Baijnath Kadio vs State Of Bihar And Ors. on 28 August, 1969

Equivalent citations: AIR1970SC1436, 1971(0)BLJR798, (1969)3SCC838, [1970]2SCR100

Bench: M. Hidayatullah, A.N. Grover, J.M. Shelat, K.S. Hegde, V. Bhargava

JUDGMENT

1. This judgment will also govern the disposal of Civil Appeals 686 (Kanti Prasad Pandey v. State of Bihar and Ors.), 687 (Shri Krishna Chandra Gangopadhya v. State of Bihar and Ors.) and 688 (Pakur Quarries Private Ltd. and Anr. v. State of Bihar and Ors.) of 1967. These four appeals have been brought against a common judgment, November 1, 1966 of the High Court of Patna and arise out of four petitions under Article 226 of the Constitution filed to question the validity of Proviso (2) to Section 10(2) added by Bihar Land Reforms (Amendment) Act 1964 (Bihar Act 4 of 1965), and the operation of the second Sub-rule of Rule 20 added on December 10, 1964 by a notification of the Governor in the Bihar Minor Mineral Concession Rules, 1964. The facts of all the four cases are similar and the same points arise for determination. It is, therefore, sufficient to state the facts in Civil Appeals 685 and 686 as illus illustrative of the others as well.

2. One Jyoti Prakash Pandey obtained on March 23, 1955 from Babu Bijan Kumar Pandey and Smt. Anila Devi acting for herself and also as legatee under the will of one Baidyanath Pandey, registered leases to quarry stone ballast boulders and chips from and upon Blocks Nos. 32, 45/1 45/2 and 45/3 in tauzi No. 1452, khata No. 1 in Mouza Malpahari No. 89 in Pakur Sub-Division of Santhal Parganas. The leases were to commence from November 1, 1954 and to end on October 31, 1984, that is. to say, they were for a total period of 30 years. Jyoti Prakash Pandey was working udder the name and style of 'Stone India'. He sold his rights, title and interest by a registered sale-deed on September 9, 1963 to the present appellant. It is admitted that rent under the terms of the original lease was deposited upto September 1965.

3. On the passing of the Bihar Land Reforms Act, 1950 (Act 30 of 1950) the ex-landlords ceased to have any interest from the date of vesting and in their place the State of Bihar became lessor under Section 10(1) of the Land Reforms Act. The terms of Section 10 were as given below.

10. Subsisting leases of mines and minerals.-

> (1) Notwithstanding anything contained in this Act, where immediately before the date of vesting of the estate or tenure there is a subsisting lease of mines or minerals comprised in the estate or tenure or any part thereof, the whole or that part of the estate or tenure comprised in such lease shall, with effect from the date of vesting, be deemed to have been leased by the State Government to the holder of the said subsisting' lease for the remainder of the term of that lease, and such holder shall be entitled to retain possession of the lease-hold property, (2) The terms and conditions

of the said lease by the State Government shall mutatis mutandis be the same as the terms and conditions of the subsisting condition that, if in the opinion of the State Government the holder of the lease had not, before the date of the commencement of this Act, done any prospecting or development work, the State Government shall be entitled at any time before the expiry of one year from the said date to determine the lease by giving three months' notice in writing:

Provided that nothing in this subsection shall be deemed to prevent any modifications being made in the terms and conditions of the said lease in accordance with the provisions of any Central Act for the time being in force regulating the modification of existing mining leases.

(3) The holder of any such lease of mines and minerals as is referred to in subsection (1) shall not be entitled to claim any damages from the outgoing proprietor or tenure-holder on the ground that the terms of the lease executed by such proprietor or tenure-holder in respect of the said mines and minerals have become incapable of fulfilment by the operation of this Act.

After the vesting of the estate of the intermediaries, the State of Bihar as the new lessor recognised the lease for the quarrying of stones for the remaining period and the Deputy Commissioner, Santhal Parganas asked for the rent from the date of vesting to 30 April, 1965 at the rate of Rs. 200/-per year as stated in the original lease. This was by a letter issued from his office on February 2, 1963. On December 10, 1964 the appellants received a letter which gives the gist of the facts on which the present controversy starts and the relevant part may be quoted here :

Government have been pleased to amend the Section 10 of Bihar Land Reforms Act, 1950, and according to which the terms and conditions in regard to leases for minor minerals stand statutorily substituted by the corresponding terms and conditions by the Bihar Minor Mineral Concession Rules, 1964. As a result of this, rent and royalty etc. in respect of minor minerals in the State irrespective of the date on which the lease was granted are to be paid by all categories of leases according to the rates given in the aforesaid Rules with effect from 27-10-64.

The appellants denied their liability to pay. The Government informed them by letter as follows :

This is to inform you that the terms and conditions of your mining lease in so far as they are inconsistent with the Bihar Minor Mineral Concession Rules, 1964, framed by the State Government under Section 15 of the Mines & Minerals (Regulation & Development) Act, 1957, stand substituted by the corresponding terms and conditions prescribed by the Bihar Mineral Concession Rules, 1964, from 27-1-1964. Accordingly, dead rent, royalty and surface rent in addition to the other substitution as per Bihar Mineral Concession' Rules, 1964, will be as follows :

1. Dead rent .. .. Rs. 50/- per acre per annum.

2. Royalty .. .. Rs. 3/- per 100 cft. of stone chips.

Rs. 2,-per 100 cft. of stone ballast and boulders Rs. 4/- per 100 eft. on building stones.

Re. 1;- per 100 Nos. of stones 'setts'.

3. Surface rent 3 .. .. Rs. 10 per acre per year.

It is this additional demand and the liability to pay, which is the subject of controversy here. The Bihar Government contends that the terms of the original lease have been validly altered by the operation of the second proviso to Section 10(2) of the Bihar Land Reforms Act added first by Ordinance III of 1964 and later incorporated again by the Bihar Land Reforms (Amendment) Act, 1964 (Act 4 of 1965) and the addition of Section 10A to the Act by the same enactments. The material part of the second section of Act 4 of 1965 is quoted below.

Amendment of section 10 of Bihar Act XXX of 1950.-

In Section 10 of the Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950) (hereinafter referred to as the said Act).-

(a) 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 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 . . . .

Section 10A provided for the vesting of the interest of leases of mines or minerals which were subject to such leases and need not be read here. The State Government also relied upon the Bihar Mineral Concession (First Amendment) Rules, 1964 by which a second Sub-rule was added to Rule 20. The twentieth rule, purporting to be framed under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957) was amended on December 19, 1964 and now leads :

Rule 20. (1) Dead rent, royalty and surface rent.-

When a lease is granted or renewed.

(a) dead rent shall be charged at the rates specified in Schedule 1,

(b) royalty shall be charged at the rates specified in Schedule II, and

(c) surface rent shall be charged at the rates specified by the Govt. in the Revenue Department from time to time.

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

The contention is that the amendment of Section 10 of the Bihar Land Reforms Act is ultra vires the Constitution and that Rule 20(2) does not legally entitle the recovery of the dead-rent, royalty etc. as in the Schedules to the Bihar Minor Mineral Concession Rules, 1964.

4. To understand fully the argument on behalf of the appellants a resume of the legislation on the subject of mines and minerals is necessary. Under the Government of India Act, 1935, the subject of Mines and Minerals was covered by Entry 36 of the Federal Legislative List I and entry No. 23 of the Provincial Legislative List II of the 7th Schedule. These entries read as follows :

Entry 36. Regulation of mines and oil fields and mineral developments to which such regulation and development under a Federal control is declared by Federal law to be expedient in the public interest.

Entry 23. Regulation of mines and oil fields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

When the Indian Independence Act, 1947 was passed the word 'federal' where it occurs for the first time in entry 36 and in entry 23 was changed to 'dominion'. The entries are practically repeated in the present Constitution and may be read immediately here :

Entry 54, of List I-Union List-reads :

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.

Entry 23 of List II-State List-reads :

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.

