

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
PUBLIC INTEREST LITIGATION NO. 15 OF 2019 &
WRIT PETITION NO. 84 OF 2019

PUBLIC INTEREST LITIGATION NO. 15 OF 2019

1. Mr. Viriato Hipolito Mendonca
Fernandes, Flat No.14, Shalom Crest,
Opp. SMRC Hospital, Chicalim,
Mormugao, Goa,
Email: vhmf_1@yahoo.co.in
Mobile: +919284964288
Income: Rs.6.25 Lakhs per annum
Aadhar no.:9240 4868 2383
PAN: AAJPF4163E
2. Mr. Tukaram Bharat Parab,
H. No.411, Kel Wado, Pirna,
Bardez – Goa.
Email: manojparab18@gmail.com
Mobile: +919923799976
Income: Rs.3 Lakhs per annum
Aadhar No.:2430 0584 3319
PAN: AWIPP1410F
3. Mr. Roshan Mathias,
H. No.280, Fort Aguada Road,
Bammonvado, Candolim,
Bardez, Goa,
Email: goadjroshan@yahoo.com
Mobile: +919822125270
Income: Rs.5 Lakhs per annum (approx)
Aadhar no.:7521 4944 0368

PAN: AGGPM8314H

4. Mr. Swapnesh Sherlekar,
H. No.284, Shirodwadi, Mulgao,
Bicholim, Goa,
Email: swapnesh.sherlekar@gmail.com
Mobile:+919372730066
Income: Rs.8.75 Lakhs per annum
Aadhar no.:7128 3710 5340
PAN: BTAPS2713Q

.... Petitioners

V/s.

1. Village Panchayat of Sirsaim,
through its Secretary,
Sirsaim, Bardez – Goa 403502
2. Department of Mines & Geology,
Government of Goa,
through the Director,
Ground Floor of Institute Menezes
Braganza, Panaji, Goa 403001
3. Town and Country Planning
Department, Government of Goa,
through the Chief Town Planner,
EDC Patto Plaza, 5th Floor,
Kamat Towers, Panaji, Goa 403001
4. The Forest Department,
Government of Goa,
through the Principal Chief Conservator of Forests,
Swami Vivekanand Rd., Altinho,
Panaji Goa 403 001.

5. Goa State Pollution Control Board,
1st Floor, Dempo Tower,
Patto Plaza, Patto Centre,
Panaji Goa. 403 001.
 6. Deputy Collector (DRO),
Incharge of Flying Squad, North Goa,
Collectorate Building, Panaji Goa 403 001.
 7. Goa State Environmental Impact Assessment Authority,
Department of Science, Technology &
Environment,
1st Floor, Pandit Deendayal Upadhyay Bhavan,
Behind Pundalik Devasthan,
Near Sanjay School,
Porvorim, Bardez Goa 403 521
 8. State of Goa,
through its Chief Secretary,
Secretariat, Porvorim Goa 403 501
 9. Mr. Anand Salgaokar,
HKG-61, HIG Scheme,
Housing Board Colony,
Alto, Porvorim Goa.
 10. Mr. Avinash N. Bhobe
Flat No. TI, Gulmohar Residency,
Alto Betim,
Bardez Goa.
- Respondents

WITH
WRIT PETITION NO.84 OF 2019

Village Panchayat Sirsaim,
Through its Sarpanch,
Shri Anand s. Temkar,
aged 46 years, Indian National,
having office at V. P. Sirsaim,

Bardez Goa.

... Petitioner

Versus

1. The Chief Town Planner,
Government of Goa,
Town and Country Planning
Department, having
office at EDC Complex,
Patto, Panaji Goa.

2. The Deputy Town Planner,
Government of Goa,
Town and Country Planning
Department, Mapusa,
Bardez-Goa.

3. Chief Conservator of Forests,
having office at Junta House,
Panaji, Goa.

4. The Deputy Collector & SDO,
Government of Goa,
In-charge Flying Squad,
Mapusa, Bardez-Goa.

5. The Director of Mines &
Geology, Government of Goa,
having office at Menezes
Braganza Building,
Panaji-Goa.

6. The Police Inspector,
Mapusa Police Station,
Mapusa, Bardez-Goa.

7. State of Goa,
through its Chief Secretary,
having office at Secretariat,
Porvorim-Goa.

8. Shri Anand Salgaokar,

of major age, Indian
National, resident of
HKG-61, HIG Scheme,
Housing Board Colony,
Alto Porvorim, Bardez, Goa.

9. Shri Avinash N. Bhobe,
of major age, Indian National,
resident of Alto Betim,
Bardez-Goa.

10. State Environment Impact
Assessment Authority, EIA,
Goa Secretariat, C/o Goa
State Pollution Control
Board, Dempo Towers,
Patto-Panaji, Goa.

..... Respondents

Mr. C. A. Ferreira with Mr. A. Andrade and Shane G. Pereira,
Advocates for the Petitioner.

Mr. Sagar Dhargalkar, Addl. Government Advocate for the
Respondent Nos.2, 3, 4, 6 and 8.

Mr. A. D. Bhobe, Advocate for Respondent No.10 in PILWP No.15
of 2019 and for Respondent No.9 in WP No.84 of 2019.

Mr. R. G. Ramani with Mr. P. S. Kakodkar, Advocates for
Respondent No.9 in PILWP No.15 of 2019 and for Respondent
No.8 in WP No.84 of 2019.

Mr. P. Sawant, Advocate for the Petitioner in WP No.84 of 2019.

Mr. T. Gawas, Addl. Government Advocate for the State in WP
No.84 of 2019.

***Coram : M.S. Sonak &
C.V. Bhadang, JJ.***

Reserved on : 4th December, 2019.

Pronounced on : 10th December, 2019.

JUDGMENT : (Per M.S. SONAK, J.)

