



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA,
&
HON'BLE SHRI JUSTICE PRADEEP MITTAL**

**WRIT PETITION No. 3601 of 2021
*M.P. BRICKS COMPANY***

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WITH

**WRIT PETITION No. 3989 of 2021
*SATISH JEEVTHANI AND OTHERS***

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

**WRIT PETITION No. 4612 of 2021
*AMIT KHATRI***

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

**WRIT PETITION No. 8432 of 2021
*RAMESH AZAD***

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

**WRIT PETITION No. 29036 of 2021
*M/S BALAJI STONE***

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

**WRIT PETITION No. 7540 of 2022
*ANKIT GAUTAM***

Versus



THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 8852 of 2022
KHAJURAO INFRASTRUCTURE PVT. LTD. THROUGH
ITS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 8908 of 2022
AJAY KUMAR JAIN
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 11326 of 2022
M/S SHREE GANESH GRANITE
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 12994 of 2022
RAGHAVENDRA SINGH BHADORIYA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 13031 of 2022
MANJULATA RAJPUT
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 22343 of 2022
VIVEK TIWARI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 28800 of 2022
DIVYA SHUKLA
Versus



THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 29504 of 2022

D.G. MINING PVT. LTD.

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 10292 of 2023

HIRA POWER AND STEELS LIMITED

Versus

STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17878 of 2023

***MAHARAJA STONE CRUSHER THROUGH PARTNER
ABDUL GAFFAR***

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 23517 of 2023

MANISH KUMAR PUROHIT AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 30602 of 2023

M/S KISAN EXPORTS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 30604 of 2023

M/S KISAN EXPORTS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 15958 of 2024

SARASWATI STONE CRUSHER

Versus



THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 26838 of 2024

M/S S.B GRANITES LIMITED

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 27180 of 2024

VIBHA SINGH

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 35707 of 2024

SMT SAHIL KUMAR AGRAWAL

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 1232 of 2025

DEVENDRA KUMAR SUKHWANI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 7322 of 2025

PARMANAD PATIDAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 41601 of 2025

ASHOK CHOPRA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 43275 of 2025

MS KHANDELWAL METAL WORK THROUGH VASANT

Versus



THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 47658 of 2025

PANKAJ MISHRA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 47967 of 2025

KISHAN TRIPATHI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri R.S. Jaiswal, Senior Advocate with Shri K.K. Gautam, Shri Naman Nagrath, Senior Advocate with Shri Jubin Prasad, Shri Shreyas Dharmadhikari, Shri Anshuman Singh, Shri Shreyash Pandit, Shri Ranjeet Dwivedi, Shri Yash Nitin Nasery, Shri Priyan Shrivstava, Shri Shoeb Hasan Khan, , Shri Geet Sukhwani, Shri Shivam Chhalotre, Shri Pratap Tarun Singh, and Shri Navneet Shukla - Advocates for the petitioners.

Shri Abhijeet Awasthi Deputy Advocate General along with Shri Ritwik Parashar, Government Advocate for respondents/State.

Reserved on	-	13.01.2026
Pronounced on	-	.01.2026

ORDER

Per: Pradeep Mittal,

As all these writ petitions involve a common issue, they are heard and decided concomitantly by this common order. References to annexures and documents are taken from W.P. No. 3601 of 2021 for convenience.

1. The petitioner is challenging the order Annexure P/1 in which the Mining Officer, Hoshangabad has passed order of



recovery of dead rent during the period between 2013-14 principle of which has been valued at Rs.4,60,903/-.

2. That facts leading to the filing of the present petition are that, the petitioner had applied for renewal of quarry lease on 25.06.2012 before the respondent no.3 and the same was granted in favour of the petitioner on 26.09.2013 for a period of 10 years, thereafter the petitioner applied for environment clearance before the State Environment Impact Assessment Authority and the same was granted in favour of petitioner on 25.11.2014. The petitioner was not granted Bhu Pravesh as per provision of M.P. Land Revenue Code after due compliance of all mandatory condition mentioned in the Letter of intent. After due approvals granted in favour of the petitioner, the petitioner with the intention of operating the QUARRLY LEASE entered the land but in the meanwhile the National Green Tribunal has stayed the operation of mining lease in which environment clearance is not granted. The respondent no.3 has enumerated the condition that the petitioner is restricted to start the work without environment clearance. However, even though he was unable to operate the mining work in the leased area he has paid the dead rent for the period 2012 to 2013. The respondent no.3 has issued the demand notice of dead rent for the period of 13.07.2013 to 13.07.2014 vide order dated 12.03.2015. The possession could have been handed over to the petitioner and prior to starting the mining work the respondent no.3 has demanded the dead rent which is against the order passed by the Central Government whereby the Government of India vide Annexure P/ 6 issued the direction to all States directing that premature determination of dead rent when lessee was not legally



