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IN THE HIGH COURT OF BOMBAY AT GOA

**FIRST APPEAL NO.72 OF 2009
WITH
MISC. CIVIL APPLICATION NO. 343 OF 2019
IN
FIRST APPEAL NO.72 OF 2009
WITH
FIRST APPEAL NO.73 OF 2009
WITH
MISC. CIVIL APPLICATION NO. 342 OF 2019
IN
FIRST APPEAL NO.73 OF 2009**

**FIRST APPEAL NO.72 OF 2009
WITH
MISC. CIVIL APPLICATION NO. 343 OF 2019
IN
FIRST APPEAL NO.72 OF 2009**

Smt. Maria Teresa Philomena D' Rocha
Pegado widow of Hipolito Policarpo Pegado,
major of age, r/o Rue de Ourem,
Fontainhes, Mala, Panaji, Goa Appellant.

Versus

1. Mr. Faustino Matias Francisco De Rego
son of Antonio de Rego, businessman, r/o
Piedade Tiswadi, Ilhas, Goa. (deceased)

1(a) Mrs. Filomena Rego,
r/o Premeiro Vaddo,
Divar, Ilhas Goa.

[Amended as per
order
dtd.22.09.2016]

2. The Director,
Directorate of Industries and Mines,
having its office at Udoyg Bhavan,
Opp. Azad Maidan, Panaji, Goa.

3. State of Goa,
Through the Chief Secretary
of State of Goa having his office at
Secretariat, Panaji, Goa.
Panaji, Goa.

.... Respondents.

Mr G.R. Usgaonkar, Advocate for the Appellant.

Mr S.D. Lotlikar, Senior Advocate with Mr T. Sequeira and Mr
Sarvesh Sawant, Advocates for Respondent No.1.

Mr Pravin Faldessai, Additional Government Advocate for
Respondents No.2 and 3.

**WITH
FIRST APPEAL NO.73 OF 2009
WITH
MISC. CIVIL APPLICATION NO. 342 OF 2019
IN
FIRST APPEAL NO.73 OF 2009**

Smt. Maria Teresa Philomena
D' Rocha Pegado widow of
Hipolito Policarpo Pegado,
major of age, r/o Rue de
Ourem, Fontainhes, Mala,
Panaji, Goa.

..... Appellant.

Versus

1. M/s. Gervasio Fernandes & Sons, a
registered Partnership firm, represented by
its Partner, Shri Issac Fernandes, having his
office at Mercedes, Tiswadi, Ilhas, Goa.

2. The Director, Directorate of Industries and Mines, having its office at Udoyg Bhavan, Opp. Azad Maidan, Panaji, Goa.

3. State of Goa,
Through the Chief Secretary
of State of Goa having his office
at Secretariat, Panaji, Goa.
Panaji, Goa.

.... Respondents.

Mr G.R. Usgaonkar, Advocate for the Appellant.

Mr S.D. Lotlikar, Senior Advocate with Mr T. Sequeira and Mr Sarvesh Sawant, Advocates for Respondent No.1.

Mr Deep Shirodkar, Additional Government Advocate for Respondents No.2 and 3.

CORAM: VALMIKI SA MENEZES, J.

DATED: 18th October 2023

ORAL JUDGMENT :

1. In First Appeal 72/2009, the Appellant/ Original Plaintiff in Civil Suit No.132/2004 challenges the Judgment and Decree dated 30.04.2009 dismissing her suit filed for eviction of the Respondent No.1/ Original Defendant No.1 from carrying out any activities of quarrying in the suit property bearing Survey No.213/1, for mesne profits from Defendant No.1 and for a relief of declaration that the lease agreement dated 28.09.2000 between the Respondent No.2/ Defendant No.2 and Defendant No.1 permitting Defendant No.1 to

carry out mining operations for extracting basalt, a minor mineral, to be null and void and opposed to public policy.

