It is the result of recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him."

In view of the above, no case is made out to interfere with the discretion exercised by the Magistrate. The revision petition is, therefore, dismissed.

B. S. G.

Before B. R. Tuli & B. S. Dhillon, JJ.

CHANAN MAL,—*Petitioner.*

versus

THE STATE OF HARYANA, ETC.,—*Respondents.*

C. W. 1133 of 1974.

May 7, 1974.

Haryana Minerals (Vesting of Rights) Act (48 *of* 1973—*Sections* 3 & 4—*Mines and Minerals (Regulation and Development) Act (LXVII of* 1957)—*Sections* 2 & 18—*Constitution of India* (1950)—*Article* 31 *and Seventh Schedule, List I, entry* 54 *List II Entries* 18 *and* 23—*Haryana Minerals Act—Whether beyond the legislative competency of the Haryana Legislature—Such Act—Whether saved under article* 31-*A* (1) (*a*) *of the Constitution—Compensation for acquisition fixed under section* 4 *of the Act—Whether violative of article* 31(2).

Held, that Haryana Minerals (Vesting of Rights) Act, 1973 was passed by the Haryana Legislature in order to acquire the right to minerals in or on any land in the State of Haryana by the State Government. However once a legislation is made by the Union Parliament with regard to the regulation of mines and mineral development, it has the power to acquire land where-in such mines and minerals exist and the State Government has no power to acquire the same. It follows that no legislation for the acquisition of the mines or minerals can be enacted by the State Legislature. Section 2 of Mines and Minerals (Regulation & Development) Act, 1957, a Central Act, contains a declaration made under Entry 54 of List 1 of Seventh Schedule of the Constitution and from this declaration it is quite clear that the regulation and development of minerals have been taken over by the Union Government in their entirety. Any legislation by the State after such declaration and

trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field is abstracted from the legislative competence of the State Legislature. Regulation of mineral development includes the acquisition of minerals and, therefore, unless that field was left for the State to operate on, the Haryana Minerals Act could not have been enacetd by the Haryana Legislature. The perusal of the various provisions of the Central Act shows that the only power with the State Government is to make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals, and none else. It has no power whatsoever in respect of minerals other than minor minerals. The regulation of the grant of prospecting licences and mining leases does not include the power to acquire minerals or minor minerals which power exclusively vests in the Central Government. It thus follows that the regulation of mineral development to the fullest extent has been undertaken by the Union Government under section 18 of the Central Act of 1957 and the State Legislature has no jurisdiction to legislate with regard thereto. The pith and substance of the Haryana Minerals Act being the acquisition of rights to minerals and development thereof, the Act falls within Entry 23 and not Entry 18 although it incidentally touches land and not *vice versa*. The land is not sought to be acquired but the rights to its produce in the form of minerals are being acquired. Hence the Haryana Legislature lacked the legislative competence to enact the Haryana Act 48 of 1973 in view of the provisions of the Central Act 67 of 1957.

Held, that article 31A(1) (a) of the Constitution relates to agrarian reforms and not to mines and minerals or rights thereto. With regard to mines and minerals, the acquisition can be for the purpose of searching for or winning any mineral and not mineral development. For this reason the Haryana Minerals Act cannot be saved under Article 31A(a) or (e) of the Constitution, particularly in face of the provisions of the Central Act of 1957.

Held, that amount of compensation fixed by law must not be arbitrary or illusory or grossly low which would shock not only the judicial conscience but the conscience of every reasonable human being. The amount fixed or the principles for the determination of the amount stated in the enactment are open to judicial review from that point of view. Proviso to sub section (1) of section 4 of the Haryana Minerals Act clothes the State Government with an arbitrary power to deprive the owners of the minerals of any amount by way of recompense of their property acquired by the State Government. Section 4 of the Act, therefore, cannot be held to have provided for an amount to be paid to the owners of the right to minerals as contemplated in Article 31(2) of the Constitution nor does the principle for determination of the amount provided in the section accord therewith. The amount having been

fixed arbitrarily and being illusory and grossly low, the Act is deemed to have not provided for any amount to be paid to the owner of the right before acquisition. Section 4 of the Act, therefore, is violative of Article 31(2) of the Constitution.

Petition under Article 226 of the Constitution of India praying as under :—

A writ in the nature of mandamus, prohibition, or any other writ or order or direction be issued directing, restraining, declaring.

(a) *that the Haryana Mineral (Vesting of rights) Act, called Act XLVIII of 1973, is enacted by the State legislature withhout having the legislative competence to do so;*

(b) *that sections 3 and 4 of the impugned Act be struck down as being ineffective, void, illegal, without jurisdiction and ultra vires the Constitution of India;*

(c) *that the impugned Act has not been made for public purpose within the meaning of Article 31(2) of the Constitution of India and therefore must be struck down;*

(d) *that the two notifications (i) 1217-2-1-B-II-74/7622 dated the 20th of February, 1974, and (ii) GIG/SP/Auc./1173-74/3075-C dated the 22nd of February, 1974, are illegal, void and ineffective as they are in pursuance of the impugned Act which is enacted without legislative competence;*

(e) *that if any action is taken in pursuance of notifcations (i) No. 1217-2-1-B-II-74/7622 dated the 20th of February, 1974, and (ii) No. GIG/SP/Auc./1173/74/3075-C dated the 22nd of February, 1974, the same be declared to be void as the same will have been taken by the State Government without jurisdiction to do so; and*

(f) *that the State Government be restrained from taking any action in furtherance of notifications (i) No. 1217-2-1-B-II-74/7622 dated the 20th of February, 1974, and (ii) No. GIG/SP/Auc./1173/73-74/3075-C, dated the 22nd February, 1974, as the same are issued by the State Government without jurisdiction.*

H. L. Sibal, Senior Advocate with S. K. Jain and Kapil Sibal, Advocates, *for the petitioner.*

C. D. Dewan, Additional Advocate-General, Haryana, *for the respondents.*

JUDGMENT

TULI. J.—The petitioners in this bunch of twelve writ petitions (C.W. No. 1118, 1133, 1180, 1181, 1208, 1225, 1226, 1231, 1238, 1277, 1351 and 1352 of 1974), are either owners or lessees of saltpetre at various places in the State of Haryana. They have challenged the constitutional validity of the Haryana Minerals (vesting of Rights) Act, 1973 (Haryana Act No. 48 of 1973), (hereinafter referred to as the Act), principally on the ground that the Haryana State Legislature lacked the legislative competence to enact that law. The other grounds raised by the petitioners will be dealt with later on as I propose to deal with this ground in the first instance. This order will dispose of all the writ petitions.

(2) The Act received the assent of the President of India on December 16, 1973; and was published in the Haryana Government Gazette (Extraordinary), dated December 20, 1973, and came into force on that date. The Preamble of the Act shows that it has been enacted to vest the mineral rights in the State Government and to provide for payment of amounts to the owners of minerals and for other matters connected therewith. The objects and reasons which led to the passing of the Act as published in the Haryana Government Gazette (Extraordinary), dated November 7, 1973, were as under:—

> "It has been observed that the minerals in the State of Haryana are not being properly extracted due to the granting of haphazard leases/contracts by the Panchayats and other owners of the minerals. To protect the mineral potentialities from the conservation point of view and for its proper development and exploitation on scientific lines, it is essential that the minerals should be properly exploited through one agency. In order to achieve the object in view, it is necessary that the rights to minerals in the lands in the State of Haryana should vest in the State Government."

(3) 'Minerals' is defined in section 2(b) of the Act to mean minerals and minor minerals as defined in clauses (a) and (e) respectively, of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957, and section 2(c) defines "land" to mean

land whether assessed to land revenue or not and includes river beds and the sites of buildings and other structures. Section 3 of the Act is in the following words:—

"3. (1) The State Government may, from time to time, by notification, acquire the right to any minerals in any land and the right to the minerals specified in the notification shall, from the date of its publication, vest in the State Government.

(2) Notwithstanding anything contained in any law for the time being in force, on the publication of the notification under sub-section (1), the right to the minerals in the land specified in the notification shall vest absolutely in the State Government and the State Government shall, subject to the provisions of the Mines and Minerals (Regulation and Development) Act, 1957, have all the powers necessary for the proper enjoyment or disposal of such right.

(3) The right to the minerals in the land includes the right of access to land for the purpose of prospecting and working mines and for the purposes subsidiary thereto including the sinking of pits and shafts, erection of plants and machinery, construction of roads, stacking of minerals and deposit of refuse; quarrying and obtaining building and road materials, using water and taking timber and any other purpose which the State Government may declare to be subsidiary to mining.

(4) If the State Government has assigned to any person its right over any minerals, and if for the proper enjoyment of such right, it is necessary that all or any of the powers specified in sub-sections (2) and (3) should be exercised, the Collector may, by an order in writing, subject to such conditions and reservations as he may specify, delegate such powers to the persons to whom the right has been assigned."

Section 4 provides for the payment of amounts to the persons entitled to the right to minerals immediately before their vesting in

the State Government under section 3 of the Act and section 5 provides for reference to the principal civil Court of original jurisdiction for the adjudication of any objections to the quantum of the amount, the persons to whom it is payable or the apportionment of the amount among the persons entitled. This provision is in similar terms as sections 18 and 19 of the Land Acquisition Act, 1894. Section 6 makes the provisions of the Code of Civil Procedure, 1908, applicable to all proceedings before the Civil Court under the Act and section 7 provides for an appeal to the principal Civil Court of original jurisdiction where the matter is decided by a civil Court subordinate to it and to the High Court in other cases. Section 8 empowers the State Government to make rules for carrying into effect the provisions of this Act.

(4) It is not disputed that the Act was passed in order to acquire the right to minerals in or on any land in the State of Haryana by the State Government and, therefore, is covered by Article 31 of the Constitution. In order to determine the legislative competence of the State Legislature to enact the law, reference has to be made to Entry 54 in List I, Entries 18 and 23 in List II and Entry 42 in List III in the Seventh Schedule to the Constitution. The position taken up by the State of Haryana in its return is that the Act is relatable to Entry 18 of the State List (List II) and Entry 42 of the Concurrent List (List III) in the Seventh Schedule to the Constitution and is not relatable to Entry 23 of the State List. It is stated in para 3 of the written statement (C.W. 1133 of 1974) that—

> "Saltpetre is one of the minor minerals as per Central Government Notification No. 1(31)/65-MII, dated 21st January, 1967, and, therefore, its exploitation is to be regulated by the said Act (Mines and Minerals (Regulation and Development) Act, 1957) and the Punjab Minor Mineral Concession Rules, 1964; irrespective of the fact whether the right to saltpetre vests in Government or in a person other than the Government."

At another place (para 4), it is stated that—

> "the acquisition of minerals and payment of amounts, therefore, is quite distinct from the regulation and development of minerals."

In para 11, it has been further submitted that the Act—

> "does not relate to the regulation of mines and minerals development to which Entry No. 23 of the State List and Entry No. 54 of the Union List relate. It is an Act relating to acquisition of minerals in land and the State Legislature was fully competent to enact such law under Entry No. 18 of the State List and Entry No. 42 of the Concurrent List."

In para 12 it has again been said that the Act does not relate to regulation of mines and development of minerals. It is independent of the Central Act called the mines and Minerals (Regulation and Development) Act, 1957, and the rules made thereunder by the Central and the State Governments. It is then submitted that from the point of view of vesting of rights to minerals, the Act is analogous to the provisions of section 41 of the Punjab Land Revenue Act and such mineral rights, which did not vest in the Government either by virtue of that section or on the basis of entries in the wajab-ul-arz (record of rights) of the respective villages, can be acquired by the State Government under the Act on payment of the amount as mentioned in section 4 thereof. The Act is stated to be supplementary and complementary to the provisions of the Punjab Land Revenue Act and that it does not encroach upon the powers of Parliament to enact a law relating to regulation of mines and development of minerals nor it is repugnant to the Central Act of 1957.

(5) Shri Kapil Sibal, the young advocate appearing for some of the petitioners, has, however, emphasised that mines and minerals as such are not the topics for legislation in any of the three Lists. The topic for legislation is regulation of mines and mineral development as per Entry 54 in List I and Entry 23 in List II. In order to emphasise the point, the learned counsel has referred to some other entries like Entry 52 in List I, reading 'Industries, the control of which by the Union is declared by Parliament by law to be expedient in the Public interest' and Entries 13, 14, 17 and 18 of List II. I do not think there is any substance in this submission. The fact remains that the legislation has to be in respect of mines and mineral development and is, therefore, covered by Entry 54 in List I and Entry 23 in List II.

(6) In *State of West Bengal* v. *Union of India* (1), one of the questions for consideration was whether Parliament was not competent to make a law authorising the Union Government to acquire land and rights in or over land which are vested in a State and that the Coal Bearing Areas (Acquisition and Development) Act (XX of 1957), enacted by Parliament and particularly sections 4 and 7 thereof, were *ultra vires* the legislative competence of Parliament. Dealing with this matter, it was observed in para 68 of the report as under:—

> "Entry 42 in List III does not, *prima facie*, contain any indication that the expression 'Property' therein is to be understood in any restricted sense; nor do the other provisions of the Act for reasons already stated suggest a restricted meaning. The ground of absolute sovereignty of the States which may not be interfered with by taking property vested in the State by Parliamentary legislation has no legal basis. Again denial of power to the Union Parliament to legislate on allotted topics of legislation in a manner affecting the property vested in a State, may render Parliamentary legislation virtually ineffective. No provision in the Constitution suggesting a restricted meaning of the word 'property' in the context of legislative power has been brought to our notice. Regard being had to the extensive powers which the Union Parliament and Executive have for using State property, in the larger public interest, the restriction suggested that the power does not extend to the acquisition of property of the States does not seem to be contemplated. By making the requisite declarations under Entry 54 of List I, the Union Parliament assumes power to regulate mines and minerals and thereby to deny to all agencies not under the control of the Union, authority to work the mines. It could scarcely be imagined that the Constitution makers while intending to confer an exclusive power to work mines and minerals under the control of the Union, still prevented effective exercise of that power by making it impossible compulsorily to acquire the land vested in the States containing minerals. The effective exercise of the power would depend, if such an argument is accepted, not

(1) A.I.R. 1963 S.C. 1241.

upon the exercise of the power to undertake regulation and control by issuing a notification under Entry 54, but upon the will of the State in the territory of which mineral-bearing land is situate. *Power to legislate, for regulation and development of mines and minerals under the control of the Union, would by necessary implication include the power to acquire mines and minerals.* Power to legislate for acquisition of property vested in the State cannot, therefore, be denied to the Parliament if it be exercised consistently with the protection afforded by Article 31." (emphasis supplied).

According to these observations, once a legislation is made by the Union Parliament with regard to the regulation of mines and minerals development, it has the power to acquire land where in such mines and minerals exist and the State Government has no power to acquire the same. It follows that no legislation for the acquisition of the mines or minerals can be enacted by the State Legislature. It is, therefore, evident that in case the regulation of mines and mineral development had been taken over by the Union Government by enacting the Mines and Minerals (Regulation and Development) Act, LXVII of 1957 (hereinafter called the Central Act of 1957) and regulation includes acquisition of land in which mines exist, the Haryana State Legislature had no competence to pass the Act.

(7) In order to determine that question we have to examine the various provisions of the Central Act of 1957. Section 2 of that Act contains the declaration made under Entry 54 of List I of the Seventh Schedule to the Constitution and reads as under:—

"It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

From this declaration it is quite clear that the regulation and development of minerals have been taken over by the Union Government in their entirety. It is admitted by the State in its return that the regulation and development of the minerals are within the exclusive jurisdiction of the Central Government under the Central

Act of 1957 and what has been high-lighted in the course of his arguments by the learned Additional Advocate-General is that acquisition of rights to minerals is something different from the regulation of minerals development and the Union Government has not so far passed any law vesting the rights to minerals in it exclusively or to acquire those rights, and, therefore, the Haryana Legislature had the competence to enact the impugned law. This plea cannot stand in view of the weighty observations of the Supreme Court set out above. Regulation of mineral development includes the acquisition of minerals and, therefore, unless that field was left for the State to operate on, the Act cuold not have been enacted by the Haryana Legislature. The scheme of the Central Act of 1957 suggests that sections 4 to 9 prescribe general restrictions on undertaking prospecting and mining operations, sections 10 to 12 prescribe the procedure for obtaining prospecting licences or mining leases in respect of land in which the minerals vest in the Government and section 13 empowers the Central Government to make rules in respect of minerals. Section 14 makes the provisions of sections 4 to 13 inapplicable to prospecting licences and mining leases in respect of minor minerals and section 15 empowers the State Government to make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith. It, therefore, follows that the only power with the State Government is to make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals, and none else. It has no power whatsoever in respect of minerals other than minor minerals. The regulation of the grant of prospecting licences and mining leases does not include the power to acquire minerals or minor minerals which power exclusively vests in the Central Government. Section 17 relates to the land in which the minerals vest in the Government of a State and the Central Government has been given the power to undertake, after consultation with the State Government, prospecting or mining operations in any area not already held under any prospecting licences or mining leases, etc. From this provision it is clear that the plenary power to carry out prospecting or mining operations, even where the land vests in the State Government, rests with the Central Government and that is why in section 3 of the Act, a specific provision has been made that the minerals acquired by the State under the Act will be developed and enjoyed in accordance with the provisions of the

Central Act of 1957. Section 18 of the Central Act of 1957 specifically deals with the development of minerals and the remaining provisions of the Act concern the miscellaneous and ancillary matters. It thus follows that the regulation of mineral development to the fullest extent has been undertaken by the Union Government under section 18 of the Central Act of 1957 and the State Legislature has no jurisdiction to legislate with regard thereto.

(8) In order to determine the respective field of legislation of the State Legislature as well as the Union Parliament, reference has to be made to Entry 54 in List I and Entry 23 List II in the Seventh Schedule to the Constitution of India which read as under:

> "54 (List I) Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the Public interest.
>
> 23 (List II) Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

In The Hinger-Rampur Coal Co. Ltd., and others v. *The State of Orissa and others* (2), the respective scope of these two Entries was stated as under:—

> "The jurisdiction of the State Legislature under Entry 23 is subject to the limitation imposed by the latter part of the said Entry. If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded. In other words, if a Central Act has been passed which contains a declaration by Parliament as required by Entry 54, and if the said declaration covers the field occupied by the impugned Act, the impugned Act would be *ultra vires*, not because of any repugnance between the two statutes but because the State Legislature had no jurisdiction to pass the law. The limitation imposed by

(2) A.I.R. 1961 S.C. 459.

the latter part of Entry 23 is a limitation on the legislative competence of the State Legislature itself. This position is not in dispute."

The matter was again considered by their Lordships of the Supreme Court in *State of Orissa and another* v. *M/s. M. A. Tulloch and Co.* (3), and it was observed in para 5 of the report as under:—

"Coming now to the Seventh Schedule, Entry 23 of the State List vests in the State Legislature power to enact laws on the subject of 'regulation of mines and minerals development subject to the provisions of List I with respect to regulation and development under the control of the Union.' It would be seen that 'subject' to the provisions of List I the power of the State to enact Legislation on the topic of 'mines and mineral development' is plenary. The relevant provision in List I is, as already noticed, Entry 54 of the Union List. * * * *

* * * * *

There is no controversy that the Central Act has been enacted by Parliament in exercise of the legislative power contained in Entry 54 or as regards the Central Act containing a declaration in terms of what is required by Entry 54 for it enacts by section 2: 'It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided.'

It does not need much argument to realise that to the extent to which the Union Government had taken under 'its control' 'the regulation and development of minerals,' so much was withdrawn from the ambit of the power of the State Legislature under Entry 23 and legislation of the State which had rested on the existence of power under that entry would to the extent of that 'control' be superseded or be rendered ineffective, *for here we have a case not of mere repugnancy between the provisions of the two*

(3) A.I.R. 1964 S.C. 1284.

enactments but a denudation or deprivation of State legislative power by the declaration which Parliament is empowered to make and has made." (emphasis supplied).

(9) In that case it was urged by Mr. Setalvad, the learned counsel for the respondent, that the Central Act covered the entire field of mineral development, that being the 'extent' to which Parliament had declared by law that it was expedient that the Union should assume control and in this connection he relied most strongly on the terms of section 18(1) which laid a duty upon the 'Central Government to take all such steps as may be necessary for the conservation and development of minerals in India' and 'for that purpose the Central Government may, by notification, make such rules as it deems fit.' He further argued that if the entire field of mineral development was taken over; that would include the provision of amenities to workmen employed in the mines which was necessary in order to stimulate or maintain the working of mines etc. The learned Judges found considerable force in this submission of the learned counsel and approved of the decision in *the Hingir-Rampur Coal Co.* v. *State of Orissa* (supra).

(10) Another judgment of the Supreme Court having a direct bearing on the point is *Baijnath Kedia etc.* v. *The State of Bihar and others*, (4). In that case; the question that arose for decision was whether the State Legislature had the legislative competence to enact the amendment of section 10 of the Bihar Land Reforms Act, 1950. The impugned amendment which added second proviso to sub-section (2) of section 10 of the Bihar Land Reforms Act, 1950, was made by the Bihar Land Reforms (Amendment) Act 1964, and was in these terms:—

"In sub-section (2), the following second proviso shall be added, namely:—

'Provided further that the terms and conditions of the said lease in regard to minor minerals as defined in the Mines and Minerals (Regulation and Development) Act, 1957 (Act LXVII of 1957), shall, in so far; as they are inconsistent with the rules made by the State Government under section 15 of that Act, stand

(4) A.I.R. 1970 S.C. 1436.

substituted by the corresponding terms and conditions prescribed by those rules and if further ascertainment and settlement of the terms will become necessary, then necessary proceedings for that purpose shall be undertaken by the Collector', and (b) after sub-section .. ..".

Dealing with this matter in paras 14 and 15 of the report, it was observed:—

"14. .. it is necessary to address ourselves to the first argument that the legislative competence to enact the amendment to section 10 of the Reforms Act was wanting. As the amendment was made after Act 67 of 1957, we have to consider the position in relation to it. Entry 54 of the Union List speaks both of Regulation of mines and minerals Development and Entry 23 is subject to Entry 54. It is open to Parliament to declare that it is expedient in the public interest that the control should rest in Central Government. To what extent such a declaration can go is for Parliament to determine and this must be commensurate with public interset. Once this declaration is made and the extent laid down, the subject of legislation to the extent laid down becomes an exclusive subject for legislation by Parliament. *Any legislation by the State after such declaration and trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field is abstracted from the legislative competence of the State Legislature.* This proposition is so self-evident that no attempt was rightly made to contradict it. There are also two decisions of this Court reported in the *Hinger-Rampur Coal Co. Ltd.* v. *State of Orissa* and *State of Orissa* v. *M. A. Tulloch & Co.* (supra), in which the matter is discussed. The only dispute, therefore, can be to what extent the declaration by Parliament leaves any scope for legislation by the State Legislature. If the impugned legislation falls within the ambit of such scope, it will be valid; if outside it, then it must be declared invalid.

15. The declaration is contained in section 2 of Act 67 of 1957 and speaks of the taking under the control of the

Central Government the regulation of mines and development of minerals to the extent provided in the Act itself. *We have thus not to look outside Act 67 of 1957 to determine what is left within the competence of the State Legislature but have to work it out from the terms of that Act.*" (emphasis supplied).

In para 17 of the report, it is observed:

"Since the Bihar State Legislature amended the Land Reforms Act after the coming into force of Act 67 of 1957, the declaration in the latter Act would carve out a field to the extent provided in that Act and to that extent Entry 23 would stand cut down. To sustain the amendment the State must show that the matter is not covered by the Central Act. The other side must, of course; show that the matter is already covered and there is no room for legislation."

With regard to the Central Act 67 of 1957, it was observed in para 18 of the report—

"The Act takes over the control of regulation of mines and development of minerals to the Union; of course, to the extent provided. It deals with minor minerals separately from the other minerals. In respect of minor minerals it provides in section 14 that sections 4-13 of the Act do not apply to prospecting licences and mining leases. It goes on to state in section 15 that the State Government may, by notification in the official Gazette, make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith, and that until rules are made, any rules made by the State Government regulating the grant of prospecting licences and mining leases in respect of minor minerals which were in force immediately before the commencement of the Act would continue in force. It is admitted that no such rules were made by the State Government. It follows that the subject of legislation is covered in respect of minor minerals by the express words of section 15(1). Parliament has undertaken legislation and laid down that regulation of the grant of prospecting licences and mining leases in respect of minor

minerals and for purposes connected therewith must be by rules made by the State Government. Whether the rules are made or not, the topic is covered by Parliamentary legislation and to that extent the powers of State Legislature are wanting. Therefore, there is no room for State legislation."

Further, in paragraph 20 of the report, their Lordships held that—

"By enacting section 15 of Act 67 of 1957, the Union has taken all the power to itself and authorised the State Government to make rules for the regulation of leases. By the declaration and the enactment of section 15 of the whole of the field relating to minor minerals came within the jurisdiction of Parliament and no scope was left for the enactment of the second proviso to section 10 in the Land Reforms Act. The enactment of the proviso was, therefore, without jurisdiction."

The matter is again put beyond any doubt in para 22 of the report as under:—

"We have already held that the whole of the legislative field was covered by the Parliamentary declaration read with the provisions of Act 67 of 1967, particularly section 15. We have also held that entry 23 of List II was to that extent cut down by entry 54 of List I. The whole of the topic of minor minerals became a Union subject. The Union Parliament allowed rules to be made but that did not recreate a scope for legislation at the State level. Therefore, if the old leases were to be modified, a legislative enactment by Parliament on the lines of section 16 of Act 67 of 1957 was necessary. The place of such a law could not be taken by legislation by the State Legislature as it purported to do by enacting the second proviso to section 10 of the Land Reforms Act. It will further be seen that Parliament in section 4 of Act 67 of 1957 created an express bar although section 4 was not applicable to minor minerals. Whether section 4 was intended to apply to minor minerals as well or any part of it applies to minor minerals are questions we cannot consider in view of the

clear declaration in section 14 of Act 67 of 1957 that the provisions of sections 4—13 (inclusive) do not apply. Therefore, there does not exist any prohibition such as is to be found in section 4(1), Proviso in respect of minor minerals. Although section 16 applies to minor minerals, it only permits modification of mining leases granted before October 25, 1949. In regard to leases of minor minerals executed between this date and December, 1964, when rule 20(1) was enacted, there is no provision of law which enables the terms of existing leases to be altered. A mere rule is not sufficient."

In the light of these observations, there is no substance in the argument of the learned counsel for the respondent-State that the Union Parliament has not passed any law vesting rights to minerals in the Central Government or for the acquisition of those rights. The declaration in section 2 of the Central Act of 1957 vests that power in the Union and has left no power of legislation with the State Legislatures. I may point out here that, contrary to the pleadings in the written statement, the learned counsel for the respondent-State took up the position that the impugned Act was relatable to Entry 23 in List II and since the Union Parliament had not made a law vesting the rights to minerals in the Central Government nor for the acquisition of those rights, the field of legislation in respect of the vesting and acquisition of rights to minerals in and by the State Government was still open to the State Legislature. In view of the judgments of the Supreme Court, referred to above, this plea cannot stand because the entire field of mineral development was taken over by the Union and Parliament alone can legislate on the subsubject. In this connection reference may also be made to the Objects and Reasons of the Act in which it is stated that the object was "to protect the mineral potentialities from the conservation point of view and for its proper development and exploitation on scientific lines." This object falls completely within the scope of section 18 of the Central Act of 1957, where-in a duty has been laid upon the Central Government "to take all steps as may be necessary for the conservation and development of minerals in India". In regard to that matter the Haryana Legislature could not enact the impugned law.

(11) The learned counsel for the respondent-State then submitted that the impugned Act was relatable to Entry 18 in List II of the Seventh Schedule to the Constitution. This Entry reads as under:—

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

From the preamble and the provisions of the impugned Act it is abundantly clear that what was being acquired was the right to minerals and not any land or any right in or over land. The Bihar Land Reforms Act, 1950, had abolished the rights of intermediaries in the mines and had vested those rights as lessors in the State Govvernment. In *Baijnath Kedia, etc.* v. *The State of Bihar and others* (supra), it was urged that the legislation related to land and land tenures. Dealing with this argument, the learned Judges observed in para 19 of the report:—

> "Mr. Lal Narain Sinha argued that the topic of legislation concerns land and, therefore, falls under entry 18 of the State List and he drew our attention to other provisions on the subject of mines in the Land Reforms Act as originally passed. The abolition of the rights of intermediaries in the mines and vesting these rights as lessors in the State Government was a topic connected with land and land tenures. But after the mining leases stood between the State Government and the lessees, any attempt to regulate those mining leases will fall not in entry 18 but in entry 23 even though the regulation incidentally touches land. The pith and substance of the amendment to section 10 of the Reforms Act falls within entry 23 although it incidentally touches land and not *vice versa*. Therefore, this amendment was subject to the overriding power of Parliament as declared in Act 67 of 1957 in section 15. Entry 18 of the State List, therefore, is of no help."

Thus, in the words of the Supreme Court, the pith and substance of the impugned Act being the acquisition of rights to minerals and

development thereof, the Act falls within Entry 23 and not Entry 18 although it incidentally touches land and not *vice versa*. The land is not sought to be acquired but the rights to its produce in the form of minerals are being acquired. I, therefore, hold that the Haryana State Legislature lacked the legislative competence to enact the law in view of the provisions of the Central Act 67 of 1957.

(12) The learned Additional Advocate-General then relied on Article 31A(1)(a) of the Constitution and submitetd that the impugned Act was covered under that clause and attack to its validity on the basis of Article 31 of the Constitution was barred. I have already held that the impugned Act is not relatable to Entry 18 in List II of the Seventh Schedule to the Constitution and if that be so, Article 31A(1)(a) is also not applicable. This clause relates to agrarian reforms and not to mines and minerals or rights thereto. That matter is covered by sub-clause (e) of Article 31A(1)(a) of the Constitution. For facility of reference both sub-clauses (a) and (e) of this Article are set out and they read as under:—

> "31A(1) Notwithstanding anything contained in Article 13, no law providing for—
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> (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
>
> (b) * * * * * *
>
> (c) * * * * * *
>
> (d) * * * * * *
>
> (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31:

* * * * * *."

With regard to mines and minerals, the acquisition can be for the purpose of searching for or winning any mineral and not mineral development. For this reason, the impugned Act cannot be saved under Article 31A(1) (a) or (e) of the Constitution, particularly in face of the provisions of the Central Act of 1957.

(13) The learned counsel for the petitioners have then argued that there is no public purpose for which the acquisition of the right to minerals has been made by the impugned Act as no such purpose has been stated therein. In order to find out whether the acquisition is for a public purpose, we have to consider all the provisions of the Act and, if necessary, the Objects and Reasons, which led to the enactment, can also be looked into. In the statement of Objects and Reasons, it has been definitely stated that the acquisition was being made to protect the mineral potentialities from the conservation point of view and for its proper development and exploitation on scientific lines. In section 3 of the Act it has been provided that after the vesting of the right to minerals in the State Government, the State Government shall, subject to the provisions of the Central Act of 1957, have all the powers necessary for the proper enjoyment or disposal of such right. Under the Central Act of 1957, one of the provisions, namely, section 18, directly deals with the development of minerals. Looked at as a whole, therefore, it appears to me that the acquisition of the right to minerals under the Act was made for a public purpose. The argument of the learned counsel for the petitioners that the acquisition was made in order to augment the revenues of the State does not seem to hold water. In the returns filed by the State it has been stated that a company by the name of Haryana Minerals Private, Limited, has been incorporated under the Companies Act which will be solely entrusted with the scientific development and conservation of the minerals, right to which was being acquired under the Act. It may be that as a result of the scientific development of the minerals some revenue or income accrues to the State but that is no reason to hold that there is no public purpose for which the acquisition of the right to minerals has

been made under the Act. I, therefore, repel this submission of the learned counsel for the petitioners.

(14) Lastly, it has been submitted on behalf of the petitioners that under Article 31(2) of the Constitution, the law providing for compulsory acquisition must also fix an amount or prescribe such principles in accordance with which the amount may be determined and the manner in which it has to be paid and that the amount fixed under section 4 of the Act is not only arbitrary but is wholly illusory. The learned Additional Advocate-General has submitted that this Court cannot go into the adequacy of the amount provided for acquisition under the Act in view of the prohibition prescribed in Article 31(2) of the Constitution. This argument is met by the learned counsel for the petitioners by relying on the judgment of their Lordships of the Supreme Court in *His Holiness Kesavananda Bharati Sripadagalvaru and others* v. *State of Kerala and another* (4), wherein the majority of the learned Judges held that the amount has to be fixed by the law but the amount so fixed must not be arbitrary or illusory or grossly low which would shock not only the judicial conscience but the conscience of every reasonable human being. It was thus held that the amount fixed or the principles for the determination of the amount stated in the enactment are open to judicial review from that point of view although inadequacy of the amount cannot invalidate the impugned Act. In order to find out whether the amount fixed under section 4 of the Act or the principles laid down for its determination are arbitrary or illusory or shocking to the judicial conscience or the conscience of the reasonable human beings it is necessary to scan through the provisions of that section minutely. This section reads a under:—

> "4(1) On the vesting of the right to the minerals in any land under section 3, the person entitled to the right to the minerals immedaitely before such vesting shall be paid annually, in the manner prescribed, an amount equal to ten per cent of the annual contract money, or of royalty or dead rent whichever is higher, payable to the State Government on the minerals raised in a year, as the case may be, for a period of ten years with effect from such vesting;

(4) A.I.R. 1973 S.C. 1461.

Provided that if no contract or lease is given or the lessee does not raise the minerals for any period, no amount shall be paid for that period and the aforesaid period of ten years shall be deemed to have been extended by that period:

Provided further that the payment of the amount shall commence after the expiry of one year from the date of commencement of the period of contract or lease, as the case may be.

Explanation.—If the State Government exploits the minerals itself, the royalty or dead rent whichever is higher shall be calculated as if the State Government is the lessee.

(2) The Collector shall annonnce in the manner prescribed an order specifying the person or persons to whom the amount shall be paid.

(3) If there is any dispute as to the person or persons who are entitled to the payment of amount, the Collector shall by an order decide the dispute and if he finds that more than one person are entitled to the amount, he shall apportion the amount among such persons."

According to this section, the persons entitled to the right to minerals immediately before its acquisition by the State are to be paid an amount equal to ten per cent of the annual contract money, or of royalty or dead rent whichever is higher, payable to the State Government on the minerals raised in a year, as the case may be, for a period of ten years with effect from such vesting. After this amount is paid for ten years, the right to the minerals will for ever remain with the State Government without any further amount being paid to the owners. In other words, it means that by paying an amount equal to one year's lease money, the minerals for ever will vest in the State Government. It has been pointed out by Sardara Singh and others, petitioners in C.W. 1231 of 1974, that they purchased land bearing saltpetre for Rs. 1,30,000 from the State Government,—*vide* sale certificate dated May 23, 1966. This land was of no other use to the petitioners except for extraction of saltpetre. The area of the land is 169 *kanals* 5 *marlas*. A part of the land was given by petitioner 1 to one Shri Kailash Chander contractor in the month of October, 1973, for one year for Rs. 2,000 and the remaining area belonging to the petitioners was still with them and they had already

invested huge amount in connection with the work relating to extraction of saltpetre for the current year, that is, by engaging skilled labour and making necessary constructions and other preparations for extraction of saltpetre. During the pendency of the writ petition, the entire land has been auctioned for Rs. 5,000 which means that the petitioners will get only Rs. 500 for the current year and similar amounts in the next nine years. This amount has no relation with the value of the minerals extracted and to be found in the land and is so grossly low that it is nothing but illusory and arbitrary. It is shocking to the judicial conscience and I am quite sure will shock the conscience of every reasonable human being. Moreover, according to the proviso to sub-section (1) of section 4, ten per cent of the annual contract money or royalty or dead rent is payable to the owner of a right only when lease is granted by the State Government and the contractor, after taking the contract, raises the minerals in accordance with the contract. If no lease is granted or after taking the lease the contractor does not raise the minerals, the owner will not be entitled to any amount for that year. This proviso thus leaves an arbitrary power with the State Government whether to lease out the minerals or not and again it depends on the sweet will of the contractor to raise the minerals or not to raise the same and the owner of the minerals will get nothing for the period the minerals are not raised. This proviso thus clothes the State Government with an arbitrary power to deprive the owners of the minerals of any amount by way of recompense of their property acquired by the State Government. Section 4 of the Act, therefore, cannot be held to have provided for an amount to be paid to the owners of the right to minerals as contemplated in Article 31(2) of the Constitution nor does the principle for determination of the amount provided in the section accord therewith. The amount having been fixed arbitrarily and being illusory and grossly low, the Act is deemed to have not provided for any amount to be paid to the owner of the right before acquisition. Section 4 of the Act, therefore, is violative of Article 31(2) of the Constitution and cannot be sustained. If the provision prescribing the amount for acquisition is struck down, the Act cannot work and it has to be struck down as a whole.

(15) For the raesons given above, I hold that the Haryana Minerals (Vesting of Rights) Act, 1973, is *ultra vires* Article 31(2) of the Constitution and the provisions of the Mines and Minerals

(Regulation and Development) Act, LXVII of 1957 and is, therefore, struck down.

(16) The State Government issued notification No. 1217-2-1-B-II-74/6722, dated February 20, 1974, acquiring the right to saltpetre mineral in the lands described in the schedule appended to that notification in exercise of powers conferred by sub-section (1) of section 3 of the Act. In view of the Act having been declared as *ultra vires* this notification is also struck down.

(17) Another notification No. Glg/SP/Auc/1173/73-74/3075-C, dated February 22, 1974, was issued by the State Government for the auction of saltpetre bearing areas in the State of Haryana. That notification also falls and is quashed. The auctions held in pursuance of that notification are, therefore, of no effect.

(18) In this view of the matter, I have not considered it necessary to go into the various pleas raised by the State Government with regard to the validity of the leases in favour of the lessee-petitioners. The grounds stated are that the said leases do not conform with the provisions of the Minor Minerals Concession Rules, 1964. If that be so, the State Government shall be at liberty to take any action against the lessees or the lessors that may be permissible under the said Rules or the Central Act of 1957.

(19) The writ petitions are accordingly allowed but the parties are left to bear their own costs.

DHILLON, J.—I agree.

N.K.S.

INCOME TAX REFERENCE

Before D. K. Mahajan, C.J. & P: S: Pattar, J:

M/S NIEMLA TEXTILE FINISHING MILLS (P) LTD., CHHEHARTA (AMRITSAR),—*Applicant.*

versus

THE COMMISSIONER OF INCOME-TAX DELHI (CENTRAL) NEW DELHI,—Respondent.

... I.T.R. 9 of 1973.

May 7, 1974.

Income-tax Act (43 *of* 1961)—*Sections* 271(1)(c) *and* 274(2)—*Inspecting Assistant Commissioner—Whether has the power to impose penalty* suo motu—*Income-tax Officer determining an amount*