allowed to carry out mining activities, the State Government could not demand arrears of dead rent for intervening period. The petitioner against the order passed by the Collector approached the Appellate Authority U/s 57 of Rules 1996 wherein the said order of the Collector was affirmed by the respondent nos.1 and 2. The respondent No.3 has overlooked the clarification issued by the Central Government in the year 2001 whereby the Central Government has clarified that the State Government could not demand the dead rent if the leasee has not operated the mines. The respondent no.3 has completely overlooked the notification and dismissed the claim of the petitioner without applying the mind. The order of recovery of dead rent is arbitrary and unlawful and has been issued without application of mind. The petitioner has questioned the same before the Appellate Authority u/s 57 of Rules of 1996 and after facing rejection the petitioner has moved before the State Government and the State Government vide order dated 06.04.2018 has rejected the contentions raised by the petitioner qua exemption from the dead rent. The petitioner was unable to operate the mining work due to stay order passed by National Green Tribunal. The petitioner is suffering by the inaction on the part of respondents and petitioner is not at any fault as the condition for delaying is beyond the control of the petitioner. The impugned order dated 12.03.2015 and 24.04.2018 in which a demand has been raised for recovery of dead rent between the period 2013 to 2014 is bad in law as provision of recovery of dead rent persists only after the starting the work. The impugned order dated 06.01.2018 is issued in total disregard in overlooking the clarification issued by Government of India.



3. The submission of the respondent is that, in the present petition, the petitioner has heavily relied upon the communication made by the Central Government dated 09.10.2001 (Annexure P/6) and has claimed that, the Central Government had already clarified the aforesaid aspect but still the State Government is insisting upon to pay the dead rent. The communication (Annexure P/6) also deals with the aspect that, if the lessee did not have the physical possession over the leased area despite being lease awarded to him, in these circumstances the dead rent could not have been charged. The facts and circumstances of the present case are different. As indicated hereinabove that, if at all the grant of the petitioner is the fresh grant and first time the petitioner is applying for environmental clearance / entrance permission to the land then the case would have been different. But in the present case if under Rule 17 of the concerned rules, if the application is made prior to one year of lapse then the case of the petitioner comes under the automatic renewal at that relevant point of time and the same was exactly done in the present case. That, in these circumstances, the present case of the petitioner falls under that category of deemed renewal, in these circumstances, the plea taken by the petitioner that due to the fault of the State Government, the petitioner could not have operated, is incorrect, infact it is the duty upon the petitioner to get all the clearances in time as he himself has applied for renewal prior to one year of elapsing the lease. That, in these circumstances, the present petition filed by the petitioner is misconceived and the same deserves to be dismissed.



4. Heard the learned counsel for the parties. The crucial question for the consideration in all petitions is:-

“Whether dead rent is payable after the grant of a quarry lease when the lease could not be operated due to non-handover of possession of the leased property or because the requisite permissions for operating the lease were not granted by the competent authority?”

5. A bare perusal of Annexure R/1 clearly indicates that, the petitioner has raised the contention that, in the absence of environmental clearance the lease could not have been operated, in the circumstances, his dead rent may be exempted. The authorities while considering the grievance of the petitioner has also specifically indicated that, under the Rules of 1996 in the case of renewal, there is no provision of granting exemption of dead rent. The aforesaid demand orders which have been passed by the authorities in their respective jurisdiction are just and proper. The petitioner was given notice for payment of dead rent way back on 13.09.2014 and thereafter the Director, Geology and Mining has also endorsed the aforesaid aspect on 12.03.2015, as is clear from Annexure R/2 and R/3.

6. Learned counsel for the petitioner, referring to the circular dated 09.10.2001 issued by the Government of India, Ministry of Steel and Mines, Department of Mines, submits that even after execution of the lease, the petitioner could not commence mining operations and was unable to excavate or utilize the leased property. Consequently, the lease was terminated, and the State Government directed the lessee to pay dead rent along with interest thereon as a penalty. The Court held that, in such



circumstances, the Mining Department was not entitled to receive any dead rent for the leased area for the period up to the cancellation of the lease. It has thus been held by the High Courts that where the petitioner could not operate the area covered under the mining lease due to non-handover of physical possession of the lease area, mere execution of the lease does not give rise to liability to pay dead rent. Further, in cases where the lessee ceased to have legal rights such as upon termination of the lease or rejection of an application for renewal even if the lease is subsequently restored by a competent authority, dead rent is not payable for the period during which the lessee had neither physical nor legal possession of the leased area.

7. The petitioner has further relied upon the letter dated 09.10.2001 issued by the Government of India, Ministry of Steel and Mines, addressed to all the States, regarding the orders passed by the Rajasthan and Karnataka High Courts on the issue of payment of dead rent. The said document also does not support the petitioner's case, as Section 9A of the MMDR Act, 1957 was amended in the year 2016, and the State of Madhya Pradesh has also framed statutory rules governing royalty and dead rent pursuant to the said amendment.

8. The petitioner has also placed reliance upon the judgments of the Rajasthan High Court in **Chhoga Ram Mundoliya v. State of Rajasthan and others**, reported as **1992 SCC OnLine Raj 612**, and of the Karnataka High Court dated 20.07.1990 passed in **W.P. No. 38462 of 1989 (M/s Jyoti Brothers v. State of Karnataka and others)**. In the aforesaid judgments, it



was held that when the holder of a mining lease becomes liable to pay royalty on the minerals removed or consumed from the lease area, he is required to pay either royalty or dead rent, whichever is higher. However, the findings recorded in the above judgments do not support the case of the petitioner, as the MMDR Act was amended in the year 2016, and Section 9A was inserted by Act No. 25 of 2016 with effect from 06.05.2016. In view of the said amendment, the ratio laid down in the above judgments is no longer applicable to the present case.

