

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2017

DELIVERED ON : 15.03.2017

Coram

The Honourable Mr. Justice RAJIV SHAKDHER

Writ Petition No.36204 of 2015

1 Riverways Mines and Minerals Limited
Rep. by its Director
K.Balasubramanian
6/9 Kasturi Estate 3rd Street
Poes Garden Chennai-86.
..... Petitioner

Vs

1 The State of Tamil Nadu
Rep. by its Secretary to Government
Industries Department Fort St. George
Secretariat Chennai-9.
2 The District Collector
Tiruchirappalli District Tiruchirappalli.
3 Thiru. C.V.Shankar I.A.S.
Additional Chief Secretary to Government
Industries Department Fort St. George
Secretariat Chennai-9.
4 Additional Chief Secretary to
Government Industries Department Fort St.
George Secretariat Chennai-9.
..... Respondents

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the 4th Respondent in G.O.Ms.No.261 dated 02.11.2015 and quash the same and direct the Respondents to execute the lease deed in accordance with the G.O.Ms.No.71 Industries (MMD1) Department dated 29.12.2010 in a time bound manner.

For Petitioner : Mr.Wilson, S.C.
for Mr.Richardson Wilson

For Respondents : Mr.R.Muthukumarasamy,
Advocate General
Assisted by Mr.S.Diwakar

O R D E R

1. This is a Writ Petition directed against G.O.Ms.No.261, Industries (MMD.1) Department, dated 02.11.2015.

1.1. By virtue of the said impugned order, the petitioner's application, dated 07.08.2015, for condonation of delay, was rejected. The said application came to be filed, after the petitioner had approached this Court, for a direction to respondent No.2, i.e., The District Collector (hereafter referred to as 'the District Collector'), to execute a mining lease in its favour.

2. I may indicate herein, at the outset, apart from the captioned Writ Petition, there are three (3) other Writ Petitions, filed by the same petitioner, i.e., Riverways Mines and Minerals Limited. These Writ Petitions are numbered as: W.P.Nos.36205 to 36207 of 2015. Besides these Writ Petitions, a Writ Petition has been filed by an entity, by the name of S.S.Minerals. This Writ Petition is numbered as: W.P.No.36208 of 2015.

2.1. In respect of five (5) Writ Petitions, common submissions were made by both sides.

2.2. The captioned Writ Petition was treated as a lead petition. Counsels were agreed that the decision in the said Writ Petition, either way, would apply to the other matters as well.

2.3. Therefore, I will be dealing with the facts and submissions made in the captioned Writ petition.

3. At the outset, I may note that this is a second round of litigation. The petitioner's Writ Petition along with other Writ Petitions, which included Writ Petitions filed by the very same petitioner, as also, S.S.Minerals Limited, came to be disposed of via order dated 29.06.2015, passed in W.P.Nos.3449 to 3453 of 2015.

3.1. This Court vide the said order, i.e., 29.06.2015, passed in W.P.Nos.3449 to 3453 of 2015, directed the Writ Petitioners in those petitions, to make a representation to the Government of Tamil Nadu for condonation of delay, in view of the stand taken by the Government of Tamil Nadu that, under Rule 31 of the Mineral Concession Rules, 1960 (in short '1960 Rules'), the lease deed had to be executed within a period of six (6) months of the order passed, to grant a lease, or within such further time, the Government may allow in that behalf.

3.2. It is, in this context, that the petitioner had filed an application dated 07.08.2015. The State Government via, the fourth respondent, in accordance with the directions of this Court, granted a personal hearing on 16.10.2015 and, thereafter, proceeded to pass the impugned Government Order (in short the G.O.), which, as indicated above, led to the rejection of the application for condonation of delay vide order dated 07.08.2015.

3.3. This, in sum, is the grievance of the petitioner.

4. However, before I proceed further, the following broad facts are required to be noticed, in order to adjudicate upon the present Writ Petition:

4.1. The petitioner, evidently, submitted an application dated 07.03.2002 to respondent No.1, i.e., Government of Tamil Nadu (hereafter referred to as Government of Tamil Nadu), under Rule 22(1) of the 1960 Rules, for grant of mining lease, to enable it to mine garnet sand, qua the land admeasuring 4.80.0 hectares, situate in S.F.No.390 (part), located at Kottathur Village, Musiri Taluk, Tiruchirappalli District (hereafter referred to as the subject land). The subject land, concededly, is a Eri Poramboke land, i.e., Government land.

4.2. Via this application, a request was made for grant of a mining lease for a period of twenty (20) years.

4.3. The District Collector, upon subjecting the application to scrutiny, carried out field an inspection and, thereafter, submitted a report, that the area, applied for grant of mining lease, fulfilled the requirements of Section 6(1) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereafter referred to as 'the 1957 Act').

4.4. Thus, in effect, the District Collector, via his report, recommended the grant of mining lease, in favour of the petitioner, albeit, subject to the usual terms and conditions, as stipulated in the 1957 Act.

4.5. The petitioner's application was also subjected, evidently, to scrutiny, by the Executive Engineer, Public Works Department, RC Division, Tiruchirappalli, who, apparently, vide his letter dated 15.04.2002, recommended incorporation of certain other conditions.

4.6. Likewise, the Special Commissioner and Commissioner of Land Administration vide letter dated 07.11.2007, recommended to the Government of Tamil Nadu, the petitioner's case, for grant of mining lease.

4.7. It appears that similar recommendations were made by the Commissioner of Geology and Mining vide his letters dated 10.10.2007, 09.06.2010 and 29.06.2010.

4.8. The result of the aforesaid exercise, at various levels, was that, the Government of Tamil Nadu issued G.O.No. (3D) No.71, Industries (MMD.1) Department, dated 29.12.2010, granting mining lease, in favour of the petitioner, to mine garnet sand, over the subject land.

4.9. This G.O. was issued by the Government of Tamil Nadu, in exercise of its powers under Section 10(3) of the 1957 Act.

5. It is important to note, at this stage, the relevant terms and conditions, which stood incorporated by the Government of Tamil Nadu in G.O.(3D) No.71, Industries (MMD.1) Department, dated 29.12.2010, as much has been said on both sides, with regard to some of the conditions contained therein. The relevant parts of the said G.O., are as follows :

"..... 5. In exercise of power conferred under section 10 (3) of Mines and Minerals (Development & Regulation) Act, 1957 (Central Act 57 of 1957) the Government of Tamil Nadu hereby grant of fresh mining lease to Tvl. Riverways Mines & Ltd for garnet sand Over an extent of 4.75.0 Hectares of Eri poramboke lands in S.F. No. 390 (part) of Kottathur village, Musiri Taluk, Triuchirappalli District, for a period of 20(twenty) years. Subject to general conditions mentioned in the appendix-I and the conditions led down by the Executive Engineer, Public Works Department, R.C. Division, Triuchirappalli, in his letter RC. V3/KO.35/2002, dated 15.04.2002 and also subject to the following conditions:-

1. A safety distance of 7.5 meters should be maintained form the adjacent lands.
2. Latest mining due certificate, Income Tax certificate in the name of partners of the firm and in the name of firm, shall be submitted to the District Collector, before the execution of lease deed.
3. The approved mining plan should be submitted District Collector, before the execution of lease deed

.....

Surface Rent and Water Rates:

.....

6. The Collector of Trichy District, shall obtain the difference amount of application fee if Rs. 20,000/- from the applicant as per the amended provision of Rule 22 (3) (a) of Mineral Concession Rules, 1960 before lease deed is executed. He shall also take necessary further action for execution of lease deed in the prescribed form. After satisfying the conditions specified in this order and report the date of execution of the lease deed to Government and Commissioner of Geology and mining as soon as the deed is executed. The Collector shall ensure compliance of the concerned provisions mining and minerals (Development and Regulation) Act, 1957 and Mineral

Concession Rule 1960, and other applicable Act, and Rules including Forest (Conservation) Act 1980 by the lessee before the lease deed is executed."

