

**IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH**

Date of Decision : 15th January, 2015

1. CWP No. 15431 of 2014

M/s Haryana Royalty Company

..... Petitioner

Versus

State of Haryana and another

..... Respondents

2. CWP No. 15377 of 2014

Faridabad Gurgaon Minerals

..... Petitioner

Versus

State of Haryana and another

..... Respondents

3. CWP No. 15428 of 2014

M/s AVJ Infrastructure Pt. Ltd.

..... Petitioner

Versus

State of Haryana and another

..... Respondents

4. CWP No. 15430 of 2014

Pradeep Kumar Sethi

..... Petitioner

Versus

State of Haryana and another

..... Respondents

5. CWP No. 15432 of 2014

M/s Yamuna Infra Developers Private Limited

..... Petitioner

Versus

State of Haryana and another

..... Respondents

6. **CWP No. 18000 of 2014**

Jaipur Infrastructure Pvt. Ltd.

..... Petitioner

Versus

State of Haryana and another

..... Respondents

7. **CWP No. 18019 of 2014**

Millennium Infra Engineers Private Limited

..... Petitioner

Versus

State of Haryana and another

..... Respondents

8. **CWP No. 24573 of 2014**

M/s B.D. Mines

..... Petitioner

Versus

State of Haryana and another

..... Respondents

9. **CWP No. 24576 of 2014**

M/s Lotus Infrastructure

..... Petitioner

Versus

State of Haryana and another

..... Respondents

10. **CWP No. 24636 of 2014**

M/s Raman Sethi

..... Petitioner

Versus

State of Haryana and another

..... Respondents

11. CWP No. 24637 of 2014

M/s Esteem Infra Build Private Limited

..... Petitioner

Versus

State of Haryana and another

..... Respondents

**CORAM : HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present : Mr. Akshay Bhan, Sr. Advocate with
Mr. Alok Mittal, Advocate;
Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate
for the petitioner(s).

Mr. Amar Vivek, Addl. A.G., Haryana.

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

ASHUTOSH MOHUNTA, J.

By way of this judgment, we will dispose of 11 writ petitions i.e. CWP Nos.15377, 15428,15430, 15431, 15432, 18000, 18019, 24573, 24576, 24636 and 24637 of 2014, involving common question of law and facts.

2. In order to effectively address the issues involved in the said writ petitions, the facts relevant for adjudication of the present case are being culled out and taken from CWP No.15431 of 2014.

3. State of Haryana advertised auction of minor mineral units containing number of mining block and villages to the general public in the districts of Panchkula, Ambala and Kurukshetra vide

auction notice dated 13.11.2013 (Annexure P-1). In the present writ

petition under reference, 395.44 hectare of land under mines was lined up for auction in respect of "District Panchkula Unit-I".

4. In pursuance to the said auction notice, the petitioner participated in the aforesaid auction and gave its bid of Rs.52 Crores per annum against the reserve price of Rs.16.50 Crores per annum in respect of Boulder Gravel and sand minor mineral mines/quarries of Panchkula Unit-I having total area of 395.44 hectares divided into 2 blocks having 15 number of mines. Block No.1 was having 7 mines situated in 7 different villages with particular Khasra numbers while Block No.2 was having 8 mines situated in different villages with specific Khasra numbers. In pursuance to the bid, the petitioner was declared successful bidder. Accordingly respondents issued letter of intent dated 03.01.2014 (Annexure P-2) to the petitioner. As per clause 3(i) of the letter of intent (Annexure P-2), "the period of contract shall be 7 years and the same shall commence with effect from the date of grant of environmental clearance by competent authority or on expiry of a period of 12 months from the date of this communication of acceptance of highest-paid/issuance of "letter of intent", whichever is earlier.

5. Upon receiving the letter of intent, the petitioner wrote to the respondents to provide with the fard Jamabandi and aks-shajara of all the Khasra numbers of all the villages shown in the auction notice. In addition thereto, he also requested the respondents to carry out the demarcation of the area with the help of Revenue

Department in the presence of the petitioner so that the petitioner can start the survey for the preparation of mining plan and environmental impact assessment and obtain the EMP Clearance within the stipulated timeframe of 12 months, as stated above.

