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

+ **W.P.(C) 2958/2016 & C.M.Nos.12363-12364/2016**

M/S SINGHBHUM MINERAL COMPANY & ANR Petitioners

Through **Mr.Nidhesh Gupta, Sr.Advocate with
Mr.Naveen Kumar, Advocate.**

versus

UNION OF INDIA & ANR

..... Respondents

Through **Mr.Ripu Daman Bhardwaj, CGSC
with Mr.T.P.Singh, Advocate for R-
1/UOI.**

**Mr.Ajit Kumar Sinha, Sr.Advocate
with Mr.Amit Pawan, Mr.Shashank
Singh and Mr.Mohd. Waques,
Advocates for R-2.**

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Date of Decision: 7th April, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging the order dated 2nd March, 2016 whereby the respondent no. 1 has rejected the petitioner's revision application *in limine* against the respondent no. 2's order dated 2nd February, 2016 whereby the petitioner's mining lease was not renewed on the ground that the petitioner's lease had lapsed in terms of Section 8A(9) of the Mines and Minerals (Development and Regulation) Act, 1957. Petitioner further prays that the matter be

remanded back to the respondent no. 1 for a decision on merits in accordance with the prescribed procedure.

2. Learned senior counsel for the petitioner states that the Mines Tribunal did not grant any opportunity of hearing to the petitioners before rejecting the revision petition. He also relies upon the judgment of the Supreme Court in ***Common Cause Vs. Union of India & Ors.*** passed in ***W.P.(C) No.114/2014*** decided on 16th May, 2016.

3. On the other hand, learned senior counsel for respondent no.2- State Government of Jharkhand raises a preliminary objection that the present Court is not the *convenient forum* inasmuch as the situs of the mine is situated in the State of Jharkhand and the petitioners as well as respondent no.2 are based in Jharkhand. He points out that the impugned order dated 2nd March, 2016 has been passed in proceedings where the order passed by the Jharkhand State Government dated 22nd January, 2016 was impugned. In support of his submission, he relies upon the judgment of Five Judges Bench of the Supreme Court in ***Sterling Agro Industries Ltd. Vs. Union of India & Ors. 181 (2011) DLT 658 (LB).***

4. In rejoinder, learned senior counsel for the petitioners states that this Court has the jurisdiction as the Revisional Authority is situated in Delhi and the order is challenged only on the ground of violation of principles of natural justice. He also refers to and relies upon the orders dated 16th October, 2015 and 20th October, 2015 passed by a Coordinate Bench of this Court in ***National Enterprises Vs. Union of India & Ors. in W.P.(C) No.9874/2015*** and ***M/s Essel Mining & Industries Ltd. Vs. Union of India & Anr. in W.P.(C) No.10094/2015***

respectively. Since considerable emphasis has been laid on the said orders, the same are reproduced hereinbelow in their entirety:-

A) *National Enterprises Vs. Union of India & Ors.* (supra)

“CM No.23896/2015 (for exemption)

1. Allowed, subject to just exceptions.

2. The application is disposed of.

W.P.(C) 9874/2015

3. The petitioner has preferred a Revision Petition under Section 30 of the Mines and Minerals (Development and Regulation) Act, 1957 to the Central Government against the order, dated 27th June, 2015 of the respondent No.3 Deputy Director of Mines, Koira Circle, Orissa of the respondent No.2 State of Orissa, declaring that the Iron and Manganese mining lease of the petitioner over an area of 70.917 hectares in village Sanindupur of Sundargarh district has stood lapsed with effect from 28th August, 2012.

4. The grievance of the petitioner is that though hearing of the revision petition is held up owing to the vacancy in the office of the Revisional Authority, to be filled up by the respondent No.1 Union of India (UOI), the respondents No.2&3 are threatening to dispossess the petitioner from the said area.

5. Vide order dated 7th October, 2015 in W.P.(C) No.9582/2015 direction has already been issued for appointment of the Revisional Authority for the State of Orissa on or before 16th November, 2015.

6. The counsel for the respondent No.1 UOI and the counsel for the respondents No.2&3 appearing on advance notice have been heard.

7. This petition is disposed of with the following directions:

(i) the Revisional Authority for the State of Orissa, to be appointed in terms of a direction contained in the order dated 7th October, 2015 in W.P.(C) No.9582/2015, to take up the Revision Petition No.22/(38)/2015/RC-I preferred by the petitioner as expeditiously as possible and dispose of the same before end of February, 2016.

(ii) the respondents No.2&3 are restrained from dispossessing the petitioner from the area aforesaid till the disposal of the Revision Petition aforesaid or till the

disposal of the application for interim relief filed therewith, subject however to the condition that the petitioner shall not carry on any mining operations therefrom and shall not do any other thing so as to prejudice the rights of the respondents No.2&3 or of the person to whom the said area may be granted in the event of the petitioner not succeeding in the revision petition.

No costs.

Dasti under signature of the Court Master.”

B) *M/s Essel Mining & Industries Ltd. (supra)*

“CM No.24743/2015 (for exemption)

1. Allowed, subject to just exceptions.

2. The application is disposed of.

W.P.(C) 10094/2015

3. The petitioner has preferred a Revision Petition under Section 30 of the Mines and Minerals (Development and Regulation) Act, 1957 to the Central Government against the order dated 20th August, 2015 of the respondent No.2 Government of the State of Orissa, declaring that the Iron and Dolomite Ore mining lease of the petitioner over an area of 134.733 hectares in village Kasla of Keonjhar district has stood lapsed with effect from 22nd November, 2014.

4. The grievance of the petitioner is that though hearing of the Revision Petition is held up owing to vacancy in the office of the Revisional Authority, to be filled up by the respondent No.1 Union of India (UOI), the respondent No.2 is threatening to dispossess the petitioner from the said area.

5. Vide order dated 7th October, 2015 in W.P.(C) No.9582/2015, direction has already been issued for appointment of the Revisional Authority for the State of Orissa on or before 16th November, 2015.

6. The counsel for the respondent No.1 UOI and the counsel for the respondents No.2 appearing on advance notice have been heard.

7. This petition is disposed of with the following directions:

(i) the Revisional Authority for the State of Orissa, to

be appointed in terms of a direction contained in the order dated 7th October, 2015 in W.P.(C) No.9582/2015, to take up the Revision Petition No.22/(50)/2015/RC-1 preferred by the petitioner as expeditiously as possible and dispose of the same before end of February, 2016.

(ii) the respondent No.2 is restrained from dispossessing the petitioner from the area aforesaid till the disposal of the Revision Petition aforesaid or till the disposal of the application for interim relief filed therewith, subject however to the condition that the petitioner shall not carry on any mining operations therefrom and shall not do any other thing so as to prejudice the rights of the respondents No.2 or of the person to whom the said area may be granted in the event of the petitioner not succeeding in the Revision Petition.

No costs.

Dasti under signature of the Court Master.”

5. Having heard the learned counsel for the parties, this Court is of the view that the Five Judges Bench in ***M/s Sterling Agro (supra)*** has conclusively held that the Court may refuse to exercise its discretionary jurisdiction by invoking the *doctrine of forum conveniens*. The expression “*forum conveniens*” has been interpreted to include the existence of a more appropriate forum, expenses involved, the law relating to this lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The relevant portion of ***M/s Sterling Agro (supra)*** is reproduced hereinbelow:-

"31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more

appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots (supra), Mosaraf Hossain Khan (supra) and Ambica Industries (supra) about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.

32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.

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

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

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

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

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

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide alone.

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

(g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) “that since the original order merges into the appellate order, the place where the appellate authority is located is

also forum conveniens” is not correct.

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

(emphasis supplied)

6. Since in the present case, the situs of the mine is situated in the State of Jharkhand and the petitioners as well as the primary contesting respondent no.2 are based in Jharkhand, this Court is of the view that the High Court of Jharkhand is the *convenient forum*.

7. This Court is also of the view that the orders dated 16th October, 2015 and 20th October, 2015 relied upon by the learned senior counsel for the petitioners do not refer to and deal with the submissions of '*forum conveniens*'. To that extent, the aforesaid orders are *sub silentio*. The Supreme Court in ***State of U.P. and Another vs. Synthetics and Chemicals Ltd. and Another (1991) 4 SCC 139*** has held as under:-

"41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p.153). In Lancaster Motor Company (London) Ltd. V. Bremith Ltd., the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal

Corporation of Delhi v. Gurnam Kaur. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry, it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.'

(emphasis supplied)

8. At this stage, Mr. Nidhesh Gupta, learned senior counsel for the petitioners contends that in the event, after the remand the matter is decided against the petitioners on merits, the petitioners shall not approach this Court by way of a writ petition challenging the Mines Tribunal's order. He states that as the present impugned order has been passed in violation of the principles of natural justice, this Court in exercise of its supervisory jurisdiction should interfere.

9. In the opinion of this Court, the aforesaid submission made by learned senior counsel for the petitioners cannot be accepted inasmuch as two different High Courts cannot exercise jurisdiction with regard

to the same dispute between the parties at different stages. Moreover, the undertaking given by the petitioners would not bind the respondents who if aggrieved by the subsequent order of the Tribunal may file a writ petition in this Court contending that as in the first round of litigation, the petitioners' writ petition had been entertained, the subsequent writ petition should also be dealt with by this Court. This Court is also of the opinion that if once it exercises jurisdiction in the order passed by the Mines Tribunal, then between the same parties any subsequent order passed by the Mines Tribunal would have to be dealt with by this very High Court.

10. Consequently, the present writ petition along with the applications are dismissed with liberty to the petitioners to file the proceeding in an appropriate Court in accordance with law.

APRIL 07, 2016
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MANMOHAN, J