

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 26.03.2019

+ **W.P. (C) 5121/2015 & CM Nos. 9274/2015 & 12629/2015**

B. RUDRAGOUDA

...Petitioner

Versus

UNION OF INDIA & ORS

...Respondents

Advocates who appeared in this case:

For the Petitioner :Mr S. Ganesh, Senior Advocate, Mr Dhruv
: Mehta, Senior Advocate and Mr Sameer
: Abhyankar.

For the Respondents :Mr Joseph Aristotle S for R-3, Mr Sandeep
: Sethi, Senior Advocate with Ms Kirti
: Mishra and Ms Apurva Upmanyu for R-4.

AND

+ **W.P.(C) 6456/2015**

**M/S P.M. MINES & MINERALS PRIVATE
LIMITED**

...Petitioner

Versus

UNION OF INDIA & ORS

...Respondents

Advocates who appeared in this case:

For the Petitioner :Mr Naresh Kaushik, Advocate.

For the Respondents :Mr Ripu Daman Bhardwaj, CGSC
with Mr T.P. Singh, Advocate for R1.
Mr Sandeep Sethi, Senior Advocate with
Ms Kirti Mishra, Ms Apurva Upmanyu,
Advocates for R4/SAIL.
Mr Joseph Aristotle S., Advocate with
Ms Priya Aristotle, Mr Shikq P., Advocate
for R2 and R3 State of Karnataka.

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HON'BLE MR JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J

1. The petitioners have filed the respective petitions impugning a common order dated 07.05.2015 passed by the Central Government (hereafter 'the Mines Tribunal') rejecting the revision petitions filed by the petitioners under Section 30 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereafter 'the MMDR Act'). The petitioners had preferred the revision petitions before the Mines Tribunal impugning an order dated 08.09.2014 passed by respondent no.2 (Government of Karnataka) pursuant to a show-cause notice issued under Rule 26(2) of the Mineral Concession Rules, 1960 (hereafter 'the MC Rules'). The abovementioned orders dated 07.05.2015 and 08.09.2014 are, hereafter, referred to as the impugned orders.

2. In terms of the impugned order dated 08.09.2014, the Government of Karnataka has directed that the coordinates of the 140 hectares in the North East Block Range (NEB Range) Joga Village in Sanchur Taluk, Bellary District reserved in favour of respondent no.4 (hereafter 'SAIL'), be revised for issuance of a corrigendum under Section 17A(2) of the MMDR Act. It was further directed that the revised coordinates for the land reserved for SAIL as well as the applications of the petitioners, be determined on the basis of the boundaries of the existing lease in favour of M/s Chowgule and Company, as determined by Central Government Empowered

Committee (CEC). It was expressly directed that the earlier survey and demarcation done in respect of the leases of the petitioners stand nullified.

3. The petitioners are, essentially, aggrieved by the aforesaid directions, as the import of the impugned orders is to re-determine the area of the respective mining leases, which the petitioners claim, have been granted in their favour. This is so as it is apparent that revision of the coordinates for 140 hectares reserved in favour of SAIL would overlap with the leases decided to be granted to the petitioners.

4. Since, the impugned orders are common orders and the controversy involved in the present petitions is common, the petitions were heard together. For the sake of brevity, the facts as are relevant to W.P. (C) 5121/2015 are noticed for addressing the controversy raised in the present petitions. Shri B Rudragouda (the petitioner in W.P. (C) 5121/2015) is hereafter referred to as 'the petitioner', and the petitioner in W.P. (C) 6456/2015 is hereafter referred to as 'PM Mines'.

Factual Background

5. On 23.09.1963, the predecessor of M/s Chowgule & Co was granted mining lease for an area of approximately 459.73 hectares in Bellary District. On 09.02.1968, the said lease was transferred in favour of M/s Chowgule & Co (hereafter 'Chowgule & Co').

6. In 2002, Chowgule & Co surrendered an area of approximately

359.73 hectares (hereafter ‘the surrendered area’) out of its total mining lease area and retained an area of 100 hectares (hereafter ‘the retained area’).

7. On 18.08.2003, the petitioner filed an application for grant of mining lease in respect of Iron Ore to an extent of 1,777.0 Acres in North East Block (NEB) Range, Sandhur State forest, Sandhur Taluk, Bellary District, Karnataka. Thereafter, the Department of Mines and Geology (respondent no.3) and the Government of Karnataka decided to grant the mining lease to the petitioner over an extent of 68.31 hectares for a period of twenty years, which was the free/virgin area lying outside the surrendered area (the area surrendered by Chowgule and Co) and also outside the reserved Block No. 13/2 as notified by the State Government of Karnataka on 15.03.2003.

8. On 21.08.2007, respondent no.2 (Secretary (Mines, SSI and Textiles) Commerce & Industry Department, State of Karnataka) recommended the petitioner’s application for grant of mining lease for prior approval of the Central Government under Section 5(1) of the MMDR Act.

9. On 24.01.2007, SAIL applied for a mining lease in respect of 140 hectares within the surrendered area of Chowgule & Co. Respondent no.2 recommended the said proposal of SAIL for reserving the said area under Section 17(2) of the MMDR Act.

10. On 12.12.2007, the Central Government issued a letter and accorded its prior approval under Section 5(1) of the MMDR Act for

grant of mining lease to the petitioner.

11. The petitioner sought approval of its Mining Plan from the Indian Bureau of Mines, Ministry of Mines, Government of India. This was necessary to obtain the mining lease. On 27.01.2006, the Office of the Controller of Mines (South Zone) issued a letter approving the Mining Plan over an extent of 68.31 hectares of land in NEB Range, Sandhur Taluk, Bellary District in favour of the petitioner.

12. On 28.06.2007, the Ministry of Environment and Forests (MoEF) also accorded the Environmental clearance under the provisions of EIA Notification dated 14.09.2006 in favour of the petitioner.

13. On 24.01.2008, Government of Karnataka issued a notification under Section 5 of the MMDR Act sanctioning the Mining Lease in respect of Iron Ore for a period of twenty years over an extent of 68.31 hectares of land in NEB Range, Sandhur State Forest, Sandhur Taluk, Bellary District, Karnataka in favour of the petitioner.

14. The concerned authorities of respondent no.3, Forest Department & Revenue Department conducted joint survey on 17.04.2008, 20.04.2008 & 21.04.2008 with respect to the lease area under Rule 33 of the Mineral Concession Rules, 1960 (the MC Rules) and demarcated the said area in terms of the Joint Survey Report dated 06.06.2008 prepared by the Deputy Director of Mines & Geology, Hospet, Bellary District (respondent no.5). The lease area was

demarcated by taking into consideration the permanent boundary mark as GTS 972 and from the permanent boundary marks at Sy.No. 251 & 252 of Joga Village in Sanchur Taluk, Bellary District.

15. The lease land being a forest land, the petitioner filed an application before the Forest Department of Karnataka for obtaining the prior approval from the MoEF under Section 2 of the Forest Conservation Act, 1980. The said application is under consideration and had been kept pending in view of the confusion relating to moratorium imposed by the MoEF in Karnataka. Thus, the execution of the mining lease was kept pending.

16. On 21.10.2011, the Government of India issued a notification under Section 17A(1A) of the MMDR Act reserving 140 hectares of land in NEB Range, Sandhur Taluk, Bellary District in favour of SAIL. As per the notification, the area reserved for SAIL excluded the areas already granted under the prospecting license or mining lease and the area already granted to the petitioner, as it was already under a mining lease. The area reserved for SAIL was demarcated on the basis of GPS coordinates submitted by SAIL.

17. On 29.10.2012, SAIL issued a letter to respondent no.3 stating that on the basis of the CEC survey, it would confine its claim to 87.89 hectares within the reserved area of 140 hectares as the remaining the area was not suitable for scientific mining. Therefore, SAIL requested for survey and demarcation of the reduced area of 87.89 hectares as per the revised sketch under Rule 33 of the MC Rules. It also sought

notification of grant of mining lease in terms of the said survey and demarcation.

18. On 30.11.2012, SAIL issued another letter to respondent no.3 stating that there was some discrepancy in the revised sketch of reduced area of 87.89 hectares submitted on 29.10.2012, and therefore requested that the survey and demarcation be carried out as per SAIL applied area.

19. On 18.02.2013, respondent no.5 conducted the survey of the reserved area which was reduced to 87.89 hectares, and submitted a Survey Report to respondent no.3.

20. On 24.05.2013, the petitioner submitted a representation with respect to the area granted to the petitioner being adjacent to the reserved area for SAIL, and also appeared personally and submitted that any area to be considered in favour of SAIL has to be confined within the boundaries indicated under the GPS co-ordinates mentioned in the notification dated 21.10.2011.

21. On 11.07.2013, respondent no.3 addressed a letter to respondent no.2 with respect to the issue of grant of mining lease to SAIL under the notification dated 21.10.2011, and submitted a report prepared by it. By the said letter, it was pointed out that the SAIL's reserved area was located entirely within the surrendered area of Chowgule & Co. and that as a result of the redetermination of Chowgule & Co.'s retained area by CEC, the same was shifted to some extent into the surrendered area. Therefore, an area to the extent of 88.26 hectares

was free for grant in favour of SAIL inside the surrendered area of Chowgule & Co. According to the report, the entire area applied by SAIL was not exactly within the reserved area as notified on 21.10.2011 and that an extent of 9.64 hectares was outside the reserved area and was overlapping with the area granted to the petitioner. Thus, respondent no.3 recommended to the State Government for granting Mining Lease only to the extent of 88.26 hectares in favour of SAIL.

22. On 29.07.2013, the Under Secretary, Mines, Government of Karnataka (respondent no.2) accepted the aforesaid recommendation/proposal of respondent no.3 on behalf of the Secretary and advised the concerned officer to conduct the Survey and Demarcation of the area to the extent of 88.26 hectares.

23. On 08.11.2013, respondent no.2 issued a letter to respondent no.3 directing it to submit a sketch of the entire surrendered area of Chowgule & Co., and compare the same with reserved area of SAIL on the basis of the boundary points demarcated by CEC and to also conduct a fresh survey of the area claimed by SAIL. Pursuant to the said letter, a fresh survey and demarcation was conducted by respondent no.5 and National Institute of Technology, Karnataka (NITK).

24. On 27.01.2014, the petitioner issued a letter to respondent no.5 stating that the Survey and Demarcation, conducted by respondent no.5 and the team of NITK, was to be carried out in terms of the

notification dated 21.10.2011.

25. On 20.03.2014, the petitioner issued another letter to respondent no.5 objecting to the Survey and Demarcation conducted by respondent no.5, as the same was neither carried out in terms of the notification dated 21.10.2011 nor in accordance with the methodology prescribed in the letter dated 08.11.2013.

26. In March 2014, NITK submitted its fresh survey report on Survey and Demarcation of the reserved area of 140 hectares in NEB, Sandhur Taluk, Bellary District to respondent no.3. By the said report, it was concluded that the area granted to the petitioner fell within the surrendered area of Chowgule & Co.

27. On 07.03.2014, on perusal of the said report, respondent no.5 issued a letter to NITK calling upon it to mention the exact area available to SAIL.

28. On 11.03.2014, NITK replied to the letter dated 07.03.2016 issued by respondent no.5 enclosing a letter dated 06.03.2014, stating that a part of the area granted to the petitioner fell within the surrendered area of Chowgule & Co and, therefore, the petitioner's area be demarcated outside the surrendered area of Chowgule & Co.

29. On 20.03.2014, respondent no.3 issued a letter to respondent no.2 stating that as per the fresh survey report, there was an overlapping of the petitioner's area on the 140 hectares area reserved for SAIL.

30. On 23.05.2014, a show cause notice under Rule 26(1) of the MC Rules was issued to the petitioner calling upon the petitioner for an inquiry into as to why the Notification dated 24.01.2008 in favour of the petitioner should not be cancelled.

31. On 13.06.2014, upon receiving the show cause notice, the petitioner appeared before respondent no.2 and filed a statement of objections.

32. Respondent no.3 filed its reply to the objections raised by the petitioner stating that NITK had specifically stated that there was no overlapping between petitioner's area and the area of 140 hectares granted to SAIL based on the digitization of applied area sketches. Respondent no.3 also stated that overlapping was as per actual filed survey.

33. On 21.06.2014, SAIL also filed its reply to the objections raised by the petitioner, *inter alia*, contending that the objections raised by the petitioner were without any substance and were liable to be rejected. SAIL contended that according to the survey report filed by NITK, a part of the area surveyed and demarcated in favour of the petitioner lies within the surrendered area of Chowgule & Co. It was also contented by SAIL that the earlier report was manipulated by the petitioner in order to deprive SAIL of its designated mining area.

34. On 08.09.2014, respondent no.2 passed an order, whereby following directions were issued:-

- (i) To send revised coordinates to Government of India for issuing a corrigendum under Section 17A(2) of the MMDR Act keeping the coordinates of Chowgule & Co's retained area, which was determined by the CEC, as the base and the applied sketch of SAIL abutting the same.
- (ii) The CEC determined boundaries of Chowgule & Co's retained area would be the base for all survey and demarcation exercise in respect of the petitioner and the earlier survey and demarcation exercise would stand nullified.

35. Aggrieved by the aforesaid order passed by respondent no.2, the petitioner preferred a Revision Application dated 31.10.2014 under Section 30 of the MMDR Act read with Rule 54 of the MC Rules, praying for stay of the order dated 08.09.2014.

36. On 19.11.2014, the Ministry of Mines forwarded the Revision Application to respondent no.2 seeking its comments on the said application in terms of Rule 55(1) of the MC Rules. The Mines Tribunal rejected the application for interim relief.

37. Thereafter, the petitioner preferred a writ petition (bearing no. W.P.(C) 8775/2014) seeking direction to the Mines Tribunal to consider the Revision Application or grant an interim relief and stay of the order dated 08.09.2014. On 18.12.2014, this Court passed an order allowing the petition and directing the Mines Tribunal to consider the Revision Application preferred by the petitioner within a period of

three weeks from that date, while directing status quo to be maintained.

38. On 09.01.2015, the petitioner filed an application (bearing IA No. 1), wherein this Court directed the Mines Tribunal to decide the application within four weeks while maintaining status quo till the disposal of the application.

39. On 07.05.2015, the Mines Tribunal rejected the Revision Application and upheld the decision of respondent no.2 passed on 08.09.2014.

40. On 22.05.2015, the petitioner preferred the present petition before this Court. Thereafter, on 25.05.2015, the Coordinate Bench of this Court passed an order directing that any action taken pursuant to the order of the Mines Tribunal would be subject to the final outcome of the present petition.

41. Thereafter, the petitioner preferred an appeal bearing LPA No. 383/2015 against the order dated 25.05.2015. On 29.05.2015, the Division Bench of this Court disposed of the appeal directing the parties to the writ petition to maintain the status quo during the pendency of the petition.

