



AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT – C No. - 23491 of 2021

Vijay Lakshmi
Kesarwani

.....Petitioners(s)

Versus

State Of U.P. And 4
Others

.....Respondents(s)

Counsel for Petitioners(s)	: Kalpana Sinha
Counsel for Respondent(s)	: C.S.C.

Court No. - 40

**HON'BLE SARAL SRIVASTAVA,J.
HON'BLE ARUN KUMAR SINGH DESHWAL,J.**

1. Heard Sri Navin Sinha, learned Senior Counsel assisted by Sri Utkarsh Srivastava, learned counsel for the petitioner and Sri Rajeshwar Tripathi, learned Chief Standing Counsel-II for State-respondents.

2. The petitioner seeks the following reliefs through this writ petition:-

"(i) Issue a writ, order or direction directing respondent no.1 & 2 to acknowledge the deemed extension of the petitioner's lease term from 20 years to 50 years i.e. uptill 27th July, 2051.

(ii) Issue a writ, order or direction directing respondent no.1 & 2 to update the extended lease term of the petitioner on the E-MM-11 portal i.e. till 27th July 2051 and to restore the petitioner's access to the portal.

(iii) Issue any other writ, order or direction as this Hon'ble Court may fit and proper on the basis of justice, equity and good conscience.

(iv). Award the cost of the writ petition to the petitioner."

3. The facts, in brief, are that the petitioner was granted lease for mining 'Silica Sand' for a period of 20 years on 28.07.2001. The lease was to expire on 27.07.2021. The Central Government published an ordinance, namely Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 (hereinafter referred to as 'Amendment Ordinance, 2015'). The Ordinance has been promulgated to amend the Mines and

Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'Act, 1957'). The Ordinance was published in the Gazette of India on January 12, 2015, and, as per Section 1(2) of the Ordinance, 2015, it shall come into force immediately.

4. Section 8A has been inserted after Section 8 in the Act, 1957 by Amendment Ordinance, 2015, which reads as under:

"8A. (1) The provisions of this section shall apply to minerals other than those specified in Part A and Part B of the First Schedule.

(2) On and from the date of the commencement of the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015, all mining leases shall be granted for the period of fifty years.

(3) All mining leases granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 shall be deemed to have been granted for a period of fifty years.

(4) On the expiry of the lease period, the lease shall be put up for auction as per the procedure specified in this Act.

(5) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015, where mineral is used for captive purpose, shall be extended and be deemed to have been extended upto a period ending on 31 March, 2030 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(6) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015, where mineral is used for other than captive purpose, shall be extended and be deemed to have been extended upto a period ending on 31st March, 2020 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(7) Any holder of a lease granted, where mineral is used for captive purpose, shall have the right of first refusal at the time of auction held for such lease after the expiry of the lease period.

(8) Notwithstanding anything contained in this section, the period of mining leases, including existing mining leases, of Government companies or corporations shall be such as may be prescribed by the Central Government.

(9) The provisions of this section, notwithstanding anything contained therein, shall not apply to a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015, for which renewal has been rejected, or which has been determined, or lapsed."

5. The Amendment Ordinance, 2015, was later made an Act and is named as 'Mines and Minerals (Development and Regulation) Amendment Act, 2015' (hereinafter referred to as 'Amendment Act, 2015'). As per Section 1(2) of the Amendment Act, 2015, it came into force on 12.01.2015.

6. The Central Government, by notification dated 10.02.2015, declared 'Silica Sand' as 'minor mineral'. The case of the petitioner is that the term of the petitioner's lease was 20 years, and it expired on 27.07.2021, but by virtue of Section 8A(3) of the Amendment Act, 2015, the lease period of the petitioner stood extended by operation of law for a period of 50 years as provided in the Act. In the aforesaid backdrop, the petitioner has prayed for the aforesaid relief.

7. A counter affidavit has been filed by the State-respondent in which it has been stated that the 'Silica Sand' was notified as 'minor mineral' on 10.02.2015, and mining lease of 'Silica Sand' can only be granted by means of e-tender/e-auction proceeding as per Mining Policy, 2017. It has been further stated that the procedure for granting mining leases through e-tender/e-auction is a transparent procedure, and the public exchequer is also benefited by realising more revenue through competitive bidding in the auction proceedings. It is also stated that if the provision of Amendment Act, 2015 is applied retrospectively w.e.f. 12.01.2015, that would cause a huge loss to the public exchequer.

8. The writ petition was heard at length on 12.08.2025, and thereafter heard on 14.08.2025 on which date, learned Chief Standing Counsel-II prayed for some time to bring on record certain relevant facts and documents which are necessary for correct and proper adjudication of the controversy in hand, therefore, in the interest of justice, we had granted time to the learned Chief Standing Counsel-II to file supplementary counter affidavit.

9. In the supplementary counter affidavit filed by the State Government, it has been averred that the petitioner has not complied with the terms and conditions of the lease deed. The petitioner was

issued a show cause notice on 10.10.2013 for violating the terms and conditions of the lease deed on the ground that the approved mining plan of the petitioner was till 31.03.2011, and thereafter, she continued mining operation without any approved mining plan, which was in violation of the terms and conditions of the lease deed. The petitioner's licence, thereafter, was suspended by Regional Controller of Mines, Indian Bureau of Mines by order dated 06/07.01.2014 on the ground that the petitioner carried out mining operation without having a valid scheme of mining which amounted to violation of Rule 12 (3) of Mineral Conservation and Development Rules, 1988 (MCDR) and defeats the very purpose of systematic development of mines, conservation of minerals and protection of environment.

10. It has been further stated that the petitioner had not provided the Environmental Clearance Certificate from Uttar Pradesh State Environment Impact Assessment Authority (SEIAA), which is mandatory for carrying out mining activity.