2. In First Appeal No.73/2009, the Appellant/ Original Plaintiff in Civil Suit No.133/2004 challenges the Judgment and Decree dated 30.04.2009 dismissing her suit filed for eviction of the Respondent No.1/ Original Defendant No.1 from carrying out any activities of quarrying in the suit property bearing Survey No.213/1, for mesne profits from Defendant No.1 and for a relief of declaration that the lease agreement dated 28.09.2000 between the Respondent No.2/ Defendant No.2 and Defendant No.1 permitting Defendant No.1 to carry out mining operations for extracting basalt, a minor mineral, to be null and void and opposed to public policy

3. Since the grievance raised in both the appeals/suits is exactly the same, concerning the same suit property and the same point of law raised therein, the appeals have been heard together and are disposed of, with the consent of all the parties, with a common judgment.

For the sake of convenience and easy reference, the Appellant in both appeals is referred to as Plaintiff while the Respondent No.1, though being different persons in the appeals/suits, shall be referred to herein as Defendant No.1 as each of them is arraigned in the suits as the lessee with respect to the leasehold rights granted by the Government of Goa under the Mineral Concession Rules, 1985, to

them under separate lease agreements both dated 28.09.2000, challenged in the suits. The Directorate of Mines and the State of Goa have been respectively arraigned as Defendants No.2 and 3 in these suits and shall be referred to accordingly in this judgment.

4. Both these suits have been instituted by the Plaintiff on the basis of the following undisputed facts as seen from the pleadings of the parties:-

1. That the Plaintiff is the owner of the property known as “Baincho Uddo” situated at Santa Barbara, Village Panchayat of Mercês, Morombi-O-Grande, Tiswadi, Goa presently surveyed under Survey No. 213/1 (the suit property), by virtue of her marriage to late Hipolito Policarpo Pegado;
2. That by two separate lease deeds, both executed on 12.07.1986, the late husband of the Plaintiff leased two separate plots, each admeasuring 40,000 square metres respectively to Faustino Matias Francisco de Rego (the Defendant No.1 in RCS No.132/2004) and to M/s Gervasio Fernandes & Sons (the Defendant No.1 in RCS No.133/2004). In each of these lease deeds, the rent reserved for allowing the lessees to explore stone quarries in their respective plots, for extraction of basalt stone was Rs.10,000/-
3. That Hipolito Pegado expired on 17.09.1988 after which, the lease deeds, which expired by efflux of time in ten years i.e. by 12.07.1996 were not renewed by the Plaintiff, wife of Hipolito, and the Plaintiff sent the Defendant No.1 a notice

dated 28.07.1997 to desist from carrying out further quarrying operations and to return possession of the suit plots.

4. That the Defendants No.2 and 3, who have entered into an agreement of lease dated 28.09.2000 with the Defendant No.1, granting Defendant No.1 the right to extract basalt metal, a minor mineral, in terms of the Goa Minor Mineral Concession Rules, 1984 (the said Rules), have no right to enter upon such a lease, which lease is contrary to law, hence a declaration was sought to declare such lease agreements as illegal and void and being opposed to public policy.

5. In the written statements filed by the Defendant No.1, in both suits, apart from the defence of non-joinder of necessary parties i.e. the three children of the Plaintiff and late Hipolito, it is their case that pursuant to the agreement of lease being executed by late Hipolito in 1986 in favour of Defendant No.1, after coming into force of the Goa Minor Mineral Concession Rules, 1985 (the Rules), the lease of the quarrying rights was executed between Defendant No.2 and the Defendant No.1 in terms of an indenture dated 04.08.1987. That by virtue of the quarrying lease under these Rules, the Defendant No.1 was conferred with the right to quarry for the minor mineral of basalt from 04.08.1987 ending 03.08.1997. Further, the Defendant No.1 has stated that the grant of the renewal of the quarrying lease was further extended for another ten years from 04.08.1987 to 03.08.2007 under indenture dated 28.09.2000 (which indenture/agreement is under

challenge in the suit), since the right to renew the quarrying lease vests exclusively in the Defendants No.2 and 3 under the Rules.