9. The petitioner has heavily relied upon the order dated 01.09.2022 passed by this Court in **W.P. No. 8953 of 2022 (Ashish Pandey v. State of M.P. and others)**, wherein it was held that since the petitioner had not excavated any mineral for the last four years and had not earned any income therefrom, the demand raised was unreasonable, harsh, and unjustified. However, the facts of the said case are clearly distinguishable from the facts of the present case. In the said judgment, it was also held that for the period 2019–2022, there was no subsisting lease. Although the Director, by order dated 12.01.2022, renewed the lease retrospectively with effect from 01.01.2019, this Court held that there was no lease in existence during the period 2019–2022, and therefore, the petitioner therein was not liable to pay dead rent. Accordingly, the aforesaid judgment does not assist the case of the present petitioner.

10. The petitioner further relies upon the judgment of the Hon'ble Supreme Court in the case of **D.K. Trivedi' and Sons and others Vs. State of Gujrat and others 1986 (Supp) SCC 20** in para 43 to 45 wherein it has been held as under:



43. *The Gujarat High Court in Sorabji case held that the intention of Parliament in enacting Section 15(1) was not to clothe the State Governments with power to impose any financial liability upon the lessee but only to give them the power to prescribe conditions for regulating the grant of leases other than conditions relating to financial liability and that the power to prescribe conditions relating to financial liability of a lessee were to be found only in sub-section (3) of Section 15. In order to ascertain this intention attributed by it to Parliament, the Gujarat High Court relied upon the provisions of Section 9-A and sub-section (3) of Section 15. The same view was taken by the Andhra Pradesh High Court in M. V. Subba Rao v. State of A.P. and another, AIR 1978 AP453.*

44. *We find that the reliance placed by the Gujarat High Court in Sorabji case, which is one of the two judgments of that High Court challenged before us, and the Andhra Pradesh High Court in M. V. Subba Rao case on sub-section (3) of Section 15 and Section 9-A in order to ascertain the intention of Parliament is misplaced. Though sub-section (3) was inserted in Section 15 with retrospective effect by the Amendment Act of 1972, until it was so inserted it was not before the courts when they came to construe the scope of the rule-making power of the State Governments under Section 15(1) and even without sub-section (3) being before the courts, various High Courts have held that the State Governments' power to charge royalty is to be found in the rule-making power conferred by Section 15(1). The Patna High Court in Ladu Mal v. State of Bihar and others AIR1965 Patna 491,*



*the Madhya Pradesh High Court in Banku Bihari Saha v. State Government of M.P. and others. AIR1969 MP210, the Punjab and Haryana High Court in Shanti Saroop Sharma v. State of Punjab and others AIR 1969 Punj. and Har. 79 and M/s Amar Singh Modi Lal v. State of Haryana and others AIR 1972 Punj. And Har. 356 and the Rajasthan High Court in M/s Brimco Bricks, Bharatpur v. State of Rajasthan and another AIR 1972 Raj. 145 have all taken this view. **These were all cases prior to the Amendment Act of 1972 when sub-section (3) of Section 15 was not then on the statute book.** After the enactment of the Amendment Act of 1972, the Allahabad High Court in Sheo Varan Singh v. State of U.P. AIR 1980 A;;. 92 has held that the power of the State Governments to charge royalty and dead rent is to be found only in Section 15(1). The Rajasthan High Court in Bal Mukand Arora v. State of Rajasthan and others AIR 1981 Raj. 95 has also taken the same view, disagreeing with the view taken by the Andhra Pradesh High Court in M. V. Subba Rao case.*

45. A proper reading of sub-section (3) of Section 15 shows that it does not confer any power upon the State Governments to make rules with respect to royalty. Royalty is payable by the holder of a quarry lease or mining lease or other mineral concession granted under rules made under sub-section (1) of Section 15. What sub-section (3) does is to make such holder liable to pay royalty in respect of minor minerals removed or consumed not only by him but also by his agent, manager, employee, contractor or sub-lessee. It thus casts a vicarious liability upon such holder to pay royalty in respect of the acts of



persons other than himself. The very fact that under sub-section (3) the liability of such holder is to pay royalty “at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals” shows that the prescribing of the rate of royalty in respect of minor minerals is to be done under the rule-making power of the State Governments which is to be found in sub-section (1) of Section 15. Yet another purpose of enacting sub-section (3) is to be found in the proviso to that sub-section which prohibits the State Government from enhancing the rate of royalty in respect of any minor mineral for more than once during any period of four years. If the reliance placed by the Gujarat and the Andhra Pradesh High Courts on sub-section (3) of Section 15 in order to ascertain the intention of Parliament was misplaced, their reliance upon Section 9-A was even more misplaced. Section 9-A was inserted in the 1957 Act by the Amendment Act of 1972 but it was not inserted with retrospective effect. It was, therefore, not there when Section 15(1) was placed upon the statute book while enacting the 1957 Act. Section 9-A was enacted with a two-fold purpose. It cast a liability upon the holder of a mining lease whether granted before or after the commencement of the 1972 Act, that is, either before or after September, 12, 1972, to pay to the State Government dead rent at the rates specified for the time being in the Third Schedule to the 1957 Act “notwithstanding anything contained in the instrument of lease or in any other law for the time being in force”. The purpose of inserting Section 9-A in the 1957 Act, as stated in the Statement of Objects and Reasons