11. To the aforesaid supplementary counter affidavit, a supplementary rejoinder affidavit has been filed by the petitioner stating therein that the suspension order suspending the mining operation of the petitioner was revoked by the Mining Officer, Allahabad, by order dated 20.11.2014. It has been further stated that so far as the Environmental Clearance Certificate is concerned, the respondent has passed an order dated 09.01.2020 asking the petitioner to submit an Environmental Clearance Certificate, which was assailed by the petitioner in Writ-C No.4161 of 2020. The said writ petition was allowed by the Division Bench of this Court by judgment and order dated 20.02.2020, holding that the petitioner did not require any Environmental Clearance Certificate since the notification dated 14.09.2006, which prescribes for having an Environmental Clearance Certificate for mining operation would not apply retrospectively.

12. Sri Navin Sinha, learned Senior Counsel for the petitioner has contended that the lease of the petitioner was granted on 28.07.2001 for a period of 20 years, which was to expire on 27.07.2021. He contends

that during the subsistence of the lease, the Central Government has promulgated an ordinance which came into force from the date it was published in the Official Gazette on 12.01.2015, and Section 8A has been inserted in the Act, 1957. He submits that since on the date, the ordinance was promulgated, which was later on made an Act, the petitioner's lease was subsisting, therefore, by virtue of Section 8A(3) of the Amendment Act, 2015, the lease period of the petitioner stood extended by operation of law upto 50 years. Thus, he submits that the right of the petitioner to continue mining operation for 50 years has crystallized in favour of the petitioner from the date Section 8A has been inserted in the Act, 1957.

13. Accordingly, it is submitted that the petitioner is entitled to a writ of mandamus directing the respondent authority to execute the lease deed for a further period of 30 years from the date of expiry of the lease of the petitioner in view of Section 8A(3) of the Amendment Act, 2015. He further submits that 'minor and minerals' has been defined in Section 3(e) of the Act, 1957. He submits that Section 14 of the Act, 1957 provides that Sections 4 to 13 of the Act, 1957 would not apply to minor minerals, and the other part of the Act, 1957 would apply. According to him, Section 15 of the Act, 1957, enables the State Government to make rules regarding minor minerals, and rules framed under Section 15 of the Act, 1957, would apply in respect of minor minerals. Accordingly, he submits that after the 'Silica Sand' has been declared 'minor mineral', U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as 'Rules, 1963') framed under Section 15 of the Act, 1957 would apply to the petitioner. Therefore, the petitioner's lease deed stood extended for a further period of 30 years, subject to adherence to the Rules, 1963.

14. He further submits that Chapter IX has been inserted in the Rules, 1963 with effect from 29.06.2016 and would apply to the grant of lease in respect to prospecting licence/lease. He submits that the lease of the petitioner is deemed to have been extended by operation of law for 50 years from the date of execution of the lease; therefore, Chapter IX of the Rules, 1963 would not apply to the petitioner as the petitioner's lease

was subsisting on 29.06.2016 when Chapter IX was inserted in the Rules, 1963. Sri Navin Sinha, learned Senior Counsel for the petitioner, has placed reliance upon the Division Bench judgement of this Court in the case of ***Rameshwar Dutt Awasthi Vs. State of U.P. and Others*** passed in Writ-C No.52665 of 2016, decided on 25.01.2017.

15. Sri Rajeshwar Tripathi, learned Chief Standing Counsel-II, rebutting the aforesaid submission, has submitted that in the present case, Section 8A(6) of Ordinance, 2015 shall apply. The said submission has been made on the strength that if there had been any intention of the legislature that condition of sub-section (6) would not apply in case of subsisting lease on the date the Amendment Act, 2015 shall come into effect, there was no occasion for the legislature to incorporate sub-sections (2), (3) and (4) in the opening line of sub-section (6). He submits that if the present case is governed by sub-section (6) of Section 8A, it is incumbent upon the petitioner to comply with the terms and conditions of the lease deed. He submits that if it is found that the petitioner has failed to comply with the terms and conditions of the lease deed, the benefit of Section 8A providing for extension of the lease for 50 years from the date it has been granted cannot be extended to her.

16. He further submits that in the instant case, there is no pleading in the writ petition in respect to the fact that the petitioner has complied with the terms and conditions of the lease, and in the absence of such pleading, it has to be presumed that the petitioner has violated the terms and conditions of the lease. Accordingly, he submits that the petitioner cannot be extended the benefit of Section 8A of the Amendment Act, 2015.

17. He further contends that in the instant case, it is established on record that petitioner has violated the terms and conditions of the lease inasmuch as petitioner carried on mining operation without having any approved mining plan, and for violation of the said condition, the petitioner was issued a show cause notice, and thereafter, petitioner's licence for mining operation was suspended by order dated 06.01.2014 passed by the competent authority.

18. He submits that in order to carry out any mining operation, the petitioner should obtain an Environmental Clearance Certificate from SEIAA, and in the instant case, admittedly, there was no Environmental Clearance Certificate; therefore, the petitioner had violated the terms and conditions of the lease. Thus, he submits that since the petitioner has violated the terms and conditions of the lease, and the compliance of all the terms and conditions of the lease for treating the same to have been extended for 50 years is *sine qua non* for extension of the lease, therefore, the petitioner is not entitled to the relief prayed for in the present petition.

19. It is further contended that 'Silica Sand' has been declared 'minor mineral' w.e.f. 10.02.2015 and from that day onwards, Sections 4 to 13 of the Act, 1957 would not apply to 'Silica Sand', being minor mineral in view of Section 14 of the Act, 1957, and once 'Silica Sand' has been excluded from major minerals, the provisions applicable to major minerals would not apply. Therefore, Section 8A of the Amendment Act, 2015 would not apply.

20. He further submits that there is no provision in the Act, 1957, for altering the nature of the lease as enshrined in Section 16 of the Act, 1957. He contends that had there been any intention of the legislature to permit any alteration in the lease deed, it would have inserted a provision prescribing the procedure for alteration in the lease deed. Accordingly, it is submitted that the petitioner is asking for an alteration in the terms and conditions of the lease deed, which is not provided under the Act, 1957; therefore, the lease of the petitioner is not extended by operation of law for 50 years as claimed by the petitioner under Section 8A of the Amendment Act, 2015.