6. Defendants No. 2 and 3 filed a separate written statement in both suits contending that the quarry lease referred to by the Defendant No.1 in his written statement is still in force under the Rules while the earlier quarrying lease, prior to the coming into force of these Rules of 1985, was granted under the old Minor Mineral Rules, of 1974, which have since been repealed. These Defendants further stated that after Defendant No.1 applied for renewal of his lease for the quarrying of basalt under application dated 30.04.1987, as per Rule 19(6) of the Rules of 1985, once the application for renewal of quarrying lease was made and granted under the Sub-Rule 2 of Rule 19, the period of the said lease is deemed to have been extended for a further period till the competent authority passes an order thereon. The Defendants No.2 and 3 have thus supported the case of Defendant No.1 and denied that the Plaintiff has any right to the minor minerals in her property, stating that such minerals vest in the State and the State had every right to lease the quarrying rights of such minor minerals to the Defendant No.1 in each of the suits.

7. Two issues were framed by the Trial Court on the pleadings of the parties which were:

- i. Whether Plaintiff proves that the Defendant No.1 has been illegally extracting mining in the suit property since 01.10.1988?

- ii. Whether Plaintiff proves that Plaintiff is entitled to mesne profits at the rate of Rs.60,000/- per annum from 2000?

Thereafter, additional issues were framed in the matter which are as under:

- iii. Whether the Defendant No.1 proves that prayer (g) added to the plaint is barred by Law of Limitation?
- iv. Whether Defendant No.1 proves that the relief under prayer (g) not having been valued for the purpose of jurisdiction and Court fee needs to be rejected in limine?

The parties led evidence on these issues and on completion of the evidence, written submissions came to be filed before the Trial Court.

8. Whilst the suits were pending disposal, the Plaintiff filed Writ Petition No.158/2005 under Article 226 of the Constitution of India before this Court seeking a declaration that Rule 5 of the Goa Mineral Concession (Amendment) Rules, 2002 is unconstitutional, illegal and ultra vires Section 15(1)(1A)(d)(h) of the Mines and Minerals (Development and Regulations) Act, 1957 (for short “MMDR Act”), and for a writ of mandamus to direct Respondents No.1 and 2 (State of Goa and the Directorate of Industries and Mines) to cancel the quarrying lease dated 28.09.2000 executed between them and the Respondents No.3 and 4 (Defendant No.1 in each of the present suits (i.e. Gervasio Fernandes and Faustino Rego). In that Writ Petition,

the Plaintiff has also prayed for quashing of the order dated 12.10.2005 passed by the Civil Court in Civil Suit No.133/2004 refusing to grant the Plaintiff an order of temporary injunction pending that suit. Note may be taken of the fact that the subject matter of the Writ Petition was for relief of cancellation of the quarrying lease dated 28.09.2000, which was the very lease challenged in both the suits with which I am now concerned.

9. Further, a note is required to be taken of the fact that whilst the above referred Writ Petition was pending, the Plaintiff moved Misc. Application No.189/2008 in that Writ Petition requesting for early hearing of that matter on the premise that the challenge to clause 5 of the amending act, would directly affect the outcome of the suits. In that application, the Plaintiff sought a direction from the High Court in the Writ Petition, to the Trial Court in both suits, to refrain from passing any judgment and decree in those suits until the result of the Writ Petition was known.

This Misc. Application in Writ Petition No.158/2005 was rejected on 21.04.2008, after which the Trial Court, proceeded to dismiss both suits mainly on the basis of the following findings:

1. That the evidence on record demonstrates that the Defendant No.1 in each of the suits has been operating the mine/quarry for the last 45 years after making huge investments in plant and machinery;

2. That the Plaintiff accepted rents from the Defendant No.2 for a period subsequent to the commencement of the agreement for the period 01.10.1985 to 30.09.1988. That there is no dispute in the fact that even after expiry of the initial lease in favour of Defendant No.1, he continued in possession of the suit plot and has carried on mining operations therein under a valid lease agreement entered with Defendants No.2 and 3 for a period of ten years even after the expiry of the lease period on 30.09.1988 and this continued till the year 1997, with no steps taken by the Plaintiff to intimate the Defendant No.1 of any termination of the contract.
 3. That there is no evidence led by the Plaintiff as to the extent of encroachment done by the Defendant No.1 in the area which is in excess of the leased area nor is she able to assess the compensation due or the damage caused to the property beyond the leased area.
 4. That in terms of Rule 19 of the Goa Minor Mineral Concession Rules, 1985, the lease dated 28.09.2000 was deemed to be extended for a further period till the competent officer passes an order on the same; that once the initial lease of the land for winning the minor mineral was granted by late Hipolito, there was no requirement for the Defendant No.1 to obtain consent of the owners to extend the quarry lease executed by Defendants No.2 and 3 in his favour, in terms of the provisions of the Rules of 1985.
10. After the suit was dismissed and whilst these appeals were pending before this Court, the Plaintiff's Writ Petition No.158/2005

laying challenge to the constitutionality of Rule 5 of the Concession Rules, 2002, came to be heard and was dismissed by Judgment of this Court dated 10.12.2013. Reference is made in that Judgment in para 2, that the suits which are the subject matter of these appeals, came to be dismissed and that these appeals were pending.

In that petition, two specific propositions in support of the Plaintiff's case were raised which are:

1. That the deletion of Chapter III from the Rules of 1985 are derogatory to the power enured to the State under Section 15(1)(1A) of the MMDR Act.
2. That under Article 465, 466 and 467 of the Portuguese Civil Code of 1867, the right to prospect and explore mines in land possessed by private individuals is vested in the owner of the land, which right was recognized under Chapter III of the Rules of 1985, and the deletion of this entire chapter effectively takes away the vested right as claimed by the Plaintiff.

11. In its Judgment in this Writ Petition, this Court has broadly concluded that in terms of Section 14 and Section 36 of the Goa Land Revenue Code, unless it is otherwise expressly provided by the terms of the grant made by the Government, the right to all minerals at whatever place found, whether on the surface or underground, would vest in the Government. After examining the Portuguese Colonial Mining Law, this Court has, on a conjoint reading of the provisions of the Land Revenue Code and the Decree Law, concluded that even

under the Decree Law, just as under the Revenue Code, the rights to all minerals in privately held land are expressly reserved and vests in the Government, who shall have all powers necessary for the proper enjoyment of such right. Specific paragraphs of this Court's ***Judgment dated 10.12.2013 in Writ Petition No.158/2005 (Maria Teresa Filomena Pegado vs. State of Goa and Others)*** are quoted below for ready reference:

“6. From the tenor of the arguments advanced by the learned Counsel for the petitioner, it appears that it is the basic contention that since the petitioner owns surface soil of the land in question, the ownership of the minerals and sub-soil below it also vests in her. It further appears to be the contention that by deleting Chapter III from the said Rules, pursuant to rule making power available to it under Section 15 of the said Act, the right to minor minerals beneath surface of such land has been taken away by the State which, according to the petitioner, is not permissible in law.

15. It can thus clearly be seen that a conjoint reading of subsections (1) to (6) of Section 36 of the Land Revenue Code, along with Article 2 of Decree dated 20.09.1906, would clearly reveal that rights to all minerals at whatever place found, are expressly reserved and vest in the Government, which shall have all powers necessary for the proper enjoyment of such right.

27. It can, thus, be seen that the Apex Court has taken notice of various enactments abolishing lands tenures in South India wherein express provisions were made to the effect that the mines and minerals existing in such abolished tenures shall stand transferred to the Government and vest in the

Government. It can further be seen that the Apex Court itself has observed that the ryotwari pattadars and jenmis were held to be owners of the subsoil/ minerals until they were deprived of the same by legal process. It can thus be clearly seen that the Apex Court in the peculiar facts of the case found that in view of BSO No.10 in respect of Malabar area, the British never claimed proprietary rights over the soil and jenmis, were recognised to be the absolute owners of the soil and further their being no law made, depriving the landholders of the right to subsoil/minerals, held that the ownership of the subsoil/minerals should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. However, as already discussed hereinabove, in view of sub-section (2) of Section 14 and Section 36 of the Land Revenue Code, right to minerals at wherever place found, has been expressly reserved and shall vest in the Government which shall have all powers necessary for the purpose of enjoyment of such right. It can thus be seen that in view of specific statutory provision which has reserved right in mines and minerals at all places in the State and also providing that the said mines and minerals shall vest in the State, the petitioner cannot claim to have right over the mines and minerals. The rights would be restricted only to surface soil.