5.1. Furthermore, the said G.O. also, by reference, incorporated the conditions, contained in the appendix attached to it. Clause 3 of the appendix, being relevant, is extracted hereafter:

"3. The lessee shall not fell (sic) trees, if any, without the previous permission of the Collector and if it is found that has felled (sic) any trees and the value of such trees etc., shall be paid for by the lessee at rates to be fixed by the District Forest Officer, together with a compounding fee subject to a maximum of ten times the value of the said trees, without such permission he shall pay the value, of the trees.

.....

14. a. the lessee shall not enter upon or commerce prospecting or mining operations in any reserved forest situate upon the said land without thirty days previous notice in writing to the District Forest Officer nor without obtaining any written sanction of that officer nor otherwise that in accordance with such conditions as that officer may in his absolute discretion prescribed.

b. The area within the reserved forest limits must be demarcated by a declared fire line of 40 feet width which will be out and kept cleared by the Forest Department at the expense of the lessee;

c. The lessee must at all times permit the Forest Department to enter upon the land for the purpose of maintaining or repairing existing boundary lines within the area, and must pay the cost of such maintenance of repair as determined by the District Forest Officer;

d. The lessee must take suitable precautions to prevent fire from spreading into the adjoining reserve forest from the land and if such fires accidentally occurs he must render all possible assistance in putting them out;

e. The lessee shall not cut any trees or growth on the area granted in excess of 20 percent of the number of trees on the whole area under the lease without the previous permission of the District Forest Officer and value of such trees etc. shall be paid or by the lessee at rates to be fixed by the District Forest Officer, he must not deface or interfere with any boundary stone or marks, if any

boundary mark is accidentally damaged, he must bring the matter immediately to the notice of the Range Officer."

6. As would be evident, upon reading the extracted conditions from G.O.(3D) No.71, Industries (MMD.1) Department, dated 29.12.2010, that there were certain pre-requisites, which the petitioner was required to fulfill. Amongst other pre-requisites, the petitioner was required to submit an approved mining plan to the District Collector.

6.1. According to the petitioner, the mining plan was submitted on 16.08.2012 to the Regional Controller of Mines (IBM) (hereafter referred to as 'IBM'), Ministry of Mines, Government of India. The said plan was approved by IBM vide order dated 27.05.2013, subject to conditions incorporated therein, in exercise of its powers under Section 5(2)(b) of the 1957 Act.

7. It is the petitioner's case, that after the approved mining plan had been submitted to the District Collector, he directed the petitioner to remit the security deposit and surface rent. In addition thereto, the District Collector also directed the petitioner to furnish a non-judicial stamp papers along with the bank guarantee.

7.1. The petitioner's stand is that, these directions were complied with on 03.06.2013. It is, at this juncture, evidently, the petitioner's grievance came to fore, inasmuch as thereafter, despite several letters sent for execution of the lease deed, there was no movement in the matter.

7.2. The communications sent, in this behalf, by the petitioner are dated 25.09.2013, 14.11.2014 and 25.11.2014. This, according to the petitioner, was apart from the personal visits made by its authorised representatives to the office of the respondents.

7.3. The petitioner claims that, in the hope that it would have a mining lease executed in its favour, it has, in the meanwhile, invested monies, to the tune of several crores, in setting up a processing unit and a factory. The petitioner, thus, takes a stand that, while infrastructure for processing the mineral, i.e., garnet in this case, is ready, there is no mining lease in sight, despite the order granting mining lease having been issued, as far back as on 29.12.2010.

8. It is, in this background, that the petitioner had approached this Court, as indicated above, seeking a writ of mandamus against the respondents, to execute the mining lease in its favour.

8.1. The said Writ Petitions were disposed of via a common order. The relevant part of the said order reads as follows:

".....9. It is stated in the counter affidavit filed by the respondents in paragraph 13 that the petitioners submitted the Non- Judicial Stamp Papers, the original challans for remittance of surface rent and security deposit, belatedly and defaulted in executing the lease deed within the stipulated period of six months prescribed under Rule 31 (1) of the Mineral Concession Rules, 1960. However, till date, it appears that the petitioners have not made any Applications before the Government seeking condonation of delay. Under the circumstance, it is not permissible for the second respondent to execute the lease deed as sought for by the petitioners. Therefore, the prayer sought for by the petitioners cannot be granted and the writ petitions are liable to be dismissed. However, the learned Special Government pleader submitted that this court may direct the petitioners to approach the Government for extension of time for execution of lease deed.

10. This court finds merits in the submissions of the learned Special Government pleader. Admittedly, as per the respective Government Orders referred to above, six months period to execute the lease deed was already lapsed and the petitioners have not made any applications seeking for condonation of such delay. Therefore, without going into the merits of the case, liberty is given to the petitioners to approach the first respondent / Secretary to Government , Industries Department, Chennai and to submit necessary application within a period of one week from the date of receipt of a copy of this order. If any such application is filed, the first respondent shall consider the same and pass appropriate orders on merits and in accordance with law within a period of three weeks from the date of receipt of a copy of this order. The writ petitions are dismissed. No costs."

8.2. Consequent thereto, the petitioner, as adverted to above, made a representation dated 07.08.2015, to the Government of Tamil Nadu.

9. The petitioner, inter alia, indicated in the said representation, that it had complied with all the conditions stipulated in G.O.(3D) No.71, dated 29.12.2010, and, therefore, there was no delay on its part in seeking execution of the lease deed.

9.1. The petitioner went on to say that it had already set up a plant at Nagalapuram, Thuraiyur Taluk, Tiruchirappalli District and that, it had employed staff and purchased plant and machinery, worth Rs.2.00 Crores. Further, the petitioner indicated that it had established another plant at Kottathur

Village, Musiri Taluk, Tiruchirappalli District, at an expenditure of Rs.6.00 Crores.

9.2. It was indicted that in respect of this plant, land had been purchased and building plan and Pollution Control Board's clearance had been obtained from the concerned authorities.

9.3. The representation concluded by stating that, the delay, therefore, committed by the District Collector, in executing the lease deed, be condoned and that, appropriate orders, therefore, be passed, directing the District Collector to execute the lease deed in its favour, in line with G.O.(3D) No.71, dated 29.12.2010.

9.4. The Government of Tamil Nadu was required to dispose of the representation within a period of three (3) weeks, i.e., by 25.08.2015.

10. Evidently, the Government of Tamil Nadu, once again, did not move in the matter, within the stipulated time frame and, therefore, the petitioner was constrained to approach this Court, once again, via W.P.No.30504 of 2015.

10.1. This time around, the petitioner, once again, sought issuance of writ of mandamus qua the Government, for execution of a lease deed in its favour.

10.2. It is, when the said Writ Petition, came up for hearing, that the Government of Tamil Nadu offered to consider the application, in the light of the directions issued by this Court, in the earlier round vide order dated 29.06.2015.

10.3. Resultantly, a notice dated 06.10.2015 was issued, whereby, the petitioner was called upon to present itself for personal hearing before the Additional Secretary to the Government of Tamil Nadu, Industries Department on 16.10.2015.

10.4. This was, apparently, objected to by the petitioner and this objection was brought to the notice of this Court in the pending Writ Petition, i.e., W.P.No.30504 of 2015.

10.5. Consequent thereto, a fresh notice dated 08.10.2015 was issued to the petitioner and this time, the petitioner was asked to present itself for a personal hearing, on the designated day, i.e., 16.10.2015, albeit, before respondent No.3, i.e., Additional Chief Secretary to the Government of Tamil Nadu, Industries Department.

11. Admittedly, hearing was held by the third respondent, whereupon, the impugned G.O. came to be passed, resulting in rejection of the petitioner's application for condonation of delay in the execution of lease deed.

11.1. The petitioner, being aggrieved, has preferred the instant Writ Petition.

12. Upon notice being issued, counter affidavit has been filed by all the respondents, except the third respondent, who, as it appears, has been impleaded in his personal capacity, on

account of the allegations of mala fide laid against him.

13. A perusal of the counter affidavit would show that, the facts set out herein above are, broadly, accepted by the respondents.