Submissions

42. Mr S. Ganesh, learned Senior Counsel appearing on behalf of the petitioner (Sh B. Rudragouda) assailed the impugned orders on several grounds. First, he submitted that the impugned order dated

08.09.2014 passed by respondent no.2 is without jurisdiction, as the decision to grant the mining lease in favour of the petitioner had already been taken and the order dated 08.09.2014 amounted to a review of the order passed earlier, which was impermissible. Second, he submitted that the survey and demarcation report submitted by National Institute of Technology, Karnataka (NITK) pursuant to the survey conducted in March, 2014 was flawed and not in accordance with Rule 33 of the MC Rules. He submitted that SAIL had applied for reserving land in the surrendered area and the lease granted to the petitioner was in the virgin area. He pointed out that SAIL had also accepted that due to the boundaries of the existing lease of Chowgule & Co., as determined by CEC, the area available for SAIL had reduced and accordingly, SAIL had reduced its claim to 88.26 hectares after taking into account the boundaries determined by CEC. Pursuant to the aforesaid claim, survey and demarcation of the area available for SAIL was carried out and submitted to the Director Mines and Geology (DMG). The said report was accepted and DMG had recommended to respondent no.2 that an area of 88.26 hectares be granted in favour of SAIL.

43. Third, Mr Ganesh submitted that there were several errors in the impugned orders. He contended that the Mines Tribunal had erred in observing that the mining leases granted in favour of the petitioner had not attained finality. He submitted that a notification for grant of mining lease in favour of the petitioner had already been issued and execution of a lease deed was a mere ministerial act. He relied upon

the decision of the Supreme Court in *Gujarat Potteries Works v. B.P. Sood, Controller of Mining Leases for India & Ors.:1967 (1) SCR 695* in support of his contention. He further submitted that respondent no.2 had proceeded on an incorrect premise that the survey and demarcation done prior to the CEC survey had become invalid.

44. Mr Naresh Kaushik, learned counsel appearing for the P.M. Mines also advanced contentions similar to those advanced by Mr S. Ganesh. He also submitted that the impugned order dated 08.09.2014 passed by the respondent no.2 was not in conformity with Section 17A(1A) of MMDR Act. He submitted that the Central Government had also exercised its powers under Section 5(1) of the MMDR Act, and respondent no.2 could not make recommendations to nullify the approval granted under Section 5(1) of the MMDR Act.

45. Mr Sandeep Sethi, learned Senior Counsel appearing for SAIL countered the aforesaid submissions. In addition, they contended that the present petitions had become infructuous in view of the legislative amendments introduced in the MMDR Act by virtue of the Mines and Minerals (Development & Regulations) Amendment Act, 2015 (hereafter 'the 2015 Amendment Act'). It was submitted that by virtue of Section 10A of the MMDR Act as introduced with retrospective effect from 12.01.2015, all applications received prior to the commencement of the 2015 Amendment Act had been rendered ineligible.

46. Mr Sandeep Sethi contended that in absence of a registered

lease deed in favour of the petitioners, it was not open for them to claim that any lease had been granted in their favour. He further referred to Section 17A(1) of the MMDR Act and submitted that the said provision empowered the Central Government to reserve any area not held under any prospecting license or mining lease. He submitted that the mining lease could only be granted in accordance with Rule 31 of the MC Rules, which mandated that the lease deed be in Form K. He submitted that the Form clearly uses the words “hereby grants” and therefore, lease would be granted only once the said lease deed is executed in the said Form. He relied upon the decision of the Madhya Pradesh High Court in *Savita Rawat v. State of Madhya Pradesh & Ors.*: MANU/MP/00227/2016 and the decision of the Supreme Court in *Pallava Granite Industries (India) Private Limited v. Union of India and Others* : (2007) 15 SCC 30 in support of his contention.

Reasons and Conclusion

47. The first and foremost question to be addressed is whether the present petitions have been rendered infructuous by virtue of Section 10A as introduced in the MMDR Act. The said Section was introduced by virtue of the 2015 Amendment Act [Mines and Minerals (Development & Regulations) Amendment Act, 2015] with retrospective effect from 12.01.2015. The relevant extract of the said Section is set out below:-

“10A. (1) All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act,

2015, shall become ineligible.

(2) Without prejudice to sub-section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015:—

(a) xxxxx

(b) xxxxx

(c) where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfillment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this subsection except with the previous approval of the Central Government.”

48. In terms of Section 10A(1) of the MMDR Act as amended, all applications for mining leases received prior to 12.01.2015 (the date on which Section 10A came into force) were rendered ineligible for grant of a mining lease. Section 10A was part of a set of amendments that, *inter alia*, brought about a paradigm shift in the methodology of granting mining leases. In terms of Section 11 of the MMDR Act as amended, mining leases can be granted only by an auction. 12.01.2015

– the date with effect from which the 2015 Amendment Act came into force – is enacted as the cutoff date, and all applications received prior to the said date are rendered ineligible. However, sub-section (2) of Section 10A of the MMDR Act carves out certain exceptions.

49. Mr Naresh Kaushik had relied upon the decision of the Supreme Court in *Bhushan Power & Steel Limited & Ors v. S.L. Seal, Additional Secretary (Steel and Mines), State of Orissa & Ors.* : (2017) 2 SCC 125 in support of his contention that by virtue of the notification issued by respondent no.2, rights for a mining lease had accrued in favour of the petitioners even though the necessary formalities were required to be executed, and therefore the case of the petitioners fell within the exception of clause (c) of Section 10A(2) of the MMDR Act.

50. Mr S. Ganesh had contended that Section 10A was not applicable, as according to him, respondent no.2 had already granted a lease in favour of the petitioner. He submitted that Section 10A would be applicable only in cases where applications for grant of lease were pending. He had relied on the case of *Gujarat Pottery Works (supra)* wherein the Court had held that “*it is really the sanctioning of a lease which amount to granting of the lease. Execution of the formal lease is only a compliance with the legal requirements to make the grant legally enforceable*”.

51. The contention that the petitioner was granted the lease in terms of notification issued even though the Lease Deeds had not been

executed, is unpersuasive. Execution of a Lease Deed is not an empty formality; no interest in the immovable property is created prior to registration of the Lease Deed. Rule 31 of the MC Rules expressly provides that an order granting lease can be revoked if the Lease Deed is not executed on account of the fault of the applicant. A decision to grant lease is not a grant of lease.

52. It is also relevant to note that Section 8 of the MMDR Act specifies the maximum period for which a lease can be granted. Further, Rule 31 of the MC Rules expressly provides that the period of lease shall commence with the registration of the Lease Deed. Thus, this Court does not find any merit in the contention that lease of the lands in question stood granted to the petitioner. Clearly, no interest in the lands in question was created in favour of the petitioner.

53. In *Gujarat Potteries Works* (*supra*), the mining lease was executed on 03.11.1951 in execution of a decree for specific performance. The agreement to lease was entered into much prior to the said date – on 02.12.1939. The question that fell for consideration before the Court was whether the mining lease was an existing mining lease as defined in Rule 2(c) of the Mining Leases (Modification of Terms) Rules, 1956. In terms of the said Rule, “an existing mining lease” was defined to be a lease which was granted prior to 25.10.1949. In that case, the Court noted the contents of the agreement of the lease expressly stipulated that the possession of the land had been granted to the lessee and there was a clear statement of handing

over the property on “lease to excavate white clay”. It was also stipulated that the lessor would “execute a proper lease” and the lessee would have to incur all expenses thereof. It is in the context of these facts that the Court held that the deed of agreement entered into in 1939 really granted a lease to the lessor and only the mere execution of a proper lease was put off to a later date. The Court was of the view that the execution of a lease in November, 1951 was only to give a formal shape to the lease granted much earlier.

54. Clearly, in a given case where possession of the land has been granted and there is an unequivocal and unconditional expression of granting a lease, which has been agreed to by the lessee, it would be erroneous to not accept that a right for a lease had accrued in favour of the lessee even though formal lease deed has not been executed. Plainly, the lessee would be entitled for seeking a specific performance in such a case.

55. The decision in *Gujarat Potteries Works (supra)* would have little application in cases where, in fact, the lease has not been granted.

56. In *Pallava Granite Industries (India) Private Limited v. Union of India and Others: (2007)15 SCC 30*, the Supreme Court considered the question whether a Government Order (GD No. 1290 issued by the State Government of Andhra Pradesh) was an order granting lease. In that case, the State Government of Andhra Pradesh had issued the Government order in question for leasing out fifteen acres, each to the four firms as stated in the said order, on terms and

conditions as specified in another Government Order, subject to the modification that the lease would be for a period of 10 years and the lessee shall pay a sum of ₹600/- per acre per annum for the first five years and ₹900/- per acre per annum for the remaining 5 years. The concerned District Collector was directed to make the proper allotment keeping in view the principles of continuity. Subsequently, the State Government had cancelled the said Government order and thereafter passed a separate order reserving certain areas for exploitation by a State owned Corporation (Andhra Pradesh Mineral Development Corporation Limited).

57. The Supreme Court, *inter alia*, examined the question whether the Government Order was a grant of lease in favour of the concerns named therein. The Supreme Court held that the Government order was not “a grant but at the highest a decision of the State Government to execute a lease in favour of the appellants for mining purposes”. In the present case also, the orders passed by respondent no.2 cannot be construed as grant of lease but a decision to grant lease in favour of the petitioners.

58. In ***Savita Rawat v. State of Madhya Pradesh & Ors.*** (*supra*), the Division Bench of the Madhya Pradesh High Court had referred to the decision in ***Gujarat Potteries Works Private Limited*** (*supra*) and held that the observations made in the said case (which are relied upon by the petitioner) were made in the context of the facts in that case. The Court had further held that unless an instrument as contemplated under Rule 7A, 15 or 31 of the MC Rules is not executed, neither the

possession nor a mining lease can be stated to have been granted.

59. In the facts of the present case, the notification issued by respondent no.2 sanctioning the mining lease in favour of the petitioner is not unconditional, but subject to various terms and conditions as appended to the said notification. The notification also expressly provided that “*sanction of this mining lease is subject to the necessary clearances like forest (conservation) Act, 1980 and Rules made thereunder.*” In the given facts, the contention that the notifications in question granted a lease in favour of the petitioner cannot be accepted.

60. Having stated the above, there can be little doubt that certain rights had accrued in favour of the petitioners. Subject to the petitioner complying with the terms and conditions as stipulated, the petitioner was entitled to seek execution of a lease deed in terms of Rule 31 of the MC Rules. Undisputedly, respondent no.2 was not required to issue any further orders or any notification for grant of lease in favour of the petitioner. The only action that remained pending was execution of a formal lease deed, which of course would subject to the petitioner complying with the conditions of the order sanctioning the lease in its favour.

61. In terms of the MC Rules – which were in force at the material time – an application for a mining lease was required to be made to the State Government in Form I. On receipt of an application for mining lease, the State Government was required to take a decision to grant a

precise area to the applicant. Rule 22(4) of the MC Rules is relevant and is set out below:-

“(4) On receipt of the application for the grant of a mining lease the State Government shall take decision to grant precise area for the said purpose and communicate such decision to the applicant. On receipt of communication from the State Government of the precise areas to be granted, the applicant shall submit a mining plan within a period of six months or such other period as may be allowed by the State Government, to the Central Government for its approval. The applicant shall submit the mining plan, duly approved by the Central Government or by an officer duly authorised by the Central Government, to the State Government to grant mining lease over that area.

62. In the present case, a decision in terms of Rule 22(4) of the MC Rules was taken by respondent no.2 and the decision to grant a precise area had been communicated to the petitioner. In terms of Section 5(1) of the MMDR Act, no lease for a major mineral can be granted without the prior permission of the Central Government and this condition was also complied with.

63. Finally, on 24.01.2008, respondent no. 2 made an order under Section 5 read with Section 8 of the MMDR Act for grant of a mining lease, albeit, subject to certain conditions.

64. At this stage, it is relevant to refer to Rule 33 of the MC Rules as in force at the material time, and the same is set out below:-

“33. **Survey of the area leased.**—When a mining lease is granted by the State Government,

arrangements shall be made by the State Government at the expense of the lessee for the survey and demarcation of the area granted under the lease.”

65. Further, admittedly, in terms of Rule 33 of the MC Rules, the survey of the lands in question was conducted on 17.04.2008, 20.04.2008 and 21.04.2008 at the cost of the petitioner.

66. In terms of Rule 31 of the MC Rules, respondent no.2 was required to execute a lease deed in Form K within a period of six months from the date of the order or within such further period as the respondent no.2 may allow him in this behalf. Rule 31 of the MC Rules is relevant and is set out below:-

“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.”

67. The MC Rules were repealed in terms of Rule 55 of The Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 (hereafter ‘the 2016 Rules’). In terms of Sub-rule (1) of Rule 55 of the 2016 Rules, the MC Rules ceased to be in force in respect of all minerals for which the 2016 Rules are applicable. The saving provision is limited to the things done or omitted to be done before such commencement. Rule 55(1) of the 2016 Rules is set out below:-

“55. Repeal and saving.- (1) On the commencement of these rules, the Mineral Concession Rules, 1960 shall cease to be in force with respect to all minerals for which the Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concession Rules, 2015 are applicable, except as regards things, done or omitted to be done before such commencement.”

68. Thus, although the Mining lease had not been executed, several acts towards grant of mining lease had been done in conformity with the MC Rules and the said acts were saved by virtue of Rule 55 of the 2016 Rules. However, the same are also subject to the express provisions of Section 10A of the MMDR Act.

69. In order to proceed further, it would be relevant to examine the status of the petitioner’s application for grant of a mining lease. In terms of Section 10A(1) of the MMDR Act, all applications received prior to the commencement of the 2015 Amendment Act became ineligible. In the present case, the application filed by the petitioners had been processed and a decision on the same was taken by

respondent no.2 in terms of Rule 22(4) of the MC Rules. Further, respondent no.2 had also notified its order for granting a lease in favour of the petitioner. As noticed above, Rule 31(1) of the MC Rules requires for a lease deed to be executed within a period of six months of the order for grant of a mining lease. The opening sentence of Sub-Rule 31(1) of the MC Rules clearly indicates that the order for grant of mining lease referred to therein is on an application for grant of mining lease. It would, thus, appear that with the State Government making an order on an application for a mining lease, the application had worked its purpose. Plainly, an application for grant of a mining lease can either culminate in an order granting the same or an order declining the application.

70. It is relevant to note that sub-rules (1) & (3) of Rule 24 of the MC Rules provided for a deemed refusal if no decision was taken. However, the said sub-rules were deleted with effect from 07.01.1993.

71. Although the State Government of Karnataka had passed an order on the petitioner's application, it cannot be stated that the application stood terminated as the final action of execution of a lease deed has not fructified.

72. The provisions of Section 10A(1) of the MMDR Act must be read in a purposive manner keeping in view the object of enacting the said provision. As observed earlier, Section 10A is a part of a set of amendments which were introduced in the MMDR Act to bring out a change in the methodology of granting mining leases. The principal

object of Section 10A(1) was to provide a cut-off date for the change in the method of granting mining leases.

73. In *Bhushan Power & Steel Limited & Ors v. S.L. Seal, Additional Secretary (Steel and Mines), State of Orissa & Ors.*(supra), the Supreme Court had examined the amendments made in the MMDR Act by virtue of the 2015 Amendment Act including the provisions of Section 10A. At this stage, it would be relevant to refer to certain extracts of the said decision, which are set out below:

“21. These amendments brought in vogue: (i) auction to be the sole method of allotment; (ii) extension of tenure of existing lease from the date of their last renewal to March 31, 2030 (in the case of captive mines) and till March 31, 2020 (for the merchant miners) or till the completion of renewal already granted, if any, or a period of 50 years from the date of grant of such lease; (iii) establishment of District Mineral Foundation for safeguarding interest of persons affected by mining related activities;(iv) setting up of a National Mineral Exploration Trust created out of contributions from the mining lease holders, in order to have a dedicated fund for encouraging exploration and investment; (v) removal of the provisions requiring 'previous approval' from the Central Government for grant of mineral concessions in case of important minerals like iron ore, bauxite, manganese etc. thereby making the process simpler and quicker;(vi) introduction of stringent penal provisions to check illegal mining prescribing higher penalties up to Rs.5 lakhs per hectare and imprisonment up to 5 years; and (vii) further empowering the State Government to set up Special Courts for trial of offences under the Act.

22. Newly inserted provisions of the Amendment Act, 2015 are to be examined and interpreted keeping in view

the aforesaid method of allocation of mineral resources through auctioning, that has been introduced by the Amendment Act, 2015. Amended Section 11 now makes it clear that the mining leases are to be granted by auction. It is for this reason that sub-section (1) of Section 10A mandates that all applications received prior to January 12, 2015 shall become ineligible. Notwithstanding, sub-section (2) thereof carves out exceptions by saving certain categories of applications even filed before the Amendment Act, 2015 came into operation. Three kinds of applications are saved.

22.1. First, applications received under Section 11A of the Act. Section 11A, under new avatar is an exception to Section 11 which mandates grant of prospecting license combining lease through auction in respect of minerals, other than notified minerals. Section 11A empowers the Central Government to select certain kinds of companies mentioned in the said Section, through auction by competitive bidding on such terms and conditions, as may be prescribed, for the purpose of granting reconnaissance permit, prospecting license or mining lease in respect of any area containing coal or lignite. Unamended provision was also of similar nature except that the companies which can be selected now for this purpose under the new provision are different from the companies which were mentioned in the old provision. It is for this reason, if applications were received even under unamended Section 11A, they are saved and protected, which means that these applications can be processed under Section 11A of the Act.

22.2. Second category of applications, which are kept eligible under the new provision, are those where the reconnaissance, permit or prospecting license had been granted and the permit holder or the licensee, as the case may be, had undertaken reconnaissance operations or prospecting operations. The reason for protecting this class of applicants, it appears, is that such applicants, with

hope to get the license, had altered their position by spending lot of money on reconnaissance operations or prospecting operations. This category, therefore, respects the principle of legitimate expectation.

22.3.Third category is that category of applicants where the Central Government had already communicated previous approval under Section 5(1) of the Act for grant of mining lease or the State Government had issued Letter of Intent to grant a mining lease before coming into force of the Amendment Act, 2015. Here again, the *raison detre* is that certain right had accrued to these applicants inasmuch as all the necessary procedures and formalities were complied with under the unamended provisions and only formal lease deed remained to be executed.”

74. In view of the above, it is clear that the application filed by the petitioner cannot be considered as terminated. Therefore, by virtue of Section 10A(1) of the MMDR Act, the said application has now been rendered ineligible for grant of a mining lease subject to the exceptions stipulated in Section 10A(2) of the MMDR Act. This leads to the question whether the petitioner’s application falls within the exception of Section 10A(2)(c) of the MMDR Act.

75. It is apparent from the plain reading of Section 10A of the MMDR Act that the applications submitted prior to 12.01.2015 can be classified into two categories. The first category comprise of applications that fall within the scope of Section 10A(1) of the MMDR Act, without considering the exclusion under Section 10A(2) of the MMDR Act. These applications would include all applications, which have not resulted in execution of the mining lease. The secondcategory comprises of applications, which have fructified in execution of a

mining lease prior to the 2015 Amendment Act coming into force. Out of the first category – applications that have been rendered ineligible – certain categories of applications as specified under 10A(2) of the MMDR Act, are excluded from the rigor of the provisions of Section 10A(1) of the MMDR Act.

76. The three kind of applications that fall within the exceptions carved under Section 10A(2) of the MMDR Act have been briefly explained by the Supreme Court in ***Bhushan Power & Steel Limited & Ors.*** (*supra*) and the relevant passages in this regard are quoted herein before. As explained by the court, the applications falling within the scope of clause (c) of Section 10A(2) of the MMDR Act consisted of applicants where “*certain right had accrued to these applicants inasmuch as all the necessary procedures and formalities were complied with under the unamended provisions and only formal lease deed remained to be executed.*”

77. Concededly, the petitioner had acquired certain rights as the Central Government had granted the *previous approval* under Section 5 of the MMDR Act and the State Government had decided to grant a lease, the petitioner has to be considered falling within the exception to 10A(1) of the MMDR Act. Thus, there can be little doubt that the petitioner’s case falls under clause(c) of Section 10A(2) of the MMDR Act. In this case, both the conditions as specified in clause (c) are fulfilled: (i) the Central Government has granted the *previous approval* under Section 5(1) of the MMDR Act; and (ii) the State Government has evinced its unequivocal intention to grant the lease is satisfied.

78. In *Bhushan Power & Steel Limited & Ors (supra)*, the Supreme Court had rejected the contention that the letter relied upon by the petitioners in that case was a letter of intent, as the previous approval of the Central Government under Section 5(1) of the MMDR Act had not been granted. The Court held that such previous approval of the Central Government was essential and unless such approval was available, the State Government could not communicate its intention to enter into any contract. The Supreme Court had also clarified that the position would have been different if the letter issued by the State Government in that case evincing its intention to grant a mining lease, had been issued after previous approval of the Central Government. In the present case, the order for grant of mining lease had been issued after the previous approval of the Central Government.

79. It is also relevant to note that Section 10A(2)(c) of the MMDR Act expressly clarify that the letter of intent, as contemplated under the said provisions, is a letter of intent in writing “*by whatever name called*”. Even if the intention of respondent no.2 to grant a mining lease is couched as a notification or as an order, the same has to be construed as a letter of intent as contemplated under Section 10A(2)(c) of the MMDR Act.

80. The next aspect to be examined is whether the applications preferred by the petitioners can no longer fructify as the mining lease has not been executed within a period of two years from the commencement of the 2015 Amendment Act, as mandated under Clause (c) of Section 10A(2) of the MMDR Act. Section 10A(2)(c) of

the MMDR Act is couched in affirmative words; it mandates that the mining leases to be executed within the period of two years in pursuant to the applications that fall within the said exception contained therein.

81. At this stage, it is relevant to note that the 2015 Amendment Act also amended Section 13 of the MMDR Act, to expressly enable the Central Government to make Rules in regard to some of the matters relating to the substantive amendments introduced in the MMDR Act. The Central Government has made the 2016 Rules in exercise of powers under Section 13 of the MMDR Act, which have come into force with effect from 04.03.2016.

