

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE WRIT JURISDICTION
WRIT PETITION NO.10587 of 2018

Dharti Industries Pvt.Ltd.,
a Company registered under the
provisions of the Companies Act,
having its registered office at:
221/BK, Pleasant Home,
Shop No.5, Tarabai Park, Kolhapur.

Petitioner

Versus

01 The State of Maharashtra,
through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.

02 The Directorate of Geology and Mines,
Government of Maharashtra,
having address at: "Khanji Bhawan",
Plot No.27, Shivaji Nagar, Cement
Road, Nagpur-440 010.

03 Office of Deputy Director,
Directorate of Geology & Mining,
Udyog Bhawan, Nagalapak,
Kolhapur.

04 Forest Officer, Warul,
having office at Range Forest Office,
Malkapur, Tal: Shahuwadi,
District Kolhapur.

Respondents

Mr.Pralhad D. Paranjape, advocate along with Mr.Manish Kelkar,
advocate for the petitioner.
Mr.P.N.Diwan, AGP for Respondents No.1 to 4-State.

**CORAM : R.M.BORDE &
N.J.JAMADAR , JJ.
DATE : 28th March, 2019.**

JUDGMENT (Per R.M.Borde, J.) :

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The petitioner is a Company incorporated under the provisions of Companies Act and is engaged in the business of prospecting, exploring, operating mines, quarries and to set, crush, smelt, manufacture, process and excavate and dig various mines and minerals.

3 The instant petition is presented challenging the communication dated 19.12.2017, issued by Respondent No.4 - Forest Officer, Warul whereby the said authority has directed the petitioner to forthwith stop activity of transport of bauxite from plots of land bearing G.Nos. 56 and 57 situate at Mouze Javali, Tq.Shahuwadi, District Kolhapur. By virtue of the amendment carried out at subsequent stage, petitioner is impugning the order dated 19.01.2018, passed by Respondent No.4 confirming the direction issued earlier.

4 The petitioner, for the purposes of processing bauxite at the unit set up at Sheloli and for procuring and obtaining bauxite approximately 76000 metric tons, had entered into an agreement with one Padmawati Mining Company in and around 2013. The petitioner, with a view to trade, store and transport said bauxite, had tendered an application for issuance of license under the provisions of Maharashtra Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2001 to Respondent No.3 Deputy Director of Geology and Mining Kolhapur. The

petitioner was granted permission for transportation of mineral for the period between 04.12.2013 to 03.12.2016, which also includes to trade, transport and to store bauxite obtained from Padmawati Mining Company. According to the petitioner, the permission/license was renewed from time to time and is still subsisting.

5 The petitioner contends that during the period 11.02.2013 to 31.05.2014, petitioner purchased bauxite approximately 76000 metric tons from Padmawati Mining Company through its consignee M/s Gold Corporation. The mining lease of the Padmawati Mining Company is spread over 26 gut numbers covering an area of 800 acres situated at village Kasarde, Tq. Shahuwadi, District Kolhapur. The petitioner has been issued transit passes for transportation of bauxite which has been stored at village Javali, for processing the same at its unit at Sheloli. According to the petitioner, the communication issued by Respondent No.4-Forest Officer directing the petitioner to stop transporting of mineral bauxite, which has been stored at its site G.Nos.56 and 57 at village Javali on an erroneous assumption that the bauxite has been illegally excavated from land bearing G.No.118, which has been declared as a private forest on 06.01.2015 and by a notification dated 19.09.2017, is illegal and deserves to be quashed. It is also disclosed by the petitioner that an offence has been registered against the Mining Company in relation to extraction of bauxite from G.No.118 and a direction has been issued to stop transportation of bauxite immediately and, in turn, the petitioner Company has been directed by the impugned communication to desist from transporting the mineral stored at G.Nos.56 and 57 at village Javali, Tq.Shahuwadi, District Kolhapur.

6 According to the petitioner, firstly, the mineral bauxite, that has been procured from Padmawati Mining Company, has been validly obtained on fulfilling procedural formalities of securing necessary permission required under law and after paying the amount of royalty. The petitioner approached this Court earlier by presenting Writ Petition No.14193 of 2017 challenging the communication dated 19.12.2017 directing the petitioner to desist from transporting bauxite stored at G.Nos.56 and 57. This Court, by order dated 22.12.2017, was pleased to dispose of the writ petition by directing Respondent No.4 to consider detailed representation, which the petitioner was expected to tender and pass appropriate orders after extending an opportunity of hearing to the petitioner. According to the petitioner, a detailed representation was submitted on 29.12.2017 in furtherance of the liberty granted by this Court. However, the representation has been turned down by Respondent No.4 and the said order is impugned in this petition.

