IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of Decision: **02.06.2016**

1. **Civil Writ Petition No. 19549 of 2015**

M/s Planet Steels Private Ltd. ..Petitioner
Versus
State of Haryana and others ..Respondents

2. **Civil Writ Petition No. 21219 of 2015**

Devender Nagpal ..Petitioner
Versus
State of Haryana and others ..Respondents

3. **Civil Writ Petition No. 3364 of 2016**

M/s Tirupati Infra ..Petitioner
Versus
State of Haryana and others ..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE ARUN PALLI.

Present : Mr. Soli Sorabjee, Senior Advocate and
Mr. Puneet Bali, Senior Advocate with
Mr. Vibhav Jain and Ms. Neha Sonawale, Advocates,
for the petitioners in CWP Nos. 19549-2015 &
21219 of 2015.

Mr. Arun Jain, Senior Advocate with
Mr. Vinod Gupta, Advocate, for the petitioner in
CWP No. 3364 of 2016.

Mr. Amar Vivek, Additional Advocate General, Haryana,
for the respondents.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

As the issues in these writ petitions are the same, they are disposed of by this common judgment and order.

2. We will first refer to the facts in Civil Writ Petition No. 21219 of 2015 Devinder Nagpal v. State of Haryana and others.

Respondent Nos.3 and 4 are the Additional Chief Secretary and Principal Secretary to the Government of Haryana, Mines & Geology Department, the Director, Mines & Geology Department and the Mining Officer respectively.

3. The petitioner in this writ petition has sought a writ of certiorari to quash the auction for Karnal unit No.2 for extraction of sand held by the respondents on 26.12.2013 in pursuance of an auction notice dated 30.11.2013 and a writ of mandamus directing the respondents to refund the bid security of Rs. 13,00,25,000/- with interest at 18% per annum from the date of deposit till payment.

4. The petitioners' case and our conclusions in a nut-shell are as follow:-

The petitioner's bid at an auction of minor mineral blocks/units for mining being the highest was accepted. The respondents issued a Letter of Intent (LoI) in respect of the relevant blocks. The petitioner paid various amounts as required by the terms and conditions of the auction notice and the LoI. The petitioner, however, rescinded the agreement and seeks a refund of the amounts deposited by it together with interest. It contend that it is entitled to do so on the basis of the judgment of a Division Bench of this Court in Civil Writ Petition No. 15431 of 2014 *M/s Haryana Royalty Company v. State of Haryana and another* and on account of misrepresentations by the respondents.

We have rejected the petitioners' contention that the judgment of the Division Bench of this Court in *M/s Haryana Royalty Company case* *(supra)* compelled the State of Haryana to cancel all the auctions including auctions which were not the subject matter of the petitions in that case.

The misrepresentations alleged by the petitioner fall into two categories. The first relates to the respondents having allegedly not informed the petitioner that there were various structures and activities including agricultural being carried out on the land. The contention is rejected on more than one ground. Firstly, the petitioners undoubtedly knew about the existence of the situation at the site. The contention that the petitioners were unaware of the same is ex-facie unbelievable and untenable. In any event the petitioner had the means of discovering the actual position at site. There are several other grounds which would to say the least, require extensive oral and documentary evidence and cannot be decided in these writ petitions.

The second misrepresentation is that a part of the land is actually situated in the State of Uttar Pradesh and the State of Haryana, therefore, could not have auctioned the same. This is so in respect of two writ petitions, namely, 21219 of 2015 and 3364 of 2016. For instance in Civil Writ Petition No. 21219 of 2015, 56 hectares out of 974 hectares of land fall in the State of Uttar Pradesh. We have come to the conclusion that at least in a writ petition which in effect seeks a money decree this ground cannot be upheld without extensive oral and documentary evidence. It would be necessary for a Court to decide various disputed questions of fact including whether this representation formed the basis on which the contract was entered into and whether the petitioner delayed in rescinding the agreement. The issue would also entail an interplay of sections 12(2) and 27 of the Specific Relief Act. Under section 12 the respondents would be entitled to specific performance of the agreement if the Court comes to the conclusion that the part that cannot be performed i.e. 56 acres forms but a small proportion to the part that can be performed namely about 920 hectares.

Lastly, it was contended that the petitioners would be prejudiced on account of their now having to obtain a fresh EIA and fresh environmental clearance as a result of a change in the area. We have found albeit prima-facie that a fresh EIA and environment clearance would not be required if the area is reduced and not changed. The record does not establish the petitioners case. It would, therefore, be necessary for the petitioner to establish its case by leading further evidence, documentary and/or oral.

The writ petitions have, therefore, been dismissed and the petitioners have been relegated to a suit or any other appropriate proceedings.

5. Respondent No.3 issued a notice dated 13.11.2013 informing the general public that the minor mineral blocks/units in three districts in Haryana, namely, Karnal, Panipat and Sonipat would be put to auction on 26.12.2013. The notice specified the districts and the particulars of the blocks including the names of the quarries, the area in hectares, the khasra numbers and the period of the contract.

6. This petition is concerned with Karnal Unit No.2 containing three blocks for extraction of sand. The three blocks comprised an aggregate area of 974.10 hectares. The contract was for a period of 10 years commencing with effect from the date of grant of environmental clearance by the competent authority as required under the Environment Impact Assessment Notification dated 14.09.2006 and as amended from time to time by the Ministry of Environment and Forest.

7. Clauses 1,5,10,15,18,19, 20 and 32 of the terms and conditions of the notice of auction read as under:-

> 1. The period of contract shall commence w.e.f. the date of grant of environmental clearance by competent authority as required under the EIA notification dated 14.09.2006 and as amended from time to time by the MoEF, GoI or on expiry of a period of 12 months from the date of acceptance of highest bid/issuance of "Letter of Intent" (LoI) whichever is earlier.
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> 5. 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.
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> 10. All the intending bidders shall deposit the earnest money, equal to 10% of the reserve price of the mining area/site for which bid has to be made, rounded by an amount of Rs.10,000/- of the mining for the each of the block/mine for which bids are proposed to be offered, before commencement of open auction.
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> 15. The highest bidder shall be liable to deposit 25% of the annual bid/contract money amount as "security" and one month's advance contract money. The above said amount shall be deposited as per following schedule:-
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> (a) an amount equal to 10% of the annual bid amount as "initial bid security" at the fall of hammer.
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> (b) balance amount of bid security i.e. 15% of the annual bid amount alongwith one month's advance contract money before commencement of the mining operation or before expiry of the period of 12 months, whichever is earlier.
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> 18. After the acceptance of highest bid by the State Government and on issuance of Letter of Intent, the LoI holder shall execute an agreement in Form MC-1 appended to the 'Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of

illegal Mining Rules, 2012' within a period of 90 days of the order of grant of LoI.

19. In case of failure to execute the agreement, after issuance of acceptance of bid/LoI within prescribed period, the acceptance/LoI shall be deemed to have been revoked and 10% amount deposited towards initial bid security shall stand forfeited and unpaid 15% amount towards security shall be recovered as arrears of land revenue and such bidder shall debarred from participation in any subsequent bids for a period of 5 years.

20. After execution of agreement, either before commencement of the mining operation or before expiry of the period of 12 months from the date of issuance of LoI, whichever is earlier in case of failure to deposit the balance 15% amount towards security (as required under clause 13(b) above) the acceptance of bid/issuance of LoI/execution of agreement shall be deemed to have been revoked and 10% amount deposited towards as initial bid security at the time of auction shall stand forfeited. Further un paid 15% amount towards security shall be recovered as arrears of land revenue and such bidder shall debarred from participation in any subsequent bids for a period of 5 years.

32. In respect of "Sand Units", the contractor shall restrict the quarrying operations to maximum four villages of the Unit at any point of time during the subsistence of the contract. The contractor shall have a right to change the site at any time, during the subsistence of the contract, on settlement of compensation with the land owners of new site of the block from where he intend to extract sand but ceiling of maximum four villages shall be adhered to strictly and such change of site shall be intimated to the Director or any officer authorized by him in this behalf."

8. The petitioner's bid of Rs.52.01 crores per annum was the highest. The petitioner being the highest bidder deposited a sum of Rs. 5,20,10000/- being 10% of the annual bid amount as initial bid security at the fall of the hammer in accordance with clause 15-A of the terms and conditions. Respondent No.3 accepted the petitioner's bid and issued a

Letter of Intent (LoI) dated 03.01.2014 in respect of the said three blocks. In paragraph-3 it is stated that the State Government having accepted the petitioner's bid, the letter of intent was issued in his favour in respect of the said "Karnal Unit-2" subject to the terms and conditions stipulated therein. Paragraph-3, (i) (vi) (xi) and (xvii) of the Letter of Intent read as under:-

> "3. The State Government having accepted the aforementioned highest bid offered by you, the Department is pleased to issue this Letter of Intent (LoI) in your favour in respect of the mining unit/area namely, "Karnal Unit-2" subject to the following terms and conditions:-
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> (i) The period of contract shall be 10 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 bid/issuance of "letter of Intent", whichever is earlier.
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> (vi) You shall execute an agreement deed in Form MC-1 appended to the State Rules within a period of 90 days from the date of issuance of the communication/grant of LoI. The stamp duty as applicable at the time of execution/registration of the agreement shall be payable by you. This amount is subject to audit and in case of any difference found at a later stage, the difference shall be payable by you on demand.
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> (xi) After execution of agreement, either before commencement of the mining operation or expiry of the period 12 months from the date of issuance of this LoI, whichever is earlier, in case of failure to deposit the balance 15% amount towards security [as required under clause (v) above] the acceptance of bid/issuance of LoI/execution of agreement shall be deemed to have been revoked and 10% amount deposited towards as initial bid security at the time of auction shall stand forfeited. Further, unpaid 15% amount towards security shall be recovered as arrears of land revenue and you shall debarred from participation in any subsequent bids for a period of 5 years.

(xvii) Further, the actual mining will be allowed to be commenced only after prior Environmental Clearance is obtained by you as the LoI holder/mining contractor for the Mining Blocks from the Competent Authority separately or jointly for the mining unit as permitted by the competent authority required under EIA notification dated 14.09.2006, as amended from time to time by the MoE&F, GoI and guidelines/circulars issued in this behalf."

9. The petitioner thereafter instructed GRC India Training & Analytical Laboratory to prepare a mining plan and to seek environmental clearance. The mining plan was submitted to respondent No.3 for approval. On 06.05.2014, the Environment Impact Assessment Report (EIAR) prepared by the GRC India Training & Analytical Laboratory was submitted to the Haryana State Pollution Control Board.

10. This brings us to a letter dated 26.11.2014 purportedly addressed by the petitioner to respondent No.3. Mr. Amar Vivek, the learned counsel appearing on behalf of respondent No.3 stated that the letter had not been received by respondent No.3. However, in the written statement, the receipt of this letter has not been denied. We proceed, therefore, on the basis that the letter was addressed and delivered to the respondents.

By this letter, the petitioner stated that it had requested the mining area to be demarcated, that upon its visit to the site, the residents alleged that the area given to the petitioners for mining was an abadi area i.e. a habitable area in which a whole village was settled. The petitioner further stated that several others had protested against its carrying on any mining activities at the site stating that the land, in view of the Dikshit award, falls within the State of Uttar Pradesh and not in the State of Haryana. The petitioner stated that it was not, therefore, possible for any mining operation to be carried out pursuant to the LoI. The letter concludes as follows:-

> "Therefore, you are once again requested that the demarcation of the area at the spot be done and the applicant be given the possession of the same, so that the applicant can take further action as per the contract. The applicant has completed all the formalities with regard to Security Solvency etc. under the contract."

11. On 02.01.2015, the petitioner deposited a further amount of Rs.7,80,15,000/-. Together with the initial deposit of Rs.5,20,10,000/-, the petitioner had deposited an aggregate amount of Rs.13,00,25,000/- which they now seek the refund of.

12 Suffice it to note at this stage that although the petitioner was aware about the state of the site allotted under the LoI, it did not rescind the contract and infact took steps pursuant thereto and in implementation thereof. This is evident from the letter dated 26.11.2014 and the petitioner having deposited a further sum of ₹ 7,80,15000/- on 02.01.2015 i.e. after the petitioner admittedly knew of the situation at the site.

13. In the meantime, several parties had filed writ petitions before this Court one of which is Civil Writ Petition No. 15431 of 2014 *M/s Haryana Royalty Company v. State of Haryana and another*. These writ petitions were allowed by an order and judgment dated 15.01.2015 by a Division Bench of this Court. Considerable reliance was placed upon this judgment in support of two contentions. The judgment is firstly relied upon as a precedent contending that in similar circumstances the petitioners therein were allowed to rescind the agreement. Secondly, it is contended that the judgment directed the respondents to conduct a fresh auction in respect of all the mining contracts in the State of Haryana including those which

were not the subject matters of the writ petitions which were disposed of by the judgment. We have rejected both the contentions for reasons we will furnish shortly.

14. By a letter dated 30.04.2015 the petitioner drew the attention of respondent No.3 to Civil Writ Petition No. 4 of 2015 Rajvir Chauhan v. State of Haryana in which various sub paragraphs of clause-3 of the Letter of Intent were challenged. The issue there related to the commencement of mining operations. It was contended that the conditions challenged therein were unrealistic, unreasonable, illegal and in contravention of the provisions of the Indian Contract Act. Paragraph-3(i) provided that the period of contract would be 10 years and the same would commence with effect from the date of grant of environmental clearance by the competent authority or on expiry of the period of 12 months from the date of the communication of the acceptance of the highest bid/issuance of LOI whichever was earlier. Paragraph 3(v) required 15% of the amount to be deposited before the commencement of the mining operations or before the expiry of the period of 12 months whichever was earlier. Paragraph-3(vi) required the execution of the agreement within 90 days of the LoI. Paragraph-3(xi) provided the consequence of failure to deposit 15% towards the security within the period stipulated. It was contended in those cases that no mining operation was possible prior to the environmental clearance and therefore, the requirement for payment of the installments commencing from the expiry of 12 months of the LoI was unreasonable, unreasonable, unrealistic and illegal.

The petitioner referred to an interim order dated 17.12.2013 in those writ petitions whereby it was ordered that the auctions therein would be subject to the outcome of those writ petitions. The petitioner, therefore, contended in the letter that it could not be forced to execute the contract prior to the final disposal of Civil Writ Petition Nos.27700 of 2013 and 4 of 2015.

15. Both these writ petitions were disposed of alongwith several other writ petitions the first of which was Civil Writ Petition No. 13492 of 2015 *VNS Infrastructure Pvt. Ltd. v. State of Haryana and others* by a common order and judgment of a Division Bench of this Court dated 19.10.2015 to which one of us (Acting Chief Justice) was a party.

16. It is significant to note that by the letter dated 30.04.2015 the petitioner did not purport to rescind the contract on the grounds taken in the present writ petition. The petitioner infact maintained its option to proceed with the LoI subject only to the outcome of Civil Writ Petition Nos. 27700 of 2013 and 4 of 2015 the subject matter whereof is different from the challenge in these writ petitions.

17. Respondent No.3 by his letter dated 09.09.2015 rejected the request to postpone the execution of the agreement till the decision in Civil Writ Petition No. 4 of 2015 *Rajvir Chauhan v. State of Haryana.* Respondent No.3 stated that in the event of the petitioner failing to execute the agreement within 10 days it would be presumed that it was willfully refusing to do so and further action in accordance with the terms and conditions of the LoI would be taken including forfeiture of the security amount deposited by him and debarring it from participating in any further auction for a period of 5 years.

18. By a further letter dated 12.09.2015 addressed to respondent No.3, the petitioner reiterated what it stated earlier and emphasized that when it reached the banks of the Yamuna river, several people assembled and informed it that a part of the area falls in Uttar Pradesh as per the Dikshit award and that they would not allow the petitioner to undertake

mining on the basis of the contract between the petitioner and the State of Haryana. The letter concludes as under:-

> "Therefore, it is requested that the demarcation and giving of possession of the area is immediately requested and if the whole area is not eligible for mining, then the applicant be immediately intimated, if the area on the spot is complete, then the applicant be granted possession of the area and if the area is not complete, then the amount spent by the applicant till now, the said amount alongwith interest be refunded to him."

19. The petitioners now seek to rescind the contract on the following grounds:-

As per the Dikshit award 56.5717 hectares of land were admittedly transferred to the State of Uttar Pradesh. The State of Haryana could not, therefore, have auctioned this area. That a large area had been transferred to the State of Uttar Pradesh and that the State of Uttar Pradesh had in turn transferred a part of its land to the State of Haryana is not relevant for the purpose of this judgment. The fact remains that an area of about 56 hectares could not have been auctioned. Secondly, major portions of the land were either agricultural in nature, were privately owned and/or under the cultivation of its respective land owners. There were poultry farms, structures and tubewells on the land. A part of the area was abadi i.e. inhabited and structures were erected thereon. Only 563.10 hectares of land out of the total area of 974.10 hectares were in the river bank wherein mining operations could be carried out whereas the balance 411 hectares were outside the river bank.

20. We will for the purpose of this petition proceed on the basis that agricultural activities are being undertaken on the land and that there are

also structures, shrines and tubewells thereon. The extent thereof, however, is a matter of dispute and cannot possibly be determined in this petition.

21. Similar contentions have been raised on behalf of the petitioners in the other two writ petitions. Before dealing with them we will refer briefly to the facts in these petitions.

CWP NO. 19549 of 2015

22. The auction notice in this writ petition is the same as in Civil Writ Petition No. 21219 of 2015. No part of the land in this case is in the State of Uttar Pradesh. The petitioner in this case also alleges that a part of the land is abadi-inhabited, that agricultural activities are being undertaken on a part of the land and that there are shrines, tubewells and other structures on the land.

CWP No. 3364 of 2016

23. The auction notice in this writ petition is also the same as in Civil Writ Petition No. 21219 of 2015. The LOI in this case was in respect of 941 hectares. The petitioner herein alleges that 437 hectares fall in the State of Uttar Pradesh and therefore, could not have been auctioned. The respondents, however, contend that only 65.89 hectares fall in the State of Uttar Pradesh. It is further contended by the petitioner that on 188 hectares of land agricultural activities are being undertaken and there is an abadi.

24. This leads us to a consideration of the submissions on behalf of the petitioners.

25. The petitioners base their claim in the petition on the following grounds:-

(I) The petitioners are entitled to rescind the agreements on account of the respondents' misrepresentations.

(II) The petitioners are entitled to rescind the agreements for the area actually available for mining being different from the area mentioned in the agreement, the petitioners would have to obtain a fresh EIA and environmental clearance which would take considerable time.

(III) In view of the judgment of the Division Bench of this Court dated 15.01.2015 in M/s Haryana Royalty Company v. State of Haryana and another Civil Writ Petition No. 15431 of 2014 the LoI's are liable to be cancelled and the respondents are bound to conduct fresh auctions in respect of all the mines in Haryana including those that were not the subject matter of the petitions decided by the judgment.

26. The first contention on behalf of the petitioners is that they are entitled to rescind the agreement on account of the respondents' misrepresentations as to the area available for mining. The petitioner contends that there were various misrepresentations by the respondents which even if innocent entitled them to rescind the contract. Two misrepresentations are alleged.

The first is for the following reasons. The mining activities cannot be carried out on a substantial part of the land on account of the structures and the activities being carried on thereon. Agricultural activities are being undertaken on a part of the land. It is not possible to displace the farmers or to stop their activities. A part of the land is abadi. It is impossible to displace the inhabitants. That would also involve demolishing their structures including their dwelling units and sheds. The area around tubewells cannot be used for mining. There are several shrines in the property. It is impossible to remove them or even carry out mining operations within the vicinity of the shrines. It was not possible for the petitioners to ascertain these facts as the respondents had failed to demarcate the property. Out of 974 hectares of land, only 563.10 hectares was in the river bed and the balance 411 hectares was outside the river bed. He submitted that the maximum yield of sand is from the river bed and as only a little more than 50% of the land that was auctioned was in the river bed, the respondents are guilty of misrepresentation of the essential facts.

The second misrepresentation is on account of the fact that a part of the area could not have been auctioned for the land was situated in the State of Uttar Pradesh and not in the State of Haryana. No mining activities, therefore, could be carried out on a substantial part of the land in Civil Writ Petition Nos. 21219 of 2015 and 3364 of 2016. The petitioner contends that the respondents ought to have disclosed this fact and in any event ought to have ascertained this fact before auctioning the land.

The petitioner contends that the respondents ought to have disclosed these facts. Having failed to do so, they are guilty of misrepresentation entitling the petitioner to rescind the contract.

27. It would be convenient to preface an analysis of the facts with a reference to section 18, 19 and 20 of the Indian Contract Act, 1872 relied upon by the petitioners to justify their having rescinded the agreements. They read as under:-

“**18. "Misrepresentation" defined-**

"Misrepresentation" means and includes -
(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is subject of the agreement.

19. **Voidability of agreements without free consent-** When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put on the position in which he would have been if the representations made had been true.

Exception: If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation : A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

20. Agreement void where both parties are under mistake as to matter of fact- where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void.

Explanation : An erroneous opinion as to the value of the things which forms the subject-matter of the agreement, is not be deemed a mistake as to a matter of fact."

28. The first misrepresentation the petitioners allege is that the respondents did not disclose the existence of the structures and of the activities on the land and that it was inhabited. In our view there was no misrepresentation to the effect and the misrepresentation, if any, did not entitle the petitioners to rescind the contract.

29. Firstly, it is impossible to believe that the petitioners did not know of the existence of these factors upon the land. It is impossible to believe that parties such as these who bid an amount of ₹ 52 crores per annum for 10 years in respect of mining rights over 1000 hectares of land would not have carried out a survey or at least some inspection of the land. This is probably not their first venture. Even if it was they would not have

undertaken it without availing the expertise of others even assuming that they had not done so themselves**.** Parties do not invest hundreds of crores of rupees blindly. This is not the normal course of human conduct. There is nothing that persuades us to believe that for some reason the petitioners did not inspect the property.

30. The doubt, if any, is set at rest by clause 32 of the terms and conditions which expressly refers to the "four villages of the unit". The petitioners would, therefore, have known that there are structures on the land with people living in and/or working there and that agricultural and other activities are being carried on there. The parties, therefore, not only knew but proceeded on the basis that these factors exist on the land.

31. The Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of illegal Mining Rules, 2012 (hereinafter referred to as 'the 2012 Rules') establish beyond doubt that the parties did not even expect mining operations to be carried out in respect of every portion of the land auctioned without dealing with the said factors. A few illustrations based on these Rules are sufficient to negate the petitioners case.

(A) Rule 62(1) provides that the landowner is entitled to a fair rent and compensation for such use of the land and any damage or injury caused to such land. Sub rule (2) thereof provides that a mineral concession holder, such as the petitioner, is entitled to use the land/area for extraction of mineral in respect of which the said concession is granted. Sub rule (2) provides that a mineral concession holder shall be liable to pay the annual rent *"in respect of the land area blocked under the concession"* but not being operated and the rent plus compensation in respect of the area used for actual mining operations. Thus, it is clear that a part of the land is blocked under the concession but is not operative and only a part of the land is used for actual mining operations. The mineral concession holder, therefore, knows that the mining operations cannot be carried out on the entire land that is auctioned.

Moreover, even during the operation of the mining concession, the owner of the land may use a part thereof himself. This is evident from sub rule (3) which provides that no rent shall be payable in respect of such portion of land which is not being used for actual mining operations for such period as it remains available to the landowner for his normal use. The rent is payable only when the owner is not able to use such land or a part thereof for his normal operations.

(B) Rule 63 provides that the rent and the compensation shall be settled mutually between the landowner and the mineral concession holder. Rule 64 provides for the determination of the fair market rent, if not mutually settled between the parties. Sub rule (5) of Rule 64 requires the District Collector to determine the fair market rent of the land keeping in mind various factors. The relevant part of sub-rule (5) of Rule 64 reads as under:-

> "64(5) (1) Pursuant to the hearing granted to the parties to the reference, the District Collector shall determine the fair market rent of the land keeping in view the following:
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> (i) nature/character of the land i.e. arable (single crop or multiple crop) or barani or banjar;
>
> ....(emphasis supplied)."

The rule, therefore, recognizes the fact that agricultural activities may be carried on upon the land. A bidder at an auction of such leases would obviously be aware of the same.

(C) A similar provision is made in Rule 65 for the determination of the compensation. Sub rule (5) of Rule 65 insofar as it is relevant reads as under:-

> "65(5)(1) The Collector shall determine the fair compensation for the damage or injury caused to such land keeping in view the following:
> (i) nature or character of the land i.e. arable (single crop or multiple crop) or barani or banjar;
> (ii) economic activity for which such land was being used immediately before the grant of mineral concession;"

This provision also indicates the existence or the possible existence not merely of agricultural activities but also other commercial activities upon the land. Such activities would invariably involve the existence of structures thereupon.

32. The contention, therefore, that the petitioners were not aware of the activities being carried out on the land or of the existence of the structures thereon is rejected.

33. The petitioner would then have factored these circumstances into its financial bid. It cannot seriously be suggested that the bids were made without taking these factors into consideration. Had the entire land been vacant and freely available for mining, the bid would have been structured entirely differently. It would have been much higher. The petitioner appears to be anxious to wriggle out of the contract as the market may have fallen subsequently.

34. The facts, the terms and conditions of the auction notice and the provisions of law such as the 2012 Rules belie the petitioner's case of misrepresentation. Not one of the ingredients of misrepresentation in section 18 of the Indian Contract Act is satisfied. As far as sub-section (1) is

concerned, there was infact a positive assertion of the existence of the factors. In any event there was no assertion, positive or implied, of the absence of the factors. There was, therefore, no breach of duty on the respondents' part which would bring the case within sub section (2). It follows that the respondents did not cause in any manner, the petitioners to make a mistake. In fact as we have demonstrated, the petitioners made no mistake. The case in this regard is an afterthought. Sub section (3) of section 18 also, therefore, does not apply. The agreements are, therefore, not voidable at the petitioners instance under section 19 of the Indian Contract Act on this ground.

35. The petitioners in any event could have ascertained the status of the land and the activities thereupon. The petitioners could have ascertained these facts as the notice inviting tenders specified the khasra numbers. The petitioners could, therefore, have ascertained these facts even without the land being demarcated. In that event even assuming that there was any misrepresentation the petitioners would not be entitled to rescind the contract in view of the Exception to section 19 of the Indian Contract Act.

36. Faced with this Mr. Bali, the learned senior counsel appearing with Mr. Sorabjee and in a connected petition contended that Rule 5 of the 2012 Rules prevented the petitioners from inspecting the property. Rule 5 falls in Chapter-II of which the heading is 'General Restrictions'. Rule 5 in so far as it is relevant reads as under:-

> "5(1) No person shall undertake any reconnaissance, prospecting or mining operation activity in respect of any mineral(s) in any part of the state, except under and in accordance with the terms and conditions of a reconnaissance permit or a prospecting licence or a mining lease or a mining contract or a permit,

> or a concession in any other form, as the case may be, granted:
> (2) The government shall decide the mode and nature of grant of mineral concession under these rules in different areas i.e. lease, contract, permit etc from time to time.”

37. The submission is not well founded for more than one reason. In this regard, it is important to note condition No.4 of the auction notice which reads as under:-

> “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;”

38. The bidders were expected and were presumed to have surveyed the area to make their own assessment for the potential of the area for which the bids were to be offered. This infact is a permission to survey the area to enable the bidders to make an assessment for the potential of the areas for which the bids were offered. This in any event is a clear indication that the permission if sought would have been granted. The petitioners did not contend that they attempted to survey the area but were not permitted to do so. They did not even contend that they made an application to survey the area but that the application was rejected or that there was no response thereto. Had the petitioners discharged their obligations to survey the area, they would have found the existence of the said factors that they now rely upon to contend that the entire area is not mineable. We are infact of the opinion that the petitioners must have surveyed the area and would

undoubtedly have noticed the existence of the activities being carried out on the land and of the existence of various structures thereon and that they, therefore, did not make an application to survey the land under Rule 5.

39. The petitioners could have obtained a reconnaissance permit. They did not even apply for a permit. It is not their case that they apprehended that for some reason had they made an application it would have been rejected. Mr. Bali’s contention that a reconnaissance permit can be granted only if a prospecting licence is obtained is not supported by any authority or by any of the Rules. Our attention has not been drawn to any provision that debars the respondents from granting a reconnaissance permit except to the holders of prospecting licences. The contentions raised in this regard are nothing but an attempt to wriggle out of the contract.

40. The contention that the petitioner was unable to inspect or survey the site and its assertion that it did not visit the site till much later is infact demonstrably incorrect. In the letter dated 26.11.2014 the petitioner stated that whenever it visited the spot, the residents intimated it that the land is inhabited and a whole village is settled there and that the petitioner, therefore, could not undertake the mining activities. The petitioner also referred to its visits to inspect the banks of the Yamuna river, when it was informed about a part of the land falling in the State of Uttar Pradesh as per the Dikshit award. The petitioner, therefore, admittedly visited the site at least soon after the LoI.

41. The reliance upon the existence of structures and the activities carried out on the land is a mere afterthought. At least upon the execution of the agreement, the petitioner knew of these facts. Despite the same it did not seek to terminate the contract for that reason. The LoI was issued on 03.01.2014. The petitioner engaged a consultant for preparing the mining

plan and seeking environmental clearance. The Environment Impact Assessment Report was submitted to the Haryana State Pollution Control Board on 06.05.2014 for holding a public hearing. Surely by this time the situation at the site was known to the petitioners. By its letter dated 26.11.2014, the petitioner requested respondent No.3 to demarcate the area. It is important to note that by this letter the petitioner admits having come to learn that the site was inhabited and that an entire village was settled thereon. It is reasonable to presume that the petitioner would also have noticed other structures such as tubewells, shrines and farm houses at the site and the agricultural activities being carried out there. By the letter dated 26.11.2014 the petitioner raised the issue regarding a part of the land being in the State of Uttar Pradesh. It, however, did not even at this stage i.e. 11 months' after the LoI seek to rescind the contract on the ground regarding the situation at the site. By the letter dated 26.11.2014 the petitioner not only did not terminate or rescind the contract but infact called upon the respondents to demarcate the area. It thereby infact sought implementation of the agreement. In the concluding part of the letter, which we set out earlier, the petitioner requested for the demarcation of the area at the spot and for possession of the site "so that the applicant (i.e. the petitioner) can take further action as per the contract". The petitioner further stated that it had completed all the formalities required under the contract. Thus, although the petitioner was aware of the situation at site, it chose to proceed with the implementation of the contract.

Added to this is the fact that on 02.01.2015 the petitioner in Civil Writ Petition No. 21219 of 2015 paid a further sum of about Rs.7.08 crores clearly evincing thereby its intention to implement the contract. Further, still by the letter dated 30.04.2015, the petitioner requested respondent No.3 to postpone the execution of the agreement. Ultimately it was on 12.09.2015 after almost two years that the petitioner sought to rescind the contract.

42. The ground regarding the situation at site is, therefore, clearly an afterthought. The petitioner had kept the contract open for almost two years without rescinding it on this ground. Thus as far as this ground is concerned, even assuming that there was any misrepresentation, prima-facie at least the petitioner would not be entitled to rescind the contract on the ground of misrepresentation for it clearly waived it and acted upon the agreement. Thus even under section 27(2)(a) of the Specific Relief Act, 1963 which provides that the Court may refuse to rescind the contract which is voidable where the plaintiff has expressly or impliedly ratified the contract, prima-facie at least the respondents ought to be refused to rescind the contract. During this period of two years there may well have been a change in the circumstances since the making of the contract and the parties cannot be substantially restored to the position in which they stood when the contract was made. The market may have fluctuated and the position at site may also have changed depending upon the demands of the inhabitants upon the land. The evidence at a trial will probably reveal the details necessary to judge petitioner’s right to rescind the agreement.

43. In Civil Writ Petition No. 3364 of 2016, the petitioner obtained the environmental clearance on 03.08.2015 and commenced the mining operations on 01.09.2015. On 23.10.2015, the petitioner started extracting the sand. The petitioner by a letter dated 23.10.2015 stated that it came to know of the extent of activities carried on upon the land and the extent of the structures thereon only later. As we mentioned earlier, in the case of the petitioner in Civil Writ Petition 21219 of 2015 it is difficult to believe that

the petitioner was not aware about these facts earlier. It is reasonable to presume that the petitioner knew the facts regarding the same except probably as to the Dikshit award from the beginning.

The petitioners conduct in not rescinding the contract immediately upon coming to know of the existence of the said factors raises two hurdles in their way. The first is an inference that the petitioners knew of the same earlier and therefore, did not rescind the contract immediately. The second is the legal consequence arising from section 27(2) of the Specific Relief Act, 1963 for not having rescinded the contract within a reasonable time.

44. Every misrepresentation does not make a contract voidable. Even if the misrepresentation makes the contract voidable, there may be circumstances which do not entitle the party to rescind the contract. For instance, if a party does not rescind the contract immediately or in any event within a reasonable time or if a party implements the contract, he cannot later rescind it. Whether the contract was rescinded within a reasonable period of time; whether a party chose to keep it open and evinced an intention to insist upon its performance, are questions of fact which if disputed cannot easily be resolved in a writ petition.

45. We have already held that it is inconceivable that the petitioners did not know the situation at the site except as regards the fact that a part of the land is in the State of Uttar Pradesh. In any event in our view, the petitioners not only had the means of discovering the truth but were bound to have acquainted themselves with the situation at the site.

46. We will assume that if there was no reason to suspect a statement to be untrue, then the fact that the party had the means to discover the truth is not a ground to resist repudiation. However, there was no

representation by the respondents either in the LoI or otherwise that the land was vacant or that there were no activities thereon. The existence of the structures and the activities at the site, therefore, do not entitle the petitioners to rescind the contract.

47. The agreement itself does not contain an express representation that the land was vacant and that there were no activities thereon. The question then is whether a representation to this effect can be spelt out from the agreement. We do not find any representation to this effect either. The least that must be said is that a case of an implied misrepresentation of which the petitioners complain would require extensive oral and/or documentary evidence. We are not inclined to speculate in the petitioners' favour in this regard.

48. In view of what we have already held the petitioners' consent was not caused by misrepresentation or by silence. In our view, the explanation to section 19 of the Indian Contract Act, 1872 comes to the aid of the respondents even assuming that the petitioners' consent was caused by the alleged misrepresentation or by silence and that the same was fraudulent within the meaning of section 17 of the Indian Contract Act, 1872 for the petitioners had the means of discovering the truth with ordinary diligence.

49. The above facts would also require consideration as to whether the explanation to section 19 applies in this case. It would be necessary for the Court to examine whether the fraud or misrepresentation caused the petitioners to consent to the contract for if it did not it would not render the contract voidable. This would be essentially a question of fact. Even assuming that the burden of proving the same is upon the respondents, we cannot deprive them the opportunity of doing so in appropriate proceedings.

50. We have held that there was no representation in the agreement that the land was vacant and that the said structures did not exist on the land or that there were no activities being carried out on the land. The petitioners alleged that they never inspected the land. Considering the extent of the land, namely, almost a thousand hectares and the nature of the transaction, the petitioners not having inspected the land would infact indicate that they knew that the land would not be vacant and that they also knew that the activities including agricultural activities were going on on the land. It is a legitimate inference that even absent condition no.4 a party in such cases would insist upon surveying the property and familiarizing himself with it before investing hundreds of crores of rupees for a mining lease in respect thereof. If they indeed did not inspect the land it would be indicative of their having known that it would not be vacant and that there would be activities being carried out thereon.