29. It can thus be clearly seen that the Apex Court has in unequivocal terms held that in view of Section 24A of the said Act, holder of a mining lease under the said Act and Rules made thereunder, is empowered to enter the land on which the lease has been granted and carry out mining operations. The Apex Court has observed that the holder of the mining lease is obliged to compensate the landowner for any loss or any damage that his operations may cause.

31. *We are, therefore, of the considered view that in view of the provisions of sub-section (2) of Section 14 and Section 36 of the Land Revenue Code, read with the provisions of Article 2 of Decree dated 20.09.1906 which was a Portuguese Colonial Mining Law, the right in the minor minerals vests solely in the State Government and the State Government has all powers necessary for the purpose of enjoyment of such rights. We find that this position is fortified by the provisions of Section 24A of the said Act, which is applicable to all minerals, including minor minerals.*

32. *In view of the provisions of Section 24A of the said Act, a holder of a prospecting licence etc., is empowered to enter the lands over which such permit, etc. has been granted, at all times during its currency and carry out all such operations. The limited right in view of sub-section (2) of Section 24A of the said Act and sub-section (4) of Section 36 of the Land Revenue Code, is that the land owner will have right of compensation for such infringement.*

34. *In that view of the matter, we find that the petition is without any substance and deserves to be dismissed, and is hereby dismissed. Rule discharged.*

However, we make it clear that the decision of the present petition would not come in the way of adjudication of the rights of the parties in first appeal filed at the behest of the petitioner in this Court, nor would the same come in the way of the petitioner in raising claim for compensation as provided under sub-Section (2) of Section 24A of the said Act or sub-section (4) of Section 36 of the Land Revenue Code. In the circumstances, no order as to costs.”

12. Thus, it is clear that in Writ Petition No.158/2005, this Court has concluded that the Plaintiff would have no right to challenge the mining lease (lease deed dated 28.09.2000) executed by the Defendants No.2 and 3 in favour of the Defendant No.1 since the rights to the mineral in the Plaintiff's land would always vest in the State and it is the right of the State to allow for mining on the Plaintiff's property to win these minor minerals in terms of the Rules of 1985 as amended on 18.04.2002 by dropping Chapter III of the Rules.

It is also made clear in the same Judgment that having decided that the Plaintiff would have no right to challenge the agreement dated 29.09.2000, the decision would not come in the way of the Plaintiff getting an adjudication of her rights to compensation for the damage caused to her land covered under the lease dated 18.04.2002 (40,000 square metres) or to the remainder of the land, outside the lease area within Survey No.213/1.

13. It is also a matter of record that Judgment dated 10.12.2013 in Writ Petition No.158/2005 passed by this Court was challenged by the Plaintiff before the Hon'ble Supreme Court of India in Special Leave Petition CC No. 7997/2014 and the Special Leave Petition was dismissed at the threshold, upholding the Judgment of this Court dated 10.12.2013. Thus, the deletion of Chapter III of the Rules of 1985 has been upheld.

14. In this background, after going through the entire record of the Trial Court in the suits, perusing the impugned Judgments and Decree and assessing the controversy in the matter, I frame the following points for determination in these appeals:

POINTS FOR DETERMINATION:

- I. In view of the Judgment of this Court dated 10.12.2013 in ***Maria Teresa Filomena Pegado vs. State of Goa and Others*** (supra), whether the Trial Court has committed any error at law in refusing a decree to declare lease agreement dated 28.09.2000 to be illegal and void, or as a consequence has committed any error in rejecting the Plaintiff's prayer for a permanent injunction against the Defendants from interfering with the suit property and directing removal of all fixtures and structures therein or to stop the Defendants from carrying out any quarrying activities.
 - II. Whether the Plaintiff has proved by acceptable evidence that she is entitled to mesne profits or any compensation from the Defendants.
15. During the pendency of these appeals, and after Judgment dated 10.12.2013 was rendered by this Court in ***Maria Teresa Filomena Pegado vs. State of Goa and Others*** (supra), the Appellant filed two applications bearing Misc. Civil Application No.342/2019 in First Appeal 73/2009 and Misc. Civil Application No.343/2019 in