13.1. The justification for passing the impugned G.O. rejecting the petitioner's application, which can be gleaned from the counter affidavit filed on behalf of respondent Nos.1, 2 and 4, are, broadly, as follows:

i) That the petitioner did not approach the District Collector or the Government of Tamil Nadu with an application for approval of a mining plan for a period of 2 years and 5 months. The reasons given by the petitioner that this delay occurred, as the permission for felling the trees had to be taken, as also, that clearance of IBM had to be sought, was contested by them, by asserting, that the petitioner could have approached the Government of Tamil Nadu for condonation of delay for these very reasons within the period of six (6) months, as stipulated in Rule 31 of the 1960 Rules.

ii) In furtherance of the assertion made above, (as is indicated in Paragraph 13(a) of the counter affidavit), it is stated that it was the duty of the petitioner, as a grantee of the lease, to furnish the statutory documents to the District Collector for execution of the lease deed, in accordance with Rule 31 of the 1960 Rules. It was averred that the petitioner made this request to the District Collector only on 04.06.2013, and that, the petitioner had made no representation to the District Collector or the Commissioner of Geology and mining or the Government of Tamil Nadu for grant of extension of time, either before, or after the expiry of the stipulated six (6) months.

(iii) Beach sand mining activities have been completely banned by the Government, as reflected in G.O.Ms.No.156, Industries (MMD1), dated 08.08.2013 and G.O.Ms.No.173, Industries (MMD1), dated 17.09.2013.

(iv) Lastly, it is stated that the responsibility lay with the grantee, i.e., the petitioner herein, to act with due promptness as per the Rules in force, and, therefore, the lapse, if any, would have to be viewed, strictly, in terms of the extant provisions of law.

13.2. Furthermore, it is stated that vide G.O.No.156, Industries (MMD1), dated 08.08.2013 and G.O.No.173, Industries (MMD1), dated 17.09.2013 (to which I have made a reference above), mining activities stand banned, based, evidently, on the recommendation of the Special Committee, in the background of the illegal garnet sand mining being carried at Thoothukudi

District and four (4) other Districts, including Tiruchirapalli District, a place qua which the petitioner had made a proposal for mining of garnet sand.

13.3. It is averred (in particular in paragraph 16 of the counter affidavit), that, though, the ban is on mining and transportation of beach minerals qua existing mining leasehold areas, fresh mining activities are not entertained, in order to avoid any legal complications, since, many proceedings are pending in this Court, against the said G.Os, issued by the Government of Tamil Nadu.

14. It may be relevant to note that, the assertion made in the counter affidavit, is, itself, indicative of the fact, that though, the said G.Os, strictly, are applicable, only, to existing mines, they have been extended to fresh mining activity, as a measure of practicality, and, in order to avoid, what is termed as legal complications, on account of the proceedings pending in this Court qua the said G.Os.

15. Apart from the aforementioned counter affidavit, an additional counter affidavit was filed by the Government of Tamil Nadu, during the pendency of the present proceedings.

16. In the additional counter affidavit, apart from the fact that the stand taken in the earlier counter affidavit has been reiterated, which is that, application for execution of mining lease deed was not made within the stipulated period of six (6) months, as provided under Rule 31 of the 1960 Rules, subsequent developments have been brought on record.

16.1. It is sought to be brought to fore by the Government of Tamil Nadu that 1957 Act was amended by Act 10 of 2015, whereby, among others, Section 11B and 11C were inserted. With the insertion of Section 11B, the Central Government was conferred with an enabling power to make Rules to regulate grant of mining lease or other mineral concessions, in respect of the minerals, specified in Part B of the First Schedule (Atomic Minerals).

16.2. In so far as Section 11C is concerned, the Government asserted via this very additional affidavit that, the said Section enabled the Central Government to amend, albeit, by issuing a notification, the First and Fourth Schedule of the 1957 Act, so as to add or delete any mineral mentioned thereto.

16.3. It is further averred by the Government of Tamil Nadu that in consonance with the power conferred, amendment, was, in fact, made in Part B to the First Schedule of the Act via a notification dated 11.07.2016.

16.4. By this notification, Item 12 was included, which brought "garnet", within the ambit of atomic minerals, which are subject matter of Part B of the First Schedule to the Act.

16.5. Furthermore, it is averred that on that very same date, i.e., 11.07.2016, the Central Government enacted the Atomic Minerals Concession Rules, 2016 (in short 'the AMC Rules'), in exercise of its powers under Section 11B of the amended 1957 Act.

17. By virtue of the enactment of the Atomic Minerals Concession Rules, the Central Government gave itself the power to grant mining lease for atomic minerals.

17.1. Furthermore, the Government took the stand that, in terms of Rule 31(2) of the 1960 Rules, mining lease is to commence, only from the date, on which, the lease deed is duly executed and registered.

18. Therefore, according to the Government of Tamil Nadu, what it has granted, for the moment, is, only an order sanctioning the grant of lease.

19. Thus, the Government of Tamil Nadu asserts in its additional counter affidavit, that on account of the amendment to the 1957 Act and the 1960 Rules, lease qua garnet can only be granted under the new AMC Rules.

20. The Government of Tamil Nadu takes the stand that, after 11.07.2016, it does not have power to grant mining lease, in respect of garnet, to a private party.

20.1. The Government of Tamil Nadu goes on to state that, therefore, lease can be granted, only in consonance with Rule 5 of the AMC Rules, qua garnet, which is now declared as an Atomic Mineral.

20.2. Lastly, the Government of Tamil Nadu avers that the request for mining garnet is related to Eri Poramboke land, and therefore, the permission already granted would have to be revoked, in view of the judgment of this Court in the matter of : T.K.Shanmugam V. State of TN & Ors., (2015) 6 CTC 369 (FB), whereby, directions have been issued to safeguard the water bodies.

21. In the background of the aforesaid facts and the pleadings filed in the matter by both sides, arguments were advanced by Mr.P.Wilson, learned Senior Advocate on behalf of the petitioner, while the respondents were represented by Mr.Muthukumarasamy, learned Advocate General.

22. Briefly, Mr.Wilson submitted that the impugned order, whereby, the petitioner's application dated 07.08.2015, for condonation of delay was rejected, was unsustainable in law, in view of the fact that the relevant rule, i.e., Rule 31 of the 1960 Rules, itself, gave discretion to condone the delay.

22.1. The submission was that the execution of the mining

lease was dependent on certain pre-requisites, such as, felling of trees (and their removal) in the concerned area and obtaining a mining plan.

22.2. The respondents themselves, in the earlier round of litigation, had invited an order from this Court (i.e., order dated 29.06.2015), to the effect that, the petitioner should prefer an application for condonation of delay. Therefore, once, the order was passed by the Court, the State Government ought to have exercised the power reasonably, taking into account all the facts and circumstances, and not arbitrarily and unfairly, as has been done in the instant case.

22.3. In this behalf, reference was made to the orders sanctioning grant of lease and the Appendix 14(e) of the G.O.No. (3D) No.71, dated 29.12.2010, which referred to the fact that permission that had to be sought from the concerned District Forest Officer (in short "DFO") for felling of trees.

22.4. Learned counsel submitted that the application, in that behalf, was made on 06.10.2010, to the Conservator of Forest, Tiruchirappalli Division. This application, it was stated, was forwarded by the Conservator of Forest to the DFO on 12.10.2010.

22.5. It was further averred that, thereafter, steps were taken to auction the trees and the entire process of felling of trees and removal of trees was completed on 31.08.2012.

22.6. Learned counsel submitted that nearer to the said date, on 16.08.2012, when it was made aware that the exercise of felling of trees and their removal was about to get completed, the mining plan was submitted by the petitioner.

22.7. Learned counsel went on to state that, it was only thereafter, that a mining plan was obtained from IBM, on 28.05.2013 - whereupon, the petitioner promptly deposited the surface rent and security deposit on 03.06.2013 and submitted the Non Judicial Stamp Papers on 04.06.2013. In addition thereto, a Bank Guarantee in the sum of Rs.1,00,000/- was also furnished.

23. Furthermore, de hors the aforesaid submission, learned counsel submitted that Rule 31 of the 1960 Rules conferred only administrative power on the State Government to execute the lease deed. It was submitted that the said Rule was wrongly understood by the respondents that it conferred a quasi judicial power to condone the delay. The provisions of Section 10(3) of the 1957 Act, provides for only a power to extend time beyond six (6) months for execution of lease deed after, or, at the time of issuing order granting lease.