6. Thereafter, the petitioner vide letter dated 14.03.2014 sent a reminder to the respondents to get the area demarcated as per the letter of intent. Yet again, the petitioner vide letter dated 27.03.2014 requested the respondents to carry out the demarcation of the area as early as possible in-as-much as the signing of the agreement could only be undertaken after the demarcation takes place and further that since the demarcation was delayed for the reasons beyond the control of the petitioner, therefore, the time period for signing of the agreement be extended as provided in the Mining Rules. Since demarcation of the area could not take place within the time stipulated, the respondents extended the time period for execution of the contract agreement/lease deed in respect of letter of intent, vide letter dated 23.04.2014.

7. It was also understood by the petitioner, that in large number of quarries auctioned by the State, there is variation between the area notified for auction and quarry actually available on-site.

8. It is the case of the petitioner that after relentless and untiring efforts, actual demarcation of the area was carried out by the respondents from 10.03.2014 till 08.05.2014. On the basis of the said demarcation, it transpired that there was difference in the area in

different quarries and thus accordingly the petitioner vide letter dated 04.06.2014 and 11.06.2014 requested the respondents for issuance of corrected letter of intent in respect of the Boulder Gravel and sand minor minerals mines/quarries of Panchkula Unit-I. However, the respondents vide the impugned order dated 10.07.2014 (Annexure P-10) informed the petitioner that its request for the change in area of grant of mineral concession and to reduce the contract money proportionately is rejected being devoid of any merit.

9. It is argued by learned counsel for the petitioner that the petitioner being the highest bidder at Rs.52 Crores per annum, bagged the auction in respect of 395.44 hectare of minor mineral units for District Panchkula Unit-I and accordingly Letter of Intent (Annexure P-2) as well as contract agreement "Under Protest" has been entered and executed by it with the respondents, however, out of the said area 140.02 hectare was not found on the spot, thus reducing the actual area auctioned by the respondents to 255.41 hectare and thus the respondents are wholly unjustified in charging the auction amount for 395.44 hectare.

10. Elaborating the aforesaid argument, learned counsel for the petitioner contended that on persistent request and follow up by the petitioner, demarcation of the area in question was undertaken by the respondents from 10.03.2014 to 08.05.2014 and on the basis of the demarcation report, 62.57 hectares was not found on the spot.

The details of the said area are depicted herein below:-

Sr. No.	Village	Area as per auction notice (in Hec.)	Area as per Lol holder (in Hec.)	Difference of area/non-availability of mining as per Lol holder
1.	Shahpur	20.19	17.19	3 hectare short as per revenue records
2.	Khokhrabad	33.63	11.70	21.93 hectare short as per revenue records.
3.	Nawannagar	21.58	17.20	4.38 hectare claiming to be having 4 washing plants in the area.
4.	Gorakhnath	28.89	25.19	3.70 hectare short as per revenue records.
5.	Kona	25.26	20.24	5.02 hectare is not available either area being short or due to restriction around bridge.
6.	Khudabaksh	34.82	29.25	5.57 hectare short as per revenue records.
7.	Kiratpur	57.90	50.63	57.27 hectare area not available for mining due to restriction around bridge/a tubewell/ boring.
8.	Paploha	72.67	61.27	11.70 hectare short as per revenue records.

11. It is also the case of the petitioner that out of the total area demarcated, 77.45 hectares was non-mineable for the following reasons:-

Sr. No.	Village	Area not available for mining as representation dated 11.06.2014
1.	Shahpur	4.20 hectares area covered under Plantation of Khair Trees
2.	Nawannagar	1.68 hectares area covered under 4 Washing Plants
3.	Kona	15.57 hectares area due to restrictions relating to safety of bridge.
4.	Maranawala	30 hactres area due to restriction relating to safety of bridge, dharamshala, gaushala, school, cremation ground, washing plant, kachi basti and pucca houses. The total area under all these is approximately as it is not available for mining.
5.	Kiratpur	6.00 hectares area due to restriction relating to safety of bridge, play ground with boundary walls, tubewell.
6.	Paploha	10 hectares area due to restriction relating to safety of bridge, stadium, plots allotted to below poverty line families.
7.	Basawal	10 hectare area covered under Plantation of Khair Trees.

12. Thus in this way, 140.02 hectare was either not existent at the spot or was non-mineable due to which total area of 395.44 hectare was reduced to 255.41 hectare for which either fresh auction after demarcating the entire area in question needs to be carried out by the respondents in the presence of the petitioner or proportionate amount of the actual area (255.41 hectare) be reduced and refunded back to the petitioner.