82. As noticed above, the MC Rules stand repealed by virtue of Rule 55 of the 2016 Rules. With the repeal of the MC Rules, Rule 31 of the MC Rules – which provides for execution of the Lease Deed in Form K – no longer survives. Thus, with effect from 04.03.2016, the Mining Leases relating to applications made prior to 12.01.2015 can be executed only in accordance with the 2016 Rules in the format as specified in Schedule VII to the said Rules. Chapter II of the 2016 Rules relates to ‘rights of existing holders of mineral concessions’ and Chapter III relates to ‘mineral concessions granted through auction’.

83. Apart from Rule 8 of the 2016 Rules, there is no other provision for execution of Mining Leases in respect of persons who had acquired any right for the same prior to 12.01.2015.

84. In this regard, the respondents had also referred to Rule 8(4) of the 2016 Rules, which expressly provides that if the lease is not

registered on or before 11.01.2017, the right of an applicant for grant of a mining lease under Clause (c) of sub-section 10A(2) of the MMDR Act would be forfeited.

85. Rule 8 of the 2016 Rules is set out below:-

“8. Rights under the provisions of clause(c) of sub-section (2) of section 10A.-

(1) The applicant in whose favour:

(a) the State Government has issued a letter of intent (by whatever name called) in writing before January 12, 2015, for grant of a mining lease for minerals not specified in the First Schedule to the Act; or

(b) the Central Government has communicated the previous approval in writing before January 12, 2015, under sub-section (1) of section 5, for grant of a mining lease for minerals specified in Part C of the First Schedule to the Act,

shall submit a letter of compliance to the State Government, of the conditions mentioned in the letter of intent or the conditions mentioned in the previous approval granted by the Central Government, as the case may be; and the State Government shall send an acknowledgement of receipt of the letter of compliance to the applicant in Schedule II within a period of three days of receipt thereof.

(2) After receipt of letter of compliance under sub-rule (1), the State Government shall issue an order for grant of the mining lease within a period of sixty days from the date of receipt of such letter subject to verification of fulfillment

of the conditions mentioned in the letter of intent or previous approval of the Central Government, as the case may be:

Provided that in case the conditions as mentioned in the (i) letter of intent issued by the State Government, or (ii) previous approval granted by the Central Government are not fulfilled, the State Government shall, after giving the applicant an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant within a period of sixty days from the date of receipt of letter of compliance, refuse to grant a mining lease for non-compliance of conditions mentioned in the letter of intent or the previous approval of the Central Government, as the case may be.

(3) Upon issuance of an order of grant of mining lease under sub-rule (2), the applicant shall:

(a) furnish a performance security to the State Government in the form of a bank guarantee in the format specified in Schedule IV or as a security deposit for an amount equivalent to 0.50% of the value of estimated resources, which may be invoked by the State Government as per the terms and conditions of the Mine Development and Production Agreement, published by the Government of India in the Ministry of Mines, vide Part I, Section-I of the Gazette of India, dated the 2nd July, 2015, and the mining lease deed. The performance security shall be adjusted every five years to correspond to 0.50% of the reassessed value of estimated resources; and

(b) sign a Mine Development and Production Agreement with the State Government in the

format specified by the Central Government after compliance of conditions specified in this sub-rule.

(4) Where an order for grant of mining lease has been issued under sub-rule (2), the mining lease shall be executed with the applicant in the format specified in Schedule VII and registered on or before 11th January, 2017, failing which the right of such an applicant under clause (c) of sub-section (2) of section 10A for grant of a mining lease shall be forfeited and in such cases, it would not be mandatory for the State Government to issue any order in this regard.

(5) The State Government may, for reasons to be recorded in writing and communicated to the applicant, reduce the area applied for at the time of grant of the mining lease.

(6) The date of the commencement of the period for which a mining lease is granted shall be the date on which a duly executed mining lease deed is registered.”

86. It is apparent from the plain reading of Clause (c) of 10A(2) of the MMDR Act that the intention of the Parliament while enacting the said clause was to ensure that all pending applications which fall within the exception of the said Clause – cases where the applicants have already acquired certain rights by virtue of grants of letter of intent or previous approval of the Central Government – are closed within a period of two years by grant of a mining lease.

87. In terms of Rule 31 of the MC Rules, a lease is required to be executed within a period of six months of the order for grant of such

lease. As discussed above, in the present case, an order for grant of lease had already been made and, therefore, a lease in favour of the petitioner was required to be executed within a period of six months or such further time as the State Government may allow in this respect. This discretion to extend the time for execution of the lease stood curtailed by the provisions of Section 10A(2)(c) of the MMDR Act. It was, thus, incumbent on respondent no.2 to proceed ahead with the execution of the mining lease if all conditions have been complied with. It is also relevant to note that Rule 31 of the MC Rules also enabled the State Government to revoke the order for granting lease in the event the lease deed is not executed on account of a default on the part of the applicant. Thus, if it is found that the conditions as stipulated in the order communicating the decision to grant a mining lease had not been complied with, respondent no.2 would be well within its right to revoke the said order.

88. The plain reading of Sub-rule (1) of Rule 8 of the 2016 Rules indicates that an applicant is required to send a letter of compliance to the State Government indicating that it has complied with the conditions as mentioned in the letter of intent or the conditions in the approval granted by the Central Government. The State Government is required to issue an order for grant of mining lease within a period of sixty days from the date of receipt of such letter subject to verification of the fulfillment of the conditions mentioned in the letter of intent or the previous approval granted by the Central Government. In terms of Sub-rule (3) of Rule 8, an applicant is required to furnish a

performance security to the State Government and assign a Mine Development and Production Agreement with the State Government upon issuance of an order of grant of mining lease.

89. Sub-Rule (4) of Rule 8 of the 2016 Rules makes it explicitly clear that where an order for grant of mining lease is issued under sub-rule (2), the mining lease shall be executed with the applicant in the format specified in Schedule VII of the 2016 Rules and registered on or before 11th January, 2017, failing which the right of such an applicant under clause (c) of sub-section (2) of Section 10A of the MMDR Act for grant of a mining lease shall be forfeited.

90. Rule 8(4) of the 2016 Rules must be read in a restrictive manner and it could apply only in cases where delay in execution of the mining lease is not on account of the default or delay on the part of the State Government. The said clause is in the nature of a forfeiture clause and, therefore, would apply only in cases where delay in execution of the mining lease is attributable to the applicant or in cases where despite steps on part of both the parties the lease is not executed before the stipulated date.

91. In the present case, the order sanctioning the lease was not unconditional and the petitioner was required to obtain “*necessary clearances like forest (conservation) Act, 1980 and Rules made thereunder*”. Admittedly, all the clearances have not been obtained. And, therefore, in terms of Rule 8(4) of the 2016 Rules, the petitioner’s right for a Mining Lease is curtailed.

92. The amendments made in the MMDR Act by the 2015 Amendment Act, which came into force on 12.01.2015, and 2016 Rules framed thereafter, clearly leave certain gaps in the statutory framework. The facts in the present case would be required to be filled up by the Courts. This case also brings into focus some of the said gaps. The scheme under the MC Rules is materially different from the 2016 Rules. Applications for mining lease were required to be made under Rule 22(1) of the MC Rules. The said applications were required to be accompanied by a non-refundable fee and other necessary documents specified in sub-rule (3) of Rule 22 of the MC Rules. Sub-rule (4) of Rule 22 of the MC Rules required the State Government to take a decision to grant any precise area for the purposes of mining lease on receipt of an application. In cases where approval of the Central Government was required (as in the case of major minerals), the same was required to be obtained through the State Government in terms of Rule 63 of the MC Rules. There is no specific provision which provides for issuance of an order for grant of a mining lease. However, it is apparent from the plain language that where such a decision was made, the same would be required to be communicated to the applicant, and on receipt of such communication, the applicant was required to submit a mining plan to the State Government for its approval. In the event, the State Government was not inclined to grant a mining lease, it was required in terms of Rule 26 of the MC Rules to communicate its decision in writing after affording the applicant an opportunity to be heard.