23.1. This Court, by its order dated 29.06.2015, only directed the parties to present themselves before the State Government, and therefore, that by itself, would not invest quasi judicial powers on the State Government. Reference in this

regard was made to the following judgments :

- (i).M.P.Gopalakrishnan Nair Vs. State of Kerala,
(2005) 11 SCC 45;
- (ii).Union of India Vs. Mohanlal Likumal Punjabi,
(2004) 3 SCC 628.

23.2. According to the learned counsel, such an order of the State Government was non est in law, and therefore, was liable to be set aside. It was further contended that there could be no estoppel against a statute, if concessions were given, which were contrary to the statute. In this regard, reliance was placed on the judgment of the Supreme court in: Vijay Narayanan Thatte and Others Vs. State of Maharashtra and Others, (2009) 9 SCC 92.

23.3. It was also contended that Rule 31 of the 1960 Rules does not confer, on the State Government, the power, to refuse execution of the mining lease. The said Rule, according to the learned counsel, only spoke about the revocation of mining lease order; an act while had not been triggered in the instant case.

23.4. Furthermore, it was submitted that, the order sanctioning the lease deed is like a contingent contract, since, the second respondent (i.e., the District Collector), was directed, in terms of clause 5 of the order, to execute the lease deed, only after the mining plan was approved by IBM.

23.5. It was submitted that, therefore, the period of six months could not be put against the petitioner, and that, the State Government could not take advantage of its own wrong, and thus, reject the petitioner's plea for execution of a lease deed.

23.6. It was also submitted that, since, the substantial compliance has been made, as per the order sanctioning the grant of lease, the said order cannot be frustrated by not executing the lease deed, which is only a ministerial act.

23.7. According to the learned counsel, the power conferred under Rule 31 of the 1960 Rules is an administrative power only to extend time and such power could not have been exercised for an unauthorized purpose, which is, to deny the petitioner its right to a mine lease, as it would amount to malice in law.

24. It is contended that the impugned order must be judged by the reasons stated in the order itself, and subsequent explanations, or, reasons given to explain the decision, or, the order, ought not to be countenanced. Reliance in this behalf was placed on the judgment of the Supreme Court in: Mohinder Singh Gill and Another V. The Chief Election Commissioner, New Delhi and Others, (1978) 1 SCC 405.

24.1. It was stated that the powers of Rule 31 of the 1960

Rules was to avoid a situation, where a person obtains a mining lease order, but sits idle thereafter, and does not come forward to execute a mining lease. In the instant case, the petitioner had been running back and forth for almost four (4) years to have a mining lease executed in its favour. In so far as this aspect of the matter was concerned, mala fides were alleged against the fourth respondent. It was submitted that the fourth respondent had, in the first instance, made a file note on 16.10.2015, wherein, inter alia, it had been set out that there was no delay on the part of the petitioner. For this purpose, reliance was placed on the extract of the note, which was received, via the RTI route, under the cover of letter dated 18.02.2016.

25. Insofar as the effect of G.O.Ms.No.156, dated 08.08.2013 and G.O.Ms.No.173, dated 17.09.2013 was concerned, learned counsel submitted that the ban order issued via the said G.Os. would only apply to existing mines and not to virgin mines. It was contended that these G.Os. were issued to check illicit mining, and that, there was no blanket ban on mining. The said G.Os., according to the counsel, only dealt with issuance of transport passes to mines, in which, mining had already commenced.

26. As regards, the stand taken by the respondents that a mining lease could not be executed with regard to beach sand minerals, which included, the mineral in issue, i.e., garnet, as it had been declared an atomic mineral, with effect from 11.07.2016, learned counsel submitted that the said argument was misconceived. It is the submission of the learned counsel that the amendment made qua Entry No.12 appearing in Part B of the First Schedule, found in the 1957 Act, would have to be read ejusdem generis. The submission being that the relevant entry should be interpreted by applying the principle ejusdem generis.

26.1. In other words, the submission was that garnet, i.e., the mineral in issue, which is found in "teri" or "beach sand", is categorised as an atomic mineral. In this connection, it is stated that in so far as land leased out to the petitioner was concerned, it is not a coastal area, but an area found besides a river bed, where, garnet is found as well. It was, thus, contended that garnet, being the single mineral, which is found in such a like leased area, cannot by any yard stick, be referred to as beach sand mineral.

26.2. According to the learned counsel, the leased area was neither teri nor beach sand area, and not even a coastal area. Therefore, it was contended that the respondents' interpretation that garnet found anywhere in the country is a beach sand mineral would lead to an erroneous interpretation of the Entry 12, found in Part B of the First Schedule of the 1957 Act.

26.3. It was stated that a perusal of the website of the

Department of Atomic Energy (in short "DAE") would show that beach sand minerals and heavy minerals are found only in the coastal area. For this purpose, the map released by the DAE was relied upon by the counsel.

26.4. To buttress this submission, learned counsel also referred to Rule 37 of the Mineral (Other Than Atomic and Hydro Carbon Energy Minerals) Concession Rules, 2016 (in short the 2016 Rules).

26.5. Based on the said rule, it was submitted that garnet is treated as an associate mineral under the said Rule. It was contended that this position has been accepted by IBM.

26.6. In sum, learned counsel submitted that garnet was not an atomic mineral and would, therefore, not come within the ambit of Entry 12, Part B of the First Schedule of the 1957 Act.

27. Furthermore, it was submitted that, since, the order sanctioning the grant of lease had been issued in favour of the petitioner prior to the date when amendment was brought about, to Part B of the First Schedule, i.e., 11.07.2016, the same cannot impact the rights of the petitioner.

27.1. In this behalf, learned counsel indicated that the petitioner had obtained necessary clearance under the Atomic Energy Radiation Protection Rules, 2004 (in short '2004 Rules'), and that, the Atomic Energy Regulatory Board (in short 'AERB'), had already declared that in so far as garnet is concerned, it did not require a license under the said rules. Emphasis was laid on the fact that AERB had clarified that river sands, which are processed and are free from Monazite do not require a license from AERB under the 2004 Rules.

27.2. In support of the submission made above, learned counsel submitted that, even, in 2007, under Rule 3 of the 2004 Rules, a license was required for mining beach sand minerals. Since, the leased area, where, the petitioner proposes to mine garnet, was not a beach sand mineral, no such license was required nor was such a condition stipulated in the order sanctioning the grant of lease.

27.3. The fact that the area leased out to the petitioner did not contain atomic mineral was sought to be established by relying upon a certificate dated 22.06.2009. (Notably, this certificate was issued to M/s.S.S.Minerals, an entity, which is the petitioner in W.P.No.36208 of 2015, whose case is heard along with the captioned matter). Based on this certificate, it was contended that there was a zero percentage of atomic minerals in the area leased to the petitioner.

27.4. Besides, the submissions made above, learned counsel went on to say that the special provisions have been made both in the 1960 Rules, as well as the 2016 Rules, to deal with a

situation as to how the atomic minerals are to be handled, if they are discovered during the course of mining. In this behalf, reference was made to Rule 66A of the 1960 Rules and Rule 7 of the AMC Rules.

27.5. Learned counsel submitted that as a matter of fact, under the 2016 Rules, the atomic minerals can be mined provided, their grade value is less than the threshold value that is prescribed under Rule 4(5) (a) of the AMC Rules.

28. As regards the impact that the amendment Act 10 of 2015 had brought about, with regard to amendments carried out in the 1957 Act, learned counsel submitted that the amendments made were prospective in nature and would have no effect qua matters, where order sanctioning the grant of mining lease had already been passed under Section 10(3) of the Act. It was emphasized that since, the amendment came into force with effect from 12.01.2015, the aforementioned amendments would apply only in respect of mining applications received under Section 10A, prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015. For this purpose, reliance was placed on Rule 55 of the 2016 Rules, which according to the learned counsel saved all acts, things done or omitted to be done before the commencement of the said 2016 Rules. In other words, it was submitted that 2016 Rules would replace 1960 Rules, to the extent it was not repugnant to the latter regime.

