

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 16.2.2021**
Judgement delivered on 09/4/2021**WA No. 34 of 2020**

(Arising out of order dated 29.11.2019 passed by learned Single Judge in WPC No.52/2018)

1. Hemanand Patel S/o Parmanand Patel Aged About 36 Years R/o Village Kodkel, Post Office Milupara, Police Station / Tehsil Tamnar, District - Raigarh, Chhattisgarh.
2. Tirthanand Patel, S/o Parmanand Patel, Aged About 34 Years R/o Village Kodkel, Post Office Milupara, Police Station - Tehsil Tamnar, District - Raigarh Chhattisgarh.

---- Appellants**Versus**

1. State of Chhattisgarh Through Secretary, Department Of Revenue & Disaster Management, Mantralaya, Naya Raipur Chhattisgarh.
2. Secretary, Department Of Mineral Resources, Mantralaya, Naya Raipur Chhattisgarh.
3. Collector, District Raigarh Chhattisgarh.
4. Sub Divisional Officer, (Revenue) Gharghoda, District Raigarh Chhattisgarh.
5. The Superintendent Of Police, District Raigarh Chhattisgarh.
6. Hindalco Industries Ltd., Through Its Manager, Gare Palma Coal Block, Village Kodkel, Tamnar Block, District Raigarh Chhattisgarh.
7. Jayaswal Neco Industries Limited, Through Its Director, Having Registered Office At F - 8 M I D C Industrial Area Hingna Road, Nagpur, Maharashtra.

---- Respondents**WA No. 70 of 2020**

(Arising out of order dated 29.11.2019 passed by learned Single Judge in WPC No.801/2018)

1. Mohitram S/o Jidhan Patel Aged About 58 Years Resident Of Village Kodkel, Post Office Milupara, Police Station/tehsil Tamnar, District Raigarh, Chhattisgarh.

2. Chaitram Patel S/o Jidhan Patel Aged About 56 Years Resident Of Village Kodkel, Post Office Milupara, Police Station/tehsil Tamnar, District Raigarh, Chhattisgarh.

---- Appellants

Versus

1. State of Chhattisgarh Through- Secretary, Department of Revenue And Disaster Management, Mantralaya, Naya Raipur Chhattisgarh
2. Secretary Department of Mineral Resources, Mantralaya, Naya Raipur Chhattisgarh
3. Collector District Raigarh Chhattisgarh.
4. Sub Divisional Officer (Revenue) Gharghoda, District Raigarh Chhattisgarh.
5. The Superintendent Of Police District Raigarh Chhattisgarh.
6. Hindalco Industries Ltd. Through Its Manager, Gare Palma Coal Block, Village Kodkel, Tamnar Block, District Raigarh Chhattisgarh.
7. Jayaswal Neco Industries Limited Through- Its Director, Having Registered Office At F-8 Midc Industrial Area Hingna Road, Nagpur, Maharashtra.

---- Respondents

WA No. 161 of 2020

(Arising out of order dated 29.11.2019 passed by learned Single Judge in WPC No.966/2018)

1. Hariram S/o Rupmohan Aged About 71 Years R/o Village Kodkel, Tahsil Tamnar, District Raigarh Chhattisgarh.
2. Balakram Patel (Since Deceased) Through Lrs.
 - 2.1 - (A). Champavati Wd/o Balakram Patel Aged About 66 Years R/o Village Kodkel, Tahsil Tamnar, District Raigarh Chhattisgarh.
 - 2.2 - (B). Manoj Kumar Patel S/o Balakram Patel Aged About 40 Years R/o Village Kodkel, Tahsil Tamnar, District Raigarh Chhattisgarh.
 - 2.3 - (C). Rohit Kumar Patel S/o Balakram Patel Aged About 37 Years R/o Village Kodkel, Tahsil Tamnar, District Raigarh Chhattisgarh.
3. Hemnath Patel S/o Rupmohan Aged About 52 Years R/o Village Kodkel, Tahsil Tamnar, District Raigarh Chhattisgarh.
4. Manbodh S/o Ramprasad Aged About 70 Years R/o Village

Kodkel, Tahsil Tamnar, District Raigarh Chhattisgarh.

5. Parmanand S/o Ramprasad Aged About 66 Years R/o Village Kodkel, Tahsil Tamnar, District Raigarh Chhattisgarh.
6. Dinbandhu Patel S/o Tikait Aged About 72 Years R/o Village - Kodkel, Tahsil Tamnar, District Raigarh Chhattisgarh.
7. Leelamber S/o Dileshwar Patel Aged About 32 Years R/o Village - Kodkel, Tahsil Tamnar, District Raigarh Chhattisgarh.