51. Added to this, is a disputed question of fact, namely, the nature and the extent of the structures upon and the activities being carried out on the land and the extent to which the same would hamper mining operations to be carried out thereon. The respondents for instance have filed a detailed affidavit indicating that the structures did not prevent the petitioners from carrying on normal mining activities. The structures are at a considerable distance from each other. Thus even assuming that upon the area in the immediate proximity of such structures the mining activities cannot be carried on it would not necessarily follow that the entire purpose of the bid is frustrated. It is not even the petitioners' case that they were under the impression that the entire area was capable of being mined.

52. Further it is not as if the mining operations could be carried out only in the river bed. It was possible to carry on the mining activities even

outside the river bed. This as Mr. Amar Vivek rightly pointed out is evident from the mining plan and progressive mineral closure plan for river sand submitted by the petitioner. The agreement does not contain a representation that parties entered into the contract only on the basis of the extent of the river bed available for mining.

In any event, the least that must be said in favour of the respondents in this writ petition regarding when the petitioner's came to know of the facts relating to the situation at site, is that it is a disputed question of fact which must be determined after a trial in proceedings before an appropriate Court or Tribunal.

53. In the result, the petitioners were not entitled to rescind the contract on the grounds that there were upon the land the said structures and that the activities were being carried on on the land.

54. This brings us to the question whether the petitioners were entitled to rescind the contract on account of a part of the land being in Uttar Pradesh. This issue arises in writ petition Nos. 21219 of 2015 and 3364 of 2016 and not in writ petition No. 19549 of 2015. We will for the purpose of this judgment assume that the respondents are not entitled to make good the shortfall by compelling the petitioner to accept different parcels of land.

55. This aspect of the matter does not end with a consideration of sections 18 and 19 of the Indian Contract Act, 1872. It also requires a consideration of sections 12 and 27 of the Specific Relief Act. This in turn involves an extremely complex and an extensive consideration of the facts. Considering the facts of this case, it is obvious that extensive oral evidence would also be required. Sections 18, 19 and 20 of the Indian Contract Act, 1872 must be considered alongwith section 12 and 27 of the Specific Relief Act, 1963. We set out sections 18, 19 and 20 of the Indian Contract Act,

1872 earlier. Sections 12 and 27 of the Specific Relief Act, 1963 read as under:-

[Specific Relief Act, 1963]

“12. Specific performance of part of contract

(1) Except as otherwise hereinafter provided in this section the court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed by only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either-

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money;

he is not entitled to obtain a decree for specific performance; but the court may, at the suit of other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party-

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and a case falling under clause (b), 2[pays or had paid] the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquished all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.

Explanation: For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject matter existing at the date of the contract has ceased to exist at the time of its performance.

27. Where rescission may be adjudged or refused

(1) Any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the court in any of the following cases, namely,-

(a) where the contract is voidable or terminable by the plaintiff;

(b) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

(2) Notwithstanding anything contained in sub-section (1), the court may refuse to rescind the contract-

(a) where the plaintiff has expressly or impliedly ratified the contract; or

(b) where, owing to the change of circumstances which has taken place since the making of the contract (not being due to any act of the defendant himself), the parties cannot be substantially restored to the position in which they stood when the contract was made; or

(c) where third parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value; or

(d) where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.

Explanation : In this section "contract", in relation to the territories to which the Transfer of Property Act, 1882, does not extend, means a contract in writing."

56. In Civil Writ Petition No. 21219 of 2015, only 56 hectares of land out of 964 hectares of land are in the State of Uttar Pradesh. This constitutes about 5.57% of the entire land. The petitioners' case has already been noted. Section 27 of the Specific Relief Act, 1963 provides the other party i.e. the party not in default, the remedy on account of misrepresentation namely the right to sue to have the contract rescinded, in the event of it being found that the contract is voidable or terminable. Section 27(2) of the Specific Relief Act, 1963, however, confers power upon the Court to refuse to rescind the contract in the circumstances mentioned

therein. In our view, section 27(2) is not exhaustive of the circumstances and the grounds upon which the Court may refuse to rescind the contract. An interplay of sections 27(2) and 12(2) of the Specific Relief Act, 1963 is involved. Section 12(2) is a clear indication that the grounds mentioned in section 27(2) are not exhaustive of the circumstances and the grounds upon which the Court may refuse to rescind the contract. A view to the contrary would render section 12(2) redundant. It would deprive the party of the right of specific performance under section 12(2) of the Specific Relief Act, 1963.

57. Our attention has not been invited to any authority on this point and our own research has yielded only the following passage from *Halsbury's Laws of England* Fourth Edition 2003 Reissue Vol. 31:-

> (3) DEFENCES IN CLAIMS FOR RESCISSION
> **826. Defences to proceedings:** By way of answer to any proceedings for rescission or analogous relief, in whichever form they may be instituted, the representor may set up any of the affirmative pleas which are special to proceedings of this nature, in addition to any other defence which may be available to him[4] . In the case of these pleas, the burden of allegation and, except so far as any averment may be expressly or impliedly admitted, of proof is on the representor.
> Foot note No.4 in so far as it is relevant reads as under:-
> "Ie either at common law, in equity or by statute".

58. Even assuming that the respondents are unable to perform the whole of their part of the contract on account of 56 hectares of land being in the State of Uttar Pradesh, they may still be entitled to specific performance with respect to the rest of the land if the Court comes to the conclusion that 56 hectares forms only a small portion to the whole in value. Whether a party is unable to perform only a small portion in value is a question of fact which must depend upon the facts and circumstances of each case. For

instance if it can be established that the mineable area is only about 25 hectares out of the area of 100 hectares, the Court may well come to the conclusion that the respondents are not entitled to the relief under sub section (2) of Section 12 of the Specific Relief Act, 1963. The extent of the mineable area would by itself be a question of fact. It is impossible in this writ petition to determine the exact mineable area. The mere existence of structures on the land and of the activities thereon does not render such area incapable of mining. Under the provisions of the Act and the Rules, it would be for the petitioners to negotiate with the occupants of those areas to allow them to carry out the mining activities. If they are unable to agree, the Act provides for the mode of resolution of the dispute including as to the quantum of compensation to be paid for the same.

59. In Civil Writ Petition No. 3364 of 2016 there is a serious dispute as to the extent of the area that falls in Uttar Pradesh. From the record before us it is not possible to decide this seriously disputed question of fact. This issue itself must go to trial.

60. If the respondents establish their right to specific performance under section 12(2) of the Specific Relief Act, 1963 but the Court in its discretion does not grant specific performance for any reason, the respondents would nevertheless be entitled to compensation in lieu of specific performance. We do not express any opinion as to whether section 12(2) of the Specific Relief Act, 1963 can be used as a defence or whether it can be the basis of a claim for a set off. It certainly is a right which can be enforced by way of a suit or any other appropriate action.