to Legislative Bill 83 of 1972, was to make a “provision of a statutory basis for calculation of dead rent”. Section 9-A also provides that the liability of the lessee would be to pay either royalty or dead rent, whichever is greater, thus embodying in the Act what was contained in the proviso to clause (c) of Rule 27 of the Minor Mineral Concession Rules, 1960. Section 9-A was inserted also with a view to prohibit the Central Government from enhancing the rate of dead rent more than once during any period of four years. It is pertinent to note that by the Amendment Act of 1972 Section 9 was also amended. While under the original sub-section (1) of Section 9 the liability of the holder of a mining lease was only to pay royalty in respect of any mineral removed by him, after the amendment he is made liable to pay royalty in respect of any mineral “removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee”. By the Amendment Act of 1972 the power of the Central Government to amend by notification the Second Schedule which specifies the rate of royalty was also curtailed by inserting a proviso to Section 9(3) in order to provide that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of four years. The amendments made by the Amendment Act of 1972 have, therefore, no relevance for ascertaining the scope of the rule-making power of the State Governments under Section 15(1).

11. Regarding the issue involved in these petitions, it is apposite to consider the legal provisions. Section 15(3) of the



Mines and Minerals (Development and Regulation) Act, 1957 is as under:-

“15. Power of State Governments to make rules in respect of minor minerals

*** **

(3) The holder of a mining lease or any other mineral concession granted under any rule made under subsection (1) shall pay royalty or dead rent, whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:

Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years.”

12. As stated by the petitioner, the levy of royalty is by virtue of Rule 29(3) of the Madhya Pradesh Minor Mineral Rules, 1996, which reads as under:-

“29. Rent, Royalty and other payable amounts etc. –

(1) When quarry lease is granted or renewed

(2) xxx xxx

xxx

(3) Notwithstanding anything contained in any instruments of the lease, in cases of minerals specified in Schedule-I and Schedule II, the lessee shall pay royalty/rent in respect of minerals



dispatched and/or consumed at the rate specified from time to time in Schedule III and Schedule IV:

Provided that notwithstanding anything contained in any instruments of the lease in cases of minerals specified in Schedule V; the lessee shall pay royalty and additional payable amount/rent under these rules at the rates specified in Schedule VI and Schedule VII from time to time in respect of any minerals dispatched and /or consumed .”

13. Per contra, learned counsel for the respondents submits that the petitioner is an existing lease holder from 14.07.2003 to 13.07.2013 and thereafter his application was considered and from 04.07.2013 to 13.07.2023, the appropriate renewal has been granted in his favour. Since the case of the petitioner is a case of renewal. Under these circumstances, the exemption of the dead rent as claimed in the petition cannot be granted to him.

14. The learned counsel for the respondents relying on the judgment of the High Court of Andhra Pradesh passed in W.P. No. 3433 of 2022 (**M/s Manglore Minerals Pvt. Ltd. Vs. State of A.P and others**) submits that mere inability to extract minerals because of lack of statutory clearances does not discharge the lessee from the obligation to pay dead rent. It was held in said judgement that there was no legal impediment stopping the petitioner from excavating the minor minerals for which it had been granted a lease. The petitioner misunderstood the scope of the notification requiring environment clearances and had voluntarily suspended mining activity in the lease area. In such circumstances, there was no hindrance for the petitioner exercising both the rights of entering



into the land as well as excavating the minor minerals. Even otherwise, it would be an implied condition of the lease that the responsibility of obtaining necessary clearances for carrying on mining activity would be on the lessee. In such a situation, it would not be permissible for a lessee to avoid payment of dead rent on the ground of lack of clearances for carrying on mining activity.

15. The provisions relating to royalty and dead rent, as contained in the MMDR Act, 1957 are required to be considered. The relevant provisions are reproduced below:-

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 1 [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 (56 of 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 [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 [three years].]

THIRD SCHEDULE

(See section 9A)

Rates of Dead Rent

1. Rates of dead rent applicable to the leases granted for low value minerals are as under:

RATES OF DEAD RENT IN RUPEES PER HECTARE PER ANNUM

<i>From 2nd Year of Lease</i>	<i>3rd and 4th Year of Lease</i>	<i>5th Year onwards</i>
<i>400</i>	<i>1000</i>	<i>2000</i>

2. Two times the rate specified at paragraph 1 above in case of lease granted for medium value minerals.

3. Three times the rate specified at paragraph 1 above in case of lease granted for high value minerals. 4. Four times the rate specified at paragraph 1 above in case of lease granted for precious metals and stones.