---- Appellants

Versus

1. State of Chhattisgarh Through The Secretary, Department Of Revenue And Disaster Management, New Mantralaya, Mahanadi Bhawan, New Raipur Chhattisgarh.
2. Collector Raigarh (CG).
3. Sub Divisional Officer (R) Gharghoda, District Raigarh
4. Tahsildar Tamnar, District Raigarh Chhattisgarh.
5. M/s Hindalco Limited Through Its Managing Director, Having Office At Block 4/5, Miluparra Coal Mine, Tamnar, Near Jindal Power Plant, Raigarh Chhattisgarh.

---- Respondents

W.A. No.34/2020 & 70/2020

For Appellants	:	Mrs. Rajni Soren, Advocate
For Respondent No.1 to 4	:	Mr. Vikram Sharma, Deputy Government Advocate
For Respondent No.6	:	Mr. Ashish Prasad, Mr. Rohit Sharma, Mr. BD Guru & Mr. Anuroop Panda, Advocates

W.A. No.161/2020

For Appellants	:	Miss Sharmila Singhai & Mr. Sanjay Agrawal, Advocates
For Respondent No.1 to 4	:	Mr. Vikram Sharma, Deputy Government Advocate
For Respondent No.5	:	Mr. Ashish Prasad, Mr. Rohit Sharma, Mr. BD Guru & Mr. Anuroop Panda, Advocates

Hon'ble Shri PR Ramachandra Menon,CJ
Hon'ble Shri Parth Prateem Sahu, J

C A V Order

Per Parth Prateem Sahu, J;

1. Correctness and sustainability of the order dated 29.11.2019 passed by the learned Single Judge dismissing writ petitions preferred by the petitioners/appellants herein, is put to challenge in the above writ appeals.
2. As the above three writ appeals arise out of the common order dated 29.11.2019, therefore, the same were heard together and are being disposed of by this common order.
3. Facts relevant for disposal of these appeals are that petitioners/appellants are the owners of lands bearing different khasra numbers situated in village Kodkel, Tahsil Tamnaar, District Raigarh. On 29.3.2006 the State Government granted mining lease in favour of 7th respondent M/s Jayaswal Neco Industries Ltd. for 'Gare Palma Coal Block No.IV/4, Raigarh' and entered into an agreement on 13.4.2006. Pursuant to execution of mining lease agreement, the 7th respondent had approached the Collector, Raigarh for grant of 'Surface Rights' by making application dated 15.9.2007 (Annexure P-2 to WPC No.966/2018). On making said application, the Collector, Raigarh vide letter dated 27.4.2011 directed respondent Sub-Divisional Officer (Revenue), Gharghoda to initiate proceedings for grant of surface rights in favour of the 7th respondent M/s Jayaswal Neco Industries Ltd. The Competent

Authority granted surface rights after passing an order on 19.4.2012 fixing compensation. The 7th respondent after depositing the calculated amount of compensation started mining activities. One public interest litigation bearing WP (Crl) No.120/2012, parties being Manohar Lal Sharma vs. Principal Secretary & ors, was filed before Hon'ble Supreme Court challenging the procedure for allotment of coal blocks. The said petition came to be decided on 24.9.2014 cancelling allocations of coal blocks including the subject coal block, except specified therein. The Central Government thereafter again initiated proceedings of auction in which 6th respondent became successful being highest bidder for the subject coal block and all the formalities were completed in the year 2015 and it started its work. The petitioners thereafter have approached the High Court by filing writ petitions seeking for following reliefs:-

- i. To kindly call for the records of the case no.06/A67/2010-11 from the respondent no.3
- ii. To kindly quash the impugned proceedings of Surface Right Case No.06/A-67/2010-11 (Annexure P/1)
- iii. To kindly direct the respondents to act in accordance with law prior to taking possession of the lands of the petitioners.
- iv. To kindly make any other order that may be deemed fit and just in the facts and circumstances of the case including awarding of the costs to the petitioner."

Main contention of petitioners along with others is that respondent No.4-SDO though initiated proceedings but not complied with the provisions under Section 247 (3) of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code of

1959'). Petitioners/appellants have not been given notice before granting surface right and thereby they have been deprived from their right to raise objection and hearing prior to passing of the order dated 19.4.2012 fixing the amount of compensation under Section 247 (4) of the Code of 1959.

