

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Public Interest Litigation No.56 of 2017

Kisan S/o Patruji Barsagade and another

Versus

Union of India and others

With

Writ Petition No.8207 of 2017

Ramesh s/o Meso Gundru v. State of Maharashtra and others.

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

In Public Interest Litigation No.56 of 2017 :

Shri A.R. Ingole, Advocate for Petitioners.

Shri Ulhas Aurangabadkar, Assistant Solicitor General of India, for Respondent Nos.1 and 2.

Shri Subodh Dharmadhikari, Senior Advocate (as Special Counsel), assisted by Ms T.H. Khan, Assistant Government Pleader for Respondent Nos.3 to 5.

Shri Chinmay S. Dharmadhikari with Shri R.S. Kalangiwale and Shri A.O. Shriwas, Advocate for Respondent No.6.

In Writ Petition No.8207 of 2017 :

Shri H.M. Bobde, Advocate for Petitioner.

Shri Subodh Dharmadhikari, Senior Advocate (as Special Counsel), assisted by Ms T.H. Khan, Assistant Government Pleader for Respondent Nos.1 to 5.

Shri Chinmay S. Dharmadhikari with Shri R.S. Kalangiwale and Ms Abole N. Kawale, Advocates for Respondent No.6.

Coram : R.K. Deshpande & Vinay Joshi, JJ.

Date : 27th June, 2019

1. Heard the learned counsels appearing for the respective respondents.

2. This Public Interest Litigation seeks a relief to declare that that the mining lease granted to the respondent No.6- M/s. Lloyds Metal and Energy Ltd., Chandrapur, by the respondent No.5- District Collector, Gadchiroli, on 3-5-2007 in respect of Surajgarh (Wooria Hill), Bhamragarh Range, Forest Compartment Nos.197, 198, 199, 227 and 228 of Tahsil Etapalli, District Gadchiroli, is null and void. The PIL was filed on 26-4-2017 and the notice was issued by this Court on 27-4-2017. The parties have filed their replies.

3. The challenge to the grant of mining lease for iron ore is on the ground that it takes away the right of tribals residing in the area to collect the mining forest produce as their livelihood. Relying upon the provision of Clause (k) under Section 4 of the Panchayats (Extension to the Scheduled Areas) Act, 1966, it is urged that the requirement of obtaining the recommendations of the Gram Sabha or the Panchayats at the appropriate level prior to grant of prospecting licence or mining lease in the Scheduled Areas is mandatory. It is further urged that the Gram Sabha is the owner of the forest produce and without its recommendations, the grant of lease was illegal

4. Shri Subodh Dharmadhikari, the learned Senior Advocate, appearing as the Special Counsel for the State Government, assisted by Ms T.H. Khan, Assistant Government Pleader, invited our attention to the list of dates and events, which we reproduce below :

03.05.2017:	Mining lease for extraction of iron Ore from Surajgarh, Bhamragarh Range, Forest Compartment no.197, 198, 199, 227 & 228, Tah: Etapalli, Gadchiroli District, was executed after conducting a public hearing. Therefore, 10 years delay in filing the PILs (Page: 24 of PIL no.56/2017)
30.06.1993:	Lloyds Metal applied for grant of Mining Lease in prescribed format under Rule 22(1) of the Mineral Concession Rules to the Government of Maharashtra. (Page: 25 of PIL no.164/2016)
11.01.1995:	In pursuance thereof, the Government of Maharashtra issued a letter of Intent in favour of Lloyds Metal in respect of Land Admeasuring 449.42 Hectares. (Page: 298 of PIL no.56/2017)
11.09.2003	The Government of Maharashtra issued a revised letter of intent in relation to the land admeasuring 348.09 Hectares. Condition to set up plant at Gadchiroli was inserted. (Page: 299 of PIL no.56/2017) The mining plan was prepared and submitted the same for approval to the Indian Bureau of Mines.
03.03.2004:	The mining plan prepared by Lloyds Metal was approved by the Indian Bureau of Mines u/s 5(2) of The Mines and Minerals (Development and Regulation) Act, 1957. (Page: 301 of PIL no.56/2017)
13.06.2005:	The Government of India, Ministry of Environment and Forests granted in-principle approval on the proposal seeking approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980 for diversion of 374.90 Ha of reserved forest land on certain terms and conditions. (Page: 303 of PIL no.56/2017)