The learned Counsel for the parties agree that both these petitions can be disposed of by a common Judgment and Order. However, for convenience of reference, the PIL Writ Petition No.15/2019 is treated as the lead petition.

2. Rule in both these petitions. At the request of and with the consent of the learned Counsel for the parties, Rule is made returnable forthwith.

3. The Petitioners' grievance relates to the large scale quarrying operations being undertaken by Respondents No.9 and 10 in the property bearing Survey No.20/1 at Konxem, Sirsaim Village. It is the case of the Petitioners that such quarrying operations are being undertaken in an area which is demarcated as '*No Development Slopes*' or '*Ecologically Sensitive Areas (Eco-2)*' in the Regional Plan – 2021 prepared under the Goa Town and Country Planning Act, 1974 (TCP Act). Further, it is the case of the Petitioners that the quarrying operations are being undertaken without Respondents No. 9 and 10 securing approval for quarrying plan as contemplated by the Goa Minor Mineral Concession Rules,

1985, as amended in the year 2012. Based upon these grievances, the Petitioners have applied for the following substantive reliefs :

a) For an order quashing the renewal of the mining lease granted to Resp. no. 9 dated 10.09.2018;

b) For an Order directing the recovery of all the amounts received by the lease holder (resp. No.9 and 10) pursuant to the illegal activity as per the Hon'ble Supreme Court's Judgment in Common Cause v. Union of India & Ors [MANU/SC/0491/2014];

c) For an Order quashing permissions, if any, granted to Resp. No.9 and 10 pursuant to the renewal of mining lease dated 10.09.2018;

d) For an order directing the Resp. No.9 and 10 to restore the area and environment to its original status.

4. By an interim order dated 1st January, 2019, Respondents No.9 and 10 were restrained from undertaking any quarrying operations or hill cutting operations in the property surveyed under No.20/1 (said property) of Sirsaim Village. This interim order was continued from time to time and is in operation even now.

5. Mr. C.A. Ferreira, learned Counsel for the Petitioners in

PIL WP No.15/2019 submits that in the Regional Plan – 2021, the said property is indicated as '*Ecologically Sensitive Areas (Eco-1)*' and further classified as '*No Development Slopes (NDS)*'. He submits that in terms of Section 2(10) of the TCP Act, the expression '*development*', includes *inter alia* mining, quarrying or other operations, in or over or under the land. He submits that Sections 16 and 16-A of the TCP Act make it clear that on or from the date of publication of the Regional Plan for an area, all works of development undertaken within that area shall have to conform to the provisions of such regional plan. He submits that in terms of these statutory provisions, Respondents No.2 and 8 had no authority to grant any mining lease or quarrying lease in favour of Respondent No.9 or to even grant renewal of mining lease or quarrying lease in favour of Respondent No.9 on 10.9.2018 by which time, the Regional Plan – 2021 has already entered into force. He submits that Respondents No. 9 and 10 have undertaken massive hill cutting in clear breach of the provisions of Section 17-A of the TCP Act and this is yet another ground to stop such quarrying operations, which are being undertaken by way of hill cutting in the said property.

6. Mr. Ferreira, without prejudice to the aforesaid submits that the Respondent No.9 despite securing a quarrying lease on 18th January, 2010 had failed to undertake any quarrying operations for

continuous period of over six months. He points out that throughout the term of lease, no quarrying operation was undertaken by the Respondent No.9. The lease therefore stood terminated and the Respondent No.2 was not entitled to consider any application for renewal of lease which has already been terminated. Mr. Ferreira submits that in any case the Respondent No.9 applied for renewal of lease only on 11th January, 2015 i.e. hardly seven days prior to the expiry of term of lease. He submits that no application for condonation of delay was filed and in any case, there is no order condoning the delay after recording of reasons. For these reasons also the application for renewal of quarrying of lease could never have been considered by the Respondent No.2.

7. Mr. Ferreira without prejudice to the aforesaid, submits that the Goa Minor Mineral Concession Rules, 1985, as amended in the year 2012 mandate that no person shall commence quarrying operations in any area, except in accordance with a quarrying plan approved by the authorities. He points out that in the present case, the authorities have themselves admitted that no such quarrying plan was approved, but that the same was pending scrutiny. He, therefore, submits that Respondents No.9 and 10, in undertaking any quarrying operations, without having any approved quarrying plan, have breached the provisions of the Goa Minor Mineral

Concession Rules, 1985, as amended in the year 2012.

8. Mr. Ferreira submits that despite stop-work orders, respondents No. 9 and 10 continued with their illegal and unauthorised activity and, therefore, the Petitioners were constrained to move this Court and secure interim orders. Mr. Ferreira points out that the connected Writ Petition No.84/2019 has, in fact, been instituted by the Village Panchayat of Sairsaim since, despite the stop work orders, Respondents No. 9 and 10 persisted with their illegal and unauthorised quarrying operations. Mr. Ferreira and Mr. Sawant submit that in the aforesaid circumstances, the relief prayed for by the Petitioners deserve to be granted.

9. Mr. Sagar Dhargalkar, learned Additional Govt. Advocate appearing for Respondents No.2, 3,4, 6 and 8 has submitted that in view of the said property being declared as Ecologically Sensitive Area and No Development Slopes, no quarrying lease could have been granted in favour of Respondent No.9. He has also submitted that there was no approval granted for the quarrying plan submitted by Respondent No.9 and consequently, Respondent No.9 was not entitled to commence the quarrying operations in the said property. He has, however, submitted that since this was a case of renewal of quarrying lease, Respondent No.2 chose to rely upon the reply of the Chief Town Planner dated 11.8.2009 in which it was stated that there

was no demarcation of areas for quarrying in the Regional Plan – 2001.

10. Mr. R.G. Ramani, learned Counsel for Respondent No.9 submitted that both these Petitions have not been instituted *bona fide* and should be dismissed on the said ground alone. He pointed out that the Petitions proceed on the basis that the said property is demarcated as forest area when, in fact, the said property is not at all demarcated as forest area. He submits that the Petition proceeds on the basis that the quarrying operations require conversion under the Goa Land Revenue Code when, in fact, no such conversion is required or contemplated under the Goa Land Revenue Code. He submits that since the Petition proceeds on the basis of premise which are found to be totally baseless, this Petition warrants dismissal.

11. Mr. Ramani then pointed out that Respondent No.9 has obtained permissions from all the concerned authorities, including, *inter alia*, Environment Clearance under the provisions of the Environment (Protection) Act, 1986. He submits that Respondent No. 9 has been granted the quarrying lease after due compliance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR) and the Goa Minor Mineral Concession Rules, 1985, as amended from time to time. He submits

that there is absolutely no breach of the the terms and conditions of the quarrying lease as alleged in the petition or, in any case, such allegations have not been made good by any of the Petitioners. For these reasons, M. Ramani submits that these Petitions may be dismissed.

12. Mr. Ramani submits that the subject-matter of grant of mining leases or quarrying leases, even in respect of minor minerals is entirely covered by the MMDR Act, which is a central legislation. He submits that the very enactment of the MMDR Act is relatable to Entry 54, List I, Schedule Seven to the Constitution of India. He submits that Section 2 of the MMDR Act has already declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent indicated in the MMDR Act. He submits that since the entire field is completely occupied by the MMDR Act, there is no question of any provision under the TCP Act becoming applicable to the grant or renewal of quarrying leases in favour of Respondent No.9. He submits that even the Goa Minor Mineral Concession Rules, 1985, to the extent such rules are inconsistent with the Mineral Conservation and Development Rules, 2017 enacted by the Central Government, cannot apply to the quarrying lease or the renewal of quarrying lease granted to Respondent No.9 in the present

case. He submits that since the provisions of the TCP Act are not at all applicable to the grounds raised by the Petitioners on the basis of the provisions in the TCP Act are completely misconceived and on the basis of the same, there is no question of grant of any relief to the Petitioners. In support of these contentions, Mr. Ramani relied upon the following decisions :

- (1) *Sandur Manganese and Iron Ores Limited vs. State of Karnataka and ors.*¹
- (2) *UCO Bank and another vs. Dipak Debbarma and ors.*²
- (3) *Dhatwada Usgao Citizens Forum & anr. vs. Village Panchayat of Usgao-Ganjam and ors.*³

13. Mr. Ramani also submitted that undertaking of quarrying operations does not involve any development as such, but rather undertaking of quarrying operations amounts to '*destruction*'. He, however, submits that this is a case of '*constructive destruction*', to which the provisions of TCP Act obviously cannot apply. He, therefore, submits that on the basis of the provisions of the TCP Act, there is no question of any interference with the quarrying lease granted in favour of Respondent No.9.

14. Mr. Ramani submits that the original quarrying lease was

¹ (2010) 13 SCC 1

² (2017) 2 SCC 585

³ PIL WP No.17 of 2018 dated 11/09/2019.

granted to Respondent No.9 on 16/10/2009, though a formal quarrying lease was executed on 18.1.2010. He points out that the term of this quarrying lease was 5 years i.e. upto 17.1.2015. He pointed out that Respondent No.9 applied for renewal before the date of expiry of the quarrying lease i.e. on 11.1.2015. The EIA clearance was obtained by Respondent No.9 on 21.6.2018. and the quarrying lease was renewed by an order dated 13.8.2018. The actual quarrying lease was executed on 10.9.2018. Mr. Ramani submits that, without prejudice to the contention that the provisions of the TCP Act are not at all attracted, the relevant Regional Plan to be considered is the Regional Plan – 2001. He submits that in the Regional Plan – 2001, the said property was never classified as Ecologically Sensitive Areas or as No Development Slopes. He submits that this position was clarified by the Chief Town Planner by his letter dated 11/8/2009. He, therefore, submits that there is absolutely no illegality in the renewal of the quarrying lease and on this ground also, the two petitions warrant dismissal.

15. Mr. Ramani, without prejudice to the aforesaid contentions, finally submitted that this is a case where Respondent No.9 had commenced the quarrying operations after securing permissions from all the authorities. Mr. Ramani pointed out that even if there was any doubt, Respondent No.9 would address letters

to the concerned authorities inquiring whether any further permissions were necessary. He points out that in this case, the authorities not only executed the quarrying lease on 10/9/2018, but further required Respondent No.9 to make advance payments towards royalty and dead rent. Mr. Ramani submits that Respondent No.9, upto now, has expended an amount of Rs.5,95,313/- even after giving the Department of Mines and Geology credit for murum actually extracted and transported by Respondent No.9 from the said property. Mr. Ramani submits that if at all the Court comes to the conclusion that the Department of Mines and Geology was not right in renewing such quarrying lease granted to Respondent No.9, then, appropriate directions are liable to be issued to the Department of Mines and Geology to refund this amount of Rs.5,95,313/- to Respondent No.9, forthwith. Mr. Ramani submits that liberty should also be reserved to Respondent No.9 to institute a suit for damages against the authorities who led the Respondent No.9 into believing that he was very much entitled to undertake the quarrying operations in the said property.

16. For all the aforesaid reasons, Mr. Ramani submits that these Petitions may be dismissed and in the alternate, the Department of Mines and Geology be directed to pay to the Respondent No.9 an amount Rs.5,95,313/-, without prejudice to

the right of the Respondent No.9 to institute a suit for damages against the Department of Mines and Geology and the State of Goa.

17. Mr. Bhole, learned Counsel for Respondent No.10 submitted that Respondent No.10 is not at all involved in undertaking any quarrying operations in the said property and, therefore, there is no question of making any orders against Respondent No.10.