61. Mr. Sorabjee submitted that the petitioner was entitled to rescind the contract in view of the misrepresentation on the part of the respondents to the effect that 974 hectares were available for mining when

infact admittedly about 56 hectares were not available for mining as they were situated within the State of Uttar Pradesh and the respondents, therefore, were not entitled to auction the same. He submitted that misrepresentation even as to a part makes the contract voidable. He relied upon the commentary in the updated 14th edition of Pollock & Mulla on the Indian Contract Act, 1872 that “Misrepresentation as to a part, would make the whole transaction avoidable”. The commentary refers to the judgment of the Privy council in *Pertab Chunder Ghose v. Mohendra Purkait and others [1889(XVI) Indian Appeals, 233=1889(XVII) Calcutta 291]*.

62. The judgment does not support the petitioner’s case. In that case, the plaintiff filed a suit contending that the first defendant one Rukhit Chunder Purkait for himself and as guardian of three minor defendants executed a Kabuliyat by which he rented certain properties at the annual rent stipulated therein. The plaintiff prayed for a decree for that amount together with interest. Defendant Rukhit Chunder Purkait contended that he had agreed to execute the Kabuliyat on the plaintiff’s representation that it was the same draft as read out to him. However, the document he executed was not the same draft. The minor defendants’ mother contended that they had no knowledge of the Kabuliyat and Rukhit Chunder Purkait had no power to execute the same on their behalf. The plaintiff’s counsel admitted that a statement of the effect of law was a misrepresentation. It was noticed that the evidence which the District Judge believed was that the tenants objected to the condition that khas possession might be taken by the plaintiff at will, and therefore, were told that that condition had been inserted because then the tenants would remain under the influence of the Zemindar and that it was not that the plaintiff would actually eject the tenants. The tenants were further told that the condition that khas possession would be taken if the rent

was not paid by the end of the year was a penalty clause and that the law was to that effect. The Privy Council noted that it was admitted by the counsel for the plaintiff that the statement of the effect of the law was a misrepresentation. The Privy Council found that the effect of the judgment of the District Judge was that there was a misrepresentation and that the plaintiff represented his power as an auction purchaser, as greater than it really was. The District Judge, however, held that this would not amount to such misrepresentation as would vitiate the contract. It is in this context that the Privy Council held:-

> "In this he was in error. Where one party induces the other to contract on the faith of representations made to him, any one of which is untrue, the whole contract is, in a Court of Equity, considered as having been obtained fraudulently. If such a representation had not been made the tenants might have refused to sign the kabuliyat. Further, if there is any stipulation in the kabuliyat which the Plaintiff told the tenants would not be enforced, they cannot be held to have assented to it, and the kabuliyat is not the real agreement between the parties, and the Plaintiff cannot sue upon it."

In Pertab Chunder's case (supra) the issue as to whether the misrepresentation affected the entire agreement or only a part of the agreement was neither raised nor decided. Neither of the parties contended that a part of the agreement could be performed leaving the party to be compensated for the part that could not be performed. The provisions of section 12(2) of the Specific Relief Act, 1963 did not fall for consideration. Further the judgment proceeds on the basis that there are misrepresentations as to the whole lease. The case before us is entirely different.

63. It would be important to ascertain whether the shortfall of 5.75% on account of the alleged misrepresentation caused the petitioners to

consent to the agreement for if it did not the petitioner would not be entitled to rescind the contract in view of the explanation to section 19 of the Indian Contract Act. In refusing to relegate the petitioner to a civil suit or such other proceedings we would be depriving the respondents an opportunity of establishing that the petitioner would have entered into the agreement notwithstanding the shortfall in the area of the land.

64. This brings us to the second contention. It was contended that the petitioners had obtained the environmental clearance in respect of the entire property admeasuring 974 hectares. It was, therefore, contended that in the event of the agreement being performed only in respect of a part of the property, the petitioners would have to seek a fresh environmental certificate which would take a considerable amount of time. This in turn would prejudice the petitioners' right under the agreement on account of the mining period being curtailed. For the period taken to obtain a fresh environmental clearance, the petitioners would be deprived the right of mining.

65. The submission is not well founded. If it is held that the agreement can still be performed in respect of the entire land less the 56 hectares, this submission would not come to the petitioners' aid. Prima-facie at least it appears to us that if the environmental clearance has been obtained in respect of 974 hectares, the same would be valid and applicable to the property other than the said 56 hectares. Indeed, the petitioners were never even bound to carry out the mining activities in respect of 56 hectares if they chose not to. If they had left 56 hectares of land untouched, the environmental clearance already obtained would be valid and would entitle the petitioners to carry out the mining activities on the rest of the property. Moreover, this submission is mere conjecture. The petitioners have not even

sought a clarification from the Ministry and the authorities concerned in this regard.

66. The third contention is that the respondents were bound themselves to cancel the LoI and to reauction the property in view of the order and judgment of the Division Bench of this Court dated 15.01.2015 in a group of writ petitions the first of which is Civil Writ Petition No. 15431 of 2014 *M/s Haryana Royalty Company v. State of Haryana and another.* The judgment was also relied upon as a precedent in support of the contention that in any event the petitioners are entitled to rescind the contract. It is necessary, therefore, to deal with this judgment in some detail.

67. (A) The Division Bench referred to the facts from Civil Writ Petition No. 15431 of 2014. In that petition, the State of Haryana auctioned the minor mineral units containing a number of mining blocks in villages aggregating to 395.44 hectares. The bid of the petitioners therein of ₹ 52 crores per annum was accepted against the reserved price of ₹ 16.50 crores. The terms and conditions of the LoI issued in that case are similar to those in the case before us. The petitioners requested the respondents therein to demarcate the area. Ultimately upon the land being demarcated it transpired that the area was less. The petitioners, therefore, requested the respondents to amend the LoI. The respondents by the impugned order rejected the request for the change in area of grant of mineral concession and to reduce the consideration proportionately. Upon demarcation, it was found that the area was short by 62.57 hectares. The petitioners further contended that on 77.45 hectares mining activities could not have been carried out for various reasons including on account of the existence of plantation of 'Khair' trees, washing plants, restriction relating to safety of bridge, Dharamshala,

Gaushala, school, cremation ground, temporary structures, pucca houses. It was, therefore, contended that an aggregate area of 140 hectares was either non-existent or on which mining activities could not be carried out. Thus, on about 36% of the area the mining activities could not be carried out. To compensate for the area that was not available, the respondents sought to add other plots of land. The petitioners alleged that the respondents had misrepresented as to the area of the quarries auctioned.

It was observed that upon demarcation 140.02 hectares was found to be less either on account of the land not being available on the spot or on account of the land being non-mineable. The respondents contended that though the area was less at the spot, it had rectified and corrected the same by incorporating different portions of land. The Division Bench observed that the record indicated that the petitioners had submitted relevant documents before the Ministry of Environment and Forest to have the terms of reference approved for preparing a EIA report in order to seek environmental clearance and had also got their TOR approved from the Environment Impact Assessment Committee. Upon these findings, the Division Bench held as follows:-

The area of the quarry/land was not demarcated or surveyed by the respondents prior to putting the same on auction and that it is only after the persistent requests and representations by the petitioner that the area was demarcated and as a consequence thereof the area stood reduced considerably. The respondents were not justified in demanding the auction amount for 395.44 hectare of land from the petitioners when the actual area on the spot after demarcation was found to be 255.41 hectare.

On behalf of the petitioners, reliance was placed on the following observations of the Division Bench:-

> "27…………….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, <u>since the same has admittedly been found to be less at the spot by 140.02 hectare</u>, 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…………….". (emphasis supplied).