13. Learned counsel for the petitioner has also referred to the impugned order dated 10.07.2014 (Annexure P-10) to contend that the respondents have admitted that the total area is less. He has further argued that in order to cover up, they have incorporated New Khasra numbers and have also changed the area, village/mine wise, the details of which are reproduced below:-

S. No.	Name of quarry	Area as per auction notice	Area after rectification / correction	Change of area, if any	Remarks
		In hectare			
Shahpur Block PKI-I					
1	Shahpur	20.18	20.18	0	Khasra number 1 min is to be mentioned in the area of grant in addition to area as mentioned in the auction notice.
2.	Khokrabad	33.63	49.61	+15.98	The area of 49.61 hectare which is more than 15.98 hectares than that of area shown in the auction notice is to be added vide Khasra Numbers 65, 654, 656, 653, 643, 236 min., 237, 241 min.
3.	Nawan Nagar	21.58	16.94	-4.64	The area of 4.64 hectares is found short as per revenue record.

4.	Gorakhnath	28.89	23.56	-5.33	The area of 5.33 hectares is found short as per revenue record.
5.	Lehrondhi	4.51	4.51	0	--
6.	Kona	25.26	19.25	-6.01	The area of 6.01 hectares is found short as per revenue record.
7.	Marnawala	34.57	34.57	0	---
	Sub total	168.62	168.62	Nil	
Karanpur Block Pkl-2					
8	Khuda Bax Bahnoi	34.82	29.02	-5.8	The area of 5.08 hectares is found short as per revenue record.
9.	Kiratpur	57.90	57.90	0	Khasra number 550 & 128 is included in the area. The total area is 57.90 hectares.
10.	Karanpur	2.98	9.78	+6.8	The area of 6.8 hectares is found on higher side as per revenue record.
11.	Jholuwala	9.91	9.91	0	--
12.	Charnian	12.17	17.76	+5.59	The area of 5.59 hectares is found on higher side as per revenue record.
13.	Paploha	72.67	66.08	-6.59	The area was re-surveyed and khasra nos. 1, 5, 14, 20 and 32 was shown to be part of the area as shown in the auction notice. However, the area of 6.59 hectares is found short as per revenue record.
14.	Basawal	20.06	20.06	0	--
15.	Majra Mehtab	16.31	16.31	0	--
	Sub-total	226.82	226.82	Nil	
	Grand total	395.4	395.4	Nil	--

14. Learned counsel for the petitioner while referring to the auction notice dated 30.11.2013 (Annexure P-1) has emphasised on clause 3 and 4 of the same to contend that the same are one-sided dotted line contract which the petitioner is made to agree & sign by the respondents failing which penal consequences at the hands of the respondents ensues and thus the same do not have the force of

law being a voidable contract. In support of the said contention, he has referred to Section 2(h) of the Indian Contract Act which provides that an agreement enforceable by law is a contract. As per Section 10 of the said Act, only those agreements are contracts if they are made by the free consent of the parties competent to contract for unlawful consideration and with the lawful object and are not expressly declared to be void. He has also referred to Section 13 and 14 of the Act which defines “Consent” and “Free Consent”, which are reproduced herein below:-

“13. 'Consent' defined : Two or more persons are said to consent when they agree upon the same thing in the same sense.”

14. 'Free consent' defined.-Consent is said to be free when it is not caused by -

- (1) coercion, as defined in Section 15, or*
- (2) undue influence, as defined in section 16, or*
- (3) fraud, as defined in section 17, or*
- (4) **misrepresentation, as defined in section 18** or*
- (5) mistake, subject to the provisions of sections 20, 21 and 22,*

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.”

15. He has further argued that the respondents have misrepresented with regard to the area of the quarry auctioned inasmuch as 395.44 hectare was auctioned but on-site and on demarcation the same was reduced to 255.41 hectare and thus the respondents are liable to refund the proportionate amount of the

reduced area back to the petitioner or carry out fresh auction of the same after demarcating the entire area.

