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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 801/2012

CHINTESHWAR STEEL PVT. LTD..... Appellant

Through: Mr. Ravi Gupta, Senior Advocate
with Mr. Rajneesh Chunni and
Mr. Ajay Gulati, Advocates

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Amrit Pal Singh, CGSC for R-1.

Reserved on : 12th November, 2013

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Date of Decision : 26th November, 2013

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. The issue involved in the present appeal is whether this Court has territorial jurisdiction and if so, whether it should exercise it keeping in view the principles of *forum conveniens*.

2. It is pertinent to mention that the writ petition was filed challenging the decision of the State Government granting prospecting licence to respondent no. 3. However, learned Single Judge vide judgment and order dated 8th October, 2012 dismissed the appellant's writ petition on the ground that this Court was not the convenient forum.

3. Mr. Ravi Gupta, learned senior counsel for appellant submitted that the approval of the Central Government as enshrined under the Mines and Minerals (Development and Regulation Act), 1957 [hereinafter referred to

as ‘MMDR Act’] and Mineral Conservation and Development Rules, 1988 [hereinafter referred to as ‘MCDR, 1988] was obtained at every stage for grant of prospecting licence in favour of respondent No.3. He pointed out that the mineral in question fell in the First Schedule of MMDR Act. According to him, not only a miniscule part of cause of action had arisen in Delhi, but the most vital part being the Central Government’s revisional order had been passed under Rule 55 of Mineral Concession Rules, 1960 at New Delhi. He pointed out that there was no objection either by the State or Central Government to the matter being heard by this Court.

4. Mr. Gupta further submitted that the learned Single Judge failed to appreciate that this Court in *Vishnu Security Services Vs. Regional Provident Fund Commissioner, 2012 (129) DRJ 661* after analysing the Full Bench judgment in *Sterling Agro Industries Ltd. vs. Union of India & Ors., 181 (2011) DLT 658 (LB)* had held that where original authority is situated in one State and the appellate authority is situated in another, then the writ would be maintainable in both the courts and it is for the petitioner to choose his forum.

5. He also submitted that subsequently this Court in *Jan Chetna Vs. Ministry of Environment and Forests & Ors., 189 (2012) DLT 550* had held that merely the fact that the other high court is more convenient court to adjudicate the lis, cannot be the basis for this Court to refuse to exercise jurisdiction. Mr. Gupta submitted that the judgments relied upon by learned Single Judge while dismissing the writ petition on the ground of territorial jurisdiction did not apply as in the present case the revisional authority was the Central Government and not a tribunal.

6. On the other hand, Mr. Amrit Pal Singh, learned standing counsel for

respondent-UOI submitted that learned Single Judge had considered identical arguments of the appellant while passing the impugned order. Since Mr. Amrit Pal Singh relied extensively on the impugned order, the relevant portion of the same is reproduced hereinbelow:-

“12. Therefore, in the given aforementioned facts, in my view, the following scenario may emerge:-

- (i). the Revisional Authority, being the Central Government, under the MMDR Act has a pan India jurisdiction which in respect of P.Ls examines the veracity of the orders passed by various State Governments depending on where the Mine in issue is located;*
- (ii). while the location of Mines may be at different places, the questions of law could be common. In other words, in respect of a Mine, which is say, in the State of Andhra Pradesh as against that which is in the State of Maharashtra, the decision taken by respective State Governments may raise a question of law or decide an issue which may be common;*
- (iii). if a situation such as the one referred to in point (ii) above arises, and if the principle of dominus litus is applied, then the aggrieved party located in the State of Maharashtra and Andhra Pradesh would have the option of either approaching the High Court where the State Government is situate or where the situs of the Revisional Authority lies i.e., Delhi;*
- (iv). it is possible that the litigant, who is concerned with the Mine located in the State of Maharashtra may approach this court i.e., the Delhi High Court, while on the other hand, the litigant who is concerned with the Mine located in the State of Andhra Pradesh may approach the Andhra Pradesh High Court, to challenge the order of the Revisional Authority; and*

(v). *lastly, it is quite possible that the decision of this court, is diametrically opposite to that of the Andhra Pradesh High Court, on an issue of law arising from orders of the Revisional Authority.*

13. *The question which could arise: Is the Revisional Authority, which is a pan India tribunal, bound to follow the directions of this court or that of the High Court of Andhra Pradesh.....*

14. *In the context of certain other statutes such as the Income Tax Act where the Income Tax Appellate Tribunal (ITAT) operates in Benches, this court in a series of judgments, which has found approval of the Supreme Court in the case of **Ambika Industries Vs. Commissioner of Central Excise, (2007) 6 SCC 769**, has taken the view that the ITAT would be bound by the judgment of the jurisdictional High Court in which the Assessing Officer is located [see **Seth Banarasi Das Gupta Vs. Commissioner of Income Tax, (1971) 81 ITR 170 (All)**], which is cited with approval in **Suresh Desai and Associates Vs. Commissioner of Income Tax, 71 (1998) DLT 772 (DB)**.....*

15. *The Supreme Court in **Ambika Industries** (supra) examined this problem in the context of Section 35 G (9) of the Central Excise Act, 1944. In terms of section 35 G, an appeal lay to the High Court against an order passed by the Central Excise and Service Tax Appellate Tribunal (in short CESTAT). Sub section (9) of section 35G provided for appeals from CESTAT to **the High Court**. This court had dismissed the action preferred against the order of the CESTAT. The aggrieved party filed an appeal which was dismissed by the Supreme Court. The Supreme Court made some pertinent observations in paragraphs 12 to 15.*

“..12. The said decision proceeded on the basis that part of the cause of action may arise at the forum where the appellate order or the revisional order is sourced. If, thus, a cause of action arises within one or the other High Court, the petitioner shall be the dominus litis. Indisputably, if this set of reasoning is to be accepted, the impugned

judgment as also the decision rendered in Bombay Snuff (supra) would not be correct. Before dilating on the said proposition of law it may be noticed that the decision of a Tribunal would be binding on the Assessing Authority. If the situs of the appellate Tribunal should be considered to be the determinative factor, a decision rendered by the Tribunal shall be binding on all the authorities exercising its jurisdiction under the said Tribunal.

13. The Tribunal, as noticed hereinbefore, exercises jurisdiction over all the three States. In all the three States there are High Courts. In the event, the aggrieved person is treated to be the dominus litus, as a result whereof, he elects to file the appeal before one or the other High Court, the decision of the High Court shall be binding only on the authorities which are within its jurisdiction. It will only be of persuasive value on the authorities functioning under a different jurisdiction. If the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of one High Court would not be a binding precedent for other High Courts or Courts or Tribunals outside its territorial jurisdiction, some sort of judicial anarchy shall come into play. An assessee, affected by an order of assessment made at Bombay, may invoke the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and which might suit him and thus he would be able to successfully evade the law laid down by the High Court at Bombay.

14. Furthermore, when an appeal is provided under a statute, Parliament must have thought of one High Court. It is a different matter that by way of necessity, a Tribunal may have to exercise jurisdiction over several States but it does not appeal to any reason that Parliament intended, despite providing for an appeal before the High Court, that appeals may be filed before different High Courts at the sweet will of the party aggrieved by the decision of the Tribunal.

15. In a case of this nature, therefore, the cause of action doctrine may not be invoked...."

(emphasis supplied)

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18. Given the aforesaid principle, let me examine in the argument put forth by the petitioner. The petitioner before me

has contended that even if a miniscule part of the cause of action arises within the territorial jurisdiction of the court, that court would have the jurisdiction to entertain the writ petition. It is contended that in this case, one of the impugned orders is passed by the Revisional Authority, which has its situs within the territorial jurisdiction of this court, and therefore, this court would have the jurisdiction to entertain the writ petition. A reference was also made to various provisions of the MMDR Act, to contend that in respect of minerals which are included in Part A and B of the first Schedule, the involvement of the Central Government is crucial. In this regard, reliance is placed on Sections 4 to 7 and 11 of the MMDR Act.

19. *In my view, the writ petitioner's case at the present juncture is positioned at the stage of recommendation by the State Government for grant of P.L., therefore, the stage for involvement of the Central Government has not, stricto sensu, reached at this point in time. The petitioner, however, relying on the Full Bench judgment of this court in **Sterling Agro Industries Ltd. Vs. Union of India, 2011 AIR (Del) 174** and the judgments of the Supreme Court in the case of **Union of India & Ors. Vs. Adani Export Ltd. and Anr., (2002) 1 SCC 567** and **Alchemist Ltd. Vs. State Bank of Sikkim & Ors (2007) 11 SCC 335** contends that this court has jurisdiction. Reference is also been made to **Ambica Industries (supra)**.*

20. *In my view, the Full Bench decision of this court in Sterling Agro Industries Ltd. (supra), after examining a whole range of case law, including the Supreme Court judgments referred to by the petitioners, in no uncertain terms, came to the conclusion that the situs of a Tribunal is not a determinative factor. It also reiterated that the principle of forum conveniens which briefly put, permits a writ court to refrain from exercising jurisdiction in a given case, where a substantive part of the cause of action arises outside its territorial jurisdiction. In the words of the court **the principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining***

factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co. Ltd. vs UOI AIR 2010 Del 43 has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.