28.1. Learned counsel submits that Rule 8(4) of 2016 Rules and Rule 31 of the 1960 Rules dealt with execution of mining lease deed, and therefore, any omission, such as in the instant case, involving of non-execution of lease deed under Rule 31 of the 1960 Rules would stand saved.

28.2. Thus, the submission was that the lease document would have to be executed now under Rule 8(4) of the 2016 Rules in the form specified in Schedule VII. In other words, it was contended that, if, the impugned order is set aside, the petitioner would be entitled to automatic execution of a mining lease deed in terms of Rules 8(4) read with Rule 55 of the 2016 Rules.

28.3. According to the learned counsel, therefore, neither would the proviso to Section 5 nor would Sections 10A and 11B of the 1957 Act apply to the petitioner, since, the orders sanctioning the grant of lease had already been issued in its favour, as per the provisions of Section 10(3) of the said Act.

28.4. In these circumstances, learned counsel, thus, emphasized that there would be no requirement of seeking an approval from the Central Government.

29. The petitioner's counsel also contended that in the present case, the principle of legitimate expectation would

apply, as it had altered its position, based on the issuance of the order granting lease by the State Government and thus, it was reiterated that the petitioner had purchased 5 hectares of land for setting up a factory, and that, in anticipation, it had entered into an agreement with an entity by the name of Global Garnet Sand Private Limited, for installation of a processing plant. In addition thereto, learned counsel says orders had been placed for purchasing plant and machinery worth Rs.10.00 Crores.

29.1. Furthermore, it was stated that approval of the DTCP authorities and Tamil Nadu Pollution Control Board, had been received for construction of a factory on the subject site. It was stated that equipment and machinery purchased by the petitioner, at considerable cost, was lying idle.

29.2. In so far as the benefits of the project were concerned, learned counsel submitted that once, operations commenced, the petitioner would be able to employ about 100 persons from the local area and provide indirect employment to another 200 persons, besides being able to generate revenue for the State exchequer.

30. In so far the objection taken to the maintainability of the writ petition on the ground of alternate remedy was concerned, learned counsel submitted that the impugned order, whereby, the State Government refused to condone the delay, is not an order, which could have been passed under the 1957 Act, or, the rules framed thereunder, and therefore, it was an order without jurisdiction, thus, could be corrected by the Court in exercise of the powers under Article 226 of the Constitution.

30.1. In support of this submission, it was stressed that, since, malafides had been alleged against the third respondent, it would be appropriate for this Court to entertain and adjudicate upon the instant writ petition, as the alternate remedy would not be efficacious.

31. It was submitted that it was more so, as the revisional power prescribed under Rule 55 of the 1960 Rules read with Form N and Rule 54 of the very same rules, were circumscribed, and thus, conferred power to deal with only certain kinds of orders, as adverted to in para 4(a) and 4(b) of the said Form, and not, in respect of orders passed on a condonation of delay application.

32. The learned Advocate General, in response, argued in line with the pleadings filed in the matter on behalf of respondent Nos.1, 2 and 4. The averments made therein were elaborated by the learned Advocate General, broadly, as follows :

32.1. That Rule 31 of the 1960 Rules vested discretion in the Government, in so far as extension of time frame is

concerned, qua, execution of the lease deed. It was submitted that in the instant case, discretion was validly exercised, and therefore, no interference is called for with the impugned order, whereby, the petitioner's application for condonation of delay was rejected. In this behalf, learned Advocate General drew my attention to the dates and events, set out in the counter affidavit filed on behalf of first and fourth respondents. It was contended that the order sanctioning the grant of mining lease was passed on 29.12.2010, and that, the petitioner did not approach the second respondent, i.e., the District Collector, or, the first respondent, i.e., Government of Tamil Nadu thereafter, for nearly two years and five months. It was sought to be brought to my notice that the first representation for execution of lease deed was made by the petitioner to the second respondent, i.e., the District Collector, only on 25.09.2013. In other words, the submission was that no representation whatsoever was made for grant of extension of time for execution of the lease deed either before or, after the expiry of the stipulated period of six months, as provided under Rule 31 of the 1960 Rules.

32.2. The second objection, which was taken by the learned Advocate General, with regard to the relief sought for in the present writ petition, was based on G.O.Ms.No.156, dated 08.08.2013, and G.O.Ms.No.173, dated 17.09.2013. According to the learned Advocate General, in view of the said Government Orders, since, the mining activity had been completely banned in the state of Tamil Nadu, no relief ought to be given to the petitioner.

32.3. The third objection to the reliefs claimed, which was, taken by the learned Advocate General, was that - post the amendment of the 1957 Act, (with the enactment of Act 10 of 2015), the State Government, i.e., Government of Tamil Nadu, stands denuded of its power to grant mining lease qua garnet to a private party. The submission was that with the passing of the amendment Act (i.e., 10 of 2015), amendments were brought about under the 1957 Act, including qua Section 11B and 11C of the said Act. It was contended that Section 11B enables the Central Government to make rules for regulating grant of mining lease, or, other mineral concessions, qua, minerals specified in part B of the First Schedule (i.e., atomic minerals). Likewise, it was contended that Section 11C of the 1957 Act, enables the Central Government to amend the First and the Fourth Schedules of the 1957 Act, so as to add, or, delete any mineral that may be specified in the notification. It was contended that by virtue of the notification issued on 11.07.2016, by the Central Government, Entry 12, Part B of the First Schedule, was amended to include garnet, and that, simultaneously, on the same date, the Central Government, also, issued the AMC Rules, in exercise of power conferred under Section 11B of the 1957 Act. In sum, it was contended by the learned Advocate General that in view of

the inclusion of garnet in Entry 12, Part B of the First Schedule of the 1957 Act, only, the Central Government has power to grant lease. In this behalf, it was contended that the amendment made would apply to the petitioner, as it had obtained up till now, only an order sanctioning the grant of mining lease, and that, mining lease in terms of Rule 31(2) of 1960 Rules would commence only from the date, on which, a mining lease deed is executed and registered.

32.4. The fourth objection, which was taken in the matter, was that the petitioner should be relegated to an alternate remedy available to it, under Rule 54 of the 1960 Rules.

32.5. Lastly, the learned Advocate General relied upon the judgement of this Court in T.K.Shanmugam Vs. State of Tamil Nadu and Others, 2015 (6) CTC 369 (FB), to contend that no mining activity can be carried out in eriporamboke land.

33. Before I proceed further, I may state that in rejoinder Mr.Wilson re-emphasised the submissions made in the opening.

33.1. In so far as the judgement of this Court rendered in the case of T.K.Shanmugam (FB) was concerned, learned counsel stated that several mining leases had been granted in areas, which were categorized as eriporamboke land.

33.2. It was further contended that the subject leased area was not in the vicinity of any water tank nor did it obstruct any water course. Learned counsel, emphatically, stated that the closest water body was 100-200 meters away from the leased land, and that, its factory was located six to nine kilometers away from the mining area. Learned counsel submitted that, therefore, the suggestion made that construction would be made on Eriporamboke land, so as to obstruct the flow of water was fallacious.

Reasons:

34. I have heard the learned counsels for parties and perused the record.

35. According to me, the core dispute veers around to the following issues :

(i) Firstly, as to whether the petitioner should be relegated to an alternate remedy in the facts and circumstances of the instant case?

(ii) As to whether the power vested in the State Government to extend time for execution of the lease deed under Rule 31 was properly and fairly exercised ?

(iii) Whether the petitioner would be entitled to the claims, sought for in the writ petition, which, in effect, seek quashing of the impugned order and issuance of a direction to the respondents to execute the lease deed in favour of the petitioner in accordance with G.O.(3D)No.71, dated 29.12.2010. While deciding this issue, the objections raised on behalf of the respondents, based on G.O.Ms.No.156, dated 08.08.2013, and

G.O.Ms.No.173, dated 17.09.2013, would have to be borne in mind. In addition to this, the argument raised by the learned Advocate General with regard to emasculation of the power of the State Government to execute the mining lease with respect to the atomic minerals, including garnet, would also have to be dealt with, as also the objection taken based on the judgment of this Court in TK Shanmugam Case (FB).