12.07.2005:	Thereafter, public hearing was conducted in which no objection to the mining in the area was raised by the People. The Public hearing was concluded with the support of the people to the project of mining with a request from people to establish plant at Gadchiroli and more preferably Etapalli.
29.05.2006:	The Ministry of Environment and Forests also granted environmental clearance to the mining project. (Page: 307 of PIL no.56/2017)
23.03.2007:	Since Lloyds Metal duly complied with all the conditions contemplated in the said in-principle approval dated 13.06.2005, the Government of India conveyed its approval under Section 2 of the Forest (Conservation) Act, 1980 for diversion of 374.90 Hectares of Forest Land for Iron Ore mining, transmission line and approach road. (Page: 305 of PIL no.56/2017)
13.04.2007:	As all the statutory requirements were duly complied with by Lloyds Metal, the Government of Maharashtra issued an Order for execution of mining lease. (Page: 316 of PIL no.56/2017) . Only thereupon, mining lease dated 03.05.2007 came to be executed.
19.11.2016:	PIL no.164 of 2016 was filed.
26.04.2017:	PIL no.56 of 2017 was filed.
18.12.2017:	W.P. no.8207 of 2017 was filed.

5. The preliminary objection is that the application for grant of mining lease was submitted on 30-6-1993 and after complying with all the statutory requirements, the order for execution of mining lease was passed on 13-4-2007, as pointed out above, and the first Public Interest Litigation No.164 of 2016 was filed on 19-11-2016, i.e. almost after a period of nine years. This PIL, therefore, suffers from delay and laches, in the absence of any explanation.

6. In terms of Clause (iii) under Section 2 of the Forest (Conservation) Act, 1980, any forest land or any portion thereof can be assigned by way of lease to any person or authority, corporation, agency or any other Organisation not owned, managed or controlled by the State Government, with the prior approval of the Central Government. In the present case, the Central Government granted prior approval on 13-6-2005, which is supported by the final approval dated 23-3-2007. There is no illegality or violation of any of the provisions of the Act or the Rules brought to our notice in executing the mining lease on 3-5-2007.

7. So far as the question of violation of the provision of Section 4(k) of the Panchayats (Extension to the Scheduled Areas) Act, 1996 is concerned, it speaks about the prospecting licence or the mining lease for minor minerals in the Scheduled Areas. It will not apply to the mining lease in question, for the reason that it is for major minerals, i.e. iron ore. Hence, the said reliance is misplaced.

8. Once it is found that there is no illegality brought to the notice of this Court in executing the lease agreement, the question of taking away the right of tribals residing in the area, would not arise. Apart from this, the State Government can impose appropriate restrictions or conditions, if at all required, to protect the existing right, if any, of the tribals in accordance with law. Merely because the mining lease is granted in respect of the area in question, it would not follow that the right, if any, of the tribals would be defeated. We, therefore, do not find any substance in this Public Interest Litigation.

9. The Public Interest Litigation is, therefore, dismissed.

Writ Petition No.8207 of 2017 :

1. We have also heard this petition, claiming the relief of quashing and setting aside the working permission granted on 14-11-2017 to the respondent No.6- M/s Lloyds Metal and Energy Ltd., Chandrapur.

2. For the reasons stated in the order passed in Public Interest Litigation No.56 of 2017 today, as above, this petition is also required to be dismissed. The same is, therefore, dismissed.

(Vinay Joshi, J.)

(R.K. Deshpande, J.)