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24. *In the facts of this case, as indicated above, potentially there are apart from the petitioner, fifty two (52) applicants who could be aggrieved by the decision of the State Government (respondent no. 2) in passing an order in favour of respondent no. 3. As noticed above, many of the applicants are from States other than the State of Maharashtra. There are several applicants also from the State of Maharashtra. It is not known as to whether any of these applicants also approached the Revisional Authority. Assuming that they did, and were unable to persuade the Revisional Authority to reverse the decision of the State Government (Respondent no. 2), they could approach a High Court other than this High Court. Potentially, it could lead to a serious issue of conflict of orders. It is, therefore, in this context, that in a series of matters, to which I have made a reference above, various Division Benches of this court have taken a view that the High Court, which would have jurisdiction with regard to Tribunal's which have a pan India jurisdiction or at least jurisdiction over several states, the most appropriate High Court (which a litigant should approach) would be the one where the original authority is situate. The said judgments were delivered in the context of a statutory regime. However, while exercising power under Article 226 of the Constitution; in assessing as to whether in a given case, a High Court should or should not exercise power the test indicated in those judgments would be relevant. In other words, in*

ascertaining whether the High Court which a litigant has approached is a convenient forum qua all parties, will require, amongst others, cognizance of principle that judgment of a High Court would be binding only qua those Courts, Tribunal and Authorities which are situate within its territorial jurisdiction.

25. *In this context of what is stated above, let me test the proposition by taking the present case further. Assume an eventuality where, one of the applicant's were to approach the Bombay High Court, and assume that the Bombay High Court were to take a view contrary to the one that this court would take, respondent no. 2/ State Government of Maharashtra, would be bound to follow the view of the Bombay High Court. A writ issued by this Court would thus, in a sense, lose its efficacy. The entire exercise would be in vain. The judgment of this Court would neither be binding on the Bombay High Court nor the State Government of Maharashtra. At best it can only have a persuasive value. See observations in **Commissioner of Income Tax vs Highway Constructions Co. (F) Ltd. (1996) 217 ITR 234 (Gauhati)**, in which, the Division Bench of the Gauhati High Court has quoted with approval the judgment of the **Bombay High Court in CIT Vs Thana Electricity Supply Ltd (1994) 206 ITR 72.7** Also see observations of the Division Bench of this Court in **Taylor Instrument Co. (India) Ltd. vs Commissioner of Income Tax (1998) 232 ITR 771 (Delhi)**, wherein the said principle has been clearly articulated.*

26. *With reference to the above, I may allude to another judgment of the Supreme Court, in the case of **Stridewell Leathers (F) Ltd vs Bhankerpur Simbhaoli beverages (F) Ltd. (1994) 1 SCC 34**. In this case the Supreme Court was concerned with interpretation of the Section 10F of the Companies Act, 1956 (Companies Act) wherein, an appeal is provided to “**the High Court**” against any order of the Company Law Board (CLB). The question which arose for consideration was whether the High Court, which could entertain an appeal against the order of the CLB, would be the*

Delhi High Court, in view of the situs of the principal bench of the CLB, being in Delhi or the High Court wherein, the registered office of the company, which was involved in the litigation, was located. The Supreme Court after examining the scheme of the Companies Act, came to the conclusion that the expression 'the High Court' in Section 10 would have to be construed in line with the provisions of Section 2(11) and Section 10(1)(a) of the said Act. Section 2(11) of the Companies Act defines 'court', in respect of any matter relating to a company, to mean, the court having jurisdiction under the said Act, with respect to that matter relating to that company, as provided in Section 10. Section 10(1)(a) of the Companies Act, states that the court having jurisdiction under the said Act shall be the High Court having jurisdiction in relation to the place at which the registered office of the company concerned, is situate. The appellant, before the Supreme Court, had raised a preliminary objection before this court (i.e., the Delhi High Court) that the appeal under Section 10 could not be entertained as the registered office of the company was situate in Madras (now Chennai). This court rejected the plea; which is how the matter travelled to the Supreme Court. As indicated above, the Supreme Court reversed the view of this court, by holding that the expression "the High Court" in Section 10F would be governed by the provisions of Section 2(11) read with Section 10(1)(a) of the Companies Act. It also repelled the submission of the respondent in that case, that Section 10(1)(a) only referred to those matters over which the High Court exercised original jurisdiction prior to the constitution of the CLB, to which, its jurisdiction got transferred, by virtue of the 1988 amendment to the Companies Act.....”

7. It is pertinent to mention that keeping in view the conflicting judgments of this Court on the issue of territorial jurisdiction and *forum conveniens*, the said issues were referred to a Full Bench of five Judges of this Court. In ***Sterling Agro Industries Ltd.*** (supra), the Full Bench of five

Judges of this Court has held as under:-

“33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a mala fide manner is too restricted / constricted as the

exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide alone.

