A M/S. SOM DATT BUILDERS LTD.

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 2088 of 2007 etc.)

NOVEMBER 9, 2009

B **[TARUN CHATTERJEE AND R.M. LODHA, JJ.]**

Mines and Minerals (Development and Regulation) Act, 1957 – s. 30(e) – 'Ordinary earth' – Whether a mineral – Held: In view of s. 3(e) 'Ordinary earth' is a mineral – Hence rightly C *declared to be 'minor mineral' by Government Notification.*

Uttar Pradesh Minor Mineral (Concession) Rules, 1963 – First Schedule – Amendment of – Fixing royalty for use of 'ordinary earth' @ Rs. 4/- per cubic meter – Challenge to – Propriety of – Held: The party challenging it, having failed to D *resort to remedies provided under the Rules, cannot challenge it later – Hence, High Court order upholding the validity of fixing of royalty, cannot be interfered with in exercise of jurisdiction under Article 136 of the Constitution – Constitution of India, 1950 – Article 136.*

E *Words and Phrases – 'Mineral' – Meaning of, in the context of s. 3(e) of Mines and Minerals (Development and Regulation) Act, 1957.*

The question for consideration before this Court was whether 'ordinary earth' used for filling or levelling F **purposes in the construction of embankments, roads, railways, buildings, have validly been declared to be a 'minor mineral' by the Central Government vide Notification dated 3.2.2000 issued u/s. 3(e) of Mines and Minerals (Development and Regulation) Act, 1957; and whether the amendment brought in First Schedule in Uttar** G **Pradesh Minor Minerals (Concession) Rules, 1963, fixing royalty for the use of 'ordinary earth' at the rate of Rs. 4/- per cubic meter.**

Dismissing the appeals, the Court

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HELD: 1.1. The word 'mineral' has not been circumscribed by a precise scientific definition; it is not a definite term. The proposition that the 'minerals' must always be subsoil and that there can be no minerals on the surface of the earth has also not found favour in judicial interpretation of the word 'mineral'. The term 'mineral' has been judicially construed many a time in widest possible amplitude and sometimes accorded a narrow meaning. Its precise meaning in a given case has to be fixed with reference to the particular context. The word 'mineral' is not a word of art and that it is capable of multiplicity of meanings depending upon the context and that the word 'mineral' has no fixed but a contextual connotation. Any natural material that is defined as a 'mineral' by statute or case law may also be covered by the expression 'mineral'. [Para 20] [785-E-G; 786-A]

1.2. In the context of Section 3(e) of Mines and Minerals (Development and Regulation) Act, 1957, 'ordinary earth' is comprehended within the meaning of the word 'any other mineral'. If the expression 'minor mineral' as defined in Section 3(e) of the Act includes 'ordinary clay' and 'ordinary sand', there is no reason why 'ordinary earth' should not be comprehended within the meaning of the word 'any other mineral'. [Para 22] [786-B-D]

M/s. Banarsi Dass Chadha and Brothers vs. Lt. Governor, Delhi Administration and Ors. **(1978) 4 SCC 11, relied on.**

V.P. Pithupitchai and Anr. vs. Special Secretary to the Govt. of T.N. **(2003) 9 SCC 534, distinguished.**

Bhagwan Das vs. State of U.P. and Ors. **(1976) 3 SCC 784;** *State of M.P. vs. Mahalaxmi Fabric Mills Ltd.* **1995 Supp (1) SCC 642;** *State of West Bengal and Ors. vs. Jagadamba Prasad Singh and Ors.* **AIR 1969 Cal 281, referred to.**

Lord Provost and Magistrates of Glasgow vs. Farie **(1888) LR 13 Appeal Cases 657;** *North British Railway Company vs. Budhill Coal and Sandstone Company and Ors.* **(1910) AC 116;** *Scott vs. Midland Railway Company* **(1901) 1 Q.B. 317;**

A *Great Western RailwayCompany vs. Carpalla United China Clay Company Limited and Anr.* **(1910) A.C. 83;** *Northern Pacific Railway Company vs. John A. Soderberg* **147 L Ed 575, referred to.**

Black's Law Dictionary (Eighth Edition), **referred to.**

B **1.3. Once the 'ordinary earth' is found to be comprehended within the meaning of the word 'any other mineral' for the purposes of Section 3(e) of the Act, 1957, there is no impediment for the Central Government to include or exclude the same based on a particular use or** C **purpose. User can be a valid reason for exclusion as well as inclusion in declaring mineral, 'minor mineral' in exercise of the powers conferred upon the Central Government u/s. 3(e) of the Act and exercise of any such power based on use or purpose cannot be said to be arbitrary. The declaration of the 'ordinary earth' for the uses** D **and purposes mentioned in the notification dated February 3, 2000 is not ultra vires the power conferred upon the Central Government. [Para 23] [786-E-H; 787-A]**

2. Uttar Pradesh Minor Minerals (Concession) Rules, 1963 provide complete machinery for assessment and E **recovery of royalty and consequences of non-payment of royalty. These Rules also provide remedy to an aggrieved person against order passed under the Rules by the District Officer demanding payment of royalty. The appellants, having failed to pursue remedy provided under** F **the Rules, 1963 as regards recovery of royalty from them, the view taken by the High Court that the State in imposing the royalty has not placed undue restrictions on the right to carry on trade or business or that the same was without the authority of law, does not call for any interference in exercise of jurisdiction under Article 136 of the** G **Constitution. [Para 28] [788-D-F]**

Case Law Reference :

(1888) LR 13 Appeal Cases 657	**referred to.**	**Para 9**

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(1910) AC 116	**referred to.**	**Para 10**
(1901) 1 Q.B. 317	**referred to.**	**Para 11**
(1910) A.C. 83	**referred to.**	**Para 12**
(1976) 3 SCC 784	**referred to.**	**Para 13**
(1978) 4 SCC 11	**relied on.**	**Para 14**
47 L Ed 575	**referred to.**	**Para 14**
(2003) 9 SCC 534	**distinguished.**	**Para 15**
1995 Supp (1) SCC 642	**referred to.**	**Para 15**
AIR 1969 Cal. 281	**referred to.**	**Para 18**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2088 of 2007.

From the Judgment & Order dated 28.02.2006 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 8760 of 2003.

WITH

C.A. Nos. 7475-7476, 7477, 7478 of 2009, 4314 of 2008 & 2087 of 2007.

Sunil Gupta, S.P. Singh, K. Radhakrishnan, Shobha Dikshit, S.R. Singh, Shail Kr. Dwivedi, AAG., Rajiv K. Garg, Ashish Garg, A.D.N. Rao, Venkateswara Rao Anumolu, C.D. Singh, Sunny Chowdhary, Lakshmi Raman Singh, Vivek Singh, Udita Singh, Ron Bastian, Chandra Prakash, Rajesh Srivastava, Rekha Pandey & Sadhna Sandhu, Rashmi Malhotra, Wasim Qadri, A.K. Sharma, D.S. Mahara, Pradeep Misra, Suraj Singh, Manoj Kr. Sharma, V.K. Verma, S.A. Abdi, Anuvrat Sharma, Vandana Mishra & Alka Sinha Praveen Jain & Mukesh Kumar (for M.V. Kini & Associates) for the appearing parties.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Leave granted in SLP(Civil) Nos. 12127 of 2006, 12722 of 2006 and 6808-6809 of 2008.

2. This group of seven appeals arises from the common judgment passed by the High Court of Judicature at Allahabad on February 28, 2006 and, therefore, all these appeals were heard together and are being disposed of by this judgment.

3. The core issue that calls for determination in these appeals is whether 'ordinary earth' used for filling or levelling

A purposes in the construction of embankments, roads, railways, buildings has validly been declared to be a 'minor mineral' by the Central Government vide notification dated February 3, 2000 issued under Section 3(e) of Mines and Minerals (Development and Regulation) Act, 1957 (for short, 'Act, 1957').

B 4. It is not necessary to refer to the facts of each of these appeals. The brief narration of facts in Civil Appeal No. 2088 of 2007 will suffice. The appellant therein is a company incorporated under the Companies Act, 1956. It is engaged in the construction of business towers, hotels and various other infrastructural development projects. According to them, an C agreement was entered into between the Company and National Highway Authority of India for widening of Grand Trunk Road from 393 kilometer stone to 470 kilometer stone at Sikandara, Kanpur. For the purpose of filling and levelling of road, the company entered into agreement with the local land holders/ D agriculturists for purchase of 'ordinary earth' and paid them accordingly. Various demand notices are said to have been issued to the appellant towards royalty for lifting 'ordinary earth' necessitating them to approach the High Court of Judicature at Allahabad challenging the constitutional validity of notification dated February 3, 2000 issued by the Central Government. They R also challenged the amendment brought in the First Schedule by the State of Uttar Pradesh in Uttar Pradesh Minor Minerals (Concession) Rules, 1963 (for short, 'Rules, 1963') fixing royalty for the use of 'ordinary earth' at the rate Rs. 4/- per cubic meter.

5. Section 3 of the Act, 1957 defines 'minerals' and 'minor F minerals' as follows :

"Section 3 – Definitions

In this Act, unless the context otherwise requires,--

(a) "minerals" includes all minerals except mineral oils;

(b) .....

G (c) .....

(d) .....

(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central

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Government may, by notification in the Official Gazette, declare to be a minor mineral;....."

6. In exercise of the power conferred under Section 3(e), Central Government issued the following notification on February 3, 2000 :

"G.S.R.95(E).—In exercise of the powers conferred by clause (e) of Section 3 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the Central Government hereby declares the 'ordinary earth' used for filling or levelling purposes in construction of embankments, roads, railways, buildings to be a minor mineral in addition to the minerals already declared as minor minerals hereinbefore under the said clause."

7. That a substance has to be mineral before it can be notified as a 'minor mineral' pursuant to the power under Section 3(e) of the Act of 1957 is not in dispute. Whether 'ordinary earth' is a mineral is the primary question for consideration. The question is a little intricate one because the definition of 'minerals' in the Act, 1957 is not of much help in finding answer to the question.

8. The word 'mineral' has come up for judicial interpretation from time to time.

9. In *Lord Provost And Magistrates of Glasgow vs. Farie*[1], the issue before the House of Lords was whether clay is included in 'other minerals' under the Waterworks Clauses Act, 1847. Lord Halsbury, L.C said :

"There is no doubt that more accurate scientific investigation of the substances of the earth and different modes of extracting them have contributed to render the sense of the word "minerals" less certain than when it originally was used in relation to mining operations. I should think that there could be no doubt that the word "minerals" in old times meant the substances got by mining, and I think mining in old times meant subterranean excavation. I doubt whether in the present state of the authorities it is accurate to say that in every deed or in every statute the word "minerals" has acquired a meaning of its own independently of any question

1. (1888) LR 13 Appeal cases 657.

A as to the manner in which the minerals themselves are gotten."

Lord Watson in his opinion stated that "mines" and "minerals" are not definite terms: they are susceptible of limitation or expansion, according to the intention with which they are used.

B 10. The House of Lords in *North British Railway Company vs. Budhill Coal And Sandstone Company And Others*[2] was concerned with the question whether sandstone or freestone is included in the minerals excepted by Section 70 of the Railways Clauses Consolidation (Scotland) Act of 1845. Lord Loreburn L.C. considered number of decisions including the aforequoted C decision and summarised the tests applied in various cases in the following words :

".....It is not possible to extract any uniform standard. The same is true of the opinions expressed by different learned judges. A variety of tests have been propounded, which are D discussed by Lord Gorell. I agree with him both in his enumeration and in his criticism. Is the substance in common parlance a mineral? Is it so considered by geologists? Is it a substance of any peculiar value? No one principle has been accepted, and every principle appears to have its E friends."

11. In *Scott vs. Midland Railway Company*[3], Darling J. observed that the word "minerals" is one which at different times has been used with very different meanings. In some statutes it has a very restricted meaning, in others a very wide one. In order F to determine in each case whether the word is used in a wide or narrow sense we must, as Lord Herschell said in *Glasgow vs. Farie*[1], look at the object which the Legislature had in view.

12. In *Great Western Railway Company vs. Carpalla United China Clay Company, Limited and Another*[4], House of Lords had an issue before it whether China clay was a mineral G within the provisions of the Railways Clauses Consolidation Act, 1845. Lord Macnaghten said :

2. (1910) AC 116.

3. (1901) 1 Q.B. 317.

H 4. (1910) A.C. 83.

A "..... The word 'minerals' undoubtedly may have a wider meaning than the word 'mines'. In its widest signification it probably means every inorganic substance forming part of the crust of the earth other than the layer of soil which sustains vegetable life."

B 13. In *Bhagwan Das vs. State of U.P. and Others*[5], it was argued before this court that the sand and gravel are deposited on the surface of the land and not under the surface of the soil and, therefore, they cannot be called minerals. Y.V. Chandrachud, J. (as he then was) negating the said contention said :

C "..... It is in the first place wrong to assume that mines and minerals must always be subsoil and that there can be no minerals on the surface of the earth. Such an assumption is contrary to informed experience. In any case, the definition of mining operations and minor minerals in Section 3(d) and (e) of the Act of 1957 and Rule 2(5) and (7) of the Rules of D 1963 shows that minerals need not be subterranean and that mining operations cover every operation undertaken for the purpose of "winning" any minor mineral. "Winning" does not imply a hazardous or perilous activity. The word simply means "extracting a mineral" and is used generally to E indicate any activity by which a mineral is secured. "Extracting", in turn, means, drawing out or obtaining. A tooth is 'extracted' as much as is fruit juice and as much as a mineral. Only, that the effort varies from tooth to tooth, from fruit to fruit and from mineral to mineral."

F 14. In the case of *M/s. Banarsi Dass Chadha and Brothers vs. Lt. Governor, Delhi Administration and Others*[6], a three-Judge Bench of this Court was seized with the question whether 'brick earth' is a 'minor mineral' within the meaning of that expression as defined in Section 3(e) of the Act, 1957. Chinnappa Reddy, J. speaking for the Bench observed : G

"..... The expression "minor mineral" as defined in Section 3(e) includes 'ordinary clay' and 'ordinary sand'. If the expression "minor mineral" as defined in Section 3(e) of the

5. (1976) 3 SCC 784.

6. (1978) 4 SCC 11. H

A Act includes 'ordinary clay' and 'ordinary sand', there is no reason why earth used for the purpose of making bricks should not be comprehended within the meaning of the word "any other mineral" which may be declared as a "minor mineral" by the Government. The word "mineral" is not a term of art. It is a word of common parlance, capable of a B multiplicity of meanings depending upon the context. For example the word is occasionally used in a very wide sense to denote any substance that is neither animal nor vegetable. Sometimes it is used in a narrow sense to mean no more than precious metals like gold and silver. Again, the word C "minerals" is often used to indicate substances obtained from underneath the surface of the earth by digging or quarrying. But this is not always so as pointed out by Chandrachud, J. (as he then was) in *Bhagwan Dass vs. State of U.P."*

D This court referred to a decision of the Supreme Court of United States in *Northern Pacific Railway Company v. John A. Soderberg*[7] and quoted the observations made therein as follows:

"The word "mineral" is used in so many senses, dependent E upon the context, that the ordinary definitions of the dictionary throw but little light upon its signification in a given case. Thus, the scientific division of all matter into the animal, vegetable, or mineral kingdom would be absurd as applied to a grant of lands, since all lands belong to the mineral kingdom, and therefore could not be excepted from the grant F without being destructive of it. Upon the other hand, a definition which would confine it to the precious metals—gold and silver—would so limit its application as to destroy at once half the value of the exception. Equally subversive of the grant would be the definition of minerals found in the G Century Dictionary; as "any constituent of the earth's crust;" and that of Bainbridge on Mines: "All the substances that now form, or which once formed, a part of the solid body of the earth." Nor do we approximate much more closely to the meaning of the word by treating minerals as substances

H 7. 47 L Ed 575.

which are "mined," as distinguished from those which are "quarried," since many valuable deposits of gold, copper, iron, and coal lie upon or near the surface of the earth, and some of the most valuable building stone, such, for instance, as the Caen stone in France, is excavated from mines running far beneath the surface. This distinction between underground mines and open workings was expressly repudiated in *Midland R. Co. v. Haunchwood Brick & Tile Co. L. R. 20 Ch. Div. 552, and in Hext v. Gill,* L. R. 7 Ch. 699."

This court further held in paragraph 6 of the report thus :

"The Supreme Court of United States also referred to several English cases where stone for road making or paving was held to be 'mineral', as also granite, sandstone, flint stone, gravel, marble, fire clay, brick-clay, and the like. It is clear that the word 'mineral' has no fixed but a contextual connotation."

It was then concluded that word 'mineral' has no definite meaning but has a variety of meanings, depending on the context of its use. This is what this Court observed :

".....In the context of the Mines and Minerals (Regulation & Development) Act, we have no doubt that the word 'mineral' is of sufficient amplitude to include 'brick-earth'. As already observed by us, if the expression 'minor mineral' as defined in the Act includes 'ordinary clay' and 'ordinary sand', there is no earthly reason why 'brick-earth' should not be held to be 'any other mineral' which may be declared as a 'minor mineral'. We do not think it necessary to pursue the matter further except to say that this was the view taken in *Laddu Mal vs. State of Bihar, Amar Singh Modilal vs. State of Haryana* and *Sharma & Co. vs. State of U.P.* We do not agree with the view of the Calcutta High Court in *State of West Bengal vs. Jagdamba Prasad,* that because nobody speaks of 'ordinary earth' as a mineral it is not a minor mineral as defined in the Mines and Minerals (Regulation & Development) Act."

15. The decision of this Court in Banarsi Dass Chadha squarely answers the question posed before us. However, the

A learned Senior Counsel for the appellants heavily relied upon a subsequent decision of this court in *V.P. Pithupitchai and Another vs. Special Secretary to the Govt. of T.N.*[8] and submitted that 'ordinary earth' is not comprehended by the expression 'mineral'. That was a case where the question was whether seashells could be termed to be 'mineral' within the B meaning of the Act, 1957. This court referred to earlier decisions viz; *State of M.P. vs. Mahalaxmi Fabric Mills Ltd.*[9], *Bhagwan Dass*[5] and *Banarsi Dass Chadha*[6] and also noticed the meaning of the word 'mineral' noted in (i) Webster's 3rd New International Dictionary, 1968; (ii) Funk and Wagnalls' Standard C Dictionary, International Edn., Vol. II; (iii) Oxford Illustrated Dictionary and (iv) Groliar International Dictionary, Vol.II. We deem it appropriate to reproduce paragraph 13 wherein meaning of the word 'mineral' noted in aforesaid dictionaries was noticed :

D "13. This is in keeping with the meaning given in the several dictionaries referred to by the High Court to determine the meaning of the word "mineral" which are reproduced:

(i) Webster's 3rd New International Dictionary, 1968 defines "mineral" as:

E "a solid homogeneous crystalline chemical element or compound (as diamond or quartz) that results from the inorganic processes of nature and that has a characteristic crystal structure and chemical composition or range of compositions ... something that is neither animal nor vegetable (as in the old general classification of things into F three kingdoms: animal, vegetable and mineral)".

(ii) Funk and Wagnalls' Standard Dictionary, International Edn., Vol. II:

"a naturally occurring, homogeneous substance or material formed by inorganic processes and having a characteristic set of physical properties, a definite range of chemical composition, and a molecular structure usually expressed in crystalline forms .... Any inorganic substance,

8. (2003) 9 SCC 534

9. 1995 Supp (1) SCC 642

as ore, a rock, or a fossil". A

(iii) Oxford Illustrated Dictionary:

"Substance (e.g. metal, coal, salt) got by mining....
... (chem.) element or compound occurring naturally as a product of inorganic processes....
... substance which is neither animal nor vegetable." B

(iv) Groliar International Dictionary, Vol. II:

"any naturally occurring, homogeneous inorganic substance having a definite chemical composition and characteristic crystalline structure, colour and hardness....
... Any of various natural substances. C
(a) An element, such as gold or silver.
(b) A mixture of inorganic compounds, such as hornblende or granite.
(c) An organic derivative, such as coal or petroleum D
... any substance that is neither animal nor vegetable; inorganic matter"."

16. In *V.P. Pithupitchai,* this Court did not consider whether seashells were covered within the residuary entry in the Second Schedule but considered the correctness of the High Court's view whether seashell is limeshell within the meaning of Item 28 of the Second Schedule. In paragraph 15 of the report, the following observations were made: E

"15. A distinction must be drawn between *(i)* a substance identified as a mineral, *(ii)* a substance *containing* minerals (for example bones which contain large percentages of F calcium and phosphate and to some extent carbonate), and *(iii)* a substance which may be the *original source* of a mineral (for example plants which after being subjected to millions of years of geological processes ultimately become coal). In the first case, the classification of a substance as G a mineral is simple. But the bones in the second class and trees in the third class can hardly be termed to be minerals although they may contain or ultimately result in a mineral. Seashells may, like bones, *contain* calcium carbonate, and may also like trees, through a geological process result in H

A a mineral such as limestone. But it cannot be said that a seashell in its original form is a mineral."

17. In our view, the decision of this court in *V.P. Pithupitchai* is a substance specific and not of much help in deciding the case in hand for more than one reason. In the first place, in that case B the court was not concerned with the power conferred upon the Central Government to declare a substance 'minor mineral' in exercise of the power conferred on it under Section 3(e) of the Act,1957. Secondly, and more importantly, in that case the court was called upon to determine the correctness of the High Court's opinion whether a seashell is limeshell within the meaning of item C 28 of the Second Schedule to the Act, 1957. It is true that in paragraph 15 of the report, this court drew distinction between (i) a substance identified as a mineral, (ii) a substance containing minerals and (iii) a substance which may be the original source of mineral and then it was held that seashell in its original form D is not a mineral but, we are afraid, the test applied by this court in *V.P. Pithupitchai* is not of universal application.

18. The learned Senior Counsel for the appellants submitted that as there is no definition of 'mineral' in the Act, 1957 or the Rules 1963, dictionary meaning of the word 'mineral' is most E pertinent and apt to the context. In this regard, he referred to the Black's Law Dictionary (Sixth Edition) wherein the meaning of the 'mineral' is noted to be an inorganic substance which is homogeneous in structure and similar in the composition when found on or under the soil bed. The learned Senior Counsel would submit that 'ordinary earth' (sadharan mitti) is not covered by the F definition of 'mineral' as noted above. He also submitted that one cannot equate 'ordinary earth' (sadharan mitti) with 'ordinary clay' and 'ordinary earth' is not like 'ordinary clay'. The Learned Senior Counsel argued that Banarsi Dass Chadha was a case relating to 'brick earth' and there was no cause of action, no plea and no G argument raised as regards 'ordinary earth' and the remark in passing about 'ordinary earth' or the judgment of Calcutta High Court in the *State of West Bengal and Ors. v. Jagadamba Prasad Singh and Others*[10] at the fag end is obiter and not part of law laid down by this Court. According to him, Banarsi Dass

H 10. AIR 1969 Cal 281

Chadha is not an authority or precedent for the purpose of the present case and it is the ratio in *V.P. Pithupitchai* that governs and binds the case.

19. It is appropriate to reproduce the meaning of the word 'mineral' noted in Black's Law Dictionary (Eighth Edition) since it is a later edition. It reads thus :

> *"mineral, n.* 1. Any natural inorganic matter that has a definite chemical composition and specific physical properties that give it value <most minerals are crystalline solids>. [Cases: Mines and Minerals 48. C.J.S. *Mines* and *Minerals* §§ 4, 140-142.] 2. A subsurface material that is explored for, mined, and exploited for its useful properties and commercial value. 3. Any natural material that is defined as a mineral by statute or case law."

20. A survey of various decisions referred to hereinabove would show that there is wide divergence of meanings attributable to the word 'mineral' and that in judicial interpretation of the expression 'mineral' variety of tests and principles have been propounded; their application, however, has not been uniform. Insofar as dictionary meaning of the word 'mineral' is concerned, it has never been held to be determinative and conclusive. The word 'mineral' has not been circumscribed by a precise scientific definition; it is not a definite term. The proposition that the minerals must always be subsoil and that there can be no minerals on the surface of the earth has also not found favour in judicial interpretation of the word 'mineral'. The term 'mineral' has been judicially construed many a time in widest possible amplitude and sometimes accorded a narrow meaning. Pithily said, its precise meaning in a given case has to be fixed with reference to the particular context. We find ourselves in agreement with the view expressed in Banarsi Dass Chadha that word 'mineral' is not a word of art and that it is capable of multiplicity of meanings depending upon the context and that the word 'mineral' has no fixed but a contextual connotation. The test applied by this Court in *V.P. Pithupitchai* in holding seashell not a mineral because in its original form it is not mineral, in our view, is not determinative and conclusive in all situations when a question arises as to whether a particular substance is a mineral or not. It is worth noticing that any natural material that is defined

A as a 'mineral' by statute or case law may also be covered by the expression 'mineral' as noted in Black's Law Dictionary (Eighth Edition).

21. Common parlance test that because nobody speaks of 'ordinary earth' as a 'mineral' has not been accepted by this B Court in Banarsi Dass Chadha. As a matter of fact, this Court in this regard specifically disagreed with the view of Calcutta High Court in *Jagadamba Prasad Singh*[10].

22. In the context of Section 3(e), what we have discussed above, we hold, as it must be, that 'ordinary earth' is comprehended within the meaning of the word 'any other mineral'. C We adopt the reasoning given by three-Judge Bench in *Banarsi Dass Chadha* that if the expression 'minor mineral' as defined in Section 3(e) of the Act includes 'ordinary clay' and 'ordinary sand', there is no reason why 'ordinary earth' should not be comprehended within the meaning of the word 'any other mineral'.

D 23. Having held that 'ordinary earth' is comprehended within the meaning of the word 'any other mineral' in Section 3(e) of the Act, 1957, the question that now arises is whether the exercise of power by the Central Government under Section 3(e) of the Act, 1957 in declaring the use of 'ordinary earth' for filling or E levelling purposes in construction of embankments, roads, railways, building as 'minor mineral' is justified. It was contended on behalf of the appellants that the Central Government cannot include any matter based on mere use nor can it make purpose-based distinction. Once the 'ordinary earth' is found to be comprehended within the meaning of the word 'any other mineral' F for the purposes of Section 3(e) of the Act, 1957, in our view, there is no impediment for the Central Government to include or exclude the same based on a particular use or purpose. User can be a valid reason for exclusion as well as inclusion in declaring mineral, 'minor mineral' in exercise of the powers G conferred upon the Central Government under Section 3(e) of the Act and exercise of any such power based on use or purpose cannot be said to be arbitrary. We, accordingly, find no merit in the contention of the Learned Senior Counsel for the appellants that the declaration of the 'ordinary earth' for the uses and purposes mentioned in the notification dated February 3, 2000 H

is ultra vires the power conferred upon the Central Government. A

24. The learned Senior Counsel for the appellants also argued that demand of royalty can be raised only against a lessee or mining permit-holder and the demand raised against the appellants, who are neither lessees nor mining permit holders, is violative of the Rules, 1963. B

25. The High Court while dealing with the aforesaid contention held :

> "Now coming to the question as to whether the amount of royalty can be recovered from the petitioners who are the contractors and suppliers of ordinary earth and other minor C minerals, we are of the considered opinion that the royalty is payable on excavation of any minor minerals. The liability is primarily of the person holding the mining lease or a mining permit but if a person does not hold any mining lease or a mining permit, the liability does not cease. Any person dealing in a minor mineral is required to maintain and keep D documents to show that the royalty has been paid and in order to ensure that due royalty on minor minerals has been paid within the State of U.P., the State Government by the tree Government Orders have provided for producing copies of declaration in form MM 11 and treasury challan E evidencing deposit of royalty. It cannot be said that any undue restrictions have been placed upon the right to carry on trade or business or it is without the authority of law."

26. Rules, 1963 have been framed by the Government of Uttar Pradesh in exercise of its power conferred under Section F 15 of the Act, 1957. These Rules have adopted the definition of 'minor mineral' as provided in Clause (e) of Section 3 of the Act, 1957. The Rules make provision for grant of mining lease; payment of royalty/dead rent; conditions of mining lease and permit; contraventions, offences and penalties for unauthorized mining including consequences of non-payment of royalty, rent G or other dues; powers of the District Officers and the Officers of the Directorate of Geology and Mining for the purpose of assessment of royalty; collection of royalty or dead rent through contractor; appeal against order passed under these Rules by the District Officer and remedy by way of revision to the State H

A Government.

27. Vide notification dated March 20, 2001, First Schedule appended to the Rules, 1963 was amended and rate of royalty for 'ordinary clay' 'ordinary earth' was fixed at Rs. 4/- per cubic meter.

B 28. Admittedly demand notices came to be issued to the appellants by the Office of the District Officer bringing to their notice that they have extracted 'ordinary earth' covered by the definition of 'minor mineral' without any permission or permit and that they have also not paid royalty. The appellants were, thus, called upon to make payment of royalty. However, neither the C material placed before us nor from the judgment of the High Court, it transpires that the appellants responded to the said notices and raised the objection that demand of royalty cannot be raised against them as they were not lessees or mining permit holders. In any case, if they raised such objection, they D did not await decision of the authorities in this regard. Rules, 1963 provide complete machinery for assessment and recovery of royalty and consequences of non-payment of royalty. These Rules also provide remedy to an aggrieved person against order passed under the Rules by the District Officer demanding E payment of royalty. The appellants, having failed to pursue remedy provided under the Rules, 1963 as regards recovery of royalty from them, we are afraid, the view taken by the High Court does not call for any interference in our jurisdiction under Article 136 of the Constitution.

29. Consequently, all these appeals fail and are dismissed F with no order as to costs.

K.K.T. Appeals dismissed.