21. He further submits that for the aforesaid reason, the Division Bench judgment of this Court in the case of **Rameshwar Dutt Awasthi** (*supra*) is not applicable in the facts of the present case.

22. He further placed reliance upon Rule 95 of the Rules, 1963, to contend that the grant of lease is governed by Chapter IX of the Rules

1963, and it can be granted for 20 years and not more than 30 years. Accordingly, he submits that in case, if the argument of the petitioner is accepted, the petitioner is granted lease for 50 years from the date of execution of lease deed, then that would be hit by Article 14 of the Constitution of India inasmuch as that would amount to treating equals to unequals for the reason that those who are entitled to the benefit of Section 8A of the Amendment Act, 2015 would get the lease deed extended for 50 years whereas those who apply for grant of lease under the said rule for 'Silica Sand' would get it at the most for 30 years lease. Thus, the argument of learned Senior Counsel for the petitioner is fallacious and lacks substance.

23. Rebutting the aforesaid submission of learned Chief Standing Counsel-II, Sri Navin Sinha, learned Senior Counsel for the petitioner submits that so far as the applicability of Section 8A of the Amendment Act, 2015 in the case of petitioner is concerned, the contention of learned Chief Standing Counsel-II on the point that Act, 1957 does not contain any provision for alteration in the lease deed has been dealt with by the Division Bench of this Court in the case of ***Rameshwar Dutt Awasthi (supra)*** and the Court has repelled the aforesaid contention.

24. He submits that the petitioner's lease was continuing on the date of induction of Section 8A, therefore, the case of the petitioner is governed by Section 8A(3) of the Amendment Act, 2015 and sub-section (6) would not be attracted in the case of the petitioner inasmuch as sub-section (6) would apply in cases of renewal of lease and not in cases where the lease is subsisting on the date of Amendment Act, 2015.

25. He further submits that the petitioner's right to have mining operation for 50 years got crystalized on the date Section 8A was inserted with effect from 12.01.2015. He submits that Rules, 1963 have been framed under Section 15 of the Act, 1957, therefore, the Rules being subordinate legislation would not govern the rights of the petitioner once the statute is clear and unambiguous in respect to the rights of the petitioner and provides that the lease of the petitioner stood extended by operation of law for 50 years from the date of its grant.

Accordingly, it is submitted that Rule 95 of the Rules, 1963 would not apply in the case of the petitioner.

26. He further submits that Rule 95 is part of Chapter IX of the Rules, 1963, and Chapter IX has been inserted w.e.f. 29.06.2016, whereas the petitioner's right has crystallized on the date of induction of Section 8A in the Act, 1957, and since Chapter IX of the Rules, 1963 would not apply retrospectively, therefore, Rule 95 has no application in the case of the petitioner. He drew the attention of the Court to the title of Chapter IX of the Rules, 1963, which talks of the grant of prospecting licence or mining lease for certain minerals. He laid emphasis on the word 'prospecting' in the title and submits that the intention of the legislature to apply Rule 95 is in respect of those leases which have expired or is to expire and renewal of the said lease deed is required. Thus, he submits that in the instant case, the grant of extension of lease of the petitioner upto 50 years from the date of the grant of lease is not hit by Article 14 of the Constitution of India.

27. We have considered the rival submissions of learned counsel for the parties and perused the record.

28. The undisputed facts, which are born out from the record, are that the petitioner was granted a lease for a period of 20 years on 28.07.2001 for 'Silica Sand' which was to expire on 27.07.2021. According to the petitioner, lease of the petitioner stood extended by 50 years by virtue of Section 8A(3) of the Amendment Act, 2015, therefore, it is not a case of extension or renewal of lease rather it is a case where lease was subsisting on the date of promulgation of the Ordinance, 2015, and therefore, Section 8A(3) of the Amendment Act, 2015 shall apply.

29. The language employed in Section 8A(3) of the Amendment Act, 2015, extracted above, is clear and unambiguous and provides that all the mining leases granted before the commencement of Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 shall be deemed to have been granted for the period of 50 years. Thus, it is clear that by virtue of Section 8A(3), all the leases that were existing

on the date of promulgation of the Amendment Act, 2015, stood extended by operation of law for 50 years from the date of execution of the lease deed. Section 8A(4) is also relevant in the context of the present case, which provides that on the expiry of the lease period, the lease shall be put for auction as per the procedure specified in this Act.

30. A conjoint reading of sub-section (3) and sub-section (4) of Section 8A of the Amendment Act, 2015 reveals that the intention of the legislature in respect of existing lease was that the lease existing on the date of promulgation of Ordinance, 2015 stood extended for a period of 50 years, and on expiry of the lease period, the lease shall be put for auction as per the procedure specified in this Act.

31. Thus, it can be safely culled out that if the legislature had not intended to extend the existing lease for a period of 50 years, there was no occasion for the legislature to provide under sub-section (4) that the lease shall be put for auction as per the procedure specified in the Act on the expiry of the lease period.

32. Now, the Court proceeds to consider the contention of learned Chief Standing Counsel-II that in the instant case, sub-section (6) of Section 8A is attracted because if there had been any intention of legislature that subsection (6) would not apply in respect to existing lease, there was no occasion for the legislature to incorporate sub-sections (2), (3) & (4), and if, sub-section (6) is attracted, it is to be seen whether lessee complied with the terms and conditions of the lease deed, we may note that the Apex Court in the case of ***Common Cause Vs. Union of India & Others, 2016 (11) SCC 455*** has considered in extenso where leaseholder is entitled to the benefit of Section 8A of the Amendment Act, 2015. The Apex Court, while interpreting Section 8A, has held as follows:-

"20. In terms of Section 8A(2) of the amended MMDR Act, all future mining grants would be for a uniform period of fifty years. Section 8A(3) envisages that all original mining lease grants, made prior to the insertion of Section 8A, in the MMDR Act (with effect from 12.1.2015) would also be deemed to have been made for a period of fifty years.