(f) *While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).*

(g) *The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) “that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens” is not correct.*

(h) *Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled."*

(emphasis supplied)

8. Keeping in view the aforesaid judgment as well as the judgment cited by learned senior counsel for the appellant, this Court is of the view that when original authority is situated in one High Court and appellate authority is situated in the jurisdiction of another High Court, undoubtedly writ petition is maintainable in both the High Courts as a part of cause of action has arisen in both the courts. The petitioner would have the liberty to choose where he would like to file his writ petition. But even in such an eventuality, the High Court before whom the said writ petition is filed would have the discretion to refuse to entertain it on the ground of *forum conveniens*. Needless to say, the discretion to refuse to entertain the writ petition would have to be exercised on sound judicial principles.

9. Appellant's submission that the decision in ***Vishnu Security Services*** and ***Jan Chetna*** (supra) are contrary and do not accept the ratio propounded

in *Sterling Agro Industries Ltd.* (supra), is illfounded and cannot be accepted. We do not find any conflict between the said judgments and the ratio in *Sterling Agro Industries Ltd.* (supra). Even if there is any conflict, the law laid down by a larger Bench is binding on us, as it is for any Bench of lesser or co-equal strength. The Supreme Court in *Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another*, (2005) 2 SCC 673 has held that the law laid down in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

10. In fact, the two decisions in *Vishnu Security Services* and *Jan Chetna* (supra) elucidate when and in what circumstances judicial discretion should not be exercised on the ground of *forum conveniens*. In *Vishnu Security Services* (supra), the Division Bench observed that though the writ petition may be maintainable in two High Courts, but when the High Court finds that it is inconvenient to entertain the writ petition as other High Court is better equipped to deal with the case, doctrine of *forum conveniens* would be attracted. Thereafter, reference was made to English authorities wherein it has been held that in judging the comparative convenience or non-convenience of the forum, the test to be applied is which Court out of the two is more suitable in the interest of the parties as well as ends of justice. Reference was also made to a U.S. decision wherein it has been observed that courts have open doors to those who seek justice, but when justice is blended with some harassment, it needs to be checked. Undoubtedly, the petitioner is *dominus litis*, but when the choice is motivated by temptation/strategy to force the petition at an inconvenient place, the Court has the power to step in. We are also in agreement with the view of learned Single

Judge in the impugned order that the Division Bench in ***Vishnu Security Services*** (supra) overruled the judgment of learned Single Judge only on the ground that no reason had been given by the learned Single Judge in that case to come to the conclusion that this Court was not the convenient forum. Similarly, in ***Jan Chetna*** (supra), the Division Bench observed that though the issue raised was purely legal relating to an object in another State, yet as the issue raised had no local flavour at all, the said doctrine need not be invoked. Consequently, in our opinion the judgments of ***Vishnu Security Services*** (supra) and ***Jan Chetna*** (supra) have neither deviated nor could have deviated from the judgment of five Judges of this Court in ***Sterling Agro Industries Ltd.*** (supra).

11. In the present case, learned Single Judge in the impugned order has given following reasons for refusing to entertain the writ petition, “.....*I am of the view that this Court would not be a convenient forum for the following reasons: the order impugned in the present writ petition is not only of the Revisional Authority but also of the respondent no.2/State of Maharashtra. There are several applicants, as noticed above, who are potentially aggrieved by the decision of the respondent No.2/State Government of Maharashtra. The petitioner, the State Government of Maharashtra and respondent No.3 and other respondents except the Revisional Authority, are located outside the jurisdiction of this Court. At the stage at which, challenge has been laid before the Revisional Authority, the Central Government has little or no role to play. Therefore, for the foregoing reasons, I decline to entertain the captioned writ petition. The petitioner will, however, be free to approach the appropriate High Court in regard to the impugned orders.*”

12. We are of the opinion that the reasons given by learned Single Judge are cogent and germane inasmuch as the matter has a local flavour and the mine is situated in Maharashtra as well as the primary decision to allot the prospecting licence has been taken by the State of Maharashtra.

13. In any event, it is a settled principle that law laid down by a High Court is binding only within its territorial jurisdiction and judgments of other High Courts have only persuasive value. Further, if there is a contrary decision to the jurisdictional High Court, then only the jurisdictional High Court's judgment would be binding on its subordinate Courts, authorities or tribunals.

14. Keeping in view the aforesaid, we are of the view that it is inconvenient for this Court to entertain the present writ and Bombay High Court is better equipped to deal with the present case.

15. Accordingly, present appeal is dismissed, but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

NOVEMBER 26, 2013

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