4. Respondent Nos.1 to 4 - State filed reply to writ petition pleading that the order dated 19.4.2012 is challenged after lapse of long delay. Petitioners have not offered any explanation in Para-7 of writ petition except mentioning that there is no delay in filing writ petition. They are fence sitters who have not approached the Court in time. Instead of approaching the Competent Authority as prescribed under the Statute itself, the petitioners have directly approached the Court after inordinate delay. Respondent SDO in compliance of the provisions of Section 247 of the Code of 1959 had issued proclamation on 2.5.2011 with respect to grant of Surface Right to the applicant-company and called objections from the land holders till 23.5.2011. No objection was raised before the respondent SDO, a meeting of Gram Sabha was convened on 7.7.2011 in which, issue with respect to grant of Surface Right to 7th respondent Jayaswal Neco was discussed and concluded with an agreement that the company may go ahead. 4th Respondent taking into consideration the proceedings of Gram Sabha has assessed the amount of compensation and directed 7th respondent M/s Jayaswal Neco Industries Ltd. to deposit Rs.37,81,96,830/- and service

charge with the Collector/Land Acquisition Officer, Raigarh. The 7th Respondent M/s Jayaswal Neco Industries Ltd. has deposited the amount as calculated by respondent No.4-SDO and after obtaining necessary permission and sanction started its activities. In pursuance of the order passed by the Hon'ble Supreme Court in case of Manohar Lal Sharma vs. Principal Secretary & ors, WP (CrI) No.120/2012, the subject coal block was reallocated to respondent M/s Hindalco Industries Ltd. and the authority concerned vide order dated 23.3.2015 ordered for vesting of 'Gare Palma Coal Block IV-4, Raigarh' in favour of respondent M/s Hindalco Industries Ltd. After vesting of rights in the subject coal block, the respondent No.4 passed necessary orders on 3.8.2015 whereby Surface Right over the subject area has been granted to respondent M/s Hindalco Industries Ltd. Majority of land owners of village Kodkel have accepted the compensation against acquisition.

5. 6th Respondent M/s Hindalco Industries Ltd. filed its reply to writ petition stating therein that prior allottee i.e. respondent M/s Jayaswal Neco Industries Ltd. had deposited the entire amount of compensation with the respondent State authorities. Amount of compensation was deposited in the year 2013-14 by the prior allottee, whereas the petition has been filed in the year 2018, as such, the petition suffers from delay. Respondent M/s Hindalco Industries Ltd. under the Coal Mines (Special Provisions) Act, 2015 (henceforth 'the Act of 2015') has been vested with right, title and interest in and over

the land and mine infrastructure together with mining leases. After the allotment of subject coal block and passing of the order of vesting of rights, on 24.7.2015 mining lease in respect of 'Gare Palma IV/4' was issued in favour of respondent M/s Hindalco Industries Ltd. and consequently mining lease agreement was executed on 16.10.2015. The Competent Authority on 3.12.2015 has granted permission to the respondent company to enter and occupy surface of leased area and to commence mining. Petitioners have suppressed the fact that respondent No.4-SDO following the procedure prescribed has issued proclamation, meeting of Gram Sabha was convened and that, the amount of compensation was deposited by the prior allottee. The compensation was calculated for the lands and the trees standing thereon. One of the petitioners in WPC No.265/2015 has withdrawn the amount of compensation. Surface Right was granted to the prior allottee in respect of subject coal block for open cast mines.

6. Rejoinder was filed by the petitioners to the effect that the petitioners were not served with the notice, they got knowledge only when respondent Hindalco started its activities. Hence, it cannot be said that there is delay in filing writ petition. Alternative remedy cannot restrict the Court for exercising its jurisdiction under Article 226 of the Constitution of India. Proceedings of Gram Sabha are concocted one and outcome of an afterthought.

7. Learned Single Judge upon hearing learned counsel for both sides, considering the provisions under Section 247 (3) of the Code of 1959, issuance of proclamation by respondent No.4- SDO and holding of Gram Sabha on 7.7.2011, held that it was hard to believe that that the petitioners were not aware about the decision of the State Government of granting surface right to 7th respondent Jayaswal Neco Industries. Taking into consideration the judgment passed by a Division Bench of Madhya Pradesh High Court in case of **Shyam Bihari Singh vs. Premchand** reported in **2008 (4) MPHT 151**, the learned Single Judge dismissed writ petitions inter alia on the ground of delay.