21. Section 8-A(5) pertains to mining leases granted for captive purposes, and is principally aimed at leaseholders operating under renewal. Section 8A(5) postulates three different contingencies:

21.1. Firstly, the period of all mining leases granted before 12.01.2015 "...shall be extended and be deemed to have been extended..." up to 31.03.2030, "... with effect from the date of expiry of the period of renewal last made.....". It is apparent that the question of an "extension" will ordinarily arise only after an "expiry". Since both the terms - "extension" and "expiry" find place in sub-section (5), we are of the view, that Section 8-A(5) is attracted even after the expiry of a renewal. The instant inference emerges from the use of the words "expiry of the renewal last made" in sub-section (5). The issue whether Section 8-A would be applicable to a subsisting lease as on 12.01.2015 (when the amended MMDR Act was notified), as was the contention of the non-applicant petitioner, will be examined in further detail immediately hereinafter. The first contingency, therefore, extends to renewed mining leases which were scheduled to expire before 31.03.2030.

21.2. Secondly, the use of the phrase "renewal last made", leaves no room for any doubt, that the instant second contingency presupposes an existing (first, second or subsequent) renewal in favour of the leaseholder. The difference between the first and the second contingency is the date when the renewal of the mining lease was scheduled to expire. The first contingency applies to renewed mining leases which would expire before 31.03.2030. The instant- the second contingency applies to renewed mining leases which would expire after 31.03.2030. A perusal of Section 8-A of the amended MMDR Act reveals that the second contingency is aimed at extending the existing lease period and not reducing it. Therefore, if the period of the existing renewal would extend beyond 31.03.2030, the period contemplated by the renewal itself has been mandated to be preserved.

21.3. Thirdly, the regime sought to be introduced also has a reference to an original grant. The scheme/course sought to be introduced under Section 8-A(3) of the amended MMDR Act is intended to be preserved even in situations where a mining leaseholder is (or has been) carrying on mining operation under a renewal. Since the original lease period of fifty years has been adopted as the overarching rule, the third contingency aims at allowing the leaseholder, the benefit of treating the original lease period as of fifty years. Therefore, even during the renewal period, if the period of mining lease would get extended (beyond the renewal period), by treating the original lease as of fifty years, the leaseholder would be entitled to the said benefit under the third contingency.

21.4. For the leases governed by Section 8-A(5), out of the above three contingencies, the contingency as would extend the lease period farthest would be applicable.

22. A similar contingency has been provided for under Section 8-A(6) with reference to mining leases used for non-captive purposes. Herein also, the same three contingencies are contemplated. Firstly, the period of all renewals expiring before 31.03.2020 "...shall be extended and be deemed to have been extended..." up to 31.03.2020, "...with effect from the date of expiry of the period of renewal last made...". Secondly, if the renewal period in any case would have actually stretched beyond 31.03.2020- then till the completion of the postulated renewal period. Thirdly, for extending the original lease to fifty years, from the date of grant of the original lease. For leases governed by Section 8-A(6) the contingency as would expire last of all would be applicable to the leaseholder. No further discussion is being recorded herein because the discussion in the preceding paragraph is fully applicable for the interpretation of Section 8-A(6) of the amended MMDR

Act, except for the substitution of the date 31.03.2020 (as under Section 8-A(6) of the MMDR Act) in place of 31.03.2030 (as under Section 8-A(5) of the MMDR Act)."

33. The Apex Court in the aforesaid case has summarised the conclusion as under:-

"37.1. A leaseholder would have a subsisting mining lease, if the period of the original grant was still in currency on 12.01.2015. Additionally, a leaseholder whose original lease has since expired, would still have a subsisting lease, if the original lease having been renewed, the renewal period was still in currency on 12.01.2015. Such a leaseholder, would be entitled to the benefit of Section 8-A of the amended MMDR Act.

37.2. A leaseholder who had not moved an application for renewal of a mining lease (which was due to expire, prior to 12-1-2015), at least twelve months before the existing lease was due to expire, under the provisions of the unamended MMDR Act and the Mineral Concession Rules will be considered as not a valid/subsisting leaseholder after the expiry of the lease period. The provisions of the amended MMDR Act will therefore not enure to the benefit of such leaseholder.

37.3. A leaseholder who has moved an application for renewal (of the original/first or subsequent renewal) of a mining lease, at least twelve months before the existing lease was due to expire and on consideration such an application has been rejected will be considered as not a valid/subsisting leaseholder. The provisions of the amended Section 8-A of the MMDR Act will not enure to the benefit of such leaseholder because of the express exclusion contemplated for the above exigency under Section 8-A(9) of the amended MMDR Act.

37.4. A leaseholder who has moved an application for "first renewal" of the original mining lease, at least twelve months before the original lease was due to expire, and such application has not been rejected, will be considered to be a valid leaseholder having a subsisting right to carry on mining operations till the expiry of two years after 18-7-2014 i.e. up to 17-7-2016 as is apparent from a conjoint reading of the unamended and amended Rule 24-A of the Mineral Concession Rules. Such leaseholder would have the benefit of sub-sections (5) and (6) of Section 8-A of the amended MMDR Act.

37.5. A leaseholder who had moved a second (third or subsequent) renewal application under Section 8(3) of the unamended MMDR Act, at least twelve months before the renewed lease was due to expire and whose application had not been considered and rejected (though not entitled to any benefit under the unamended Section 8-A of the MMDR Act and the amended Rule 24-A(6) of the Mineral Concession Rules] up to 12-1-2015 would still have the benefit of sub-sections (5) and (6) of Section 8-A of the amended MMDR Act in view of the situation sought to be remedied by the Mines and Minerals (Development and Regulation) Amendment Act, 2015.