16. Per contra, it has further been argued that as per Condition No.3 and 4 of the auction notice (Annexure P-1), it was made clear to the petitioner that inadvertent clerical mistakes can be rectified even after the auction and further that all prospective bidders are expected and presumed to have surveyed the area to make their own assessment for the potential of the areas for which bids are to be offered and the State Government shall not be responsible for any kind of loss to the bidders/contractors at any point of time (before or after grant of contract) and thus they are fully justified in forfeiting the amount deposited by the petitioner besides directing recovery as arrears of land revenue. Condition No.3 and 4 of the auction notice (Annexure P-1) is reproduced herein under:-

- “3. Though due care had been taken in specifying the details of the areas of the mining units/blocks etc., However, in case of any inadvertent clerical mistake the same shall be got rectified/corrected even after the auction but before execution of contract agreement;*
- 4. All prospective bidders are expected and presumed to have surveyed the areas to make their own assessment for the potential of the areas for which bids are to be offered. The state government shall not be responsible for any kind of loss to the bidders/contractors at any point of time (before or after grant of contract). Further the bidders are also expected to have gone through the terms and*

conditions of auction notice and also the applicable Acts and Rules for undertaking mining;”

17. It has further been argued by the learned counsel for the respondents that instead of the petitioner honouring and adhering to the terms and conditions of the auction notice as well as letter of intent (P-2) issued to it, has indulged in blame game by passing on the buck to the respondents on a flimsy ground that the area found on the spot is not the total area which was auctioned to it. To support the said contention, learned Counsel for the respondents has referred to page 146-149 of the paper book and argued that the loss of area in a quarry situated in a particular village has duly been corrected as per Condition No.3 of the auction notice (P-1) by incorporating new Khasra numbers mine wise for which the petitioner can lay no grouse against them. Lastly it has been argued by the learned counsel for the respondents that since the petitioner has failed to comply with the terms and conditions of the auction notice as well as the letter of intent issued to it within the time stipulated therein, therefore, the impugned order (Annexure P-10) has rightly been passed against the petitioner which thus does not calls for any interference by this Court in exercise of its writ jurisdiction under Articles 226/227 of the Constitution of India.

18. We have heard the learned counsel for the parties and perused the record of the case.

19. The facts of the case are culled out in the earlier part of our judgment which thus does not need repetition at this stage for the

sake of convenience and brevity.

20. Firstly, though the issue of maintainability of the writ petition has not been argued before us but since objection with regard to the same has been taken by the respondents in their written statement, we deem it appropriate to address the same. In preliminary objections, the respondents have stated that there is an alternative remedy of appeal available to the petitioner against the impugned order before Administrative Secretary of the Department as per provisions of Rule 109(2) of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules 2012. However, in our opinion the same ipso facto does not operate as a bar. It has been held in a plethora of judgments that where a State or its instrumentality acts in an arbitrary manner even in a matter of contract, then the High Court can intervene under Article 226 of the Constitution of India. In this regard reliance has been placed on ***ABL International Ltd. and Another versus Export Credit Guarantee Corporation of India Ltd. and others, 2004 (3) SCC 553, Noble Resources Ltd. Versus State of Orissa and Another, 2006 (10) SCC 236, Zonal Manager, Central Bank of India Versus Devi Ispat Limited and others 2010 (11) SCC 186.*** In view of the settled law on the issue of maintainability as afore-stated, we are of the firm opinion that the present writ petition against the action of the State under the facts and circumstances of the case, is maintainable.

21. Undisputedly, the petitioner on depositing the earnest money and having participated in the auction in pursuance thereof, was declared the highest bidder at Rs.52 crores per annum for a mining quarry situated in District Panchkula Unit-1 auctioned in his favour by the respondents for a period of 7 years with respect to 395.44 hectare. Being the highest bidder, letter of intent was executed in his favour dated 03.01.2014 (Annexure P-2).

22. The demarcation of the area was carried out by the respondents from 10.03.2014 to 08.05.2014 i.e. after the auction and on demarcation, 140.02 hectare of land was found less being either not available at the spot or non-mineable thus reducing the total area auctioned to the petitioner to 255.41 hectare.

23. It is the case of the petitioner that since the respondents had promised to give an area of 395.44 hectares for extracting minor minerals from a quarry for a period of 7 years which on demarcation has been reduced to 255.41 hectare, therefore the respondents be directed to refund the proportionate amount of the reduced area back to the petitioner i.e. From Rs.52 Crores to Rs.33,58,68,000/- crores (difference of Rs.18,41,22,000/-) or carry out fresh auction after getting the entire area demarcated afresh.