> The difference between the entries of the Government of India Act, 1935 and the present Constitution lies in the removal of oilfields from the entries and the declaration now must be by Parliament. Entry 53 in List I deals with oilfields and mineral resources.

5. In 1948 the Legislative Assembly enacted the Mines and Minerals (Regulation and Development) Act, 1948 (Act 53 of 1948). It received the assent of the Governor-General on September 8, 1948. It was an Act to provide for the regulation of mines and oilfields and for the development of minerals. In Section 2 of that Act is to be found the declaration contemplated by entries 36 and 23, 7th Schedule of the Government of India Act, 1935. That declaration reads as follows:

> 2. It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation of mines and oilfields and the development of minerals to the extent herein after provided.

Section 3 of the Act of 1948 contained definitions. There were definitions of 'mine' and 'minerals'. The former meant an excavation for the purpose of searching for or obtaining minerals and included an oil-well and the latter included natural gas and petroleum. Section 4 provided that no mining lease would be granted after the commencement of that Act otherwise than in accordance with the rules made under that Act and that a mining lease granted contrary to the provisions would be void and of no effect. Section 5 empowered the Central Government, by notification to make rules for regulating the grant of mining leases or for prohibiting the grant of such leases in respect of any mineral or in any area. In particular the rules could provide for the manner in which, the minerals or areas in respect of which and the persons by whom, applications for mining leases could be made and the fees payable, the terms on which and the conditions subject to which, mining leases might be granted, the areas and the period for which any mining lease might be granted and the maximum and minimum rent payable by a lessee, whether the mine was worked or not. Under Section 6 the Central Government had power to make rules as respect mineral development. Section 7 then provided as follows :

> 7. (1) The Central Government may, by notification in the official Gazette, make rules for the purpose of modifying or altering the terms and conditions of any mining lease granted prior to the commencement of this Act so as to bring such lease into conformity with the rules made under Sections 5 and 6:
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> Provided that any rules so made which provide for the matters mentioned in Clause (c) of Sub-section (2)shall not come into force until they have been approved, either with or without modifications, by the Central Legislature.
>
> (2) The rules made under Sub-section (1) shall provide-
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> (a) for giving previous notice of the modification or alteration proposed to be made thereunder to the lessee, and when the lessor is not the Central Government, also to the lessor and for affording them an opportunity of showing cause against the

proposal.

(b) for the payment of compensation by the party who would be benefited by the proposed modification or alteration to the party whose rights under the existing lease would thereby be adversely affected; and

(c) for the principles on which, the manner in which and the authority by which the said compensation shall be determined.

Section 8 provided that the Central Government might by notification direct that any power exercisable under that Act might be exercised, subject to such conditions if any, as might be specified by such officer or authority or might be specified in the direction. In furtherance of the powers conferred the Central Government framed the Mineral Concession Rules 1949 and they came into force on the twenty-fifth day of October 1949. These rules for the first time defined minor minerals and after amendments from time to time the term meant:

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

Rule 4 however provided :

4. Exemption.-These rules shall not apply to minor minerals, the extraction of which shall be regulated by such rules as the Provincial Government mayprescribe.

The word "provincial" was later changed to 'State'. Although some of the Provinces (now States) made Minor Mineral Concession Rules, it is admitted that Bihar Government did not frame any such rules.

6. The leases of the appellants' predecessors were granted in 1955 during the subsistence of the Act of 1948 and the Rules of 1949. It is also to be noticed that a fresh declaration was made by Parliament as required by entry 54 List I-Union List of the 7th Schedule of the Constitution. The existing laws, however, continued. Without a declaration by Parliament the field of legislation might have been open to the State Legislatures under entry 23 of List II-State List of the Constitution but no law was made except what was enacted by the Bihar Legislature in the Land Reforms Act about vesting of mines in the State and the emergence of the State as a lessor in place of all original lessOrs.

7. Further rules were made by the Central Government in 1955 and 1956. In 1955 Minerals Conservation and Development Rules were made which were later replaced in 1958. On September 4, 1956, the Central Government in exercise of the powers conferred by Section 7 of the Act of 1948 made the Mining Leases (Modification of Terms) Rules 1956. Under the:e rules existing

Conservation and Development Rules. The expression 'existing mining leases were to be brought into conformity with the Minerals Conservation and Development Rules. The expression 'existing mining leases' was defined as a mining lease granted before the 25th day of October 1949 and subsisting at the commencement of those rules but did not include any lease in respect of any minor mineral within the meaning of Clause (c) of Section 3 of the Act of 1948.

8. We now come to the year 1957. In that year Parliament enacted the Mines and Minerals (Regulation and Development) Act, 1957 (Act 67 of 1957). It came into force from December 28, 1957. Act 67 of 1957 made amendments in the Act of 1948 so as to make the latter relate to oilfields only. All references to minerals other than oil were removed, with the result that it became legislation exclusively relating to oil and gas. Since the Act of 1948 was thus altered, Parliament enacted new provisions for minerals in Act 67 of 1957. We are primarily concerned with this Act in these appeals. A glance at some of the provisions of Act 67 of 1957 is necessary.

9. The Act 67 of 1957 came into force on 1st June, 1958 and extended to the whole of India. It contained the following declaration in Section 2 :

> It is hereby declared that it is expedient in the public interest that the Union should take under the control the regulation of mines and the development of minerals to the extent hereinafter provided.
>
> By definition minerals excluded mineral oils because the Act of 1948 exclusively dealt with oil. 'Minor minerals' were defined to mean building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral. Act 67 of 1957 contained 33 sections which were separated by general headings showing the topics dealt with. The first group of Sections 4-9 contained general restrictions on undertaking prospecting and mining operations. Of this group we may quote here Section 4 which will be considered later :
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> 4. Prospecting or mining operations to be under licence or lease-
>
> (1) No person shall undertake any prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder :
>
> Provided that nothing in this Sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement.
>
> (2) No prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

Section 5 lays down restrictions on the grant of prospecting licences or mining leases. Section 6 prescribes the maximum area for which a prospecting licence or mining lease may be granted and Section 7 the periods for which prospecting licences may be granted or renewed and Section 8 the periods for which mining leases may be granted or renewed. Section 9 fixes the royalties in respect of mining leases.

10. Then follows another group of Sections 10-12 which lays down the procedure for obtaining prospecting licences or mining leases in respect of land in which the minerals vest in the Government. The next group of Sections 13-16 is headed Rules for regulating the grant of prospecting licences and mining leases. Section 13 gives power to the Central Government to make rules in respect of minerals. Section 14 however excludes the application of Sections 4-13 to minor minerals. It reads :

> The provisions of Sections 4 to 13 (inclusive) shall not apply to prospecting licences and mining leases in respect of minor minerals.
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> Section 15 gives power to the State Governments to make rules in respect of minor minerals. It reads :
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> 15(1). The State Government may, by notification in the official Gazette, make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith.
>
> (2) Until rules are made under Sub-section (1) any rules made by a State Government regulating the grant of prospecting licences and mining leases in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

Section 16 gives power to modify mining leases granted before 25th October, 1949. It reads :

> 16(1). All mining leases granted before the 25th day of October, 1949, shall, as soon as may be after the commencement of this Act, be brought into conformity with the provisions of this Act and the rules made under Sections 13 and 18 :
>
> Provided that if the Central Government is of opinion that in the interests of minerals development it is expedient so to do, it may, for reasons to be recorded, permit any person to hold one or more such mining leases covering in any one State a total area in excess of that specified in Clause (b) of Section 6 or for a period exceeding that specified in Sub-section (1) of Section 8.
>
> (2) The Central Government may, by notification in the official Gazette, make rules for the purpose of giving effect to the provisions of Sub-section (1) and in particular such rules shall provide-

(a) for giving previous notice of the modification or alteration proposed to be made in any existing mining lease to the lessee and where the lessor is not the Central Government also to the lessor and for affording him an opportunity of showing cause against the proposal.

(b) for the payment of compensation to the lessee in respect of the reduction of any area covered by the existing mining lease; and

(c) for the principles on which, the manner in which, and the authority by which, the said compensation shall be determined.

Section 17 stands by itself as a group and contains special powers of Central Government to undertake prospecting or mining operations in certain cases. Section 18 deals with mineral development and gives additional rule making power to the Central Government. Next follow some miscellaneous provisions; of these, only two interest us. Section 19 lays down that prospecting licences or mining leases granted, renewed or acquired in contravention of the provisions of the Act shall be void and of no effect and Section 20 that the provisions apply to prospecting licences or mining leases whether granted before or after the Act. The rest of this Act does not concern this dispute.

11. It may be pointed out here that the rules made under. Section 13 do not apply to minor minerals in view of the provisions of Section 14. The State of Bihar had not made any rules till the Bihar Minor Mineral Concession Rules, 1964 were made. The modification of the terms of existing mining leases was provided for in Section 16 but that provision applied to mining leases granted before 25th October, 1949. The provisions of Miring Leases (Modification of Terms) Rules. 1955 did not apply to minor minerals because the definition of 'existing mining lease' excluded a lease in respect of any minerals. The power to modify the existing leases in the case had to be found elsewhere.

12. The argument of the appellant is that apart from the provisions of the 2nd proviso to Section 10 added to the Land Reforms Act, 1950 in 1964 by Act IV of 1965 and second Sub-rule added to Rule 20 of the Bihar Minor Mineral Concession Rules, 1964. there is nc power to modify the terms. These provisions of law are said to be outside the competence of the State Legislature and the Bihar Government. With regard to the State Legislature it is contended that the scheme of the relevant entries in the Union and State List is that to the extent to which regulation of mines and mineral development is declared by Parliament by law to be expedient in the public interest, the subject of legislation is withdrawn from the jurisdiction of the State Legislature and therefore Act 67 of 1957 leaves no legislative field to the Bihar Legislature to enact Act 4 of 1965 amending the Land Reforms Act. As regards Rule 20(2) it is contended that the rule making power of its own force cannot reach mining leases granted in 1955 and that this could only be done by a competent legislature. These are the two matters which need decision.

13. The main arguments are supplemented by the following con-tentions. That the Bihar Rules in so far as they make demands of rent and royalty on the existing leases which were executed prior to their coming into force are beyond the power to make rules in respect of minor minerals under

Section 15 of Act 67 of 1957. that Section 15 itself is unconstitutional and void because it delegates legislative power to the rule-making authority and it is excessive delegation and that the amendment of Bihar Land Reforms Act is void because it affects the fundamental rights of the appellants guaranteed under Articles 31 and 19 of the Constitution.

14. Although these supplementary arguments were raised it is obvious that they can arise according as the two main arguments are allowed or disallowed. Therefore it is necessary to address ourselves to the first argument that the legislative competence to enact the amendment to Section 10 of the Reform 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 commensuratec with public interest. 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 also self-evident that no attempt was rightly made to contradict it. There are also two decisions of this Court reported in the Hingir-Rampur Coal Co. Ltd. and Ors. v. State of Orissa and Ors. and State of Orissa v. M. A. Tulloch & Co. 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 and 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. In this connection we may notice what was decided in the two cases of this Court. In the Hingir-Rampur . (2) case a question had arisen whether the Act of 1948 so completely covered the fields of conservation and development of minerals as to leave no room for State legislation. It was held that the declaration was effective even if the rules contemplated under the Act of 1948 had not been made. However, considering further whether a declaration made by a Dominion law could be regarded as a declaration by Parliament for the purpose of entry 54, it was held that it could not and there was thus a lacuna which the Adaptation of Laws order, 1950 could not remove. Therefore, it was held that A there was room for legislation by the State Legislature.

16. In the M.A.Tulloch case the firm was working a mining lease granted under the Act of 1948. The State Legislature of Orissa then passed the Orissa Mining Areas Development Fund Act, 1952, and levied a fee for the development of mining areas within the State. After the provisions came into force a demand was made for payment of fees due from July 1957 to March 1958 and the demand was challenged. The High Court held that after the coming into force of Act 67 of 1957 the Orissa Act must be held to be non-existent. It was held on appeal that since Act 67 of 1957 contained the requisite declaration by Parliament under entry 54 and that Act covered the same field as the Act of

1948 c in regard to mines and mineral development, the ruling in Hingir-Rampur case applied and as Sections 18(1) and (2) of the Act 67 of 1957 were very wide ruled out legislation by the State Legislature. Where a superior legislature evinced an intention to cover the whole field, the enactments of the other legislature whether passed before or after must be held to be overborne. It was laid down that inconsistency could be proved not by a detailed comparison of the provisions of the conflicting Acts but by the mere existence of two pieces of legislation. As Section 19(1) covered the entire field, there was no scope for the argument that till rules were framed under that section, room was available.

17. These two cases bind us and apply here. 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.

18. We have already analysed Act 67 of 1957. 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 lease 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.

19. Mr. L. N. 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 no help.

20. Mr. Lal Narain Sinha next contended that the provisions of Sections 4-14 do not envisage control of the Union which is a condition precedent to the ousting of the jurisdiction under Entry 23.Obviously Mr. Lal Narain Sinha reads Union as equivalent to Union Government. This is erroneous. Union consists of its three limbs, namely, Parliament, Union Government and the Union Judiciary. Here the control is being exercised by Parliament, the legislative organ of the Union and that is also control by the Union. By giving the power to the State Government to make rules, the control of Union is not negatived. In fact, it establishes that the Union is exercising the control. In view of the two rulings of this Court referred to earlier we must hold 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 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.

21. This leaves for consideration the second Sub-rule added to Rule 20 in December. 1964 by the State Government. It will be noticed that the rule as it stood previously applied prospectively to all leases which came to be executed after the promulgation of the rules. The second Sub-rule made applicable those provisions to all leases subsisting on the date of the promulgation of the rules. The short question is whether the rules could operate on leases in existence prior to their enactment without the authority of a competent legislature. Vested rights cannot be taken away except under authority of law and mere rule-making power without the support of a legislative enactment is not capable of achieving such an end. There being two legislatures to consider, namely, Parliament and the State Legislature we have first to decide which legislature would be competent to grant such power.

22. We have already held that the whole of the legislative field was covered by the Parliamentary declaration read with provisions of Act 67 of 1957, 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.

23. Faced with this difficulty Mr. Lal Narain Sinha attempted to claim power for the second Proviso to Section 10 of the Land Reforms Act from entry 18 of List II, a contention we have rejected. He H also attempted to find a field for enactment by the State Legislature for the said proviso. This argument was extremely ingenious and needs separate notice.

24. The contention was that modification of existing leases was a separate topic altogether and was not covered by Section 15 of Act 61 of 1957. Therefore if Parliament had not said anything on the subject the field was open to the State Legislature. The other side pointed to the words 'and for purposes connected therewith' in Section 15 and contended that those words were sufficiently wide to take in modification of leases. Mr. Lal Narain Sinha's argument is unfortunately not tenable in view of the two rulings of this Court. On the basis of those rulings we have held that the entire legislative field in relation to minor minerals had been withdrawn from the State Legislature. We have also held that vested rights could only be taken away by law made by a competent legislature. Mere rule-making power of the State Government was not able to reach them. The authority to do so must, therefore, have emanated from Parliament. The existing provision related to regulation of leases and matters connected therewith to be granted in future and not for alteration of the terms of leases which were in existence before Act 67 of 1957. For that special legislative provision was necessary. As no such parliamentary law had been passed the second Sub-rule to Rule 20 was ineffective. It could not derive sustenance from the second Proviso to Section 10(2) of the Land Reforms Act since that proviso was not validly enacted.

25. In the result, therefore, these appeals must succeed. They are allowed with costs. A mandamus shall issue restraining the State Government from enforcing the provisions of the second Proviso to Section 10(2) added by Bihar Land Reforms (Amendment) Act, 1964 (Bihar Act 4 of 1965) and the second Sub-rule of Rule 20 added by a notification on December 10, 1964 to the Bihar Mineral Concession Rules, 1964.