37.6. Consequent upon the amendment of Section 8-A of the MMDR Act, the regime introduced through sub-sections (5) and (6) thereof provides for three contingencies where benefits have been extended to leaseholders whose lease period had earlier been extended by a renewal. Firstly, for a leaseholder whose renewal period had expired before 12-1-2015, and the leaseholder had moved an application for renewal at least twelve months before the leaseholder's existing lease was due to expire and whose application has not been considered and rejected, the lease period would stand extended up to 31-3-2030/31-3-2020 (in the case of captive/non-

captive mines, respectively). Additionally, a leaseholder whose period of renewal would expire after 12-1-2015, but before 31-3-2030/31-3-2020, the lease period would stand extended up to 31-3-2030/31-3-2020 (in the case of captive/non-captive mines, respectively). Secondly, where the renewal of the mining lease already extends to a period beyond 31-3-2030/31-3-2020 (in the case of captive/non-captive mines, respectively) the lease period of such leaseholders would continue up to the actual period contemplated by the renewal order. Thirdly, a leaseholder would have the benefit of treating the original lease period as of fifty years. Accordingly, even during the renewal period, if the period of the mining lease would get extended (beyond the renewal period) by treating the original lease as of fifty years, the leaseholder would be entitled to such benefit. Out of the above three contingencies provided under sub-sections (5) and (6) of Section 8-A, the contingency as would extend the lease period farthest would enure to the benefit of the leaseholder.

37.7. Based on the interpretation placed by us on Section 4-1(4) of the MMDR Act, and Rule 28 of the Mineral Concession Rules, we can draw the following conclusions. Firstly, unless an order is passed by the State Government declaring that a mining lease has lapsed, the mining lease would be deemed to be subsisting up to the date of expiry of the lease period provided by the lease document. Secondly, in situations wherein an application has been filed by a leaseholder, when he is not in a position to (or for actually not) carrying on mining operations, for a continuous period of two years, the lease period will not be deemed to have lapsed till an order is passed by the State Government on such application. Where no order has been passed, the lease shall be deemed to have been extended beyond the original lease period for a further period of two years. Thirdly, a leaseholder having suffered a lapse is disentitled to any benefit of the amended MMDR Act because of the express exclusion contemplated under Section 8-A(9) of the amended MMDR Act."

34. The Apex Court in paragraph-20 of the judgement in the case of **Common Cause (supra)** has held that Section 8A(3) envisages that all the mining lease grants made prior to the insertion of Section 8A in the Act, 1957 (w.e.f. 12.01.2015) would also be deemed to have been made for a period of 50 years. The Apex Court while interpreting Section 8A(5) in paragraph-21 has held that Section 8A(5) postulates three different contingencies. All three contingencies which Section 8A(5) postulates have been elaborated in paragraph-21 of the said judgement.

35. While deliberating on the first contingency, the Apex Court considers the intention of the legislature for using the words 'Extended' and 'Expiry' in sub-section (6) of Section 8A of the Amendment Act, 2015, and held that Section 8A(5) is attracted even after expiry of a renewal. It, thereafter, records that first contingency, therefore, extends to renewed mining leases which were scheduled to expire before 31.03.2030.

36. While dealing with the second contingency, the Apex Court records that the first contingency applies to renewed mining leases which would expire before 31.03.2030, whereas the second contingency applies to renewed mining leases which would expire after 31.03.2030. It further records that “a perusal of Section 8A of the amended MMDR Act reveals that the second contingency is aimed at extending the existing lease period and not reducing it.”

37. While considering the third contingency, the Apex Court records “the scheme/course sought to be introduced under Section 8-A(3) of the amended MMDR Act is intended to be preserved even in situations where a mining leaseholder is (or has been) carrying on mining operation under a renewal. Since the original lease period of 50 years has been adopted as the overarching rule, the third contingency aims at allowing the leaseholder, the benefit of treating the original lease period as of 50 years”.

38. In paragraph-22 of the judgement in the case of ***Common Cause (supra)***, extracted above, the Apex Court has held in reference to Section 8A(6) that three contingencies as postulated in interpreting Section 8A(5) are also contemplated under Section 8A(6) with reference to mining leases used for non-captive purposes.

39. So from the interpretation given by the Apex Court with reference to Section 8A(5) and 8A(6), it can safely be said that Sections 8A(5) and 8A(6) are attracted where the lease deed had been renewed and subsisting on the date of introduction of Amendment Act, 2015, and it is not applicable in reference to original lease deeds which were existing on the date of induction of Section 8A by Amendment Act, 2015.

40. The aforesaid intention of the Apex Court is also culled out from sub-paragraph nos.37.1, 37.6 & 37.7 of paragraph 37 of the judgement of the Apex Court in the case of ***Common Cause (supra)***. Thus, in view of the above discussions, we do not find substance in the submission of learned Chief Standing Counsel-II that in the instant case, Section 8A(6) is attracted, and since the petitioner has not complied with the terms and

conditions of the lease deed, therefore, she is not entitled to the benefit of Section 8A for extension of lease for 50 years.

41. It is also pertinent to note that if the leaseholder violates the terms and conditions of the original lease deed subsisting on the date of induction of Section 8A by Amendment Act, 2015 after the 'Silica Sand' has been declared 'minor mineral', adequate safeguard for taking action against the leaseholder for violating the terms and conditions of the lease has been provided under Chapter-VII of the Rules, 1963 inasmuch as Rule 81 of Rules, 1963 does not exclude the applicability of Chapter VII of the Rules, 1963 to the lease in respect of 'Silica Sand'.

42. Thus, we are of the view that where the original lease deed is existing on the date of induction of Section 8A by Amendment Act, 2015, the existing original lease deed stood extended by operation of law for 50 years, and if the lessee violates the terms and conditions of the lease deed, the authority is competent to initiate a proceeding under Chapter-VII of Rules, 1963 to terminate the lease of the leaseholder or to impose penalty as the case may be.