Note:

1. For the purpose of this notification:— (a) “precious metals and stones” means gold, silver, diamond, ruby, sapphire and emerald;

(b) “high value minerals” means semi-precious stones (agate, gem garnet), corundum, copper, lead, zinc, and asbestos (chrysotile variety);

(c) “medium value minerals” means chromite, manganese ore, kyanite, sillimanite, vermiculite, magnesite, wollastonite, perlite, diaspore, apatite, rock phosphate, fluorite (fluorspar), barytes, and iron ore; (d) “low value minerals” means the minerals other than precious metals and stones, high value minerals and medium value minerals.]



16. Madhya Pradesh Government has also made a rule regarding the royalty and dead rent which is given below-Madhya Pradesh Mines and Mineral rules 1996.

29. Rent and Royalty. - (1) When a quarry lease is granted or renewed-

a. dead rent shall be charged at the rates specified in Schedule IV;

b. royalty except for limestone shall be charged at the rates specified in Schedule III.

c. rate of royalty on limestone shall be the same as fixed by the Government of India from time to time for limestone in Schedule II of the Act;

d. surface rent shall be charged at the rates specified by the Collector of the district from time to time for the area occupied or used by the lessee.

(2) On and from the date of commencement of these rules , the provisions of sub rule (1) shall also apply to the leases granted or renewed prior to the date of such commencement and subsisting on such date;

(3) If the lease permits the working of more than one mineral in the same area separate dead rent in respect of each mineral may be charged :

Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral, whichever is higher in amount;

(4) Notwithstanding anything contained in any instrument of the lease, the lessee shall



pay rent/royalty in respect of any mineral removed and/or consumed at the rate specified from time to time in Schedule III and IV;

(5) The State Government may, by notification in the Official Gazette amend the Schedules III and IV so as to enhance or reduce the rate at which rents/royalties shall be payable in respect of any mineral with effect from the date of publication of the notification in the Official Gazette :

Provided that the rate of royalty/dead rent in respect of any mineral shall not be revised more than once during any period of three years;

(6) No I[granite and marble] block either processed or in the raw form or any other mineral shall be dispatched from any of leased areas without a valid transit pass issued by Mining Officer. The transit pass shall be issued on an application in Form VIII after depositing royalty for the quantity intended to be transported out of the minerals extracted. Contravention of this rule may result in forfeiture of the security deposit by the Collector without prejudice to any other action that might lie against the lessee;

(7) The Transit Pass shall be in Form IX.”

QUARRY LEASE - GENERAL CONDITIONS

“30. Conditions of quarry lease.- (1) Every quarry lease shall be subject to the following Conditions :-



(a) The lessee shall pay, for every year '[* *]', yearly dead rent at the rates specified in the Schedule IV in the advance for the whole "year, on or before the 20th day of the first month of the year;*

(b) The lessee shall pay the dead rent or royalty in respect of each mineral whichever is higher in amount but not both. The lessee shall pay royalty in respect of quantities of mineral intended to be consumed or transported from the leased area, no sooner the amount of dead rent already paid equals the royalty on mineral consumed or transported by him. The dead rent or royalty shall be deposited in the 3[Revenue receipt head prescribed in sub-rule (3) of Rule 10.]

c. The lessee shall also pay for the surface area occupied or used by him for the purposes of mining operations, surface rent in advance for the whole year on or before the 20th day of the first month every year;

d. Notwithstanding any other action that may be taken for default in the payment of dues as specified in clause (a), (b), (c) within time under these rules or under any other condition of the lease, the lessee shall pay interest at the rate of 24% per annum for all defaulted payments of dead rent, royalty and surface rent.

(2) If any mineral not specified in the lease is discovered in the leased area, the lessee shall report discovery without delay to the Collector and shall not win or dispose of such mineral without obtaining a lease therefor. If he fails to apply for such a lease within three months of the discovery of the mineral, the Competent Authority may sanction



lease of such mineral, to any other person, who applied for it.

(3) The lessee shall not pay wages less than the minimum wages as prescribed by the State or the Central Government from time to time under the Minimum Wages Act, 1948 (No. 11 of 1948).

(4) The lessee shall take all measures for planting trees in quarried area or any other area selected by the Collector not less than twice the number of trees destroyed by reasons of mining or quarrying operation in addition to restoring and levelling the land.

(5) The lessee shall commence mining operation within one year from the date of execution of the lease deed and shall thereafter conduct such operations in a proper, skillful and workman-like manner.

(6) Subject to the other conditions of these rules, where mining operations have not commenced within a period of one year from the date of execution of the lease or discontinued for a cumulative period of six months during any calendar year after commencement of such operation, the Sanctioning Authority may, by an order, declare the quarry lease as lapsed and communicate the declaration to the lessee.

(7) Where the lessee is unable to commence mining operation for a period exceeding one year or unable to continue mining after commencement for the reasons beyond his control, he may submit an application to Sanctioning Authority explaining the reasons at least ninety days before the expiry of such period.



