



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 708 OF 2016

AND

WRIT PETITION NO. 2832 OF 2024 (F)

WRIT PETITION NO. 708 OF 2016

Sociedade Timble Irmaos Limitada, Rep.
Thr. Its Director, Mr. Francisco Lume ... Petitioner
Pereira

V e r s u s

1. Union of India, Ministry of MOEF & CC, ... Respondents.
Thr. Its Secretary and 4 Ors.

Mr. Parag Rao, Advocate with *Ms. S. Drago, Advocate for the Petitioners.*

Mr. Raviraj Chodankar, Central Government Standing Counsel for
Respondent nos. 1 and 2.

Mr. Deep Shirodkar, Additional Government Advocate for *Respondent nos.*
3 to 5.

AND

WRIT PETITION NO. 2832 OF 2024 (F)

M/s. Vedanta Limited, Thr. Its Auth rep. ... Petitioners
Jagdish Ravindranath Desai & anr.

V e r s u s

1. Union of India, Ministry of MOEF & CC, ... Respondents.
Thr. Its Secretary and 4 Ors.

Mr. S. S. Kantak, Senior Advocate with *Mr. Abhijit Gosavi, Ms. Saicha Desai, Ms. Neha Kholkar and Ms. Krupa Naik, Advocates for the Petitioners.*

Mr. Somnath Karpe, Central Government Standing Counsel with *Mr. Anand Shirodkar, Advocate for Respondent nos. 1 and 2.*

Mr. Pravin Faldessai, Additional Government Advocate *for Respondent nos. 3 to 5.*

**CORAM: M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.**

DATE: 13th FEBRUARY, 2025

ORAL ORDER (*Per M. S. Karnik, J.*)

1. A reference to the Order dated 26.09.2016 in Writ Petition No. 708 of 2016 will clarify the basic facts necessary to deal with these petitions. The relevant portion reads thus :

“2. The challenge in the above petition, inter alia, is to a Circular dated 31st March, 2016 which, inter alia, specifies that unless Net Present Value (NPV) is paid in respect of the forest area of a subsisting mining lease, no mining operations would be allowed after 30th September, 2016.

3. Mr. Rafiq Dada, learned Senior Counsel appearing for the petitioner has pointed out that an application dated 3rd April, 2009 is pending before the respondent No.3, filed under the Indian Forests Act, 1927, inter alia, contending that the subject-property is not a forest land. It is further pointed out that in terms of the specific directions of the Authorities, the petitioners have also filed an application for diversion, without prejudice to the contentions in the application dated 3/4/2009, on 5th March, 2012. The learned Senior Counsel further points out that in the meanwhile, NPV is being

claimed by the respondent No.3 based on the Judgment of the Apex Court reported in (2006) 1 SCC 1 in the case of T.N. Godavarman Thirumulpad vs. Union of India and others. It is further submitted that as there is no progress in the disposal of the above two applications, the question of invoking the subject-Circular to stop the mining operations in respect of the non-forest area, would not at all be justified. It is further pointed out that the concerned Authorities have not even determined the amount payable towards NPV and, as such, the directions issued in such disputed Circular dated 31/03/2016, deserve to be stayed.

4. On the other hand, Mr. D. Lawande, learned Assistant Solicitor General appearing for the respondents No.1 and 2, points out that the NPV is being collected in terms of the said Judgment of the Apex Court in T.N. Godavarman Thirumulpad (supra). The learned Assistant Solicitor General further points out that in terms of Rule 6 of the Forest Conservation Rules, there are different stages contemplated therein to be followed to obtain sanction for diversion of forest land to carry out mining operations. It is further pointed out that the NPV is to be paid only after Stage I is reached in such process. The learned Assistant Solicitor General further points out that in the present case, Stage I is not yet reached and, as such, in terms of the directions in the Circular dated 31/03/2016, unless the NPV is paid for such forest area, the petitioner cannot proceed to carry out the mining operations in the non-forest area.

5. Mr. Deep Shirodkar, learned Additional Govt. Advocate appearing for the respondents No.3 to 5 has pointed out that the NPV which is payable by the petitioners in respect of the forest area, has been tentatively determined to be in a sum of Rs.36.50 lakhs and shall depend on the final assessment to be carried out by the concerned Authorities in accordance with law.

6. We have considered the submissions of the learned Counsel and we have also gone through the records. Considering the rival contentions, we find that there are arguable issues raised in the present petition which would require final hearing of the above petition. Admittedly, the applications filed by the petitioner are still pending.