43. In the instant case, learned Chief Standing Counsel-II had tried to demonstrate that petitioner had breached the lease condition as she carried out mining operation without having an approved mining plan, and for violation of such condition, the petitioner's licence was suspended by order dated 06.01.2014, but the fact on record reveals that before induction of Section 8A, the order dated 06.01.2014 suspending mining operation of the petitioner was nullified, and the petitioner was granted permission by order dated 20.11.2014 to carry on mining operation. The order dated 20.11.2014 is being reproduced below:

"आदेश

श्रीमती विजय लक्ष्मी केसरवानी नि० 86 महाजनी टोला, इलाहाबाद के पक्ष में ग्राम कचारी, तहसील-बारा, जनपद इलाहाबाद में स्थित 15.00 एकड़ क्षेत्रफल पर सिलिका सैण्ड का खनन पट्टा उ०प्र० शासन द्वारा दिनांक 24.08.2001 से 23.08.2021 तक 20 वर्ष की अवधि के लिए स्वीकृत किया गया है। खान नियंत्रक भारतीय खान ब्यूरो जबलपुर के पत्र संख्या-5477 दिनांक 10/11.10.2013 एवं 07.01.2014 द्वारा कतिपय शर्तों के उल्लंघन के कारण उपरोक्त क्षेत्र में चल रहे खनन कार्य पर रोक लगा दिया गया था। पट्टाधारिका द्वारा क्षेत्रीय खान नियंत्रक भारतीय खान ब्यूरो, जबलपुर के निर्देशानुसार इंगित कमियों को पूर्ण कर लिया गया है। क्षेत्रीय खान

नियंत्रक भारतीय खान ब्यूरो, जबलपुर के पत्र संख्या -5338 दिनांक 16/17.10.2014 द्वारा खनन संक्रियाओं पर लगाई गयी रोक को हटा लिया गया है। खान सुरक्षा निदेशक, वाराणसी क्षेत्र, वाराणसी के पत्र दिनांक 22.08.2014 द्वारा पट्टा क्षेत्र में खनन कार्य की अनुमति प्रदान की गयी है।

जनहित याचिका संख्या-33728/2013 ओम दत्त सिंह बनाम यूनियन ऑफ इण्डिया व अन्य में माननीय उच्च न्यायालय द्वारा दिनांक 21.06.2013 को आदेश पारित करके उपरोक्त पट्टाधारक को उत्पादन एवं निकासी का विवरण नियमित रूप से खनिज विभाग में प्रस्तुत करने का निर्देश दिया गया है।

उपरोक्त को दृष्टिगत रखते हुये जिलाधिकारी महोदय द्वारा दिनांक 19.11.2014 को खनन/परिवहन की अनुमति प्रदान की गयी है। अतः पट्टाधारिका स्वीकृत पट्टा क्षेत्र में नियमानुसार सिलिका सैण्ड का खनन / परिवहन कार्य कराना तथा मा० उच्च न्यायालय के आदेश के अनुपालन में उत्पादन / निकासी का मासिक विवरण खनिज विभाग में प्रस्तुत करना सुनिश्चित करें।"

44. So far as the other contention of learned Chief Standing Counsel-II that the petitioner breached other terms and conditions of the lease deed inasmuch as the petitioner carried out mining operation without having an Environmental Clearance Certificate, we may note that the order dated 09.01.2020 was passed against the petitioner, stopping the mining operation on the ground of non-production of Environmental Clearance Certificate. The said order was assailed by the petitioner in Writ-C No.4161 of 2020, and the order dated 09.01.2020 was quashed by this Court in the aforesaid writ petition, permitting the petitioner to carry out mining operation in respect of 'Silica Sand'. Paragraph nos.17 to 21 of the said judgement are reproduced herein below:-

"17. From perusal of the same it is clear that the petitioner was granted mining lease for a period of 20 years on 28.07.2001. At the relevant time there was no provision in law to obtain Environmental Clearance Certificate. The aforesaid lease was granted only in respect of silica sand. Subsequently the respondent no. 3 granted permission to the petitioner vide letter dated 22.09.2018 to excavate gitti and boulder also in respect of certain gata numbers, a reference of which has already been made above. The question for consideration before the Court is that whether any Environmental Clearance Certificate is necessary for the Mining Lease Holders in respect of which mining lease was granted before the Government Order dated 14.09.2006 was issued or not?

18. It is clear from the facts as narrated above and specially in the view of the Government Order dated 14.09.2006 that the requirement of Environmental Clearance Certificate is necessary only in the cases where the lease was granted or after the issuance of the Government Order in question namely 14.09.2006. In the present case mining lease was granted in favour of the petitioner on 28.07.2001.

19. In view of the aforesaid, we are of the view that since the notification dated 14.09.2006 was not retrospective, petitioner is not liable to obtain

any Environmental Clearance Certificate for the excavation of silica sand. In view of the same the order dated 09.01.2020 passed by the respondent no. 2, (copy of which is appended as Annexure-1 to the writ petition) is liable to be quashed and the same is hereby quashed. The petitioner is entitled for mining of silica sand only pursuant to the lease deed granted in her favour on 28.07.2001.

20. A mandamus is issued to the State Government to provide requisite ID and Password to the petitioner for downloading e-MM-11 form for transportation of silica sand only in terms of the mining lease deed dated 28.07.2001.

21. It is made clear that the petitioner will do the mining work only in respect of silica sand and not in respect of Gitti and Boulder, in respect of which the permission was granted in her favour by the respondent no.3 on 22.09.2018."

45. Nothing has been brought on record by the respondents that judgement of this Court in Writ-C No.4161 of 2021 has been assailed before the Apex Court and it has been set aside. Since, the judgement of this Court in Writ-C No.4161 of 2021 has attained finality between the parties, therefore, it is binding upon the parties. Thus, from the aforesaid fact, it is evident that on the date of induction of Section 8A, there was no breach of any condition of the lease deed by the petitioner. Therefore, the aforesaid objection/contention raised by the learned Chief Standing Counsel-II is misconceived.