24. On the other hand, the respondents have justified the impugned order (Annexure P-10) passed against the petitioner on the ground that though the area of the quarry was found less at the spot but the same has been corrected and rectified in consonance

with Condition No.3 of the auction notice (P-1) by incorporating new Khasra numbers mine-wise and despite the same, the petitioner having not executed the contract agreement as per Clause No.6 of the letter of intent (P-2), no relief can be granted to him by this Court in exercise of its writ jurisdiction under Articles 226/227 of the Constitution of India.

25. From the record it can be seen that the petitioner submitted all relevant documents before Ministry of Environment and Forests to get the terms of reference approved for preparing EIA report in order to seek environmental clearance as per notification dated 14.09.2006. They also got their TOR approved from the Environment Impact Assessment Committee in the Ministry of Environment and Forests, Government of India for the area in question and also followed other terms and conditions incorporated in the letter of intent issued to them (P-2).

26. Admittedly, the area of the quarry/land was not demarcated or survey by the respondents **prior to putting the same to auction** (*emphasis supplied*). It was only after persistent request and representation by the petitioner, that the area of the quarry/land in question was demarcated from 10.03.2014 to 08.05.2014 and as a consequence thereof, 395.44 hectare of land auctioned was reduced to 255.41 hectare and thus in our considered opinion, the respondents are not justified in demanding the auction amount for 395.44 hectare of land from the petitioner when the actual area on

the spot after demarcation was found to be 255.41 hectare.

27. Further, 395.44 hectare area of the quarry so auctioned qua mining purposes for a period of 7 years to the petitioner in open auction was found less on the spot by 140.02 hectare on demarcation carried out after the auction. The petitioner had paid Rs.52 Crores per annum to the respondents for the said area auctioned to it. The respondents have tried to justify the loss in the area by correcting and rectifying the same on incorporating new Khasra numbers mine wise without associating the petitioner in the said exercise and even without ascertaining the prospects, connectivity and viability of the said area with the existing one for the purposes of mining. The petitioner on the promise of the respondents to auction an area of 395.44 hectares for a quarry in order to extract minor minerals from it, participated in the said auction and being the highest bidder, bagged the contract, however in our opinion, since the same has admittedly been found to be less at the spot by 140.02 hectare, the respondents by their act of misrepresentation and breach of duty by not conducting the demarcation before the auction, is estopped from charging amount of Rs. 52 Crores per annum from the petitioner for 395.44 hectare. The respondents cannot be permitted to take the shelter of Condition No.3 and 4 of the auction notice (P-1) by stating that the same was a clerical error/mistake and it is the petitioner who is expected and presumed to have surveyed the area to make his own assessment

for the potential of the area. No person should be permitted to take advantage of its own wrong. This Court in the case of ***Mohinder Kumar Versus State of Punjab and others (CWP No.6883 of 2005 decided on 20.05.2005)*** held as under:-

“We have examined the issue in its totality. The impugned auction notices, depict only the “had-bast” numbers for all districts, other than the districts of Ropar and Patiala, without specifying the area over which quarrying is permitted. Learned counsel for the petitioners has invited the attention of this Court to Item No.1 for District Ropar, wherein “had-bast” has been identified as No. 330 relating to the revenue estate of village Manakpur Sharif. It is sought to be explained, that the area identified by a “had-bast” number could comprise of several thousands acres. For the aforesaid “had-bast” No. 330, the permitted area for quarrying is, only 22.031 acres. The question posed by the petitioners is, how would a contractor who is granted the tender for “had-bast” No. 330, identify the area of 22.031 acres out of thousands of acres of land included in the aforesaid “had-bast” number? It is, therefore, stated that it would be impossible for the contractors to identify the areas where quarrying is permissible, unless an express demarcation is made at the hands of the respondents.

We are satisfied, that the contention of the learned counsel, demanding identification of the quarrying area, merits acceptance. We accordingly, direct the respondents, first to specify the total area within the “had-bast”, wherein quarrying is to be allowed in all districts, and while doing so, also to specify the area by way of “khasra numbers”, as has been done for the districts of

Ropar and Patiala, which is evident from the note recorded in the auction notices, which reads as under :-

“Note: The khasra number of the area of Rivulets of District Ropar can be seen in the office of General Manager, District Industries Centre, Mohali and the khasra numbers of the area of Rivulets of District Patiala can be seen in the office of General Manager, District Industries Centre, Sirhind Road, Patiala on any working days.”

