

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 318 OF 2017

Prakash Anandrao Gaikwad alias Gavandi ... Petitioner
V/s.
The State of Maharashtra,
Through the Principal Secretary,
Industries, Energy and Labour Dept. & Ors. ... Respondents

**WITH
WRIT PETITION NO. 319 OF 2017**

Anand Mines Product Pvt. Ltd. ... Petitioner
V/s.
The State of Maharashtra,
Through the Principal Secretary,
Industries, Energy and Labour Dept. & Ors. ... Respondents

- Mr.N.V. Bandiwadekar i/b. Abhijit M. Adagule for the Petitioner.
- Ms.Jyoti Jadhav, A.G.P. for Respondent Nos.1, 2 and 4.

**CORAM : A.A. SAYED &
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 4th DECEMBER, 2017.

P.C. :

1] On the request of learned counsel for the Petitioner, leave is granted to delete Respondent No.3-Union of India from the array of parties. Amendment to be carried out forthwith.

2] These petitions are filed under Article 226 of the Constitution of India. The Petitioner(s) seeks the following relief;

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“b. That this Hon'ble Court may be pleased to issue writ of mandamus or any other appropriate writ, order or direction thereby directing the Respondents to execute the mining lease agreement in favour of the Petitioner subject to the appropriate terms and conditions which this Hon'ble Court deems fit for bauxite over an area of 113.53 hectares in Village Javali, Gholasavade, Humbavali, Tal: Shahuwadi, Dist. Kolhapur.”

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“b. That this Hon'ble Court may be pleased to issue writ of mandamus or any other appropriate writ, order or direction thereby directing the Respondents to execute the mining lease agreement in favour of the Petitioner subject to the appropriate terms and conditions which this Hon'ble Court deems fit for bauxite over an area of 221.236 hectares in Dhangarwadi block, Tehsil Shahuwadi, Dist. Kolhapur.”

3] We have perused the order dated 4th January, 2017 of the Ministry of Mines. In paragraph (2), it is stated as follows;

“2. Environment Clearance - Notwithstanding anything contained in clause (c) of sub-section (2) OF Section 10A of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (10 of 2015), it is

clarified that where the condition of obtained environmental clearance has not been complied with by the applicant on or before 11th January, 2017, but all other conditions specified in previous approval or the letter of intent have been fulfilled, the applications shall be considered under that section and mining lease shall be granted by the concerned State Governments in accordance with the notifications issued under the Environment (Protection) Act 1986 (29 of 1986):

Provided that no mining activity shall commence unless and until the applicant obtains environmental clearance as laid down under the Environment (Protection) Act, 1986 and the rules made there under.”

4. Learned counsel for the Petitioner(s) has invited our attention to the order of this Court, Nagpur Bench (Coram: B. P. Dharmadhikari & Mrs. Swapna Joshi, JJ), dated 7th February, 2017 in Writ Petition No.6777 of 2016 and connected petitions. The said order dated 7th February, 2017 reads as follows:

“1. Heard Shri S. Manohar, learned Senior Counsel with Shri A.A. Naik, Shri S.D. Harode, learned Counsel for petitioners, Mrs. B.H. Dangre, learned Government Pleader for respondent State.

2. It is not in dispute that the controversy stands redressed in the light of orders of Ministry of Mines,

Union of India dated 04.01.2017. The said order is taken on record and marked as Exh.X. Clause 2 therein envisages execution of a formal lease deed subject to procurement of environmental clearance. There is a proviso which puts a rider that actual mining activity shall not be commenced by lease holder, unless and until such environmental clearance, as laid down in Environment (Protection) Act, 1986 and Rules made thereunder is, received by him.

- 3. In view of this order dated 04.01.2017, the respective counsel appearing for respondents have no objection if petitions are disposed of by passing suitable orders.*
- 4. After hearing the learned Counsel for parties, we find that interest of justice can be met with by directing petitioners to file an undertaking with the Registry of this Court, that after receipt of environmental clearance in terms of the proviso to clause 2 of order dated 04.01.2017 mentioned supra, they shall produce it before Director of Geology and Mining, Government of Maharashtra, at Nagpur and obtain necessary orders before commissioning the mine.*
- 5. The undertaking be filed within a period of seven days, and thereafter subject to that undertaking, respondent nos. 1 and 3 shall execute necessary mining lease in terms of above order dated 04.01.2017.*
- 6. Petitioners shall produce environmental clearance immediately after its receipt with respondent no.2, and respondent no.2 shall within a weeks time of its production pass necessary orders to enable the*

petitioners to commission their mining activities.

7. *Accordingly with these directions, Writ Petitions are disposed of. No costs."*

5] Relying upon the aforesaid order, the Division Bench of this Court, Principal Bench (Coram: V.M. Kanade and P.R. Bora, JJ) in Writ Petition Nos.323 of 2017 and 324 of 2017 has passed the following interim order dated 24th February, 2017.

"3. The learned AGP appearing on behalf of the State seeks two weeks time. On the last occasion, we had granted time and made it clear that if no instructions are issued by the next date, this court would be constrained to pass interim order in favour of the Petitioners. It is not in dispute that in the light of the orders of the Ministry of Mines and Minerals of Union of India dated 04.01.2017, the mining leases were to be granted by 11th January, 2017. The said order clearly mentions that upon execution of a formal lease deed, which shall be subject to the procurement of environmental clearance, the actual mining activities should not be commenced by the lease holder. We are of the view that in view of the order dated 04.01.2017 passed by the Ministry of Mines, Union of India, an interim order can be passed in favour of the Petitioners.

4. *We, therefore, direct the Petitioners to file an undertaking with the Registry of this court that only after the receipt of the environmental clearance in terms of clause 2 of the order dated 04.01.2017 is obtained and produced before the Director of Geology and Mining, Government of Maharashtra, alongwith other necessary orders before commissioning the mining.*
5. *The Petitioners to give undertakings to the above effect within one week. Subject to the undertaking, the Respondents shall execute the mining lease in favour of the Petitioners in terms of the order of Ministry of Mines dated 04.01.2017 upon production of the environmental clearance by the Petitioners. Respondent No.2 shall within a week's time of production of environmental clearance, shall pass necessary orders to enable the Petitioners to commission their mining activities."*

6] In our view, the case of the Petitioner(s) would be covered by the aforesaid orders. In the circumstances, we pass the following interim order:

ORDER

- i) The Petitioner(s) shall file an undertaking with the Registry of this Court that unless the environment clearance in terms of clause 2 of the order dated 04-01-2017 of the Ministry of Mines is obtained and produced

before the Director of Geology and Mining, Government of Maharashtra, along with other necessary orders/compliances, they will not commence mining activity.

- ii) The Petitioner(s) shall file the undertaking within a period of one week.
- iii) Subject to the undertaking, the Respondents shall execute the mining lease in favour of the Petitioner(s) in terms of the order of Ministry of Mines dated 4th January, 2017.
- iv) Respondent No.2 shall within a week's time of production of environment clearance and other orders/compliances, pass necessary orders to enable the Petitioner(s) to commission their mining activities.

7. List as per C.M.I.S. date.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[A.A. SAYED, J.]