7 The petitioner, in order to support his contentions, has placed on record Registration Certificate issued under Rule 7 of the Maharashtra Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2001, dated 04.12.2013. Copies of the Tax Invoices in respect of transportation of bauxite have also been placed on record. The petitioner has also given details along with Transit Pass numbers, the date of transport of minerals, numbers of vehicles and the quantity transported. The petitioner has also produced on record copies of the challans demonstrating deposit of royalty amount. The communication dated 19.12.2017, issued by Range Forest Officer records that

S.No.118 of village Kasarde has been declared as reserved forest in view of the notification issued by the State of Maharashtra on 19.09.2017. It is further recorded that an offence bearing Crime No.1 of 2013-14 has been registered on 17.04.2013 in respect of illegal excavation of bauxite out of G.No.118. It is further alleged in the communication that the mineral bauxite excavated out of S.No.118 at village Kasarde is stored in G.Nos.56 and 57 and, as such, transportation of mineral stored at the above noted site shall be immediately stopped.

8 It is not a matter of dispute that land G.No.118 at village Kasarde is declared as a reserved forest in view of notification dated 19.09.2017. According to the petitioner, stock of bauxite stored at G.Nos.56 and 57 has been procured in the year 2013-14. Apart from that, there is absolutely no basis to contend that the mineral bauxite has been excavated illegally out of G.No.118 by Padmawati Mining Company and the same material has been stored in G.Nos.56 and 57 at Mouje Javali.

9 Our attention is invited to the crime report bearing No.1/2013-14 registered on 17.04.2013 under Section 26(3) of the Forest Act. The *panchanama* drawn by the authorities on 17.04.2013 records that the excavation activity has been carried out in an area covering 1891.25 and 1372.50 square meters and the quantity of the bauxite stored at the spot is approximately 1000 square meter. The Forest Officials also seized machinery used for excavation of bauxite at the spot.

10 The petitioner, at Exhibit-Q, has annexed a report tendered by the Range Forest Officer dated 23.03.2018. The

official i.e. Range Forest Officer, who tendered report on 23.03.2018 and who has dealt with representation tendered by the petitioner and rejected the same by order dated 20.01.2019 is incidentally the same officer. In the report dated 23.03.2018, it is specifically reported by the Range Forest Officer that the excavated material i.e. bauxite measuring approximately 1000 metric tons is still lying in G.No.118. It is further recorded that the additional material excavated during the continuance of order of injunction passed by Civil Court on consideration of application by the Company measuring about 70000 to 75000 metric tones is still lying at the spot since last about 4 to 5 years. It is further recorded that the access leading to Deodhopeswar Temple is completely damaged and several wild trees and shrubs have grown alongside the existing road. It is further recorded in the report that the forest guard and forest officials have closed down the access leading to G.No.118 with permanent effect by excavating a big trench in the year 2013-14 and the said trench excavated during the preceding years still exists. In substance, it is reported that there is no access available to reach land S.No.118, thus, overruling the possibility of transportation of mineral out of the said survey number. It has also been recorded in the report that as has been informed by the local people on 05.03.2018, the stock of bauxite stored in G.Nos.56 and 57 has been excavated out of land G.Nos.246, 248, 251, 252, 253, 254, 255, 257, 258, 259, during the year 2014-15 and the excavation has been carried out with due permission accorded by the Director of Geology and Mining and the excavated material has been stored in G.Nos.56 and 57. A similar report has been transmitted by the Range Forest Officer, Warul on 14.03.2018. The Range Forest Officer has also recorded statements of local

residents who have supported the contentions recorded in the report. There is one more report tendered by the Range Forest Officer, Warul to the Divisional Forest Officer Malkapur on 03.02.2018 recording similar factual aspects.

11 The *panchanama* of G.No.118 recorded on 30.01.2018 is placed on record wherein it has been specifically mentioned that a stock of bauxite of about 70000 to 75000 metric tons is still available in G.No.118 and the access leading to the said survey number is completely damaged and is non existent. The *panchanama* of stock of mineral i.e. bauxite collected in G.Nos.56 and 57 is recorded on 29.01.2018. It is recorded in the *panchanama* that stock admeasures about 1114 cubic meters. It is also recorded in the *panchanama* that the mineral has been procured from G.Nos.246, 248, 251, 252, 253, 254, 255, 257, 258 and 259. The *panchanama* records that the mineral bauxite is probably transported in phased manner during the year 2014.

12 The inquiry, thus, reveals that firstly the stock of bauxite of about 70000 to 75000 metric tons is still lying in G.No.118 of village Kasarde and access leading to said Gut number is non existent since atleast about 4/5 years. Another aspect is that the stock of bauxite available in G.Nos.56 and 57 has not been transported from G.No.118 but has been procured, excavated out of different Gut numbers. Secondly, the mineral collected in G.Nos.56 and 57 is lying on the spot since 2014 onwards. It has also been clarified in the *panchanama* and as revealed from the documents placed on record, that the mineral collected i.e. bauxite and stored in G.Nos.56 and 57 has not been transported from G.No.118 of village Kasarde, which constitutes

reserved forest area. There is absolutely no material to demonstrate that the stock of bauxite collected and transported under the valid pass and payment of royalty amount by the petitioner Company, has been procured and excavated from the forest area.

13 Though, in the affidavit-in-reply, it is specifically contended at several places that the mineral has been transported from G.No.118 of village Kasarde, however, the documentary record in the form of reports tendered by the Range Forest Officer, who is the same officer, who has dealt with the representation tendered by the petitioner, do not support the contention that the mineral has been procured from the forest area i.e. G.No.118. It is contended that land G.Nos.107, 108, 109, 110, 118, 120, 122, 123, 126, 127, 128, 129, 130, 131, 160 and 161 at village Kasarde, Tq.Shahuwadi, District Kolhapur have been declared as reserved forest under the notification published in the Bombay Government Gazette dated 12.11.1953 under Section 4 of the Act. It is further contended that those survey numbers have been assigned G.Nos. 44, 243, 247, 245, 256, 261, 262, 249, 265, 266, 267, 242, 268, 264 and 253, respectively. It is further contended that in view of the notification dated 29.09.2017, issued under Section 20 of the Indian Forest Act, aforesaid 15 lands came to be finally declared to be reserved forest. It is contended that the lands belong to the State Government. It is further contended that in view of Section 5 of the Act, after issuance of Section 4 notification, no right shall be acquired in or over the land comprised in such notification. It is, thus, contended that after issuance of notification under Section 4, no right can be acquired over the lands notified and the non forest

activities, are not permitted. The proposal for diversion of such areas for non forest user requires approval of the Central Government.

14 Reliance is placed on the judgment of the Supreme Court in the matter of **Pradeep Krishen Vs. Union of India & others**, reported in AIR 1996 SC 2040. The Supreme Court has considered the analogous provisions of Wild life protection Act and notification issued concerning the sanctuary and National Park. The phrase “declare its intention to constitute”, appearing in Sections 18 and 35 of the Wild Life (Protection) Act, 1972, are of significance. The Apex Court has observed that after issuance of Section 4 notification, no right is acquired within the said limits except by succession, testamentary or otherwise. Applying the analogy, it is contended that Section 4 of the Forest Act records the phrase “decided to constitute” and after such declaration of intention, the prohibition in respect of diversion of user for non forest activities is operational.

15 According to the respondents, the lease dated 28.03.1984, executed by *Paschin Maharashtra Deoasthan Vyavasthapan Samiti, Kollhapur*, in favour of Padmawati Mining Company, which is subsequent to the date of notification under Section 4 of the Indian Forest Act issued on 12.11.1953, is invalid and does not create any right including right to carry out mining activities in aforementioned lands in view of bar created by Section 5 of the Indian Forest Act. It is contended that since the alleged lease in favour of Padmawati Mining Company is illegal, the petitioner does not have any right to transport the illegally excavated mineral i.e. bauxite.

16 Reliance is placed on the judgment in the matter of **T.N.Godavarman, Thirumulkpad Vs. Union of India & others**, reported in AIR 1997 SC 1228. In the reply presented by respondents, the judgments in the matter of **Yashwant Stone Works Vs. State of U.P.**, reported in AIR 1988 All 120; **Ratan Lal Vs. Secretary to the Government, Forest Department**, reported in AIR Raj 129, the judgment of the Supreme Court in the matter of **Kailash Nath Vs. State of U.P.**, reported in AIR 1957 SC 756, the Constitution Bench judgment of the Supreme Court in the matter of **The State of Bombay & another Vs. F.N. Balsara**, reported in AIR 1951 SC 318 as well as the judgment in the matter of **Mahendra Lal Jaini Vs. State of U.P. & others**, AIR 1963 SC 1019, have been referred. It is contended that since the mineral has been excavated from the reserved forest i.e. S.Nos.109, 118, 123, 127 and 128, the petitioner does not have any right to transport the said mineral and store the same in land G.Nos.56 and 57. It is reiterated that the lease in favour of Padmawati Mining Company is itself illegal and *void ab initio* in the absence of prior approval of the Central Government. It is, thus, contended that the petitioner does not have any entitlement to transport the mineral and no interference is required to be caused.