28. Further in the case of ***Haryana Financial Corporation and another Versus Rajesh Gupta, 2010 (1) SCC 655***, it has been held by the Apex Court that where on account of a mistake by the seller, the buyer refuses to perform his part of the agreement/contract by not depositing the balance amount and the seller forfeits the earnest money in pursuance thereof, the said action of the seller is wholly unjustified and impermissible in law. Para-22 of the said judgment is reproduced herein under:-

“22. We are also of the opinion that the Division Bench was justified in further concluding that in law the appellant Corporation undoubtedly has the power to forfeit the earnest money provided t here was a failure on the part of the respondent to make the deposit. The Division Bench, however, observed that the respondent was dealing with an instrumentality of the State. He was entitled to legitimately proceed on the assumption that the appellant, a statutory corporation, an instrumentality of the State, shall act fairly. The respondent could not have suspected that he would be called upon to

pay the amount of Rs. 50 lakhs without being given even a proper passage to the unit that he was buying. We are of the considered opinion that the respondent had deposited the sum of Rs. 2.5 lakhs on the clear understanding that there would be an independent approach road to the unit. This is understandable. Without any independent passage the plot of land would be not more than an agricultural plot, not suitable for development as a manufacturing unit. We therefore do not find any substance in the submission made by the learned counsel for the appellant Corporation.”

29. Further, the table reproduced above would show that the respondents have incorporated not only new Khasra numbers but have also changed the area, village mine wise without the knowledge and association of the petitioner which in our firm opinion under the facts and circumstances of the present case cannot be permitted.

30. In one of the writ petitions i.e. CWP No.18000 of 2014, 407.86 hectares of land was auctioned for mining purposes in Yamunanagar of which 26.4 hectare was not available at the site, 35.01 hectare was agricultural land as opposed to a ‘quarry’ or ‘river bed’, 40.88 hectares was under plantation and orchards, 0.26 hectares was under house, roads, canals etc. and Khasra Nos.17//1 and 16//21/1 was under forest land. Admittedly no permission from the Government of India was sought by the respondents before putting the forest land to auction in the present case and thus the same in our opinion could not have been auctioned for the purposes

of granting mining lease. Prior approval and sanction of the Central Government was mandatory under Section 2 of the Forest (Conservation) Act, 1980 for all non-forest activities. Reference in this regard is made to the judgment of the Hon'ble Supreme Court of India in the case of ***T.N. Godavarman Thirumulkpad etc. Versus Union of India and others, 1997(2) SCC 267***, which reads as under:-

*"4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and fore matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest: must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in ***Ambica Quarry Works v. State of Gujarat, (1987) 1 SCC 213***, ***Rural Litigation and Entitlement Kendra v. State of U.P., 1989 Suppl. (1) SCC 504***, and recently in the order dated 29th November, 1996 in ***W.P.(C) No.749/95, Supreme Court Monitoring Committee v. Mussorie-****

Dehradun Development Authority. The earlier decision of this Court in **State of Bihar v. Banshiram Modi, (1985) 3 SCC 643** has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

5. We further direct as under:-

I. General:

1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or ply-wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith."

31. The said authoritative view laid down by the Hon'ble Supreme Court of India has been followed by the Bombay High Court in the case of **Goa Foundation and others Versus State of Goa**

and others, 2001 AIR 318, (Bombay), and by the Madras High Court in the case of *K.V. Shanmugam and etc. Versus State of Tamil Nadu and others, 1997 AIR 338 (Madras).*

32. In view of our findings recorded and law elucidated above, we quash the impugned order dated 10.07.2014 (Annexure P-10) passed by respondent No.2 and as a consequence direct the respondents to conduct fresh auction of the quarries situated in different district/villages across the State of Haryana only after conducting fresh and proper survey and demarcation of the area to be auctioned. The amount charged from the petitioner in pursuance to the auction in the present case, be refunded back to him without any forfeiture, recovery and penalty and if the petitioner so desire, shall be free to sit in the auction as and when conducted by the respondents afresh in accordance with law. It is made clear that since the impugned order 10.07.2014 (Annexure P-10) has been set-aside by us vide this judgment, all proceedings undertaken pursuant to the said impugned order dated 10.07.2014 (Annexure P-10) are also set-aside. With these observations, the writ petitions are allowed.

**(ASHUTOSH MOHUNTA)
JUDGE**

**(RAJ RAHUL GARG)
JUDGE**

**15th January, 2015
'SP'**