36. As regards, the first issue, in my view, the objections raised by the official respondents cannot be sustained for several reasons in the instant case.

36.1. Firstly, as indicated above, while narrating the facts, this is, in fact, a third round of litigation for the petitioner in this court. In the first round, vide order dated 29.06.2015, passed in W.P.Nos.3449 to 3453 of 2015, this Court had given liberty to the petitioner to approach the State Government with an appropriate application to seek condonation of delay. By the very same order, the State Government was directed that, if, an application was filed within the stipulated time, it would consider the same in accordance with law and pass orders thereto, on merits, within a period of three weeks.

36.2. Since, this direction was not complied with, the petitioner had to approach this Court, once again, when, upon directions being issued, a hearing in the matter was given by the Additional Chief Secretary to the Government of Tamil Nadu, Industries Department, which led to the passing of the impugned order.

36.3. It is, because the application for condonation of delay was rejected, that the petitioner has approached this Court once again - effectively for the third time.

36.4. Having regard to these circumstances, to my mind, it would not be appropriate to reject the writ petition on the ground of alternate remedy.

36.5. The record would show that the petitioner had applied for grant of lease as far back as on 07.03.2002. It, finally, obtained an order sanctioning the grant of lease on 29.12.2010. The petitioner, therefore, struggled for nearly eight (8) years to reach the first stage. Furthermore, the record would also show that, though, the request was made for execution of the lease deed in 2013, to date, the issue has not been resolved.

36.6. This apart, I am of the opinion that the courts are not denuded of their power to entertain writ petitions, where alternate remedy is available to litigants. This is a rule of self limitation and in the facts and circumstances of a given case, the Court can entertain a writ petition. (See ABL International Ltd. V. Export Credit Guarantee Corporation of India Ltd., (2004) 3 SCC 553).

36.7. Therefore, this objection raised by the respondents is

rejected.

37. This brings me to the other submission made by the learned Advocate General. According to the learned Advocate General, the discretion vested in the State Government under Rule 31 of the 1960 Rules, had been exercised in accordance with law, and therefore, the impugned order need not be disturbed.

37.1. Before I proceed further, it would be relevant to extract the provisions of Rule 31 of the 1960 Rules :

".... 31. Lease to be executed within six months :- (1) Where, on an application for the grant of a mining lease, an order has been made for the grant of such lease, a lease deed in Form K or in a form as near thereto as circumstances of each case may require, shall be executed within six months of the order or within such further period as the State Government may allow in this behalf, and if no such lease deed is executed within the said period due to any default on the part of the applicant, the State Government may revoke the order granting the lease and in that event the application fee shall be forfeited to the State Government.

(2) The date of the commencement of the period for which a mining lease is granted shall be the date on which a duly executed deed under sub rule (1) is registered."

37.2. A careful perusal of the aforementioned sub rule (1) of Rule 31 of the 1960 Rules would show that it stipulates, once, an applicant has obtained an order for grant of lease, a lease deed should be executed within six months of such an order, or, within such further period, as the State Government may allow in that behalf in the prescribed form (i.e., Form K), or, in a form as near thereto as the given circumstances of a case may permit.

37.3. The consequence of failure on the part of the applicant to execute the lease deed, within the prescribed time are also set out in the Rule, which is, that, in such circumstances, the State Government may "revoke" the order granting lease, and if, such revocation takes place, the application fee paid, would stand forfeited to the State Government.

37.4. In the instant case, clearly, no application was made within six months of the order being issued for grant of lease. The said order was issued on 29.12.2010. Ordinarily, the lease deed ought to have been executed on or before 29.06.2011. The execution of lease deed is not an event, which had not occurred in the instant case. The State Government, therefore, had two options, which is, either to extend the time or refuse to extend

the time and simultaneously, proceed to revoke the order granting the lease. Via the impugned order, while the State Government has, in effect, refused to extend the time, it has not revoked the order granting lease, which should follow as a necessary consequence of refusal to extend time. The impugned order, is, inchoate to that extent. However, from the point of view of the applicant, rejection of the application, for condonation of delay, which, in effect, seeks extension of time, entails civil consequences.

37.5. Therefore, before the applicant's right to seek execution of lease deed is foreclosed under Rule 31(1) of the 1960 Rules, the State Government would, necessarily, have to come to a conclusion whether the delay in seeking execution is attributable to the applicant. This is so, as, to my mind, it cannot be that, if, the applicant has done whatsoever was within his power - even then, the State Government could cite the rule and the time stipulated therein, and thereafter, proceed to foreclose the petitioner's right to seek execution of lease deed.

37.5. In the instant case, a perusal of the order sanctioning the grant of lease would show that certain conditions were stipulated therein, which, included obtaining a mining plan, and also, having the said leased area cleared of trees. The fact that these are pre-requisites is evident from a perusal of the order dated 29.12.2010, and the relevant conditions stipulated, in that behalf, which, already have been extracted hereinabove by me. A perusal of the order would, clearly, show that there were certain pre-requisites stipulated, which were incorporated in the form of conditions both in the body of the order, as also in the appendix, attached thereto.

37.6. As indicated above, one of the conditions mentioned in the order dated 29.12.2010, was the requirement to obtain a draft mining plan. This apart, amongst general conditions stipulated in the appendix, the petitioner was restrained, being a licensee, from felling of trees in the subject leased area, without previous permission of the District Collector. As indicated in the discussion above, the petitioner, as a matter of fact, had applied on 06.10.2010, to the Conservator of Forest. The Conservator of Forests, in turn, had forwarded the request to the DFO on 12.10.2010. The DFO, on his part, completed the process of removal of trees only on 31.08.2012. The petitioner, in fact, submitted a mining plan for approval on 16.08.2012. The mining plan was approved only on 28.05.2013, whereupon, the petitioner took the necessary steps for paying surface rent, making over security deposit, furnishing a bank guarantee, and obtaining a Non Judicial Stamp Paper.

37.7. As a matter of fact, steps, in this behalf, were taken, pursuant to the notice issued by the District Collector/second respondent on 31.05.2013. The entire exercise was completed within four months of the District Collector's

notice dated 31.5.2013. The petitioner made its first representation to the second respondent, i.e., the District Collector, on 25.09.2013, for execution of the mining lease deed. This representation was followed by two other representations, dated 14.11.2014 and 25.11.2014. Therefore, to my mind, it could not be said that the delay was attributable to the petitioner.

37.8. In sum, the impact of this would be that unless it could be shown that the delay was attributable to the petitioner, the period of six months provided in Rule 31(1), would not run against the petitioner, i.e., the applicant. The other way of looking at the rule is that, when, the delay is not attributable to an applicant, as in the instant case, the State Government under the second limb of Rule 31(1), is bound to consider the given circumstance and extend the period, by regularizing the delay in the execution of the mining lease deed. It is, precisely, for this reason, when, the petitioner had approached this Court in the first instance, that this Court vide order dated 29.06.2015, had directed the respondents to consider the application filed in that behalf, to seek "condonation of delay".

38. Contextually, given the facts and circumstances of the case, what was required to be done by the State Government was to ascertain as to whether in the given facts and circumstances of the case, the delay had to be regularized and/or are condoned.

38.1. The respondents, however, via the impugned order have not exercised their power, as required, in terms of provisions of Rule 31(1) of the 1960 Rules. The reasons set out in the impugned order are as follows :

(i) The petitioner could have approached the respondents, and indicated that, since, there was no felling of the trees, coupled with the fact that there was a delay in obtaining approval of mining plan from the IBM, the delay should be condoned. The petitioner made no such representation and, hence, could not be condoned.

(ii) The petitioner made a representation to the second respondent, i.e., the District Collector, to execute a lease deed only on 25.09.2013. The impugned order is indicative of the fact that the representation was made, much earlier, i.e. 04.06.2013.

(iii) The petitioner did not make a request for grant of extension of time for execution of the lease deed either before or after stipulated period of six months.

(iv) All beach sand mining activities have been banned in the State of Tamil Nadu, as per G.O.Ms.No.156, dated 08.08.2013, and G.O.Ms.No.173, dated 17.09.2013.

38.2. The reasons given in the impugned order, according to me, are unsustainable. The first three grounds for rejection of

the application for condonation of delay given in the impugned order are, clearly, unsustainable, for the following reasons :

38.3. In so far as first three grounds are concerned, they, simply, reiterated the facts, which were available to this Court, even, when, the petitioner had filed writ petitions in the first instance. It was known that no formal application had been submitted for extension of time either before the expiry of period of six months or thereafter. What the petitioner had tried to demonstrate before the Court at that point in time, which is an exercise, that is now repeated in the instant petition as well, is that there were reasons, why it could not approach the State Government for executing the mining lease deed within the stipulated period.

38.4. It is, in this background, that this Court vide, its order dated 29.06.2015, had given liberty to the petitioner to move a formal application to seek condonation of delay, with a direction to the respondents to dispose of the same. Therefore, for the respondents, to reject the application on the ground that the petitioner had not filed a formal application, to my mind, fails to take into account, what transpired in the earlier round in Court and the ground reality, which obtains in the matter.

38.5. The respondents, in their counter affidavit, have not disputed the date and events, which have been referred to by the petitioner, with regard to the felling of trees, or, with regard to the date, when, it could finally obtain the approval of the mining plan. Therefore, if, the dates and events are not disputed, to my mind, the only conclusion, that the State Government could have reached was that, the delay had to be regularized and / or condoned, as it had been, broadly, explained by the petitioner.

38.6. The petitioner, was not required to explain each day's delay. Given the construct of the provision in issue, it would suffice for the applicant, (i.e., the petitioner in the instant case), to, broadly, explain as to why the State Government should consider extending time beyond the stipulated period of six months for execution of the lease deed.

39. In so far as the fourth ground is concerned, which is that, beach sand mining activities had been banned in the State of Tamil Nadu could not have been met via the application seeking condonation of delay, as it was never put to the petitioner. The impugned order is clearly flawed to that extent.

39.1. In any event, a careful perusal of the G.O.Ms.No.156, dated 08.08.2013, and G.O.Ms.No.173, dated 17.09.2013, would demonstrate that because there was illicit mining of beach minerals by various existing lessees, that these Government Orders, came to be passed. In so far as G.O.Ms.No.156, dated 08.08.2013 is concerned, it pertains to Tuticorin District. As

far as G.O.Ms.No.173, dated 17.09.2013 is concerned, it relates to all seventy one (71) leases, which included eleven (11) leases in the Tiruchirapalli District, i.e., the District, in which, the petitioner's land is located.

39.2. A perusal of this Government Orders would show that the State Government was concerned with illicit mining in the given Districts mentioned, especially with regard to major minerals, which included garnet, and therefore, to obtain a comprehensive assessment of the problem, a direction was issued to the District Collectors of various Districts, including Tiruchirapalli District, to immediately stop mining operations, pending completion of inspections by the Specially Constituted Team. Furthermore, a direction appears to have been issued to the Assistant Directors (Mines) of various districts, including Tiruchirapalli District, to immediately stop issuance of transport permits qua major minerals, which included garnet, in respect of the leases granted to private parties, till such time, the inspections were completed.

39.3. Therefore, a plain reading of the Government Orders would show, as rightly contended by the learned counsel for the petitioner, that they apply to existing leases, where, illicit mining was taking place. The measures appear to have been put in place, which, evidently, were temporary in nature, till such time, inspections were completed and a full assessment of the problem was made. The official respondents have not adopted a policy of banning mining activities completely in the State of Tamil Nadu, which includes major minerals, as was sought to be portrayed before me, at least, via the aforementioned Government Orders.

39.4. Therefore, this reason, which was cited in the impugned order for rejecting the application for condonation of delay, to my mind, cannot be sustained and has to be rejected, with a caveat, of course, that, if, the State Government were to take a decision with regard to total ban on mining activities in the State of Tamil Nadu, that may, completely, perhaps, change the scenario. If such circumstance does not obtain, the rejection of the application for condonation of delay, on this ground, cannot be sustained.

40. Before I move on further, I need to deal with two other contentions, which were raised before me.

40.1. The first contention made was, with regard to the nature of power, which was exercised by the State Government, while exercising power under Rule 31(1) of the 1960 Rules. This contention was raised by Mr.Wilson.

40.2 The other contention is with regard to the applicability of the judgment of the Full Bench of this Court rendered in T.K.Shanmugam's case. This contention was raised by the learned Advocate General.

41. In so far as the first contention is concerned, in my view, the point laboured by Mr.Wilson will have no impact on the

final conclusion that I have reached with regard to the rejection of the application for condonation of delay, filed by the petitioner.

41.1. I may only add that, as has been observed by the Supreme Court, way back in the case of A. K. Kraipak & Ors. Etc vs Union Of India & Ors, AIR 1970 SC 150 the dividing the line between administrative decisions and quasi-judicial decisions stands obliterated.

41.2. In my view, whether the decision makers exercise administrative power, judicial or, even, quasi-judicial power, there is a duty in law, to act fairly. As a matter of fact, as observed by the Court in the aforementioned case, at times, the impact of an administrative decision may be far more severe or momentous than the decision taken while exercising, purely, judicial or quasi-judicial power.

41.3. Therefore, in so far as the administrative decisions are concerned, the Supreme Court, clearly, held that, they would also be tested on the anvil of fairness and/or whether or not, the exercise of power was whimsical or arbitrary.

41.4. Therefore, taking a cue from the dicta of the Supreme Court in A.K.Kraipak's case, which is a forerunner for several other decisions, which have followed thereafter, in my view, the State Government's decision would have to be tested on grounds as to whether or not - it was fair, not whimsical or arbitrary and/or did not involve, taking into account, irrelevant material or excluding relevant material. Thus, these tests would be applicable to the impugned order as well. The discussion made hereinabove would show that the aforesaid tests have been kept in mind while ascertaining the validity of the impugned order.

42. As regards the contention of the learned Advocate General with regard to the applicability of T.K.Shanmugam's case (FB), in my view, this was an aspect, once again, which was not put to the petitioner.

42.1. A Full Bench of this Court in T.K.Shanmugam's case was concerned with a reference made to a Larger Bench by a Division Bench in W.P.No.1294 of 2009. The order of reference was passed in the said petition on 05.08.2015. The Full Bench was called upon to reconcile the observations made by a Division Bench of this Court in L.Krishnan V. State of Tamil Nadu, 2005 (4) CTC 1 (DB) and, some of the observations made in Sivakasi Region Tax Payers' Association V. State of Tamil Nadu, CDJ 2008 MHC 2127, in background of the provisions of the Tami Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. The order of reference, clearly, indicated that the conflict, if any, would be examined in the context of judgments delivered by the Supreme Court qua protection of water bodies.

42.2. A perusal of the facts dealing in T.K.Shanmugam's case (FB), would show that a Public Interest Petition was filed by a person, who was a Secretary of a political party, seeking issuance of a mandamus qua Revenue authorities, for grant of

patta to the encroachers, who had their houses built around a water tank, located in Kolathur.

42.3. The Full Bench, after considering an array of judgments of this Court as well as the Supreme Court, and other materials on the subject, which included the judgment of the Supreme Court of the United States of America, reiterated the Public Trust Doctrine. The Full Bench held that various Government Orders (G.Os.) issued by the State Government from time to time, which included G.O.Ms.No.854, of the Revenue Department, dated 30.12.2006, are in violation of the Public Trust Doctrine. The reason for the same was spelled out in paragraphs 42 and 43 at pages 396 and 397 of the said judgment.

42.4. Briefly, the Full Bench commented adversely on the conduct of the State Government in gradually reducing the qualifying period, for which, encroachers had occupied public land for the purposes of regularisation. The Court noted that for the purposes of regularization the period of qualification was reduced from twenty (20) years to three (3) years, by virtue of G.Os issued by the State Government from time to time.