46. One of the objection of learned Chief Standing Counsel-II that petitioner has not pleaded in the writ petition that she has complied with terms and conditions of the lease deed, we are of the view that in the instant case, non-pleading of fact in respect to the compliance of terms and conditions of the lease is not relevant for the reason that Section 8A(3) which is attracted in the present case does not contemplate any such situation, and further, the respondents could not place anything on record that on the date of induction of Section 8A, the petitioner had violated any terms and conditions of the lease deed. Therefore, the argument of learned Chief Standing Counsel-II that in the instant case, sub-section (6) of Section 8A is attracted and the petitioner has violated the terms and conditions of the lease deed, therefore, she is not entitled to the benefit of extension of lease for 50 years is fallacious and does not stand to merit.

47. So far as the argument of learned Chief Standing Counsel-II that 'Silica Sand' has been declared 'minor mineral' w.e.f. 10.02.2015, therefore, in view of Section 14 of the Act, 1957, from the date 'Silica Sand' has been declared as 'minor mineral', Sections 4 to 13 of the Act, 1957 would not apply on 'Silica Sand', and therefore, provision applicable to 'major mineral' would not apply, therefore, Section 8A which is applicable to 'major mineral' would not apply to 'minor mineral' is also misconceived in view of the judgement of this Court in the case of **Rameshwar Dutt Awasthi (supra)** wherein the coordinate Bench of this Court has repelled the similar contention and has held as under:-

"...The further larger issue that is engaging our attention as on date is that with the passage of time when the claim of petitioner is being considered by us there are subsequent developments, that have so taken place, and what would be its impact in carrying out mining activity is a further issue to be considered by us.

Earlier silica sand was a major mineral and same was covered by the provisions of 1957 Act read with the provisions of 1960 Rules but after notification dated 10.2.2015 has been made by the Central Government, same has been declared as a minor mineral and as of now the silica sand being declared as minor mineral its mining operation would be covered by the provisions of 1963 Rules and under the 1963 Rules, that have been so framed, in case petitioner intends to carry out mining operations pertaining to minor mineral, then he will have to abide by the terms and conditions provided for under 1963 Rules. Section 4 of MMDR Act provides for that no person can undertake mining operations in any area, except under and in accordance with the terms and conditions of mining lease granted under the Act and the Rules made thereunder. Rule 3 of the 1963 Rules clearly provides that mining operations should be under mining lease or mining permit granted under these rules. For ready reference Rule 3 is extracted below:

"Mining operations to be under a mining lease or mining permit- (1) No person shall undertake any mining operations in any area within the State of any minor minerals to which these rules are applicable except under and in accordance with the terms and conditions of a mining lease or mining permit granted under these rules:

Provided that nothing shall affect any operations undertaken in accordance with the terms and conditions of mining lease or permit duly granted before the commencement of these rules.

(2) No mining lease or mining permit shall be granted otherwise than in accordance with the provisions of these rules.

Explanation:- For the purposes of this rule manual digging or manual extraction of ordinary clay, ordinary earth for making bricks and pottery shall not be treated as mining operations;

Provided that pit created by such digging or extraction should not be deeper than two meters.

(2) No mining lease or mining permit shall be granted otherwise than in accordance with the provisions of these rules."

A bare perusal of Rule 3 would go to show that no person should undertake any mining operations in any area within the State of any minor minerals to which these rules are applicable except under and in accordance with the terms and conditions of a mining lease or mining permit granted under these rules and the proviso in question only exempts such mining operations wherein mining lease or permit has been granted before the commencement of these rules..."

48. Since, the answer to the question raised by the learned Chief Standing Counsel-II has been elaborately dealt with in the judgement of this Court in the case of **Rameshwar Dutt Awasthi (supra)** as this Court categorically held that after notification dated 10.02.2015 of Central Government, 'Silica Sand' has been declared 'minor mineral', its operation would be governed by Rules, 1963 framed under Section 15 of the Act, 1957, in case the petitioner intends to carry out mining operation of 'minor mineral', he has to abide by the terms and conditions of Rules, 1963. The said judgement being a judgement of a coordinate Bench is a binding precedent upon this Court, therefore, the aforesaid contention of learned Chief Standing Counsel-II is devoid of merit.

49. The contention of learned Chief Standing Counsel-II that the 'Silica Sand' was 'major mineral', and after the declaration of 'Silica Sand' as 'minor mineral', the petitioner is asking for alteration in the lease deed which cannot be permitted since there is no provision in the Act, 1957 which permits alteration of the lease deed, therefore, after declaration of 'Silica Sand' as 'minor mineral', the petitioner cannot be allowed to operate. In this respect, it would be relevant to mention that this Court in the case of **Rameshwar Dutt Awasthi (supra)** has dealt with the aforesaid question by recording the finding that "*once there is no such provision which enables the term of existing lease to be altered, then as already deliberated above, even though petitioner's claim would fall within the parameter of Section 8A (6) of 1957 Act but as the lease accorded in his favour has been for mineral as specified under 1960 Rules and as of now Central Government has consciously included said mineral in the category of minor mineral and thus necessarily by operation of law governance of said mineral has to be one under 1963*

Rules, then the provisions of 1957 Act and 1963 Rules cannot be permitted to be ignored."

50. We may further add that the petitioner's right to get the lease deed extended for 50 years had been crystallized in her favour on the date of introduction of the Ordinance, 2015, which has later been made an Act. As we have held above that under Section 8A(3), the petitioner's lease stood extended up to 50 years, the petitioner's right to continue mining operation cannot be curtailed after the declaration of 'Silica Sand' as 'minor mineral' by notification dated 10.02.2015, except by following due process of law. The reason why we say so is that the petitioner was granted mining lease for 'Silica Sand' for 20 years, the Act, 1957 or Rules, 1963 do not envisage any provision under which once a 'major mineral' is declared as 'minor mineral', the leases subsisting on the date of declaration of the said 'major mineral' as 'minor mineral' ceased to exist and is automatically terminated.