17 There can be no dual opinion in respect of the proposition as regards prohibition imposed in law to carry out non forest activity in relation to the lands notified to be reserved forest. The basic foundation of the case put up by the petitioner has been lost sight by the respondent. It is contended by the respondents that the mineral i.e. bauxite stored in land G.Nos.56

and 57 of village Javali is procured from G.No.118 of village Kasarde, which is claimed to be a reserved forest area. The First Information Report recorded in the year 2013 relates to excavation activity carried out by Padmawati Mining Company over land G.No.118. Though it is alleged that under the garb of injunction secured by Padmawati Mining Company from the Civil Court, excavation activity was continued and the excavated material has been stored at G.No.118 and same is transported by the petitioner. On the contrary, the report tendered by Range Forest Officer, who himself has taken a contrary stand while rejecting the representation of the petitioner, demonstrates that stock of about 70000 to 75000 metric tons of bauxite is lying in land G.No.118 and there is no access available to reach the said Survey Number since 2013 onwards. It has also been recorded in the *panchanama* that the access to land G.No.118 has been closed by digging trench, which is still subsisting. Thus, there is absolutely no justification for the respondents to contend that the mineral i.e. bauxite has been transported by the petitioner Company from G.No.118 which is a forest land. On the contrary, *panchanamas* drawn by the Forest officials record that the stock of bauxite stored in land G.Nos.56 and 547 has been excavated out of land G.Nos.246, 248, 251, 252, 253, 254, 255, 257, 258 and 259 of village Kasarde. The above referred lands belong to Deodhopeswar Devasthan. It is also reported by the Range Forest Officer that the excavation out of these lands have been carried out with due permission and the mineral has been transported under the valid license by the petitioner.

18 We have also perused the notification dated 29.09.2017 issued under Section 20 of the Indian Forest Act,

1927, declaring various lands as reserved forest. So far as village Kasarde is concerned, the land Gut Numbers recorded in the report tendered by the Range Forest Officer on 23.03.2018 as well as Gut Numbers Recorded in the *panchanama* drawn on 30.01.2018 and the report dated 03.02.2018 do not form the part of the reserved forest, as declared by the notification. Thus, the mineral bauxite appears to have been excavated from the Gut numbers, which do not form part of the reserved forest declared under the notification issued on 29.09.2017. It has not been demonstrated by respondents that those lands recorded in the *panchanama*, and the report tendered by the Range Forest Officer earlier, have been included in the preliminary notification issued under Section 4 of the Act of 1927.

19 Thus, the respondents have failed to substantiate that the mineral bauxite stored in land G.Nos.56 and 57 of village Javali has been procured from the reserved forest area. The mineral allegedly excavated from the reserved forest area is still lying in land G.No.118 and there is no access available for transporting the mineral from the aforesaid Gut Number. Thus, the contention of the respondents that the mineral bauxite has been procured from G.No.118 of village Kasarde, which is a reserved forest area, is absolutely baseless and contrary to the report submitted by the Range Forest Officer and *panchanama* drawn by Forest officials..

20 The petitioner has demonstrated that the transportation of mineral is under the valid license and after securing transit pass during the relevant period. The petitioner has also demonstrated payment of amount of royalty for

procurement of mineral. There does not appear to be any illegality in the activity of transportation of mineral by the petitioner. The restriction clamped by the respondents in respect of transportation, disposal and user of the mineral bauxite is illegal and without authority of law. The orders impugned in this petition recorded in communication dated 19.12.2017 and the subsequent orders by the Range Forest Officer-Respondent No.4 dated 19.01.2018, are unsustainable and thus, deserve to be quashed and set aside.

21 In the result, the orders impugned in this petition recorded in communication dated 19.12.2017 and the subsequent orders issued by the Range Forest Officer-Respondent No.4 dated 19.01.2018, are quashed and set aside.

22 Rule is made absolute in above terms. There shall be no order as to costs.

23 Pending Civil Applications, if any, do not survive and stand disposed of.

N.J.JAMADAR
JUDGE

R.M.BORDE
JUDGE