18. Mr. P. Sawant, learned Counsel appearing for the Village Panchayat of Sirsaim, who is Respondent No.1 in PIL Writ Petition No.15/2019 and the Petitioner in Writ Petition No. 84/2019, adopted the submissions made by Mr. C.A. Ferreira and submitted that the quarrying operations undertaken by Respondent No.9 should be ordered to be stopped and Respondent No.9 should be ordered to restore the site to its original position.

19. Rival contentions now fall for our determination.

20. The first issue which arises for determination is, whether the Department of Mines and Geology (Respondent No.2) was justified in the facts and circumstances of the present case, in renewing the quarrying lease of Respondent No.9 vide order dated 13/8/2018 and, thereafter, executing the quarrying lease on

10/9/2018 ?

21. Admittedly, Respondent No.2, vide order dated 16/10/2009 had granted a quarrying lease to Respondent No.9 in the said property bearing Survey No.20/1 Konxem, Sirsaim Village, Bardez Taluka. In pursuance of the same, even a quarrying lease came to be executed on 18.1.2010. There is, however, no doubt that despite the order dated 16.10.2009 granting the quarrying lease in favour of Respondent No.9 or the execution of quarrying lease on 18.1.2010, Respondent No.9 failed to undertake any quarrying operations in or upon the said property, on the basis of the same.

22. Mr. Ramani, learned Counsel for Respondent No.9 pointed out that this failure was on account of opposition of certain locals, including the Village Panchayat of Sirsaim. The learned Counsel for the Petitioners pointed out that the said property was, in fact, liable to be classified as the '*private forest*' and since, there was no proper access, Respondent No.9 failed to undertake any quarrying operations in pursuance of the order dated 16.10.2009, or the quarrying lease dated 18/1/2010. The learned Counsel for the Petitioners, in fact, contended that since no quarrying operations were undertaken for a continuous period of over six months since the date of execution of the lease, the lease stood terminated and the very entertainment of the application for renewal of the lease was

misconceived.

23. At this stage, it is really not necessary to go into the issue as to what prevented Respondent No.9 from undertaking any quarrying operations in the said property in pursuance of the quarrying lease dated 18.1.2010. However, the fact remains that no quarrying operations were in fact undertaken by Respondent No.9 in pursuance of the quarrying lease dated 18.1.2010.

24. The contention of the Petitioners that the quarrying lease dated 18.1.2010 stood terminated on account of failure on the part of Respondent No.9 undertaking any quarrying operations for a continuous period of six months, however, cannot be accepted at this stage. The quarrying lease dated 18.1.2010, no doubt, had provided that the lease was liable to be terminated or cancelled if the lessee ceases to carry out work for a continuous period of six months. However, there is nothing on record to indicate that Respondent No.2 in pursuance of such clause in the quarrying lease, actually proceeded to terminate the lease. Such termination would essentially contemplate afford of opportunity to show cause. Admittedly, no such opportunity was ever given to Respondent No.9. In these circumstances, we cannot say that the very consideration of the application for renewal of the quarrying lease was incompetent or impermissible for this reason.

25. The application for renewal of the quarrying lease was made by Respondent No.9 in the present case only on 11.1.2015 i.e. hardly about 7 days prior to the date of expiry of the quarrying lease. Rule 19 of the Goa Minor Mineral Concession Rules, 1985, as amended, in its sub-rule (2) provides that an application for the renewal of quarrying lease shall be made at least 90 days before the expiry of the lease to the Competent Officer, in Form 'F'. The proviso to this sub-rule states that the Competent Officer may, for reasons to be recorded in writing, condone the delay, if any, in an application for renewal of quarrying lease. Sub-rule (6) of Rule 19 provides that once an application for renewal of quarrying lease is made under the provisions of sub-rule (2), the period of that lease shall be deemed to have been extended by a further period till the Competent Officer passes orders thereon.

26. In the present case, as noted earlier, the application for renewal of quarrying lease was made only on 11.1.2016 i.e. hardly 7 days prior to the date of expiry of the lease period. Sub-rule (2) of Rule 19 provides that an application for renewal is required to be made *'at least 90 days before the expiry of the lease'*. Clearly, therefore, the application for renewal made by Respondent No.9 was not within the period prescribed under sub-rule (2) of Rule 19 of the Goa Minor Mineral Concession Rules, 1985, as amended from

time to time. Since such an application was not made within the prescribed period, Respondent No.9 was not entitled to the benefit of sub-rule (6) of Rule 19.

27 Mr. Ramani for Respondent No.9, however, contended that since in the present case the application for renewal of the quarrying lease was ultimately considered by Respondent No.2 and the renewal was in fact granted vide order dated 13.8.2018, it must be presumed that the powers under the proviso to sub-rule (2) of Rule 19 as regards condonation of delay must have been exercised by Respondent No.2.

28. This contention cannot be accepted in the facts of the present case. The affidavit filed on behalf of Respondent No.2 nowhere states that the powers under the proviso to sub-rule (2) of Rule 19, were in fact exercised by Respondent No.2 or any other competent authority in the matter of condonation of delay. Taking into consideration the provisions in sub-rule (2) which requires that the condonation of delay has to be for reasons to be recorded in writing, it is not possible to accept the contention of Mr. Ramani that this is a case where the delay should be deemed to have been condoned by Respondent No.2. Since the proviso specifically contemplates recording of reasons and since no such reasons have

been placed on record by or on behalf of Respondent No.2, it is difficult to accept the contention based upon the deemed condonation.

29. Accordingly, Mr. Ferreira, learned Counsel for the Petitioners is quite right in submitting that the application made by Respondent No.9 for renewal of the quarrying lease could not have been considered by Respondent No.2 or by any other competent authority, unless the delay in filing the application for renewal had been condoned by recording reasons in writing. According to us, on this ground, it will have to be held that Respondent No.2 was not justified in renewing the quarrying lease in favour of Respondent No.9 in the present case.