7. Hence, Rule.

8. Mr. Dada, learned Senior Counsel appearing for the petitioners prays for an interim relief as, according to him, for no fault of the petitioners the mining operations may have to be at a standstill in respect of the non-forest area of the subject-lease. Mr. Lawande, learned Assistant Solicitor General points out that as the amount of NPV determined by the respondent No.3 is tentative, the petitioner could furnish a proper security to ensure that such amount is available to the respondent No.3 immediately after Stage I of the process which is stated to be in terms of Rule 6(3)(e)(ii) of the Forest Conservation Rules to permit diversion of the forest land is reached.

(Emphasis supplied)

9. In the present case, considering the above contentions, as the learned Assistant Solicitor

General states that Stage I has not yet reached in terms of Rule 6 of the Forest Conservation Rules and the matter is pending before the concerned Authorities, we find it appropriate, in the interest of justice, to pass the following interim order:

(I) The concerned respondents are directed to proceed to take a decision on the said application dated 5th March, 2012 filed by the petitioners for diversion of forest, as expeditiously as possible and in accordance with law.

(II) The respondent No.3 shall proceed to consider the application of the petitioners dated 3rd April, 2009 pending before the respondent No.5, on its own merits, as expeditiously as possible and preferably within nine months from today.

(III) The impugned Circular dated 31st March, 2016 shall not come in the way of the petitioners, if they are otherwise entitled, to carry out the mining operations in non-forest area of the concerned mining lease, in accordance with law, subject to the petitioners furnishing an unconditional and irrevocable Bank Guarantee to the satisfaction of the respondent No.3 in the sum of Rs.36.50 lakhs within one week from today. The said Bank Guarantee shall be kept in force by the petitioners until further orders of this Court.

(IV) The respondent No.3 shall be entitled to encash the Bank Guarantee immediately after Stage I of the process as provided in Rule 6 of the Forest Conservation Rules is reached in respect of the said

application filed by the petitioners for diversion
dated 5th March, 2012. (Emphasis supplied)

(V) Needless to say that the interim orders passed herein are only in the context of the challenge to the impugned Circular dated 31/03/2016, as any mining operations carried out by the petitioners in the subject-lease shall be in accordance with law.

(VI) Liberty to the parties to apply.”

2. It is an admitted fact that no mining activities were carried out in the portion of the land which was subject matter of this petition which, according to the petitioner in Writ Petition No. 708 of 2016, was a non-forest land. It was always the contentions of the respondents that the area of 5.3612 hectares was a forest land.

3. There have been subsequent developments. An auction was held for the purpose of granting mining lease which includes this area of 5.3612 hectares, which according to the respondents, is a forest land. The lease pursuant to the auction is now granted in favour of the petitioner in Writ Petition No. 2832 of 2024 (F) i.e. Vedanta Limited.

4. The petitioner in Writ Petition no. 708 of 2016 has therefore, now no subsisting right in the said area. Resultantly, nothing survives for consideration in the Writ Petition no. 708 of 2016 and the same by passage of time has worked itself out.

5. As a consequence, as no activity was carried out in the said area of 5.3612 hectares, the unconditional and irrevocable bank guarantee of 46.50 lakhs which was furnished by the petitioner in Writ Petition No. 708 of 2016 to the satisfaction of the respondent no. 3 and which was to be kept in force by the petitioners until further orders of this Court shall now stand released. Necessary steps forthwith be taken by the respondent no. 3 in Writ Petition no. 708 of 2016 for release of the bank guarantee which was furnished by the petitioner.

6. So far as Writ Petition no. 2832 of 2024 (F) is concerned, the petitioner seeks a direction to the respondents to process and decide the application dated 19.03.2024 filed by the petitioners (page 40 of the paper book) for the diversion of forest land to the extent of 5.3612 hectares which forms part of the Cudnem Mineral Block VII in a time bound manner. The mining lease which includes the said area to the extent of 39.36 hectares of Cudnem Village is granted in favour of the petitioner which is comprising of inter alia survey no.152/o.

7. We have heard Shri Faldessai, learned Counsel for the respondents. Shri Faldessai submits that the issue as to whether the land to the extent of 5.3612 hectares is a forest land or otherwise was pending consideration in Writ Petition no. 708 of 2016 and hence the

application of the petitioner in Vedanta Limited was not being considered.

8. In our opinion, now that Writ Petition no. 708 of 2016 is disposed of, there is no impediment for the respondents to decide the application dated 19.03.2024 of the petitioner-Vedanta Limited, which is at page 40 of the paper book in accordance with law as the petitioner Vedanta is requesting the application to be processed on the premise that the area is a forest land for which they are willing to abide by all the conditions that may be imposed including the payment of compensation. These are aspects to be considered by the competent authority on its own merits.

9. This petition is accordingly allowed in terms of prayer clause (a).

10. The application be decided in accordance with law as expeditiously as possible. We have not expressed any opinion on the merits of the application.

11. The Petitions are disposed of. No order as to costs.

NIVEDITA P. MEHTA, J.

M. S. KARNIK, J.