8. Miss Sharmila Singhai, learned counsel for appellants in WA No.161/2020 submits that the learned Single Judge while considering the grounds raised in writ petition has completely overlooked the provisions of Section 247 of the Code of 1959. Respondent No.4-SDO has not complied with mandatory procedure prescribed under sub-section (3) of Section 247 of the Code of 1959. Petitioners have not received notice as envisaged under Section 247 (3) of the Code of 1959 and as a result they have been deprived from their right to raise objection to be considered by the Competent Authority. There was an obligation upon the respondent No.4 SDO to issue personal notice prior to granting surface right of land belonging to appellants. She further submits that consent of private land owners is must before grant of surface right to

allottee. Referring to the provisions under Section 247 (3) of the Code of 1959, she submits that prior consent of the land owners is mandatory for starting mining operations in the area. For the purpose of grant of mining lease, personal notice, as envisaged under Section 247 (3) of the Code of 1959 is not necessary but for grant of surface right the notice is necessary. She submits that even it is accepted that the proceedings were drawn for grant of surface right to respondent Jayaswal Neco, but no proceeding has been drawn by the Competent Authority for granting surface right to respondent Hindalco. Referring to the proceedings dated 3.8.2015, she submits that no notice has been issued to appellants by respondent No.4 before passing order on 3.8.2015. In the information supplied under the Right to Information Act, 2005 by the Public Information Officer, copy of proclamation was not available. Gram Sabha was also not convened. Upon confronting with presence of petitioner Chaitram Patel in Gram Sabha meeting, she submits that Gram Sabha was not conducted in accordance with law. It is further contended that the Collector is having obligation to ensure proper compensation. She submits that the impugned order is liable to be interdicted.

9. Mrs. Rajni Soren, learned counsel for appellants in WA Nos.34/2020 & 70/2020 while supporting the arguments advanced by Miss Sharmila Singhai, learned counsel for appellants in WA No.161/2020, urged that sub-section (4) of

Section 247 of the Code of 1959 is not restricted upto compensation but also provides for filing of objection to grant of surface right. She submits that under the provisions of Section 247 of the Code of 1959, calling for objection and its decision is mandatory. She further submits that by virtue of interim order, the appellants are in possession of their respective lands. Appellants came to know when respondent Company started activities over the subject lands and immediately thereafter appellants have preferred writ petitions.

10. Mr. Vikram Sharma, learned Deputy Government Advocate for the State submits that the notice as required to be sent is only with respect to fixing of proper compensation and not for consent of the use of land surface. There is no provision under the Mines & Minerals (Development and Regulation) Act, 1957 (for short 'the Act of 1957') to give prior notice for obtaining consent of the land owners. Referring to Section 10 of the Act of 1957, he submits that after receiving application for prospecting license, the State Government may grant or refuse to grant the application. He further submits that under Rule 72 of the Mineral Concessions Rules of 1960 (for short 'the Rules of 1960') the holder of permit or prospecting license shall be liable to pay to the occupier of surface of land the compensation as may be determined by the officer appointed by the State Government. It also prescribes for grant / award of compensation and it does not mention about prior consent of the land owners. To support his contention, he places his

reliance on the judgment in case of **Ramchandra Badri Prasad Gour & ors vs. Associated Cement Co. Ltd. & ors** reported in **1989 MPLJ 265**. He further submits that main contention raised by the petitioners/appellants is with regard to non-compliance of the provisions contained in sub-section (3) of Section 247 of the Code of 1959 i.e. of not giving personal notice. He submits that the provisions under Section 247 (3) of the Code of 1959 are to be read along with provisions of Section 247 (4) of the Code of 1959 wherein payment of compensation is provided to the persons whose rights have been infringed. He also submits that the Competent Authority for calculating the quantum of compensation is the Sub-Divisional Officer (Revenue) and further remedy is also provided if the award is not accepted i.e. ascertainment by civil Court. Respondent authorities have drawn proceedings in accordance with law, proclamation was issued by respondent No.4-SDO specifically mentioning for use of surface right. Gram Sabha has been conducted wherein the owners of land/villagers have deliberated the issue of grant of surface right to the prior allottee and thereafter the respondent SDO calculated the amount of compensation and order was passed on 19.4.2012. He further submits that the State Government is having exclusive right over the minerals, hence contention of appellants that prior notice for taking consent is necessary is not correct. He submits that under the provisions of Section 247 (3) of the

Code of 1959 the word used is 'assigned'. The State Government has assigned the right over minerals beneath the land and thereafter the competent authority has also calculated the amount of compensation, which has been deposited by the allottee. Most of the land owners have accepted the compensation except the appellants but the appellants have not taken the same.

11. Mr. Ashish Prasad, learned counsel for respondent Hindalco Industries would argue that the Government is having right to all mines and minerals under the provisions of law. After the grant of mining lease, the surface right is to be granted. It is for the State Government to draw proceeding to get private lands acquired. Proceedings for acquisition of lands are to fix compensation by the Competent Authority to compensate the land holders. Right over the land is acquired as soon soon amount of compensation calculated is deposited. Respondent No.6 has been granted lease and rights of surface area being the successful bidder under the Act of 2015. Referring to Section 8 of the Act of 2015 it is argued that this Section is having overriding effect. Under the Act of 2015 the successful bidder has been granted right to continue with the mining operations. Total area of coal block is 174.610 hectare, out of which most of the land holders have accepted the amount of compensation. He submits that in pursuance of the order passed by Hon'ble Supreme Court in Manohar Lal Sharma's case (supra), the Act of 2015 has been enacted with a

purpose to ensure continuity of mines. The Central Government through the Nominated Agency had conducted an auction process in which respondent Hindalco Industries has become successful and as per provisions of Section 8 (4) of the Act of 2015, the rights, interest and title of the prior allottee has been vested with respondent Hindalco. Referring to definition of 'prior allottee' given in Section 2 (n) of the Act of 2015 he submits that in instant case respondent Jayaswal Neco Industries was 'prior allottee', who has been earlier granted lease rights and land surface right over the subject land/coal block. Lease granted to prior allottee at no point of time was cancelled. Respondent Hindalco Industries has been granted continuing rights under the Act of 2015 from the prior allottee. He submits that if for any reason petitioners/ appellants are aggrieved with the quantum of compensation, then the remedy lies under Section 247 (4) of the Code of 1959. The Act of 2015 has not taken away the right of getting fair compensation. The provisions of Section 247 (3) of the Code of 1959 are not applicable. Right to object, as provided to the land owners, is only for limited purpose. The entire proceedings cannot be set aside, however, the petitioners/ appellants can approach the appropriate authority challenging the quantum of compensation, if at all they are dissatisfied with it. It is submitted that the petitions suffer from delay and laches and the same are liable to be dismissed on this count only. In support of his submissions, learned counsel has

placed reliance on the decisions in case of **Rambheja vs. Newton Chikhili Collieries Pvt. Ltd.** reported in **1972 MPLJ 151**; **Aparn Gramin Vikas Sanstha Samiti Society vs. State of MP** reported in **(2013) 3 MPLJ 74**; **Premchand Sugnichand & ors Vs. State of MP** reported in **AIR 1965 MP 191**; **Shyam Bihari Singh & ors Vs. The State of MP & ors** reported in **(2008) 4 MPLJ 255**; **May George vs. Special Tehsildar & ors** reported in **(2010) 13 SCC 98**; **Sawaran Lata & ors vs. State of Haryana & ors** reported in **(2010) 4 SCC 532**;

12. Miss Singhai, learned counsel for appellants in WA No.161/2020 submits that argument advanced on behalf of the respondents are based on the Act of 2015 which talks about re-allotment. Even if the rights have been assigned to respondent Jayaswal Neco then also the procedure is to be followed by issuing notice under sub-section (3) of Section 247 of the Code of 1959. She would further submit that the Act of 2015 talks about the prior allottee and respondent Hindalco Industries is not the prior allottee.

13. Mrs. Soren submits that there was no proclamation and several land disputes are pending before the authority concerned.

14. We have heard learned counsel for the parties and perused the record.

15. Question involved in these appeals is whether in absence of

personal notice under Section 247 (3) of the Code of 1959 the entire proceedings for grant of surface right will be vitiated?

16. To better understand the provisions of Section 247 of the Code of 1959, the same is extracted below for ready reference:-

“247. Government's title to minerals. - (1) Unless it is otherwise expressly provided by the terms of a grant made by the Government, the right to all minerals, mines and quarters shall vest in the State Government which shall have all powers necessary for the proper enjoyment of such rights.

(2) The right to all mines and quarries includes the right of access to land for the purpose of mining and quarrying and the right to occupy such other land as may be necessary for purpose subsidiary thereto, including the erection of offices, workmen's dwellings and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways or tram-lines, and any other purposes which the State Government may declare to be subsidiary to mining and quarrying.

(3) If the Government has assigned to any person its right over any minerals, mines or quarries, and if for the proper enjoyment of such right, it is necessary that all or any of the powers specified in sub-sections (1) and (2) should be exercised, and the Collector may, by an order in writing, subject to such conditions and reservations as he may specify, delegate such powers to the person to whom the right has been assigned :

Provided that no such delegation shall be made until notice has been duly served on all persons having rights in the land affected, and their objections have been heard and considered.

(4) If, in the exercise of the right herein referred to over any land, the rights of any person are infringed by the occupation or disturbance of the surface of such land, the Government or its assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall be calculated by the Sub-Divisional Officer or, if his award is not accepted, by the Civil Court, as

nearly as may be, in accordance with the provisions of the Land Acquisition Act, 1894 (I of 1984).

- (5) No assignee of the Government shall enter on or occupy the surface of any land without the previous sanction of the Collector, and unless the compensation has been determined and tendered to the persons whose rights are infringed.
- (6) If an assignee of the Government fails to pay compensation as provided in sub-section (4), the Collector may recover such compensation from him on behalf of the persons entitled to it, as if it were an arrears of land revenue.
- (7) Any person who without lawful authority extracts or removes minerals from any mine or quarry, the right to which vests in, and has not been assigned by, the Government shall, without prejudice to any other action that may be taken against him be liable, on the order in writing of the Collector, to pay penalty not exceeding a sum calculated at double the market value of the minerals so extracted or removed :

Provided that if the sum so calculated is less than one thousand rupees, the penalty may be such larger sum not exceeding one thousand rupees as the Collector may impose.
- (8) Without prejudice to the provisions in sub-section (7) the Collector may seize and confiscate any mineral extracted or removed from any mine or quarry the right to which vests in, and has not been assigned by the Government.”

17. A bare perusal of sub-sections (1) & (2) of Section 247 of the Code of 1959 would reveal that the State Government is having all the powers for proper enjoyment of rights to all minerals, mines and quarries and the right to mines and quarries includes right to access to the land for the purpose of mining. Section 247 (3) of the Code of 1959 envisages the power of delegation of right over the mines and minerals of the State Government to other's subject to conditions and

reservations and assigned the rights. Under the proviso to sub-section (3) it is mentioned that before delegation of rights, notice to be duly served on all persons having right in the land affected. Sub-section (4) of Section 247 of the Code of 1959 envisages for granting compensation to the persons whose rights have been infringed in exercising the right referred in sub-sections (1), (2) & (3) of Section 247 of the Code of 1959. It is not in dispute that the proceedings were drawn by respondent SDO on 2.5.2011 for grant of surface right and fixation of compensation. Respondent SDO in its order has specifically mentioned for issuance of proclamation for the purpose of fixation of compensation and the order was passed fixing amount of compensation of land, trees standing thereon etc. at Rs.34,38,15,300/- on 19.4.2012 and after deposit of the said amount, the surface right has been granted to respondent Jayaswal Neco Industries, who also started its activities.

18. Perusal of Section 247 of the Code of 1959 would show that at first it clarifies that the Government is title holder of all minerals and it vests all powers for its enjoyment including right to access the land for the purpose of mining. The Government can assign its right to any person and delegate such powers subject to condition. If the right of owner of land surface is infringed, he is entitled for compensation under Section 247 (4). The purpose of Section 247 (3) is to be understood with conjoint reading of the provisions under sub-section (4) of Section 247 of the Code of 1959. Once the

government assigned its right to any person and delegates such power, then the owner of land cannot object assignment of its right to that person but for claiming proper compensation. Under Section 247 (5) of the Code of 1959 pre-conditions of entering or occupying the surface of land are provided protecting interest of the persons having rights on such land. For entering and occupying the surface of the land assigned to any person, it is obligatory upon the government to determine the compensation and tender to such person. Meaning thereby, after determining the compensation the assignee of the rights by the government has to deposit the same for its disbursement. The provisions of the Statute are to read as a whole and interpretation is to be purposive so that the object of every provision under the Statute is achieved. The Sub-Divisional Officer while drawing the proceedings for fixation of compensation had issued proclamation to the concerned villagers, Gram Sabha was convened, proceedings were recorded, villagers including one of appellants Chaitram was present, details of land were called from the Patwari (Revenue Officer) mentioning the purpose of computing compensation, as appearing from Annexure P-1. The submission of learned counsel for appellants appears to be correct that personal notice was not issued as is evident from the proceedings of the SDO. In the above facts of the case and the provisions, whether in absence of notice under Section 247 (3) of the Code of 1959 the entire proceedings

can be declared to be vitiated, particularly when from the provision itself it is appearing that purpose of notice is to fix the compensation only.

19. In case of **May George (supra)**, the Hon'ble Supreme Court while dealing with proceedings under the Land Acquisition Act has considered the provisions of Section 9 with regard to service of notice to persons affected for raising claim and objection and held as under:-

“13. Section 9 (3) of the Act reads as under :-

"The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate"

14. Section 9 (3) of the Act provides for an opportunity to the "person interested" to file a claim petition with documentary evidence for determining the market value of the land and in case a person does not file a claim under Section 9 even after receiving the notice, he still has a right to make an application for making a reference under Section 18 of the Act. Therefore, scheme of the Act is such that it does not cause any prejudicial consequence in case the notice under Section 9 (3) is not served upon the person interested.

15. While determining whether a provision is mandatory or directory, in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application. The provision is mandatory if it is passed for the purpose of enabling the doing of something and prescribes the formalities for doing certain things.

15. In *Dattatraya Moreshwar Vs. State of Bombay*², this Court observed that law which creates public

duties is directory but if it confers private rights it is mandatory. Relevant passage from this judgment is quoted below: (AIR p. 185, para 7)-

"7.....It is well settled that generally speaking the provisions of the statute creating public duties are directory and those conferring private rights are imperative. When the provision of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of legislature, it has been the practice of the Courts to hold such provisions to be directory only the neglect of them not affecting the validity of the acts done."

25. The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance of the provision could render entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of Legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject matter and object of the statutory provisions in question. The Court may find out as what would be the consequence which would flow from construing it in one way or the other and as to whether the Statute provides for a contingency of the non-compliance of the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid.

28. In fact, the land vest in the State free from all encumbrances when possession is taken under section 16 of the Act. Once land is vested in the State, it cannot be divested even if there has been some irregularity in the acquisition proceedings. In spite of the fact that Section 9 Notice had not been served upon the person- interested, he could still claim the compensation and ask for making the reference under section 18 of the Act. There is nothing in the Act to show that non-compliance

thereof will be fatal or visit any penalty.”

20. The ground raised in these appeals is somewhat identical to what has been considered by Hon'ble Supreme Court in case of May George (supra). In the case at hand also the ground is 'non-service of notice in person'. Under the Code of 1959 there is forum prescribed for raising the dispute challenging the quantum of compensation if dissatisfied. Even under the Act of 1957 and the Rules of 1960 the occupier or owner of surface of land is having the right for compensation from the person in whose favour license, lease or right is granted before they enter into the land allotted and start mining operations over it.
21. In view of above, in the opinion of this Court the submission of learned counsel for petitioners/appellants that in absence of proper personal notice under Section 247 (3) of the Code of 1959, grant of surface rights is to be quashed is not sustainable and is hereby repelled.
22. Another submission raised by learned counsel for appellants that no proceeding has been drawn for grant of surface right to respondent Hindalco Industries is concerned, the surface right to respondent Hindalco has been granted under the Act of 2015. The Act of 2015 has been enacted for providing allocation of coal mines and vesting of right, title and interest in and over the land with mining lease to successful bidder and to ensure continuity in coal mining operations. This Act has been enacted for taking immediate action to implement

the order passed by the Hon'ble Supreme Court. Clause-7 of the Statement of Object and Reasons of the Act of 2015 is extracted below for ready reference:-

“7. The Coal Mines (Special Provisions) Bill, 2015 provides for allocation of coal mines and vesting of the right, title and interest in and over the land and mine infrastructure together with mining lease to successful bidders and allottees through a transparent bidding process with a view to ensure continuity in coal mining operations and production of coal, and for promoting optimum utilisation of coal resources consistent with the requirement of the country in national interest. Further, the Bill, having regard to the coordinated and scientific development and utilisation of coal resources consistent with the growing requirement of the country, prescribed the condition to rationalise the coal sector for mining operations, consumption and sale.”

23. It is not in dispute that in pursuance of the Act of 2015 the allotment order has been issued in favour of 6th respondent; an agreement was entered between the 6th respondent and the State Government and subsequent to which, the surface right has been granted on 3.8.2015 by making amendment on surface right already granted to 7th respondent. The 6th respondent has been granted surface right based on the proceedings drawn under the Act of 2015 after its becoming successful under the provisions of Section 8 of the Act of 2015. Section 8 (4) of the Act of 2015 envisages that vesting order shall transfer and vest upon the successful bidder all the rights, title and interest of the prior allottee in Schedule I coal mine. Section 8 (4) & (5) of the Act of 2015 are extracted below:-

“(4) The vesting order shall transfer and vest upon the successful bidder, the following, namely:-

- (a) all the rights, title and interest of the prior allottee, in Schedule I coal mine concerned with the relevant auction;
 - (b) entitlement to [prospecting licence, mining lease or prospecting licence-cum-mining lease, as the case may be] to be granted by the State Government;
 - (c) any statutory licence, permit, permission, approval or consent required to undertake coal mining operations in Schedule I coal mines if already issued to the prior allottee;
 - (d) rights appurtenant to the approved mining plan of the prior allottee;
 - (e) any right, entitlement or interest not specifically covered under clauses (a) to (d).
- (5) The nominated authority shall, in consultation with the Central Government, determine the floor price or reserve price in accordance with such rules as may be prescribed.”