30. Respondent No.2 was very much aware that clarification was necessary from the authorities under the TCP Act, before the quarrying lease in favour of Respondent No.9 is renewed. The affidavit filed on behalf of Respondent No.2 refers to the correspondence with the Chief Town Planner on the issue of grant of quarrying lease to Respondent No.9.

31. The affidavit filed by Respondent No.2 makes reference to the letter dated 17/2/2009, addressed by Respondent No.2 to the Chief Town Planner, seeking comments/clarification. The affidavit

thus refers to the response from the CTP dated 11.8.2009, in which, it was stated that there was no demarcation of areas for quarrying in the Regional Plan – 2001. Respondent No.2, it appears, has relied upon this correspondence of the year 2009, in order to faintheartedly justify the renewal of the quarrying lease vide order dated 13/8/2018.

32. The correspondence between Respondent No.2 and the Chief Town Planner entered into in the year 2009, was clearly irrelevant for the purpose of deciding the issue of renewal of quarrying lease in the year 2018. The correspondence of 2009 refers to the Regional Plan – 2001 in which, possibly, there may have been no demarcation of areas for quarrying. However, there is no dispute whatsoever that the Regional Plan for Goa – 2021 for Bardez Taluka was notified on 20/10/2011. In this Regional Plan – 2021, the said property is very clearly indicated as Ecologically Sensitive Areas (Eco-1). The Regional Plan -2021 further, in no uncertain terms, classifies the said property as '*No Development Slopes*'. The extract of the regional plan has been placed on record by the Petitioners at Annexure-3 (page 63) from which the aforesaid position is quite clear.

33. Respondent No. 2 was, therefore, duty bound to at least address yet another letter or seek clarification from the CTP at the stage of considering the belated application for renewal of the

quarrying lease. This was necessary because by the time Respondent No.9 applied for renewal of the quarrying lease i.e. on 11.1.2015, the Regional Plan for Goa 2021 had already been notified i.e. on 20/10/2011. Respondent No.2 was, therefore, not at all right in placing reliance upon the correspondence of the year 2009 with the TCP Department, which correspondence was clearly irrelevant in the light of the drastically changed circumstances. Since the renewal order dated 13/8/2018 is based upon the consideration of totally irrelevant material i.e. the correspondence of 2009 and since the renewal order has failed to take into consideration vital and relevant material in the form of notified Regional Plan – 2021, the renewal order dated 13/8/2018 is required to be set aside. The quarrying lease dated 10/9/2018 which is simply a sequitur to the renewal order dated 13/8/2018, is also required to be set aside.

34. Section 2(10) of the TCP Act, defines the expression “*development*”, in the following terms :

*““development” with its grammatical variations and cognate expressions, means the carrying out of building, engineering, **mining, quarrying or other operations in, on, over or under, land,** 1[] or the making of any material change in any building or land, or in the use of any building or land, and includes sub-division of any land”*

[emphasis supplied]

35. The contention that '*quarrying*' is not covered under the definition of '*development*' as prescribed in Section 2(10) of the TCP Act, is clearly misconceived. The definition clause is quite clear in that sense. It means carrying out of mining, quarrying, or other operations in, on, over or under the land. Similarly, the contention that quarrying involves destruction and, therefore, can never be qualified as '*development*', is also quite misconceived and warrants rejection, particularly looking to the statutory definition under Section 2(10) of the TCP Act.

36. Section 15 of the TCP Act provides that the Chief Town Planner shall notify the regional plan as approved by the Government in the Official Gazette and also in one or more local newspapers, indicating therein the place or places where copies of the same may be inspected. In the present case, the Regional Plan for Goa – 2021 was notified on 20/10/2011 and this position has not even been disputed by any parties.

37. Section 16 of the TCP Act provides for the effect of the regional plan. This section provides that on or from the date of publication of the regional plan under section 15 for an area, all development programmes undertaken within that area by any private institution or by any other person shall conform to the provisions of such regional plan. However, public projects/schemes/development

works, undertaken by the Central Government or the Government, shall be in conformity with the rules framed and procedures laid down by the Government for such projects/schemes/development works.

38. Further Section 16-A of the TCP Act provides that the development has to conform to the regional plan. Sub-section (1) of Section 16-A provides that no person shall undertake any work of development in contravention of any provision of the regional plan as in force, except the projects/schemes/development works undertaken by the Central Government or the Government, either by himself or through his servant or agent or any other person and all such development work shall be in conformity with the provisions of the regional plan. Sub-section (2) of Section 16-A provides that whoever undertakes any work or development in contravention of the regional plan as in force, shall be punished with simple imprisonment which may extend to one year, or with fine of Rs.1.00 lakh or with both.

39. From the conjoint reading of Sections 15, 16 and 16-A of the TCP Act, it is quite clear that there is prohibition upon any person to undertake any work of development in contravention of any provision of the Regional Plan as in force. This prohibition may not apply to the projects/schemes/development works undertaken by the Central Government or the State Government as long as the same

is in conformity with the rules framed and the procedure laid down by the Government. However, in the present case, we are not concerned with any projects/schemes/development works undertaken by the Central Government or the State Government. We are concerned with the development in the form of quarrying undertaken by Respondent No.9. To such development, obviously, the provisions of Sections 16 and 16-A of the TCP Act will apply.

40. As noted earlier, in the Regional Plan, the said property is indicated as Ecologically Sensitive Areas (Eco-1) and the No Development Areas. Obviously, therefore, Respondent No.2 was not entitled to ignore these provisions of the TCP Act and proceed to renew the quarrying lease in favour of Respondent No.9, almost 7 years after the Regional Plan – 2021 entered into force or was notified.

41. Though Mr. Ramani, learned Counsel for Respondent No.9 or for that matter, Mr. Dhargalkar, learned Additional Govt. Advocate made no reference to the directions dated 9.4.2012 or the order dated 4.6.2012, made by the Chief Town Planner, Mr. Ferreira, learned Counsel for the Petitioners explained that it would not be correct to say that the Regional Plan – 2021 was, at any time, kept in abeyance from 9.4.2012 and 13.8.2018.