93. In terms of Rule 31 of the MC Rules, a lease deed was required to be executed in Form K within a period of six months from the order for the grant of a mining lease. The language of Rule 31 of the MC Rules also made it explicitly clear that such an order was required to be passed.

94. By virtue of Section 10B of the MMDR Act, introduced by the 2015 Amendment Act, grant of a mining lease in respect of a notified mineral could only be granted through auction.

95. Sub-section (1) of 10B of the MMDR Act expressly provides that provisions of Section 10B are not applicable to causes covered under Section 10A or 17A of the MMDR Act.

96. In the present case, the mining lease has not been executed. With the repeal of the MC Rules, the mining lease cannot be executed as required under the said Rules. The mining leases under the 2016 Rules are to be executed in a separate form (as specified in Schedule VII to the 2016 Rules). The same is applicable only in cases specified in Rule 8 of the 2016 Rules or in cases where the mining lease has been awarded in an auction.

97. It was contended on behalf of the petitioner that Rule 8 of the 2016 Rules is inapplicable as the lease has already been granted in favour of the petitioner. As discussed above, this court finds it difficult to accept the said contention. It was next contended that the Rule 8 cannot apply as no specific order has been passed under Rule 8(1) or 8(2) of the 2016 Rules and given the history of the case, there was no

scope of any such order to be passed. Whilst it is correct that the facts of the present case do not present a perfect fit within the statutory scheme of Rule 8 of the 2016 Rules, there is no other provision under which a mining lease can be executed in favour of the petitioner. And, the 2016 Rules have not been challenged in this petition.

98. This Court is of the view that any ambiguity in this case must be resolved keeping in view the principal objective of the 2015 statutory amendments. As noted hereinbefore, the principal objective of the said amendments was to shift to a transparent regime of awarding mining leases by an auction. A period of two years was envisaged to close all pending cases where certain rights had been created. There is no ambiguity in the legislative mandate that no leases are to be executed after the cut-off date and the applicants must compete in an open auction to secure a mining lease. Keeping that in view, it is difficult to accept that any right so survives with the petitioner for compelling the State Government of Karnataka to execute a mining lease in its favour.

99. Having stated above, it is not required to examine the controversy relating to the merits of the impugned orders. However, this Court had heard submissions with regard to the said controversy and, therefore, for the sake of completeness considers it apposite to address the said dispute as well.

100. The principal contention advanced on behalf of the petitioners was that respondent no.2 did not have any power to pass any order under Rule 26(1) of the MC Rules and the impugned order dated

08.09.2014 amounted to reviewing the order, which according to the petitioner, was impermissible. Second, the decision to nullify the survey and demarcation done in respect of the mines to be granted to the petitioner, and to once again conduct a survey and demarcation, was premised on the assumption that the coordinates of the 'surrendered area' had also changed in view of the boundaries of the existing mining lease available with Chowgule & Co., as determined by the CEC. It was contended on behalf of the petitioners that the determination of the existing boundaries of the existing mining lease with Chowgule & Co did not affect the demarcation of the surrendered area and did not necessitate fresh determination of the boundaries of the mines allotted to the petitioners.

101. The contention that the impugned order dated 08.09.2014 was passed without jurisdiction, is unmerited. The said contention is premised on the basis that the mining lease had been granted to the petitioners. As noticed above, the said contention is erroneous. In the case of the petitioner, the Notification dated 24.01.2008 indicated that respondent no.2 had accorded "sanction for grant of a mining lease" in favour of the petitioner. The sanction for grant of mining lease could not be equated with a grant of a lease. The rights of the petitioner for a mining lease remain inchoate pending compliance with the condition to obtain the necessary clearance. In the case of P. M. Mines, it does not appear that any notification similar to the Notification dated 24.01.2008 was issued. However, there is no dispute that respondent no.2 had decided to grant a mining lease in favour of PM Mines and

the approval of the Central Government in this regard was sought and was granted.

102. As noticed above, in terms of Rule 22(1) of the MC Rules, an application for grant of mining lease was required to be made in Form-I. In terms of Rule 22(4) of the MC Rules, the State Government was required to take a decision to grant precise area for the purposes of a mining lease. It is not disputed that in these cases, such a decision was taken by respondent no.2. Rule 26 of the MC Rules provides for the procedure with respect to refusal for an application for grant or renewal of mining lease. Clearly, in cases where a decision to grant mining lease is taken by the State Government, the question of refusal to grant such lease under Rule 26 of the MC Rules does not arise. The orders, as contemplated under Rule 22(4) and Rule 26 of the MC Rules, are orders on the application filed for grant of mining lease. Plainly, such applications can either be granted or refused. Thus, there is merit in the contention that any proceedings under Rule 26(1) of the MC Rules by respondent no.2 would amount to reviewing the decision taken earlier. It is also relevant to mention that Sub-rule (1) of the Rule 24 of the MC rules required that an application or mining lease be disposed of within a period of nine months from the date of its receipt. Sub Rule (3) of Rule 24 of the MC Rules further provided that if the application is not disposed of within the period as specified, it shall be deemed to have been refused. Sub Rule (1) and (3) of Rule 24 of the MC Rules were repealed by a notification dated 07.01.1993. Thus, there was now no period contemplated for disposal of an

application and further there is no provision for a deemed refusal. The application, thus, would remain alive till the mining lease is granted or is refused.

103. In the facts of the present case, order for refusing grant of mining lease in terms of Rule 26 of the MC Rules would amount to review of a decision taken earlier. The contention that respondent no.2 could not review such a decision, is unmerited. The decision to grant a mining lease is an administrative decision and respondent no.2 would always have the right to review the same in public interest. In ***Pallava Granite Industries (India) Private Limited*** (*supra*), the Supreme Court rejected the contention that a decision to grant the mining lease could not be cancelled. It was held that even if the order was considered as a grant of mining lease, such a grant could not fetter or hamper any executive decision to revoke the same in public interest. In the present case, a mining lease had not been granted and the rights of the petitioners remain inchoate. Respondent no.2 is not fettered in any manner from reviewing the decision to grant a mining lease, provided there was sufficient reason to do so.

104. Although, respondent no.2 had already taken a decision to grant mining lease in favour of the petitioners since the same was sought to be reviewed, respondent no.2 had considered it apposite to issue a notice as required under Rule 26(1) of the MC Rules to afford the petitioners an opportunity to be heard. This Court finds no infirmity with this procedure.

105. Having stated the above, it is relevant to note that respondent no.2 had not revoked his decision to grant the mining leases in favour of the petitioners. By the impugned order, respondent no.2 has merely directed that resurvey and demarcation be done with respect to the mines to be leased to the petitioners and SAIL, and that such demarcation be done on the basis of the coordinates of the existing lease of Chowgule & Co. as determined by the CEC.

106. Admittedly, the area to be leased to the petitioner's virgin area, was outside the surrendered area. The area reserved for SAIL was within the surrendered area and, therefore, there is no question of overlap between the two areas. This is a common ground and there is no dispute in this regard. However, a controversy has now arisen as to the coordinates of the surrendered area. Clearly, respondent no.2 would have the jurisdiction to direct a demarcation and survey to resolve the controversy and its decision to do so cannot be held to be without jurisdiction. Further, since the decision to grant a mining lease in favour of the petitioner had not fructified, respondent no.2 would also have the jurisdiction to review the decision if the results of demarcation and survey indicate that a mining area on the ground is not available to be granted to the petitioner.

107. At this stage, it is also relevant to note that respondent no.2's stand is that even if the coordinates are demarcated, area to be allotted to PM Mines would not be affected as the same is still a virgin area and there is no lease granted with regard to the neighboring area and, therefore, there is no question of overlap of the area leased to PM

Mines. However, if the area awarded to the petitioner (B. Rudragouda) is reviewed on account of change in the coordinates, it would overlap the mining lease granted to Shri Rangangouda (ML No.2549). It is stated on behalf of respondent no.2 that the said overlap would be to the extent of 6.45 hectares and respondent no.2 proposed to reduce the mining lease area granted to the petitioner to that extent, but there would be no question of re-determining the boundaries of other areas.

108. It is clear from the above that it is not the decision of respondent no.2 to decline the applications filed by the petitioners but to adjust the area allotted to them on account of the change in the boundaries.

109. The next question to be addressed is whether the decision of respondent no.2, that the boundaries of the surrendered area have to be re-determined on the basis of the boundaries of the existing lease in favour of Chowgule & Co., is erroneous. Respondent no.2 has proceeded on the basis that once a boundary of an existing mining lease of Chowgule & Co. have been determined by CEC, the boundaries, all survey and demarcation in the area should be in conformity with the boundaries of the area currently held by Chowgule & Co. According to respondent no.2, a change in coordinates of the existing lease of Chowgule & Co. would necessitate re-determination of the boundaries of the surrendered area.

110. In this regard, it is relevant to note that the Supreme Court had appointed the Central Empowered Committee (CEC) to submit a report on the allegations of illegal mines in Bellary region of the State

of Karnataka. The initial report submitted by CEC indicated that there was illegal mining on a large scale. In view of the report so submitted, the Supreme Court by an order dated 29.07.2011 passed in the ***State of A.P. & Ors. v. Obulapuram Mining Co. (P) Ltd. & Ors.: (2011) 12 SCC 491*** imposed a complete ban on mining in the district of Bellary District. Thereafter, the said ban was also extended to the mining operations in the district of Tumkur and Chitradurga by orders passed in ***Samaj Parivartana Samudaya v. State of Karnataka & Ors.:(2013) 8 SCC 154.***

111. The report dated 18.12.2008 of the Karnataka Lokayukta, *inter alia*, indicated that 1081.40 hectares of forest area was under illegal mining/encroachment. Further, the material place on record also substantiated the allegation that there were large scale encroachments into forest areas. In view of the above, the Supreme Court passed an order dated 06.05.2011 in ***Government of Andhra Pradesh and Ors. v. Obulapuram Mining Co. and Pvt. Ltd. and Ors.: (2011) 12 SCC 493*** constituting a joint team to carry out the demarcation of leases in question on the ground as well as on the satellite images after taking into consideration the relevant sanction lease sketches, survey and demarcation sketch of the lease, sketches of the adjoining leases and other relevant information. The joint team carried out the exercise as directed. Certain lease holders filed their objections to their findings, which were also considered by the joint team. Thereafter, CEC submitted its final report dated 03.02.2012 to the Supreme Court. One of the recommendations made by the CEC was that the boundaries, as

determined by the joint team, be directed to be followed by all authorities concerned and the boundaries of the mining leases should accordingly be fixed on the ground.

112. The report of the CEC was accepted and the Supreme Court expressly approved the findings of the survey conducted by the joint team constituted by the Supreme Court and the boundaries of the leases as determined by the joint team.

113. The Supreme Court had also noted the methodology adopted by the joint team in its decision in *Samaj Parivartana Samudaya v. State of Karnataka & Ors* (*supra*). The relevant extract indicating the same is set out below:-

“42. A consideration of the documents submitted by the learned Amicus Curiae and those submitted on behalf of the State of Karnataka would go to show that in carrying out the survey, the Joint Team had encountered some serious difficulties. The same may be enumerated below:-

- i) the sanctioned lease sketch did not have any reference point(s) and with reference to which the location of the lease can be decided;
- ii) there is mis-match between the location(s) of the reference point(s) on the ground vis-à-vis the details of such reference points(s) provided in the lease sketches;
- iii) the reference point(s) have been destroyed/altered on the ground;
- iv) the Survey and Demarcation sketch does not tally with the lease sketch; and

v) there is inherent defect in the lease sketch.”

43. To overcome the said difficulties, before the commencement of the actual survey, a pre-survey examination was undertaken to identify the boundary pillars, rock marks, revenue points etc. as shown in the lease sketch. This was done with the help of the government staff as well as the representative of the lessee concerned. Instead of measuring the length of each arm of the lease sketch by using the conventional engineering scale and instead of measuring the angle by using a protractor, the original lease sketch was scanned and the digitized so that the length of each arm and the angles could be precisely measured. Thereafter survey was undertaken by use of the Total Station Method, which, undoubtedly, is the state of the art technology with room for negligible error. A temporary control point was identified keeping in view the visibility of the maximum number of boundary points from the identified control point. Thereafter, the distance between the control point and the visible boundary points were measured and recorded in the instrument which uses an infrared ray. The instrument was shifted to another temporary control point and in a similar manner the distance between the said control point and remaining boundary points were measured. After completing the reading of all the points the margin of error for the instrument was determined (which was virtually negligible). Thereafter, the data from the total station downloaded on a computer using the AutoCAD software for preparation of the survey sketch. The survey sketch so prepared was superimposed on the digitized lease sketch to ascertain the encroachment if any. Also, the details of the survey sketch was superimposed on the satellite imageries to further verify the correctness of the process of survey undertaken.”

114. It is apparent from the above that the endeavour of the joint team was to plot the actual leases being worked on the ground. The

lease granted to Chowgule & Co. was featured at sl.no.20 and was classified as Category B, which did indicate same amount of encroachment. It is apparent from the above that the methodology adopted by the joint team was to determine the actual area being mined on the ground.

115. Any shift in the area being mined on the ground by Chowgule & Co. would not affect the original area leased to the Chowgule & Co. Any shift in the mined area does not have a cascading effect on the coordinates of the original mining lease of Chowgule & Co. Thus, it is not necessary that the outer boundaries of the surrendered area undergo any change as a result of any shift in the currently mined area of Chowgule & Co. It is clear from the methodology adopted by the CEC that the area being mined on the ground had been superimposed on the sketch of the mining leases to determine whether there was any encroachment over other areas. Therefore, any variation in the boundaries of the land being mined by Chowgule & Co. would not result in the overall shift of the original mining lease, which includes the surrendered area. The shift in the actual area could be absorbed within the surrendered area.

116. In view of the above, the direction that the area reserved for SAIL be determined on the basis of the boundaries of the land being mined by Chowgule & Co. is erroneous. However, this Court is of the view that it would be apposite for the concerned authorities to survey and demarcate the surrendered area by applying the same methodology

as adopted by CEC; that is, digitising the sketch of the area and reconciling the same with the area on the ground.

117. The petition is disposed of in the above terms. All pending applications also stand disposed of. The parties are left to bear their own costs.

MARCH 26, 2019
RK/MK

VIBHU BAKHRU, J