(8) There shall be paid, in respect of every application under sub-rule (7), a fee of Rs. 200/- (Rupees Two Hundred). The amount of fee shall be deposited in the Government treasury under the receipt head prescribed in sub-rule (3) of Rule 10.

(9) The Sanctioning Authority of the lease may, on receipt of an application made under sub-rule (7) and on being satisfied about the adequacy and genuineness of the reason for the non-commencement of mining operations or discontinuance thereof, pass an order before the date on which the lease would have otherwise lapsed; extending or refusing to extend the period of the lease : Provided that where the Sanctioning Authority on receipt of application under sub-rule (7) does not pass any order before the expiry of the date on which the lease would have otherwise lapsed, the lease shall be deemed to have been extended until the order is passed by the concerned authority or for a period of one year whichever is earlier.

(10) Where non-commencement of the mining operation within a period of one year from the date of execution of the lease deed is on account of delay in-

- i. acquisition of surface rights, or*
 - ii. getting the possession of the leased area,*
- or*
- iii. supply or installation of machinery, or*
 - iv. getting financial assistance from banks or any financial institution.*

and if the lessee is able to furnish documentary evidence supported by a duly sworn-



in-affidavit that there are sufficient reasons and/or reasons beyond their control for non-commencement of mining operations, the Sanctioning Authority may revoke the declaration/order through which the lease has lapsed.”

17. The question as to whether the rule-making power of the State Governments under Section 15(1) includes the power to levy dead rent and royalty has been decided by the Hon’ble Supreme Court in ***D.K. Trivedi and Sons and Others v. State of Gujarat and Others, 1986 (Supp) SCC 20***. The Hon’ble Supreme Court held that sub-section (1) of Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 is constitutional and valid, and that the rule-making power conferred thereunder upon the State Governments does not amount to excessive delegation of legislative power to the executive. It was further held that the power to make rules under Section 15(1) includes the power to levy dead rent and royalty. The rule-making power under Section 15(1) also includes the power to amend the rules so framed, including enhancement of the rates of royalty and dead rent. In view of the law laid down by the Hon’ble Supreme Court, the issue is no longer *res integra*, and it is well settled that the State Governments have the power to amend the rules relating to royalty and dead rent. Therefore, the rules made by the State Government are applicable to the present case.

18. In the case of ***Mineral Area Development Authority v. SAIL, reported as (2024) 10 SCC 1***, the Hon’ble Supreme Court considered the issue of whether royalty constitutes a tax. However, in the aforesaid judgment, the issue of liability to pay dead rent



under Section 9A of the MMDR Act in cases where the lease was non-operational was never examined. Therefore, the said judgment is not helpful for the consideration of the issue raised before this Court. The Hon'ble Supreme Court has categorically held in paragraphs 130 to 137 as under:-

(c) Royalty is not a tax

130. On first principles, royalty is a consideration paid by a mining lessee to the lessor for enjoyment of mineral rights and to compensate for the loss of value of minerals suffered by the owner of the minerals. The marginal note to Section 9 states that royalties are "in respect of mining leases." The liability to pay royalty arises out of the contractual conditions of the mining lease. [See Mineral Concession Rules, 1960, Rules 27 and 45.] A failure of the lessee to pay royalty is considered to be a breach of the terms of the contract, allowing the lessor to determine the lease and initiate proceedings for recovery against the lessee.

131. Section 9 of the MMDR Act statutorily regulates the right of a lessor to receive consideration in the form of royalty from the lessee for removing or carrying away minerals from the leased area. Prior to the enactment of the MMDR Act, such a condition was treated as part of a mining lease. The object of empowering the Central Government to specify rates of royalty for major minerals was to ensure a certain level of uniformity in mineral prices in view of the domestic and international market.

132. The fact that the rates of royalty are prescribed under Section 9 of the MMDR Act



does not make it a “compulsory exaction by public authority for public purposes” because:

- (i) the compulsion stems from the contractual conditions of the mining lease agreed between the lessor and lessee;*
- (ii) the demand is not made by a public authority, but the lessor (which can either be the State Government or a private party);*
and
- (iii) the payment is not for public purposes, but a consideration paid to the lessor for parting with their exclusive privileges in the minerals.*

Moreover, the fact that Section 25 allows recovery of royalty due to the Government under the MMDR Act or “under the terms of the contract” as arrears of land does not make royalty “an impost enforceable by law”. Section 25 is a standard recovery provision allowing the Government to recover any dues payable to it, flowing from statute or the terms of a contract. Pertinently, contractual payments due to the Government cannot be deemed to be a tax merely because the statute provides for their recovery as arrears.

133. *There are major conceptual differences between royalty and a tax:*

- (i) the proprietor charges royalty as a consideration for parting with the right to win minerals, while a tax is an imposition of a sovereign;*
- (ii) royalty is paid in consideration of doing a particular action, that is, extracting minerals from the soil, while tax is generally*



levied with respect to a taxable event determined by law; [Goodyear (India) Ltd. v. State of Haryana, (1990) 2 SCC 71, para 27] and

(iii) royalty generally flows from the lease deed as compared to tax which is imposed by authority of law.