42. Perusal of the direction dated 9.4.2012, at the highest, indicates that a note was received from the Secretary (TCP) that all projects/proposals based upon the RPG-2021 shall be kept in abeyance with immediate effect till the Government takes appropriate decision in the matter. Files in respect of cases/projects/proposals which had already been cleared by the Department after 20th March, 2012 shall be put up to the Government for decision on case-to-case basis, and pending which the concerned officials were directed not to act upon the same. There is nothing in the directions dated 9.4.2012 to indicate that the Regional Plan – 2021 had itself been kept in abeyance. The directions dated 9.4.2012, at the highest, indicate that the projects/proposal based upon RPG 2021 had been kept in abeyance till the Government takes appropriate decision in the matter.

43. The order dated 4.6.2012 also does not indicate that the RPG-2021 was itself kept in abeyance. In fact, this order states that pending drafting and notification of fresh plan, the Regional Plan 2021 will continue to be on hold. However, for the purpose of allowing development activities in the State, the Government has decided to put certain restrictions and guidelines to ensure that the genuine developments are permitted, keeping in mind the apprehensions raised in respect of the Regional Plan – 2021. This

order proceeds to issue the following directions for strict compliance by the Department while issuing NOCs for development/conversion, etc. until further orders :

“a) Pending drafting and notification of fresh plan, the Regional Plan 2001 shall be used as a reference Plan for the purpose of determining the land use but with the FAR policy and height of buildings, categorization of Village Panchayat (VP1& VP2) etc., as per Regional Plan for Goa 2021.

b) In addition to the above, eco-sensitive zoning of RPG-2021 shall also be strictly adhered to while deciding on the permission is to be issued.

c) Land use contrary to RPG-2021 shall not be permitted.

d) All applications/proposals decided prior to the issuance of directions dated 9/4/2012 shall be allowed to be executed as per the approvals.”

44. There is slight ambiguity in the order dated 9.4.2012 when it refers to the RPG-2021 continuing to be on hold. However, on the basis of such a stray sentence which, in any case, cannot be read *dehors* the context, it cannot really be said that Regional Plan – 2021 was kept on hold. In any case, the ambiguity, if any, is of no avail to Respondent No.2, or Respondent No.9 particularly because the order dated 4.6.2012, in terms, issued directions for strict compliance by the TCP Department while issuing NOCs for development/conversion, until further orders. One of the directions

is that eco-sensitive zoning of RPG-2021 shall be strictly adhered to while deciding the permissions to be issued. The second direction is that the land use contrary to RPG-2021 shall not be permitted.

45. The renewal order dated 13/8/2018 issued by Respondent No.2 ignores the eco-sensitive zoning of RPG-2021. The renewal order dated 13.8.2018 ignores the vital and relevant circumstance that the said property stands classified as No Development Slopes in terms of RPG-2021. In these circumstances, the directions dated 9.4.2012 or the order dated 4.6.2012 cannot assist the case of Respondent No.9 or sustain the renewal order dated 13.8.2018, in the peculiar facts of the present case.

46. The contention that the provisions of the TCP Act do not apply in cases of renewal of quarrying leases because the field is already occupied by the MMDR Act, requires no in-depth consideration in the present matter. In the first place, there are hardly any pleadings on this issue. Secondly, this is not a case of Respondent No.2 who has renewed the quarrying lease in the present case. Mr. Dhargalkar, learned Additional Govt. Advocate contested the contention on behalf of Respondent No.9 on the issue of applicability of the provisions of the TCP Act, when it comes to renewal of the quarrying lease. He submitted that the provisions of

the TCP Act will clearly apply. He conceded that since Respondent No.2 had failed to consider the effect of RPG-2021 or the provisions of Sections 16 and 16-A of the TCP Act, the renewal orders may be rendered vulnerable. Thirdly, at least, *prima facie*, it is not possible to accept the contention of Mr. Ramani on the basis that the MMDR Act, a Central legislation has completely occupied the field relating to grant or renewal of quarrying leases even in respect of minor minerals. Fourthly, the TCP Act is a legislation which deals with the subject of planning and applying the doctrine of pith and substance, at least it cannot be said that there is conflict or inconsistency as is contemplated by Articles 246 and 254 of the Constitution of India. The rulings relied upon by Mr. Ramani, relate to the situations which are not even remotely comparable to the situations in the present matter. For all these reasons, at the behest of Respondent No.9, it will not be appropriate to go into the larger issue which was sought to be raised in the course of arguments, without any pleadings whatsoever to back the same.

47. The decision in *Sandur Manganese and Iron Ores Limited* (supra) is not applicable to the facts and circumstances of the present case. There the Hon'ble Apex Court was concerned with the grant of lease for mining of iron and manganese ores which are, admittedly, major minerals. In the present case, we are

concerned with the grant of quarrying lease for minor mineral. The issues as listed in paragraph 6 of the decision do not arise even remotely in the present case.

48. In *UCO Bank and another* (supra), the issue related to the conflict between certain provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Tripura Land Revenue and Land Reforms Act, 1960. In such a situation, the Hon'ble Apex Court has held that it will be plain duty of the constitutional Court to see if the conflict can be resolved by acknowledging the mutual existence of the two legislations. If that is not possible, then, by virtue of the provisions of Article 246(1), the parliamentary legislation would prevail and the State legislation will have to give way notwithstanding the fact that the State legislation is within the demarcated field (List II). This principle will however prevail, provided the precondition exists, namely, the parliamentary legislation is the dominant legislation and the State legislation though within its own field, has the effect of encroaching on a vital sphere of the subject or entry to which the dominant legislation is referable. An attempt has to be made to keep the aforesaid constitutional balance intact and give a limited operation to the doctrine of federal supremacy. Again, we fail to see how this principle is really attracted in the facts of the present

case.