51. In the case of ***Rameshwar Dutt Awasthi (supra)***, this Court held that after declaration of 'Silica Sand' as 'minor mineral', rules framed under Section 15 of the Act, 1957 applicable to 'minor mineral' namely, 'U.P. Minor Minerals (Concession) Rules, 1963' would apply to such a mineral from the date it has been declared as 'minor mineral', and the leaseholder of such a mineral if he wants to continue the mining operation is under obligation to comply with the provisions applicable to 'minor mineral'.

52. Therefore, we follow the aforesaid judgement being binding precedent and hold that after the declaration of 'major mineral' as 'minor mineral', the leaseholder is bound to comply with the requirements of law, and terms and conditions prescribed for mining operations in respect to 'minor mineral'. Therefore, in view of the aforesaid discussion, after declaration of 'major mineral' as 'minor mineral' in respect to existing lease deed on the date of declaration of 'major mineral' as 'minor mineral', it cannot be said that continuance of mining operation of such mineral on the basis of existing lease deed by leaseholder would amount to alteration in the lease deed which is not permissible in law.

53. It has also been urged by the learned Chief Standing Counsel-II in view of Rule 95 of Rules, 1963 that a lease for minor mineral can be granted for 20 years and not more than 30 years, and in case, the petitioner's lease is extended for 50 years, that would be hit by Article 14 of the Constitution of India as that would amount to discriminate the equals. In this respect, it is pertinent to note that Chapter IX of Rules, 1963, which has been inserted in Rules, 1963, is titled as 'Grant of Prospecting License or Mining Lease for Diaspore, Pyrophyllite, Felspar, Calcite, Silica, Sand China Clay, Quartz, Etc.'.

54. Chapter IX has been inserted in the Rules, 1963 by Notification No.2229/LXXXVI-2016-130-2015 T.C., dated June 29, 2016, published in Gazette of Uttar Pradesh, Part-4 Section (ka) dated 29 June, 2016. So, from the title of Chapter IX, it is evident that Chapter IX has been inserted with respect to the grant of prospecting licence or mining lease.

55. Rule 80 of Rules, 1963 provides that provisions of this chapter shall be applicable to calcite 'Silica Sand' besides other minerals mentioned in the said rule, and any other minerals notified by the Government of India by Notification No.S.O.423(E), dated 10.02.2015 as minor mineral. Rule 81 of Rules, 1963 excludes the applicability of provision of Chapter II, IV, and VI in respect to the lease granted under this chapter.

56. Rule 82 of the Rules, 1963 provides for restrictions on the grant of prospecting license or mining lease. Rule 84 of Rules, 1963 provides for application for grant of mining lease whereas Rule 95 of Rules, 1963 provides for period of mining lease and prospecting license.

57. In the present case, the title of Chapter IX, as well as the rules referred to above, indicate that the provision of Chapter IX provides for a procedure for the grant of fresh mining lease in respect of minor minerals or for the renewal of mining lease.

58. Rule 84(1) of the Rules, 1963 is unambiguous and provides that an application in form MM-16 for the grant of a mining lease or in form MM-16(A) for renewal shall be addressed to the State Government.

Form MM-16 framed under Rule 84(1) is captioned as 'application for grant of mining lease' and provides that an applicant who intends to obtain mining lease has to submit the application in form MM-16.

59. Similarly, Form MM-16 (A) framed under Rule 84(1) of the Rules, 1963 is titled as 'application for renewal of mining lease', a leaseholder who wants the renewal of the mining lease has to submit an application in Form MM-16(A). So, the reading of Rules 80, 81, and 84 of Chapter IX of Rules, 1963 suggests that these Rules are applicable to a person who wants the fresh mining lease or renewal of mining lease. Chapter IX does not provide the consequences with respect to a lease deed granted in respect to a 'major mineral' later on notified as 'minor mineral'.

60. Since the Rules, 1963 is silent about the consequences in respect to cases where 'major mineral' has been declared as 'minor mineral' during subsistence of lease, we are of the view that the leaseholder of such a lease forms a different class from the leaseholders who have been granted mining lease and renewal of mining lease in respect of 'minor mineral' under Chapter IX of the Rules, 1963.

61. Coming to the instant case, at the time when the lease was granted to the petitioner, 'Silica Sand' was 'major mineral', and when Section 8A was inducted by amendment in the Act, 1957, even on that date, the 'Silica Sand' was 'major mineral'. The petitioner's right to get the lease deed extended for 50 years by virtue of Section 8A (3) of the Amendment Act, 2015, had crystallized on the date of introduction of Section 8A by amendment in the Act, 1957. Thus, the right of the petitioner, which has been vested in her by virtue of Section 8A(3) of the Amendment Act, 2015, to carry out mining operations in respect to 'Silica Sand' for 50 years cannot be curtailed except by due process of law.

62. Learned Chief Standing Counsel-II could not indicate any provision either under the Act, 1957, or under Rules, 1963 that on the date the 'Silica Sand' was declared as 'minor mineral', the existing

leases in respect to 'Silica Sand' would cease to exist or is automatically terminated.

63. It is pertinent to note that even after declaration of 'Silica Sand' as 'minor mineral', the petitioner was allowed to carry out mining operation till her term expired, and respondents did not raise any objection that after the 'Silica Sand' is declared as 'minor mineral', the petitioner cannot carry out any mining operation in respect to 'Silica Sand' after the date it has been declared as 'minor mineral', therefore, it is not open to the respondents to raise such a plea on the strength of Rule 95 of Rules, 1963.

64. In view of the discussions above, we hold that the petitioner's lease is continued for 50 years from the date it was granted in view of Section 8A(3) of the Amendment Act, 2015.

65. Consequently, for the reasons given above, we find that the petitioner has made out a case for the issuance of a writ of mandamus. Accordingly, we *dispose off* the writ petition asking the petitioner to fulfill the formalities as envisaged under Rules, 1963, and thereafter, the application of the petitioner shall be dealt with strictly in accordance with law by respondent no.1 under Rules, 1963 within a period of two months from the date of submission of the application by the petitioner.

August 29, 2025
Sattyarth/NS

(Arun Kumar Singh Deshwal,J.) (Saral Srivastava,J.)