42.5. The Court observed that the State Government had introduced a scheme for regularization of encroachments, as an one time measure, in the first instance in 2006. Under the scheme, a person's occupation, even though, illegal, could be regularized, if, he had been in occupation of Government land for a period of over twenty (20) years. This proposal, contained in the scheme was diluted by the State Government, by issuing successive G.Os. - first in line being : G.O.Ms.No.854, dated 30.12.2006, whereby, the minimum period of occupation was reduced to ten (10) years. The G.Os., which followed, brought down the qualifying period to three (3) years. Based on the discussions in the judgment, the Court answered the reference as follows :

"..... 45. The provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, does not in any manner dilute the Observations/Directions issued in L.Krishnan V. State of Tamil Nadu, 2005 (4) CTC 1, as quoted with the approval by the Hon'ble Supreme Court in Jagpal Singh V. State of Punjab, 2011 (11) SCC 396, and the observations contained in paragraph 20(d)(e) of the Judgment of the Division Bench in T.S.Senthil Kumar v. Government of Tamil Nadu, 2010 (3) MLJ 771, and that the Tanks which do not fall within the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, also require protection from encroachment and any encroachment made in such Tanks or Water bodies have to be removed by following the provisions of the Tamil Nadu Encroachment Act, 1905."

42.6. Thereafter, the writ petition was placed before the Division Bench. The Division Bench vide order dated 02.03.2016, passed in W.P.No.1294 of 2009, disposed of the writ petition, with a direction that the Government should look into the aspect of rehabilitation, bearing in mind that, if persons like the petitioner in that case, were rehabilitated at far off places, away from their place of work, etc. - it would motivate them to re-occupy the area, from which they had been removed.

43. Another Division Bench of this Court, in yet another Public Interest Petition filed by the very same person, who was the petitioner in the aforementioned writ petition, i.e. : W.P.No.1294 of 2009 - based on a decision taken by the Full Bench, vide judgment dated 27.11.2015, passed in W.P.No.1295 of 2009, rejected the contention of the petitioner.

43.1. As indicated above, there is no doubt that the State Government is required to follow the dicta of the Full Bench and take cognizance of the Public Trust Doctrine.

43.2. In the present case, no charge has been leveled qua the petitioner; at least not at this stage, that it is an encroacher, who had set up a construction, unauthorisedly, in and around a water body. In fact, the impugned order is completely silent with respect to this aspect of the matter. This is a submission articulated across the bar without any specifics being put to the petitioner.

44. According to me, this submission, can neither be dealt with nor can it be used to deny the petitioner, its request to seek execution of a mining lease, if, it is otherwise in order, unless a specific case of infraction of law is put to it.

44.1. Therefore, this submission of the learned Advocate General cannot be accepted, at this stage, in the light of what is stated hereinabove by me.

45. This brings me to the last submission made on behalf of the respondents, which is that, after the issuance of notification dated 11.07.2016, the power to execute the lease deed with respect to the beach sand minerals, which includes garnet, has been taken away - is an objection, which has been raised, for the first time, in this Court. As would be evident from the discussion above, submissions in this behalf were raised both for and against the proposition, which is, as to whether garnet, that is found near the riverbank, can be construed as an atomic mineral.

45.1. Mir.Wilson, on behalf of the petitioner, says that it was only that garnet, which fitted the description of a economic heavy mineral and was found in teri, or, beach sand, which could be categorized as an atomic mineral. It was also Mr.Wilson's submission that teri, in Tamil, means "red sand", and red sand was also found in the hinterland. In other words, the submission

was that the garnet, which is mined from red sand found in the hinterland, did not fall within the ambit of Entry 12, Part B of the First Schedule of the 1957 Act.

45.2. Mr. Wilson emphasized the fact that only, that garnet, which was found in beach sand or, in teri found in the coastal areas, and that too, above a particular threshold, as defined in the 2016 Rules, could be categorised as called an atomic mineral, and would, perhaps, have to be regulated by the Central Government.

45.3. On the other hand, the learned Advocate General relies upon the following material placed before me, to demonstrate that teri sand is found in hinterland, and therefore, by logical corollary, garnet found therein, would come within the ambit of Entry 12, Part B of the First Schedule of the 1957 Act :

- (i) "Research Paper regarding Heavy Minerals from Teri Sands - Journal of Minerals & Materials Characterization and Engineering;
- (ii) High Resolution Paleoclimatic Registers from Red Dune Sands (Teri Sands) of Tamil Nadu Coasts - A Multi-Proxy Study - Thesis by Vidya Sakara - Anna University
- (iii) Publication No.30 - Geology and Mineral Resources of the State of India - GSI
- (vi) Teri Red Sands of Tamil Nadu - Author : R. Jayagondaperumal - Wadia Institute of Himalayan Geology"

45.4. In effect, the submission being that the State Government could not issue a mining lease in respect of atomic minerals, which included, the subject mineral, i.e., garnet.

45.5. To my mind, as indicated above, this was an objection raised for the first time by the official respondents, by way of additional affidavit filed in this Court. Furthermore, as to whether or not, garnet, would, generally, be classified as an atomic mineral would require inputs from experts, and from the Central Government, i.e., DAE/AERB, who deal with atomic minerals. Pertinently, none of these entities are parties before me. In my opinion, the views of the Central Government, and/or the DAE/AERB, would, necessarily, have to be obtained by the State Government. The objection, if any, received thereafter, would have to be formally put to the petitioner, with the right to rebut the same.

46. The submission of Mr. Wilson, that the expression found in Entry 12, Part B of the First Schedule of the 1957 Act should be interpreted by applying the ejusdem generis principle, is premature, to say the least, at this juncture.

46.1. The reason for the same is, that the Central Government is not a party before this Court. Therefore, as to whether, the ejusdem generis principle should be applied or, the

mischievous Rule should kick-in, can only be decided after the Central Government's stand is made clear, as to whether or not, it is seeking to advance the case that, garnet, found in teri, i.e., red sand in the hinterland should also be classified as an atomic mineral. It was, inter alia, argued by Mr. Wilson in course of the proceedings that it is only, when, the mineral crosses a certain threshold limit (in this case, the garnet), would the Central Government intercede in the matter. These are aspects, which require the State Government to obtain the say of the Central Government. Therefore, having regard to submissions made before me, what emerges is that it is, clearly, a mixed question of fact and law.

46.2 Thus, the State Government would do well to take inputs from the Central Government and the concerned department, which would include DAE/AERB, in the light of the notification dated 11.07.2016.

47. Therefore, for the foregoing reasons, the impugned order is set aside. The State Government, will, accordingly, reconsider the case of the petitioner, vis-a-vis this aspect of the matter in the light of notification dated 11.07.2016. The State Government would obtain the necessary inputs from the Central Government and the relevant Department, including those referred to in paragraph 46.2. above, as expeditiously as possible, though, not later than six weeks from the date of receipt of a certified copy of the order.

47.1. In so far as the issue with respect to extension of time is concerned, that aspect will not be re-visited by the State Government, as I have, already, held that it is bad in law. This dicta would also apply to G.O.Ms.No.156, dated 08.08.2013 and G.O.Ms.No.173, dated 17.09.2013.

48. Before I conclude, I may only indicate that the other aspect raised by the petitioner, which was, with regard to the mala fides of the third respondent are not required to be considered, given the conclusion that I have reached vis-a-vis the impugned order.

48.1. Suffice it to say, curiously, the third/fourth respondent, having come to the conclusion, in his note dated 16.10.2015, that the petitioner was not responsible for the delay, took a different view, when the impugned order was passed. Though, the order went on to add extraneous reasons to justify the conclusions reached in the matter, what makes the matters worse, is that, the third/fourth respondent chose not to file an affidavit to rebut the assertions made in this behalf in paragraph 17 of the affidavit accompanying the writ petition.

49. The captioned writ petition is, accordingly, allowed in terms of the directions contained above. Resultantly, pending miscellaneous applications shall stand closed as well. There shall, however, be order as to costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

sl/gg

To

- 1.The Secretary,
Industries Department,
Government of Tamil Nadu,
Secretariat, Fort St. George
Chennai-600 009.
- 2.The District Collector
Tiruchirappalli District Tiruchirappalli.
- 3.The Additional Chief Secretary to
Government,
Industries Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.

+1cc to mr. Richardson Wilson, Advocate Sr. 16820

+1cc to the Government Pleader Sr. 16519

Order in
Writ Petition No.36204 of 2015

KS(CO)
VR(11/04/2017)

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