24. “Prior Allottee” has been defined under Section 2 (n) of the Act of 2015, which is reproduced below for ready reference:-

“(n) “prior allottee” means prior allottee of Schedule I coal mines as listed therein who had been allotted coal mines between 1993 and 31st day of March, 2011, whose allotments have been cancelled pursuant to the judgment of the Supreme Court dated the 25th August, 2014 and its order dated 24th September, 2014 including those allotments which may have been de-allocated prior to and during the pendency of the Writ Petition (Criminal) No.120 of 2012.”

For the case at hand “prior allottee” is the 7th respondent, who has been allotted mining lease of coal block in the year 2006, after passing of the order dated 19.4.2012, the surface right was also given. Under the Act of 2015 the allotment is made with the purpose to continue with the rights, title and interest of the

prior allottee. In this case, 7th respondent has already obtained surface right and started mining activities, hence 6th respondent continued with the rights, title and interest which 7th respondent was having on the date of passing of an order of vesting in favour of successful bidder. Under the scheme of the Act of 2015 it is the successful bidder to step into shoes and continue with the proceedings where the prior allottee stands. Hence, there is no requirement of again initiating and drawing proceeding for grant of land surface right, as submitted by learned counsel for the appellants. This submission of learned counsel for the appellants is contrary to the provisions of the Act of 2015, hence it is not sustainable and is hereby repelled.

25. Appellants have not challenged the order passed by the SDO on 19.4.2012 immediately thereafter. Submission made by learned counsel for the appellants that they were not aware about the proceedings of Gram Sabha dated 7.7.2011 cannot be accepted because the Gram Sabha proceedings available in the record as Annexure A-2, reveal name of petitioner Chaitram Patel as one of the signatories. Apart from Chaitram Patel, there are several villagers who participated in the Gram Sabha and also signed the proceedings. In view of the above, it cannot be said that when other villagers were present including Chaitram Patel, remaining petitioners/appellants could not get knowledge of the proceedings being drawn by respondent SDO for grant of surface right. Appellants have

filed writ petitions only in the year 2018, 2019. As the appellants have approached the Court with inordinate delay, the submission made by learned counsel for appellants that the proceedings of Gram Sabha are not in accordance with law for want of quorum cannot be accepted at this stage. In case of *Swarana Lata (supra)* Hon'ble Supreme Court while considering delay in approaching the Court has held thus:-

“10. Similar view has been reiterated in *State of Rajasthan & Ors. Vs. D.R. Laxmi & Ors.*, (1996) 6 SCC 445, wherein this Court has held that even the void proceedings need not be set at naught if the party has not approached the Court within reasonable time, as judicial review is not permissible at a belated stage. This Court held as under:

".....Delay in challenging the notification was fatal and writ petition entails with dismissal on grounds of laches. It is thus, well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications....."

10. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances."
(emphasis added)

Similar view has been reiterated by this Court in *Northern Indian Glass Industries Vs. Jaswant Singh*¹², and *Haryana State Handloom & Handicrafts Corporation Ltd. Vs. Jain School Society*¹³."

In the instant case the Competent Authority issued

proclamation on 2.5.2011 for calling objections on giving surface rights and fixing compensation. Gram Sabha was convened on 7.7.2011. The order fixing compensation was passed on 19.4.2012. The 7th respondent deposited the amount of compensation and started the work. 6th respondent got the continuing rights being successful bidder and respondent No.4 passed consequent order on 3.8.2015. Writ petition challenging order dated 19.4.2012 is filed only in the year 2018 & 2019. In the above facts of the case, we do not find any infirmity in the finding recorded by the learned Single Judge that petition is filed with inordinate delay and is to be dismissed on that count.

26. With regard to submission of learned counsel for appellants that the Collector is obligated for proper compensation, the learned Single Judge has already protected rights and interest of the appellants by recording that dismissal of writ petitions would not preclude them from approaching the authorities under the law for compensation of land to each of them and to seek for enhancement of quantum of compensation, if they are dissatisfied.

27. For the foregoing reasons, we do not find any infirmity or illegality in the order impugned passed by the learned Single Judge. Writ appeals fail and are dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-