49. The order in *Dhatwada Usgao Citizens Forum* (supra) is an interim order. The issue involved in the said matter was, whether exercise of powers under Rule 53 of the Goa Minor Mineral Concession Rules, 1985 obviate the necessity of obtaining prior environmental clearance in terms of the EIA Notification of 2006 ? Again, even this issue does not arise in the present case.

50. For all the aforesaid reasons, we hold that Respondent No.2 was not justified in making the renewal order dated 13/8/2018 or in executing the quarrying lease dated 10/09/2018. The impugned order dated 13/8/2018 and the quarrying lease executed in pursuance thereof are consequently liable to be quashed and set aside.

51. There is yet another infirmity in the impugned order or in the execution of the quarrying lease dated 10/9/2018. Rule 7 of the Goa Minor Mineral Concession Rules, 1985, as amended in the year 2012, reads as follows :

“ 7. *Grant of quarrying lease and execution thereof.* - (1)
On receipt of an application under rule 5, the Competent Officer, after making such inquiries as he deems fit, may grant a quarrying lease to the applicant for the whole or

part of the area applied for or refuse to grant it, subject to the conditions that the minimum area of quarrying lease shall be as decided by the State Government and the minimum period of such quarrying lease shall be at least five years. Even in case the size of quarrying lease is less than five hectares, environmental clearance from the State Environment Impact Assessment Authority shall be obtained before granting or renewal of such quarrying lease. The quarrying lease holder shall also obtain the necessary consents under AIR Act and Water Act from the Goa State Pollution Control Board.

(2) Where a quarrying lease is granted under sub-rule (1), the applicant shall submit a quarrying plan to the Competent Officer within a period of 60 days from the date of receipt of communication regarding such grant from the Competent Officer.

(3) The Competent Officer may, within a period of 45 days from the date of receipt of the quarrying plan, approve the plan as submitted by the applicant under sub-rule (2) or may require modifications to be carried out in the plan and the applicant shall carry out such modifications and resubmit the modified plan for approval.

(4) The Competent Officer shall within a period of 30 days from the date of receipt of the modified quarrying plan, convey, approval or disapproval to the applicant and in case of disapproval, he shall also convey the reasons for disapproving the said modified quarrying plan.

(5) The quarrying plan submitted under sub-rule (2) or (3) shall be prepared by a recognized person.

(6) Where a quarrying plan is approved under sub-

rule (3) or (4) a lease in Form D or in a Form as near thereto as the circumstances of each case may require, shall be executed within four months of the order granting approval under sub-rule (3) or (4) as the case may be, and if no such lease is executed within aforesaid period, the order granting the lease and order granting approval under sub-rule (3) or (4) shall be deemed to have been revoked.

Provided that where the Competent Officer is satisfied that the applicant was prevented by sufficient cause from executing the lease, he may permit the execution of the lease after the expiry of the aforesaid period of four months.”

52. From the aforesaid, it is apparent that before the competent authority executes a quarrying lease in favour of a party, quarrying plan, if submitted by such party, has to be approved. Sub-rule (6) of Rule 7, clearly provides that where a quarrying plan is approved under sub-rule (3) or (4) a lease in Form D or in a form as near thereto as the circumstances of each case may require, shall be executed within four months of the order granting approval under sub-rule (3) or (4) as the case may be, and if no such lease is executed within aforesaid period, the order granting the lease and order granting approval under sub-rule (3) or (4) shall be deemed to have been revoked. This clearly contemplates a specific approval of quarrying plan, without which the competent authority will not be justified in proceeding to execute a quarrying lease.

53. Mr. Ramani, learned Counsel for Respondent No.9, however, pointed out that Respondent No.9, in the present case, submitted a quarrying plan to the Competent Officer within 60 days from the date of receipt of communication regarding the grant from the Competent Officer. He points out that this was in terms of Rule 7(2) of the aforesaid rules. He submits that there was an obligation upon the Competent Officer to approve or reject the quarrying plan within 45 days from the date of receipt of the same. He submits that in the present case, the Competent Officer did neither and instead, the quarrying lease was executed in favour of Respondent No.9. Mr. Ramani submits that from this it is quite apparent that the quarrying plan was deemed to have been approved by the Competent Authority.

54. From the provisions of Rule 7, as referred to above, it is not possible to accept Mr. Ramani's contention that the Rules contemplate any deemed approval of quarrying plan. The submission and approval of a quarrying plan is a serious matter, when it comes to working of a quarry. The quarrying plan refers to, *inter alia*, several environmental measures which are required to be adopted in the process of quarrying operations. Unless the provisions of the said Rules are quite clear, it will not be possible to read into such rules any legal fiction of deemed approval of the quarrying plan.

55. Besides, we note that in the present case, the Petitioners have made specific averments in the Petition that Respondent No.9 commenced the quarrying operations without having any approved quarrying plan. These averments have not been denied by the Deputy Director of Mines, Government of Goa who has filed an affidavit on behalf of Respondent No.2. Rather, this affidavit acknowledges that Respondent No.9 had submitted a quarrying plan in respect of quarrying lease No. 14/Basalt/10 granted to Respondent No.9 in the property situated in Survey No.20/1 of Sirsaim Village, but stated that *“same is under scrutiny”*.

56. The aforesaid affidavit was filed on 10/4/2019 and the deponent has verified the aforesaid averments in paragraph 14 of the affidavit as true to her own knowledge and based upon the record maintained in the office. From this, it is very clear that Respondent No.2 or the Competent Authority prescribed, had never approved any quarrying plan in respect of the quarrying operations in the said property. In the absence of any approval to the quarrying plan, Respondent No.2 was certainly not justified in proceedings to execute the quarrying lease on 10/09/2018.