First Appeal 72/2009 in which the Appellant sought a reference of issues (a) to (e) raised in para 21 of the application, to Hon'ble The Chief Justice of the High Court, for consideration of these issues by a Full Bench of this Court. The issues which are sought to be referred to in terms of Rule 8 of Chapter I of the Bombay High Court Appellate Side Rules, 1960 are reproduced hereunder:

- a. Whether Judgment dated 10.12.2013 passed in Writ Petition No.158/05 ignores Article 3 of Portuguese Colonial Mining Law Decree dated 29.09.1906 as well as ignoring that section 14(1) declares that what does not belonged to any private person belongs to Government and further ignoring declaration made in proviso to section 36 that right of the private person to the mineral in his land shall subsist and had it considered them, it would have come to different conclusion?
- b. Whether Judgment dated 10.12.2013 passed in Writ Petition No.158/05 is per-incuriam of the Judgment passed by the Court of Judicial Commissioner in **Narayan Tilve Vs. Government of Goa, Daman & Diu** [AIR 1969 GOA] which is settled law that land owners rights to minor mineral are not taken away by the decree of 1906?
- c. Whether Section 24A of MMDR Act is to be read with section 36 (4) of land Revenue Code, 1969 so as to apply it to Minor minerals vest in private person?
- d. Whether all the lands during Portuguese regime belongs to crown and private person had limited right to land and Goa Land Revenue Code, 1969 is law abolishing proprietary rights of land owners?

- e. Whether MMDR Act, 1957 is law abolishing rights of private land owners to the minor minerals found in their properties and private land owners are only entitle for compensation towards surface?

16. I have heard the learned Advocates for the parties, on the two Misc. Applications and necessity to make a reference of the matters, as prayed for in terms of Rule 8 of Chapter I of the Bombay High Court Appellate Side Rules, 1960, before answering the points for determination formulated in the appeals.

It is the contention of learned Advocate G.R. Usgaonkar for the Applicant/Plaintiff that the Judgment of this Court dated 10.12.2013 ignores the provisions of Article 3 of the Portuguese Mining Law Decree dated 20.09.1906, and further that the Judgment is *per incuram* the Judgment dated 15.07.1968 of the Court of the Judicial Commissioner rendered in *Narayan Tilve vs. Government of Goa*, hence the Judgment dated 10.12.2013 needs to be reviewed.

17. At the outset, it will be pertinent to note that the Judgment dated 10.12.2013 having been confirmed by the Hon'ble Supreme Court on dismissal of the Special Leave Petition filed against it, has become final; even otherwise, the Plaintiff could have approached the very same Division Bench and filed an application for review of its Judgment on the contentions raised in the Misc. Applications, which even today, the Plaintiff has not done.

18. A perusal of Rule 8 of Chapter I of the Bombay High Court Appellate Side Rules, 1960 would also reveal that these provisions could not be adverted to by this Court for the simple reason that Rule 8 is a provision enabling any Judge of this Court to report to Hon'ble The Chief Justice that a matter could be more advantageously heard by a Bench of two or more Judges, however, the provision is not one which vests this Court with a power to dissent with a binding precedent or to request a reference of a case before it, merely because it has an opinion different from the opinion expressed in an earlier precedent. In that view of the matter, both Misc. Civil Applications bearing Misc. Civil Application No.342/2019 in First Appeal 73/2009 and Misc. Civil Application No.343/2019 in First Appeal 72/2009 must be rejected and are hereby rejected.

19. Shri G.R. Usgaonkar for the Plaintiff/Appellant has then submitted that there was sufficient evidence led by the Plaintiff to demonstrate that there was damage caused to the suit property by the mining/quarrying operations conducted therein by Defendant No.1 and this evidence has not been considered by the Trial Court to grant compensation and mesne profits. He further submits that merely because initial consent for carrying out quarrying operations was given by late Hipolito, would not empower the Defendant No.2 to renew a mining lease without the consent of the owner of the land. He submits that the Trial Court has erroneously held that the mining

lease dated 28.09.2000 ought to have been held illegal since the Defendant No.2 had no powers to grant such a lease in a private land.

Learned Senior Advocate Shri S.D. Lotlikar for the Respondent No.1 has heavily relied upon the Judgment of this Court dated 10.12.2013 in *Maria Teresa Filomena Pegado vs. State of Goa and Others* (supra) to contend that the issue of the legality of the lease dated 28.09.2000 has been concluded all the way to the Apex Court and the Trial Court, which has even otherwise arrived at the same conclusions as this Court in the Writ Petition before it, has rightly dismissed the suit upholding the lease. It is further his contention that though this Court in its Judgment dated 10.12.2013 has left the claim to compensation open, the Plaintiff had not led any evidence before the Trial Court to prove her claim that the suit property had been damaged by the operations of the Defendant No.1, and that the Trial Court had rightly held that there was no evidence on the claim of mesne profits. The learned Additional Government Advocates Mr Pravin Faldessai and Mr Deep Shirodkar appearing for Respondents No.2 and 3 in these appeals have supported the arguments put forth by the Respondent No.1.

20. At the outset, it is more than clear that this Court in its Judgment dated 10.12.2013 in *Maria Teresa Filomena Pegado vs. State of Goa and Others* (supra) has clearly upheld the deletion of Chapter III from the Rules of 1985 and concluded that the Plaintiff

has no rights to the minor mineral/ surface rights in the suit land. This Court has also concluded in the very same judgment that even under the erstwhile Portuguese Mining Code, the very same concept would apply, whereby the Plaintiff could only claim compensation for any damage to her property resulting from mining operations, but would not be entitled to claim the right to the minerals in her land, which would vest in the erstwhile Portuguese Government. This Judgment having been challenged unsuccessfully before the Apex Court and having obtained finality, has conclusively decided the Plaintiff's claim to the minerals and upheld the right of the Defendants No.2 and 3 to create a mining lease such as the one in lease dated 28.09.2000 under challenge in the suit. In my opinion, the entire challenge in the suit to this lease agreement must fail once this Court has upheld the right of the Defendant No.2 over the minerals and its right to execute lease agreements for winning the minor minerals from the suit property. Accordingly, I conclude that the finding of the Trial Court that the agreement dated 28.09.2000 is in conformity with the provisions of the Rules of 1985 framed under the MMDR Act cannot be faulted and is hereby upheld.

Thus, I answer Point for Determination No.I in the negative and in favour of the Respondents.

21. The next Point for Determination No.II would require reading of the Plaintiff's pleadings and evidence on the question of seeking compensation and mesne profits. The plaint nowhere states, where in

the suit property the Defendant No.1 has caused damage or in what manner destroyed any portion thereof. In fact, a reading of the relief clause in the plaint does not even disclose a claim made by the Plaintiff for compensation due to any damage, destruction or loss from the mining activities in either the lease area of 40,000 square metres or beyond it. The claim for mesne profits is also based upon some earlier payments made by the Defendant No.1 to the Plaintiff, and accepted by her, with no evidence of whatsoever nature being led by the Plaintiff in her evidence, on that issue. The conclusions of the Trial Court that the Plaintiff has miserably failed to lead any evidence on the question of mesne profits or on the damage to his suit property cannot be faulted, as in fact there is no evidence at all to be found on record. I, therefore, answer the Point for Determination No.II in the negative and in favour of the Respondents. Both suits have been rightly dismissed by the Trial Court.

22. Consequently, both these appeals are without merit and are accordingly dismissed with no order as to costs. Decree be drawn by the Registry of this Court accordingly.

For reasons stated in paragraphs 15 to 18 above, Misc. Civil Application No.342/2019 in First Appeal 73/2009 and Misc. Civil Application No.343/2019 in First Appeal 72/2009 are rejected.

VALMIKI SA MENEZES, J.