134. *Under the MMDR Act, the Central Government fixes the rates of royalty, but it is still paid to the proprietor by virtue of a mining lease. In case the minerals vest in the government, the mining lease is signed between the State Government (as lessor) and the lessee in pursuance of Article 299 of the Constitution. Through the mining lease, the Government parts with its exclusive privilege over mineral rights. A consideration paid under a contract to the State Government for acquiring exclusive privileges cannot be termed as an impost. Since royalty is a consideration paid by the lessee to the lessor under a mining lease, it cannot be termed as an impost.*

135. *This Court has held that royalty is not a tax, in several decisions. In State of H.P. v. Gujarat Ambuja Cement Ltd. [State of H.P. v. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499] , a three-Judge Bench of this Court held royalty not to be a tax. The subsequent decision in Indsil Hydro Power & Manganese Ltd. v. State of Kerala [Indsil Hydro Power & Manganese Ltd. v. State of Kerala, (2021) 10 SCC 165, para 56] brought out the distinction between tax and royalty in the following terms : (Indsil Hydro Power case [Indsil Hydro Power &*



Manganese Ltd. v. State of Kerala, (2021) 10 SCC 165, para 56] , SCC p. 209, para 56)

“56. Thus, the expression “royalty” has consistently been construed to be compensation paid for rights and privileges enjoyed by the grantee and normally has its genesis in the agreement entered into between the grantor and the grantee. As against tax which is imposed under a statutory power without reference to any special benefit to be conferred on the payer of the tax, the royalty would be in terms of the agreement between the parties and normally has direct relationship with the benefit or privilege conferred upon the grantee.”

(emphasis in original)

136. *The principles applicable to royalty apply to dead rent because:*

(i) dead rent is imposed in the exercise of the proprietary right (and not a sovereign right) by the lessor to ensure that the lessee works the mine, and does not keep it idle, and in a situation where the lessee keeps the mine idle, it ensures a constant flow of income to the proprietor;

(ii) the liability to pay dead rent flows from the terms of the mining lease; [See Mineral Concession Rules, 1960, Rules 27 and 45.]

(iii) dead rent is an alternate to royalty; if the rates of royalty are higher than dead rent, the lessee is required to pay the former and not the latter; and

(iv) the Central Government prescribes the dead rent not in the exercise of its sovereign



right, but as a regulatory measure to ensure uniformity of rates.

137. In view of the above discussion, we hold that both royalty and dead rent do not fulfil the characteristics of tax or impost. Accordingly, we conclude that the observation in India Cement [India Cement Ltd. v. State of T.N., (1990) 1 SCC 12] to the effect that royalty is a tax is incorrect.

19. Before embarking upon a consideration of this question, it will be useful to know the meaning of the expressions “dead rent” and “royalty” and their connotation. Wharton’s Law Lexicon, 14th Edn., at p. 300, defines “dead rent” as:

“Dead Rent.—A rent payable on a mining lease in addition to a royalty, so called because it is payable whether the mine is being worked or not.”

The definition of “dead rent” given in Black’s Law Dictionary, 5th Edn., at p. 359, is as follows:

“Dead Rent.—In English law, a rent payable on a mining lease in addition to a royalty, so called because it is payable although the mine may not be worked.”

Jowitt’s Dictionary of English Law, 2nd Edn., at p. 555, defines “dead rent” as:

“Dead Rent, a term sometimes used in mining leases in contradistinction to a royalty, to denote a fixed rent to be paid whether the mine is productive or not. See Rent.”



The same dictionary states under the heading “Rent”, at p. 1544:

“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 (q.v.) varying with the quantity of minerals, bricks, etc., produced during each year. In this case the fixed rent is called a dead rent.”

20. In view of the aforesaid discussion, we are of the considered opinion that there is a clear distinction between royalty and dead rent. Royalty is a kind of rent which the lessor of a mine charges from the lessee, the amount of which varies with the quantity of minerals extracted during each year. Dead rent is also a kind of mineral rent, but it differs from royalty in that royalty is a variable charge based on the value or quantity of the minerals produced, whereas dead rent is a minimum annual payment. Ordinarily, dead rent is not enforced if the amount payable as annual royalty exceeds the dead rent fixed for that year. In this sense, royalty is the genus and dead rent is the species.

21. Argument in advance is that the dead rent is nothing but it is a guarantee of minimum Royalty, meaning there by when the royalty of excavation of mineral is lesser to the dead rent as per the schedule I of the Act then, minimum royalty as a dead rent must be paid as per the rule. It is also argued that the Section 9-A is nothing it is enabling provision of the Section 9 of the MMDR Act. Meaning thereby when the royalty on excavation of mineral on lease land is paid then the provision of dead rent Section 9-A will come to operation and minimum dead rent as a royalty have to be



paid by lessee. We disagree that argument, Section 9-A of the MMDR Act is individual section from the section 9 of the MMDR Act, it cannot be read only as a enabling provision of the section 9 of the MMDR Act. Section 9-A of the MMDR Act has a two fold first is that the minimum guaranty of royalties and second the payment of dead rent if lessee could not operate the excavation and lessee fails to surrender the lease if not operated within one year. In this respect the M.P Mines and Mineral Rules 1996 are applicable, which say that after one year of execution of lease, dead rent be imposed as per the schedule. That rule clearly says that whatever may be the reason excavation could not start within one year dead rent imposed as per schedule until the lease lapse as per the rule 30(10) of the M.P. Mines and Mineral Rules.

22. It is submitted by petitioner that the lease is defined in Section 105 of the T.P Act. According to that 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. The petitioner further submits that it must be understood to mean a grant of two rights, i.e., a right to enter the leased/licensed area and a right to extract minerals from the leased/licensed area. He further submits that the transaction is a transaction in the nature of "Profit a prendre". He submits that once the petitioner's right to extract minerals had been suspended, on account of lack of environment clearance, then there would be no liability on the petitioner to pay



dead rent. The aforesaid submission is not acceptable, as under Section 9-A of the MMDR Act and the Madhya Pradesh Mines and Minerals Rules, 1996, provisions exist for the imposition of dead rent where the lessee fails to operate the lease within one year of execution. In such cases, dead rent is recoverable in accordance with Schedule III of Section 9-A of the MMDR Act.

23. The conditions for granting quarry lease are provided under Section 30 of the M.P Mines and Minerals Rules 1996. Where the lessee is unable to commence mining operation for a period exceeding one year or is unable to continue mining after commencement for the reasons beyond his control, he may submit an application to Sanctioning Authority explaining the reasons at least ninety days before the expiry of such period. The Sanctioning Authority of the lease may, on receipt of an application made under sub-rule (7) and on being satisfied about the adequacy and genuineness of the reason for the non-commencement of mining operations or discontinuance thereof, pass an order before the date on which the lease would have otherwise lapsed; either extending or refusing to extend the period of the lease.

Provided that where the Sanctioning Authority on receipt of application under sub-rule (7) does not pass any order before the expiry of the date on which the lease would have otherwise lapsed, the lease shall be deemed to have been extended until the order is passed by the concerned authority or for a period of one year whichever is earlier. Duty cast upon the lessee, where non-commencement of the mining operation within a period of one year



from the date of execution of the lease deed, is on account of delay in-

- i. acquisition of surface rights, or
- ii. getting the possession of the leased area, or
- iii. supply or installation of machinery, or
- iv. getting financial assistance from banks or any financial institution, and if the lessee is able to furnish documentary evidence supported by a duly sworn-in-affidavit that there are sufficient reasons and/or reasons beyond their control for such non-commencement of mining operations, the Sanctioning Authority may revoke the declaration/order through which the lease has lapsed.

24. The petitioner has failed to submit an application for declaration of lapse of the lease within one year on account of non-operation of the lease for any of the reasons provided under sub-rule (7) of Rule 30 of the Madhya Pradesh Mines and Minerals Rules, 1996. Consequently, the lease continued for its stipulated period. Therefore, the petitioner is liable to pay dead rent after the expiry of one year from the date of execution of the lease deed until an application for declaration of lapse of the lease is filed.

25. Dead rent is a fixed rent based on the area leased, payable regardless of mineral extraction activity. It is a minimum guaranteed amount that the lessee must pay during the lease period, independent of whether mining operations occur. It is distinct from royalty, which varies with the quantity of minerals extracted. Dead rent is primarily charged on the leased area and is considered a



fixed consideration for the lease. Under Section 9A of the Mines and Minerals (Development and Regulation) Act, 1957, the lessee is liable to pay either the dead rent or royalty, whichever is higher, with the dead rent serving as the minimum amount payable. Rules such as Rule 30 of the Rules of 1996 specify that annual dead rent must be paid in advance, based on the lease terms, and is applicable during the currency of the lease. The two are separate concepts; first, in cases where the royalty payable is less than the dead rent, the dead rent becomes payable under the relevant legal provisions. With dead rent serving as a minimum guarantee for the lessor. Second, lessees are required to pay dead rent whether or not they conduct mining operations, and failure to do so can lead to penalties, including lease termination. The dead rent is not dependent on production levels but is a fixed obligation based on the leased area at the outset of the lease. That dead rent is a fixed minimum rent, distinct from royalties, and must be paid during the lease term.

26. The coordinate Division Bench of this court, in the case of **M/S Birla Corporation Ltd. & Ors v/s The State of M.P. and Ors.** reported as **2023 MPLJ 476**, has opined that from the perusal of the 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.



27. We are of the considered opinion that Section 9-A of the MMDR Act is an independent provision and not merely an enabling provision of Section 9 of the said Act. Accordingly, the petitioner is liable to pay dead rent in cases where the lease remains non-operational during the relevant period.

28. A conjoint reading of Section 9-A of the MMDR Act and sub-rules (5) to (10) of Rule 30 of the Madhya Pradesh Mines and Minerals Rules, 1996 makes it abundantly clear that the lessee is liable to pay dead rent until the lease lapses, irrespective of whether the lease is operational or not.

29. Accordingly, the petitions filed by the petitioners being devoid of merits and substance are hereby dismissed.

30. Interim relief, if any, against the recovery of dead rent, is also hereby vacated.

31. Photocopy of this order be placed in all connected cases.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE