to the notice of this Court the documents issued in the year 2015 with respect to Entry No. 38 of the Schedule 1A of the Act of 1899 which was inserted as Explanation 6 which clearly provides that for the purpose of Article, the royalty is to be treated as rent for computation of stamp duty in cases of mining lease. It was argued that provisions was available in the original Act itself but the explanation was required to be inserted just to avoid the confusion and litigations. The explanation inserted does not mean that there is any change in the original section or rule but the same is only a clarification given by the authorities. The meaning of words 'Explanation' or 'Clarification' were considered by Hon'ble Supreme Court in the case of **Keshavji Ravji & Co. Vs. CIT (supra)** wherein Hon'ble Supreme Court has held as under:-

*“....37.Sri Ramachandran urged that the introduction, in the year 1984, of Explanation I to Section 40(b) was not to effect or bring about any change in the law, but was intend- ed to be a mere legislative exposition of what the law has always been. An 'Explanation', generally*

*speaking, is intended to explain the meaning of certain phrases and expressions contained in a statutory provision. There is no general theory as to the effect and intendment of an Explanation except that the purposes and intendment of the 'Explanation' are determined by own words. An Explanation, depending on its language, might supply or take away something from the contents of a provision. It is also true that an Explanation may--this is what Sri Ramachandran suggests in this case--be introduced by way of abundant--caution in order to clear any mental cobwebs surrounding the meaning of a statutory provision spun by interpretative errors and to place what the legislature considers to be the true meaning beyond controversy or doubt. Hypothetically, that such can be the possible purpose of an 'Explanation' cannot be doubted. But the question is whether in the present case, Explanation I inserted into Section 40(b) in the year 1984 has had that effect.*

*38. The notes on clauses appended to the Taxation Laws (Amendment) Bill, 1984, say that Clause 10 which seeks to amend Section 40 will take effect from 1st April, 1985 and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years. The express prospective operation and effectuation of the 'Explanation' might, perhaps, be a factor necessarily detracting from any evincement of the intent on the part of the legislature that the Explanation was intended more as a legislative-exposition or clarification of the existing law than as a change in the law as it then obtained. In view of what we have said on point (c) it appears unnecessary to examine this contention any further."*

24. From the aforesaid, it is clear that the explanation inserted in the year 2015 is clearly applicable to the case of the petitioners who have entered into a lease agreement almost ten years back.

25. As far as declaration of the relevant provision of the rule to be *ultra vires* is concerned, it is a settled law that the same cannot be declared as *ultra vires* owing to personal inconveniences. Interpretation of the statute from the different parts of the Section or the Rule are required to be considered as it is the basic intention of the legislature

which is required to be seen. It is required to be analyzed that whether a particular proviso appended to a particular Section is to be read in consonance with the main Section or independently. In the present case, Section 26 of the Act of 1899 deals with payment of stamp duties on the instrument and the proviso appended thereto it clearly speaks of the fact that the proviso is applicable in cases of mining lease, therefore, the proviso is only to be read with respect to the mining lease as an independent provision.

26. The Full Bench of this Court in the case of **Arun Parmar Vs. State of Madhya Pradesh and Others** (*W.P.No.1539 of 2018*) decided on 22.04.2021 has held as under:-

*“27. It is settled position of law that while interpreting a statute different parts of a section of the rule have to be harmoniously construed so as to give effect to the purpose of the legislation and the intention of the legislature. Even the Full Bench in its judgment in Masood Akhtar (Dr.) (supra) while relying upon the judgment of the Supreme Court in British Airways vs. Union of India, (2002) 2 SCC 95 has observed that sub-sections of a section must be read as parts of an integral whole and as being interdependent and an attempt should be made in construing them to reconcile them if it is reasonably possible to do so and to avoid repugnancy. As held by the Supreme Court in Raj Krushna Bose vs. Binod Kanungo and others, AIR 1954 SC 202, a statute must be read as a whole and one provision of the Act should be construed with reference to the other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid “a head on clash” between the two sections of the same Act and WP/1539/18 & linked matters whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise. The Supreme Court in Madanlal Fakirchand Dudhediya vs. Shree Changdeo Sugar Mills Ltd., AIR 1962 SC 1543 has held that the rule of construction is well*

*settled that when there are in an enactment two provisions, which cannot be reconciled with each other, they would be so interpreted that if possible the effect should be given to both. This is what is known as “rule of harmonious construction”.*

27. The Full Bench of this Court in the case of *Nagjiram Vs. Mangilal and Others* reported in (1976) 21 MPLJ 759 has considered the powers of the Court with respect of interpretation of the statute and has held as under:-

*“9.....In our opinion, we cannot, in the garb of interpretation, make any law or amend the section. Our province is limited to laying down the law as it is, and not to lay down the law as it should be although it is not. It is the first principle of interpretation of Statutes that the Court must interpret the law according to the intention of the Legislature and the intention of the Legislature must be seen deposited in the language of the statute itself. It is not permissible for a Court to interpret a law according to a supposed intention of the Legislature or to add words to the section when its wording is plain and unambiguous. It is for others to amend the law or to make a new law.”*

28. In such circumstances, it is apparently clear that the proviso to Section 26 of the Act of 1899 applicable to the mining lease is required to be read separately from the main Section which is dealing with imposition of stamp duty. As far as other documents are concerned, the explanation is also inserted by the Government in the year 2015 which makes it clear that the proviso is applicable in the cases of mining lease. On bare reading of the proviso, it is apparently clear that the stamp duty or the dead rent is to be charged on the basis of the amount of royalty to be paid.

29. In the back-drop of the aforesaid submission and the law laid down in the various cases coupled with the relevant provisions of MMRD Act

and the Act of 1899, the contention raised by the counsel appearing for the petitioners could not be accepted.

30. The writ petition *sans* merit and is accordingly dismissed. No order as to costs.

**(RAVI MALIMATH)**  
**CHIEF JUSTICE**

**(VISHAL MISHRA)**  
**JUDGE**

Sha