> "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…………"

The Division Bench then quoted paragraph-4 of the judgment of the Supreme Court. In paragraph-31 the Division Bench referred to the judgment of a Division Bench of the Bombay High Court in *Goa Foundation and others v. State of Goa and others 2001 AIR 318* and a Division Bench judgment of Madras High Court in case *K.V.Shanmugam and etc. v. State of Tamil Nadu and others, 1997 AIR 338 (Madras)* to the same effect.

(B) The judgment is not a precedent for the proposition that the existence of structures and activities on the land constitute misrepresentation or entitle a party to rescind a contract. The judgment proceeds on the basis of two vital concessions. The first concession was that it is the respondents' responsibility to demarcate or survey the land prior to putting the same to auction. The judgment does not record a contention to the contrary. There is no statutory provision or other legal provision that requires the respondents to do so. Nor does the agreement between the parties before us require the respondents to do so. The only possibilities for the observations in the judgment are that it was based on a concession or on the basis of a contractual requirement in that case. In neither event would the observations constitute ratio.

The second concession is that the area was less. That the judgment proceeded upon a concession is clear from the first sentence in paragraph-27 quoted above and especially from the words thereof emphasized by us viz. "<u>since the same has admittedly been found to be less at the spot by 140.02 hectare</u>".

The respondents in that case, therefore, conceded that there was a shortfall in the area also on account of such factors on the land.

Such a concession cannot bind a party in respect of every contract and qua even third parties. Whether it binds the respondents in respect of that very contract in other proceedings is a different matter on which we do not express any opinion.

(C) The observations in paragraph-30 do not carry the petitioner's case further in any event. The first sentence merely refers to the fact that a part of the land was not available at the site; a part of the land was agricultural as opposed to a 'quarry' or 'river bed'; a part of the land was under plantation and orchards and houses, roads and canals existed upon a small portion of the land. The Division Bench only noted these facts but did not make any observations regarding the effect thereof. The basis of the order was what was stated in the next sentence, namely, that no permission from the Government of India was sought before putting the forest land to auction. The Division Bench then observed that the land could not, therefore, have been auctioned for the purpose of granting a mining lease, as prior approval and sanction of the State Government was mandatory under section 2 of the Forest (Conservation) Act, 1980 for all non-forest activities.

68. In support of the first submission, the strongest reliance was placed on the last paragraph of the judgment which reads as under:-

> "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."

On behalf of the petitioner, reliance was placed on this paragraph to contend that the respondents were bound to conduct a fresh auction of all the quarries in the State of Haryana and not merely the quarries that were the subject matter of the petitions before the Division Bench.

69. The submission is unsustainable. The Division Bench could not have held and, therefore, rightly did not hold that the mining leases in respect of the quarries which were not the subject matter of the petitions before it were also to be cancelled and fresh auctions of those quarries were also to be held. The Division Bench could not have and therefore, did not deal with the rights of third parties. The mining leases in those cases had no relevance to the mining leases which were not the subject matter of the petitions before the Division Bench. Indeed some lessees may be willing to continue with the contract even in the event of the area available being much less. Their willingness to continue with the contract despite a shortfall in the area available for mining is of no concern to any other party.

The direction issued by the Division Bench to conduct a fresh auction of the quarries 'situated in different districts/villages across the State of Haryana' does not refer to the quarries which were not the subject matter of the petitions. The words ''situated in different district/villages across the State of Haryana' only refer to the quarries that were the subject matter of the writ petitions before the Division Bench which were in different parts of the State of Haryana. The Division Bench did not deal with just one quarry or one lease. It dealt with several of them. It was a common order and judgment in 11 petitions. The quarries which were the subject matter of those petitions were across the State of Haryana. It is for this reason that the Division Bench held that fresh auctions ought to be held in respect of the quarries situated in different district/villages "across the State of Haryana".

The operative part of the order of the Division Bench must be restricted to the facts and circumstances of those cases. We do not read the judgment as having held that in every case, irrespective of the extent of the shortfall and irrespective of the nature and extent of the use of the land by the owners or occupants thereof, the licensee is entitled to rescind the contract.

70. The contention on behalf of the petitioner that the respondents by not agreeing to cancel the contract and by refusing to re-auction the quarries which are the subject matter of the petition is in contempt is, also unsustainable. It was contended on behalf of the petitioners that the averments in paragraph 4.6 of the written statement filed on behalf of respondent Nos.1 to 4 - official respondents constitute contempt of the said judgment. We do not agree. The affidavit merely states in the beginning that the official respondents were of the view that a cartel had been formed but some of the bidders who having obtained a number of contracts at very high prices found that the same were not economically viable and started creating disputes to avoid their contractual liabilities. It is stated thereafter in the written statement that "in this way a few of the contracts/bids got cancelled as per the order dated 15.01.2015 of this Hon'ble Court passed in Civil Writ Petition No. 15431 of 2014 titled as *M/s Haryana Royalty Company v. State of Haryana and another* and other cases were disposed of alongwith the said

case". This is no reflection upon the Court. It is merely a statement of the respondents' case. Infact the affidavit goes on to state the reasons for the respondents having decided against filing an S.L.P. The respondents were of the view that this might delay the matter and therefore, they decided to break the cartel created by a few big operators by auctioning smaller blocks which would enable even the smaller entrepreneurs to enter into the business of mining. There is nothing contemptuous about this either. Nor do we find anything contemptuous about the last two sentences. The official respondents stated that other contractors were misusing the said order and are trying to avoid their obligations under the contract. It is contended that even otherwise the facts and circumstances of each case are different and any order decided on the basis of the questions in one matter cannot be cited in respect of another matter where the facts are different. We have infact found that the judgment in M/s Haryana Royalty's case (supra) is not a precedent that supports the petitioner's case. We have further rejected the contention that by virtue of that judgment the official respondents were bound to cancel all the contracts all over Haryana and to hold fresh auctions.

There is, therefore, no contempt whatsoever on the respondents' part.

71. Even if we had come to a different conclusion it would have made no difference. A party cannot be prevented from raising a contention howsoever incorrect it may be found to be. A party is always at liberty to contend that the judgment in one case does not bind it in the facts and circumstances of another case.

72. In our view, therefore, the petitioners cannot be permitted to rescind the contract on any of the grounds upon which they seek today to rescind it. The only ground upon which the petitioners may be entitled to

rescind the contract is on account of a part of the land being in the State of Uttar Pradesh. Even as far as that is concerned, it is not an open and shut case. There are several issues which would require consideration which can only be decided in properly constituted proceedings after the parties are given an opportunity of leading oral and documentary evidence.

73. It is not necessary to consider the challenge to the order black-listing the petitioner in Civil Writ Petition No. 19549 of 2015 as Mr. Amar Vivek, learned Additional Advocate General, Haryana stated that the order stands withdrawn and in the event of the respondents intending to blacklist the petitioner, they would do so after serving upon him a show cause notice and affording him a personal hearing. The statement is accepted.

74. In the circumstances, the petitions are dismissed relegating the petitioners to a civil suit or any other appropriate remedy.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

02.06.2016 **(ARUN PALLI)**
‘ravinder sharma’ **JUDGE**

To be referred to the reporter	√Yes	No.