57. A reference is necessary to the provisions in Rule 7A of

the Goa Minor Mineral Concession Rules, 1985, as amended in 2012. Sub-rule (1) of Rule 7A, reads thus :

“7A. Quarrying Plan. - (1) No person shall commence quarrying operations in any area except in accordance with a quarrying plan approved under sub-rule (3) or (4) of Rule 7.”

58. From the aforesaid, it is quite clear that no person can commence the quarrying operations in any area, except in accordance with the quarrying plan approved under sub-rules (3) or (4) of Rule 7. In the present case, Respondent No.9, who began quarrying operations on or about 30/11/2018, had no approved quarrying plan in terms of sub-rules (3) or (4) of Rule 7. This means that the quarrying operations undertaken by Respondent No.9 were not in accordance with the quarrying plan approved under sub-rules (3) or (4) of Rule 7. This was in clear breach of the provisions of Rule 7-A of the Goa Minor Mineral Concession Rules, 1985, as amended in 2012.

59. For all the aforesaid reasons, we hold that the impugned order dated 13/8/2018, granting the quarrying lease in favour of Respondent No.9 and the consequent lease dated 10/9/2018 are liable to be set aside and, are hereby, set aside.

60. Though, we have set aside the impugned order dated 13th August, 2018 and the consequent quarrying lease dated 10th September, 2018, on the aforesaid grounds, we feel that in the peculiar facts and circumstances of the present case the alternate submission made by Mr. Ramani for directions to the Respondent No.2 to refund the amount of Rs.5,95,313/- to the Respondent No.9, deserves acceptance.

61. The record indicates that the Respondent No.9 has acted in a substantially bonafide manner in this matter. The Respondent No.9, after the impugned order dated 13th August, 2018 was made and quarrying lease dated 10th September, 2018 was executed in his favour, proceeded to apply for and obtained environmental clearance as also the consent from the Goa State Pollution Control Board. The Respondent No.9 even addressed letters to the authorities enquiring whether any further permissions or clearances were necessary before he could undertake quarrying operations. No doubt, the Respondent No.9 should have waited for his quarrying plan to be approved. However, it is possible that the Respondent No.9 presumed that such quarrying plan was in fact approved after the Respondent No.2 proceeded to execute the quarrying lease dated 10th September, 2018. All this may not entitle the Respondent No.9 to insist upon continuing with the quarrying operations. However, all this is

sufficient to at least require the Respondent No.2 to refund/pay to the Respondent No.9 the amount of Rs.5,95,313/- , which represents the amount which the Respondent No.9 had to pay/spend, in pursuance of grant of quarrying lease in his favour. In the peculiar facts and circumstances of the present case, it is necessary to make such directions by accepting Mr. Ramani's alternate contention.

62. Mr. Ramani, learned counsel for Respondent No.9 has handed in a statement indicating the manner in which the aforesaid figure of Rs.5,95,313/- was arrived at. The statement refers to the payment made by the Respondent No.9 towards the application fee, advance royalty, dead rent, renewal fee, fee towards environmental clearance etc. The statement indicates that all such payments were made through regular banking channels and accordingly there is no case made out to challenge the same. Besides, the Respondent No.9, has made appropriate deduction towards the minor mineral already extracted and utilized by him. The record indicates that the Respondent No.2 had required the Respondent No.9 to pay some amount of royalty in advance. In the peculiar facts and circumstances of the present case, we do not think that it would be appropriate to let the Respondent No.2 to retain all these amounts, now it is clear that the issuance of the impugned order dated 13th August, 2018 and the execution of the quarrying lease dated 10th September, 2018, were

illegal and warranted their quashing or setting aside of the same. It is necessary to note that even the learned Additional Government Advocate did not defend the impugned order or the execution of the quarrying lease. This means that the Respondent No.2 on one hand virtually conceded that the renewal of the quarrying lease in favour of the Respondent No.9 was improper. On the other hand therefore, the Respondent No.2, cannot be permitted to retain the amount expended by the Respondent No.9 towards obtaining of such renewal or the amount spent by the Respondent No.9 in pursuance of such renewal. Accordingly, this is a fit case to accept Mr. Ramani's alternate submission and to direct the Respondent No.2 to pay to the Respondent No.9 sum of Rs.5,95,313/- within a period of three months from today.

63. Mr. Ramani also submitted that liberty be granted to the Respondent No.9 to sue the Respondent No.2 or its officers for damages. According to us, nothing in this judgment and order can prevent the Respondent No.9 from instituting such suit, if he so desires. However, we make it clear that such suit if instituted, will have to be decided on its own merits and in accordance with law. None of the observations in this judgment and order need influence the decision in any such civil suit, if indeed the same is instituted by the Respondent No.9.

64. These Petitions are, accordingly, disposed of by making the following order :

(A) The impugned order dated 13/8/2018 and the quarrying lease dated 10/9/2018 are, hereby, quashed and set aside. Respondent No.9 is restrained from undertaking any quarrying operations in or upon the said property surveyed under No.20/1 of Sirsaim Village in pursuance of the aforesaid impugned order dated 13/8/2018 and the quarrying lease dated 10/9/2018 which, in any case, have been set aside by us.

(B) Respondent No.2 is directed to pay to Respondent No.9 an amount of Rs.5,95,313/- within a period of three months from today. In the event this amount is not paid within three months from today, the same will carry simple interest at the rate of 7% per annum from the date of this Judgment, till the date of actual payment.

(C) We clarify that none of the observations in this judgment and order are to be taken into consideration in any suit, if instituted by the Respondent No.9 seeking damages. Such suit will have to be decided on its own merits and in accordance with law.

(D) In the facts and circumstances of the present case, there shall be no order for costs.

65. This judgment and order is pronounced today in terms

of Rule 1 of Chapter XI of the Bombay High Court Appellate Side Rules, 1960.

66. All concerned to act on the basis of the authenticated copy of this judgment and order.

C.V. Bhadang, J.

M.S. Sonak, J.