

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 27438 of 2022

*Orissa Sands Complex, M/s.
IREL (India) Ltd., Ganjam*

.....

Petitioner

Mr. N.K. Mishra, Sr. Advocate

Vs.

*Revisional Authority,
Department of Atomic Energy,
Government of India,
Mumbai, Maharastra and
others*

.....

Opposite Parties

Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

Mr. JUSTICE G. SATAPATHY

ORDER

19.10.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. N.K. Mishra, learned Senior Counsel appearing along with Mr. N.K. Mishra, learned counsel for the petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking to quash the demand notice no.584 dated 26.08.2020 under Annexure-6 and also the order dated 27.07.2022 under Annexure-14 issued by the Revisional Authority in Revisional Application No.02 of 2020.

4. Mr. N.K. Mishra, learned Senior Counsel appearing for the petitioner contended that pursuant to judgment passed by the apex Court in *Common Cause v. Union of India and others*, (2017) 9 SCC 499, demand has been raised on the allegation of extraction of excess minerals and, therefore, the demand has been quantified and raised against the petitioner.

It is further contended that the case of ***Common Cause*** (supra) only deals with the minerals like iron ore and manganese. Thereby, the present minerals which have been extracted by the petitioner are not covered by the judgment in ***Common Cause*** (supra). Consequentially, any demand raised by the authority is not applicable to the petitioner and, thereby, the same should be quashed.

5. Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties brings to the notice of this Court paragraph-150 of the judgment of the apex Court passed in ***Common Cause*** (supra), which is extracted below:

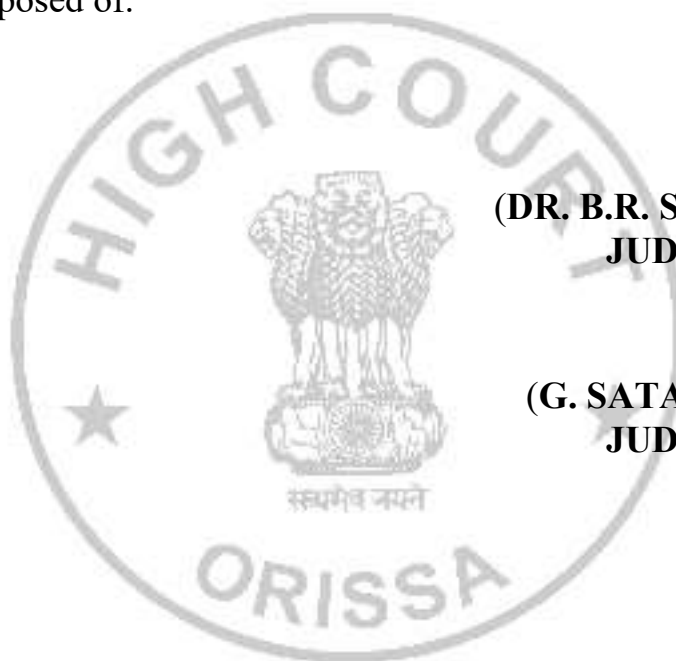
“(.....In our opinion, section 21(5) of the M&M (D&R) Act is applicable when any person raises, without any lawful authority, any mineral from any land. In the event, the state government is entitled to recover from such person the mineral so raised and where the mineral has already been disposed of the price thereof as compensation the words any land are not confined to the mining lease area is concerned, extraction of mineral over and above what is permissible under the mining plan or under the EC undoubtedly attracts the provisions of section 21(5) of the MMDR act 1957 being extraction without lawful authority.”

Therefore it is contended that even if the minerals which have been extracted by the petitioner are covered by the observation made by the apex Court in ***Common Cause*** (supra), consequentially, the demand notice issued by the authority is well justified.

6. Having heard learned counsel for the parties and after going through the records, it appears that the apex Court has expressed its opinion that Section 21(5) of the MMDR Act is applicable when any person raises, without any lawful authority, any mineral from any land, in that case the State Government is entitled to recover from such person the mineral so raised and where the mineral has already been disposed of the price thereof as compensation. But the

argument advanced by learned Senior Counsel appearing for the petitioner that the judgment of the apex Court in ***Common Cause*** (supra) only confines to the minerals like iron ore and manganese and contemplation of opinion made before this Court is only confined to the said minerals, but not the minerals deals with the petitioner. This fact can only be clarified or modified by the apex Court, but not by this Court. Therefore, this Court is not inclined to entertain this writ petition. However, liberty is granted to the petitioner to pursue its remedy before the appropriate forum, if it is so advised.

7. With the aforesaid observation, the writ petition stands disposed of.



(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE