

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4160 OF 2024

Ashapura Minechem Ltd.)
287, D.N. Road, Jeevan Udyog Building)
Fort, Mumbai – 400 001) ...Petitioner

Versus

1. Indian Bureau of Mines through)
Ministry of Mines.)
Goa Regional Office,)
Central PWD Quarters, IBM Colony,)
New National Highway, Fatorda PO,)
Opp Old RTO Office, Borda,)
Margao, Goa 403602.)
2. Directorate of Geology and Mining)
Through Government of Maharashtra)
Khanji Bhavan, 27, Shivaji Nagar,)
Cement Road, Nagpur- 440010)
3. Ministry of Ports and Mining)
Through Government of Maharashtra)
Mantralaya, Mumbai 400032)
4. Industries, Energy & Labour)
Department,)
through the Government of)
Maharashtra)
Hutatama Rajguru Chowk,)
Madam Kama Marg, Mantralaya)
Mumbai 400032) ...Respondents

Mr. Harsh Meghani a/w. Mr. Ashish Parwani a/w. Mr. Dikshet Mehra and Mr.

Mithilesh Challa i/by Rajani Associates for the Petitioner.

Ms. Anjali N. Helekar a/w. Ms. Anu C. Kaladharan for Respondent Nos.1 to 5.

Ms. S.D. Vyas, Addl. G.P. a/w Ms. T.J. Karpe, AGP for Respondent-State.

**CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.**

RESERVED ON : 5 MARCH 2025

PRONOUNCED ON : 6 JUNE 2025

JUDGMENT [PER: ADVAIT M. SETHNA, J.]

Any State Largess is rooted in the foundation of *“trusteeship, which is premised on need and not on the individual greed.**

1. This is a Writ Petition filed under Article 226 of the Constitution of India praying for the following reliefs which reads thus.

“(a) That this Hon’ble Court be pleased to declare that Section 4-A(4) of the Mines & Minerals (Development and Regulation) Act, 1957 as amended with effect from 28.3.2021 does not apply to leases executed prior thereto and that such lease shall be governed by the provisions of Section 4-A(4) of the Mines & Minerals (Development and Regulation) Act, 1957 as they stood on the date of execution of such leases;

(b) To declare that the retrospective application of the provision under Sec. 4-A as amended by the said Amendment of 2021 is violative of the fundamental rights of the Petitioner under Articles 14, 19(1) (g) and 21 as guaranteed under Part III of the Indian Constitution.

** The quoted, italicized portion are the “telling words” of the Father of the Nation – Mahatma Gandhi.*

(c) *That in the alternative to prayer (a) above, this Hon'ble Court be pleased to hold that in computing the period of two years or a further period of one year, as the case may be under the amended section 4-A, the time taken by Government authorities and/or agencies and/or bodies to pass the revival order dated 24th March 2023 and the subsequent extension order dated 9th February 2024 (i.e. 32 months in aggregate out of 36 months) be excluded;*

(d) *That this Hon'ble Court be pleased to issue a Writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate writ, order or direction, calling for the records and proceedings leading to the passing of the Order dated 24th March, 2023 (Exhibit V hereto) and the Order dated 9th February, 2024 (Exhibit AA hereto) and after going into the legality, validity and propriety thereof, to quash and set aside the same to the extent they seek to arbitrarily impose the condition of commencing production and dispatch on or before 28th March, 2024;*

(e) *That this Hon'ble Court be pleased to issue a Writ of Prohibition, or a Writ in the nature of Prohibition, or any other appropriate writ, order or direction, leading to the passing of the Order dated 24th March, 2023 (Exhibit V hereto) and the Order dated 9th February, 2023 (Exhibit AA hereto) and after going into the legality, validity and propriety thereof, to quash and set aside the same to the extent they seek to arbitrarily impose the condition of commencing production and dispatch on or before 28th March, 2024.*

(f) *For a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records and proceedings lying with the Controller of Mines & Officer in charge, Indian Bureau of Mines, Goa Regional Office, Respondent No.1, and after examining the validity, legality and propriety thereof be pleased to quash and set aside the impugned emails.*

(g) *For a declaration that the erstwhile Rule 8(4) of the MCR 2016 is unconstitutional for violation of the Fundamental Rights guaranteed under articles 14, 19 and 21 of the Constitution of India.*

(h) *For a writ of certiorari or a writ in the nature of certiorari or any other*

appropriate writ, order or direction under Article 226 of the Constitution of India to set aside the letter dated 27th November, 2018 issued by the Respondent No.5 for being bad in law.

(i) For a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India thereby directing the Respondent No.1 to provide the Petitioner with a mine code in order for it to proceed with obtaining other permissions/ approvals in order to commence production and dispatch over the mining site as provided u/s 4-A of the MMDR Act.”

2. In these proceedings, we are called upon to adjudicate upon the validity and legality of the Petitioner’s claim for the grant of a mining lease and mining code in respect of bauxite mining lease in Village Sakhri, District Ratnagiri. The petitioner before us is a company whose mining lease statutorily lapsed. This is on account of non compliance with the statutory provisions under Mines and Minerals (Development and Regulation) Act, 1957 (**‘Mines Act’**), the Rules framed thereunder, (**‘Rules’**) along with the amendments thereto, read with the provisions of Environment Protection Act, 1986 and Rules, along with the Environment Impact Assessment Notification issued by the Ministry of Environment & Forest and Climate Change dated 27 January 1994, and as amended by notification dated 14 September 2006. However, it is the case of the petitioner that the lapsing order of respondent no. 2 dated 16 June 2021 was revoked by the order dated 24 March 2023 followed by an order dated 9 February 2024 impugned in the petition.

3. In such circumstances the issue that falls for consideration before the court

is whether it can regularize the claims of the petitioner by an imprimatur of the court, even if, it would otherwise fall outside the statutory scope, ambit as the law would mandate, is to be tested in these proceedings.

4. We have heard Mr. Harsh Meghani, learned counsel for the Petitioner, Ms. Anjali Helekar, learned counsel for Respondent Nos.1 to 5 and Ms. Shruti D. Vyas, Additional G.P. for the State at length and with their assistance we have perused the record.

Factual Matrix:

5. The facts necessary for adjudication of this Petition are noted below.

6. The petitioner had initially made an application for grant of mining lease on 15 September 2003 for bauxite for an area of 62.77 hectares in Village Sakhri, Tahsil Nandangd, Dist. Ratnagiri (“**Subject Lease**”). It was on 3 July 2009 that the Respondent No.5 addressed a letter to Respondent No.4 in regard to grant of prior approval for the subject lease to the Petitioner for a period of 20 years. The said letter dated 3 July 2009 in the form of prior approval of respondent no.5 clearly stipulated that before allowing the grant of mining lease to the petitioner, the State Government ought to ensure compliance of the amended provisions of the Mines and Minerals Development and Regulation Act, 1957, Mineral Concession Rules, 1960 along with the other applicable Acts and Rules including the Forest (Conservation) Act, 1980, Environment Impact Assessment Notification dated 27 January 1994 (“**the EIA notification**”) as issued

and amended by Ministry of Environment and Forest (“**Ministry**”). The State Government was directed to furnish a copy of the order that is passed by it to respondent no.5.

7. The application was examined by respondent No.5 in the said communication on the touchstone of Section 5(1) of the Mines Act. Before allowing the grant of the mining lease, the State Government has to ensure compliance of the amended provisions of the Mines Act and Rules read with the EIA notification dated 27 January 1994 as issued and amended by Ministry in compliance with Section 5 of the Mines Act. A copy of the letter dated 3 July 2009 of respondent no. 5 was marked to the competent authorities under the State Government, i.e., respondent no. 4.

8. Pursuant thereto, a letter dated 12 August 2009 was addressed by Respondent No.4 to the Petitioner referring to the application for grant of mining lease of the Petitioner. Respondent No.4 in the said letter, requested the Petitioner to submit the necessary documents including Clearance Certificate from competent authority under the Mines Act, Rules, Forest Conservation Act, 1980, (EP Act and EP Rules and the EIA Notification) along with its subsequent amendments in 2006 within six months from the receipt of the said communication by the Petitioner.

9. The Ministry, Government of India issued an Office Memorandum dated 16 August 2010 imposing a moratorium on projects falling under the EIA

Notification, 2006. Such moratorium was to apply to category A and B projects to include the Petitioner's bauxite mine in Sakhri Village, Tahsil. Mandangad, Ratnagiri for the period 16 August 2010 to 25 July 2017. By letter dated 11 September 2015 issued to the petitioner, by the Maharashtra Coastal Zone Management Authority ("MCZMA") to the petitioner, it was clarified that such moratorium shall cease to apply qua the petitioner's mining lease.

10. The Respondent no.5 on 26 December 2011 addressed a letter to the petitioner with regard to approval of mining plan for the petitioner's subject mining lease. The said letter made it clear that the mining plan is approved without prejudice to any other laws as may be applicable. Such approval does not in any way imply approval of the government in terms of any other provisions of the Mines Act, 1957 or Mineral Concession Rules, 1960 or any other laws including Forest (Conservation) Act, 1980, Environment Protection Act, 1986 and Rules made thereunder (Allied Laws and Rules). It also specified that if anything is found to be concealed as required by the Mines Act, 1957 in the contents of the mining plan and no rectification is made, such approval is deemed to be withdrawn with immediate effect. Thus, such mining plan was without prejudice basis and contingent upon the fulfillment of the conditions stated therein.

11. On such backdrop Respondent no.5 addressed a communication dated 26 November 2015 to the petitioner in regard to approval of the modified

mining plan in respect of the petitioner's mining lease. This was also issued on a without prejudice basis and with similar terms and conditions as imposed by the earlier communication dated 26 December 2011, under which the initial mining plan was issued to the petitioner.

12. The petitioner on 10 December 2015 submitted an application and pre-feasibility report to the Ministry for issuance of Terms of Reference ("TOR") which is a document required for obtaining the Environmental Clearance ("EC"). Accordingly, the petitioner received the TOR from the Ministry for a period of three years, valid until 15 March 2019. Since the TOR was expiring on 14 March 2019 the petitioner by its letter dated 8 February 2019 also submitted its application for extension of validity of the TOR. In the intervening period the term of the TOR lapsed on 14 March 2019 after which, the petitioner applied for a fresh TOR. The petitioner then addressed another letter dated 8 February 2019 to the state authority indicating that it is submitting its application requesting to extend the validity of the TOR by one year. The state authority received the petitioner's proposal for grant of TOR on 11 November 2023. Even though such TOR is for the purposes of obtaining EC, and the petitioner made applications from time to time the fact remains that the petitioner did not obtain the EC as mandated.

13. The Ministry of Mines i.e. Respondent No.5 issued an order dated 4 January 2017 called the Mines and Minerals (Development and Regulation)

Removal of Difficulties Order, 2017, which the petitioner refers to it as a 'Grant Order'. According to such order, it was clarified that notwithstanding anything contained in Sub-clause (c) of Sub-section (2) of Section 10A of the Mines Amendment Act, 2015, (with effect from 12 January 2015) where the condition for obtaining environmental clearance has not been complied with by the Applicant on or before 11 January 2017, but all other conditions specified in the previous approval or letter of intent have been fulfilled, the applications shall be considered under the amended Section 10A and the mining lease be granted in accordance with the notifications issued under the Environment Protection Act, 1986. However, with the proviso that no mining activities shall commence unless and until the Applicant obtains Environmental Clearance ('EC') as laid down under the Environment Protection Act along with its Rules.

14. Further to the above, the Ministry of Mines Government of India issued a letter dated 5 January 2017 in the form of a clarification referring to the notification dated 4 January 2017, *inter alia*, to the effect that the EC can be obtained prior to commencement of mining activity. The said letter also stipulated that in pending cases with the state, considering the urgency directions were issued to take required steps for grant of leases in such instances, within the timeline i.e. 11 January 2017.

15. The petitioner made an application to respondent no.2 by a letter dated 6 January 2017 for execution of mining lease referring to its earlier

application dated 15 September 2003 as also certain letters/correspondence as set out in the subject of the application. The petitioner therein *inter alia* stated that it has complied with all terms and conditions of the LoI issued by the State Government dated 12 August 2009 which was issued pursuant to the letter of approval dated 3 July 2009, granted by respondent no.5.

16. Pursuant to the above, the Respondent No.4 addressed a letter dated 11 January 2017 to the Petitioner in respect of consideration for grant of mining lease in favour of the Petitioner. The letter, *inter alia*, provided that the Respondent No.2 would ensure compliance by the petitioner before starting of any mining activities of the amended provisions of the Mines Act and Rules read with the Forest Conservation Act, 1980, Environment Protection Act and Rules, before commencing any mining operation or giving work permission. This was followed by an order issued by the Respondent No.4 of the same day i.e. 11 January 2017 where the Respondent No.4 sanctioned to the Petitioner a conditional grant of subject mining lease (for bauxite in Village Sakhri, Dist. Ratnagiri for an area of 62.72 hectares) on certain terms and conditions as stipulated in the sanctioned order. One of such conditions being that the lessee shall not be entitled, as a matter of right for renewal of the lease and that the lessee should before commencing any mining activity, submit a necessary clearance certificate from the competent authorities under the relevant statutes including the Environment Protection Act, 1986 and Rules and the Environmental Impact Assessment Notification, 1994 as amended in 2006.

17. The Petitioner, on 6 April 2017 claims to have executed a mining lease with Respondent No.2, copy of which is enclosed in the writ petition after making necessary payments of charges in this regard with the competent authorities. The mandatory environmental clearance as noted above was, however, not obtained by the petitioner.

18. The Ministry vide a Notification dated 14 August 2018 directed all mining lease holders with an area less than 100 Hectares to include the Petitioner's lease, to approach the State Environmental Appraisal Committee to obtain Terms of Reference ('**TOR**') and EC.

19. The Respondent No.5 issued a letter/order dated 27 November 2018 to the effect that after commencement of the Mines Amendment Act, 2015 w.e.f.12 January 2015 and the amendments made under Section 10A (2) (c), no mining lease could be granted beyond 11 January 2017 for the minerals covered under Section 10A (2) (c), and mining leases after the said period of 11 January 2017 would be treated as void *ab-initio* under Section 19 of the Mines Amendment Act. The said letter/order issued by Respondent No.5 dated 27 November 2018 also made the execution and registration of the mining lease mandatory (to be construed as grant of mining lease) under Rule 8(4) of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 ('**Mineral Concession Rules, 2016**')

20. The Mineral Concession Rules had been notified on 4 March 2016. The Petitioner, who had not obtained the required EC, commenced its baseline and data collection activities as stated in the work order dated 1 February 2019 executed between the Petitioner and the vendor, one Shruti Seva Private Limited. The Petitioner accordingly applied for fresh TOR before the State Level Environmental Impact Assessment Authority, which was granted on 20 May 2019 for a period of three years in accordance with the Office Memorandum issued by the Ministry on 29 August 2017.

21. It was on 28 March 2021 that the Mines Act was amended incorporating Section 4A (4) substituting the expression mining activity to production and dispatch with effect from 28 March 2021. It provided that the holder of a mining lease, who fails to undertake such production or dispatch for a period of two years or has discontinued the same for a period of two years, the lease shall lapse on expiry of said two years' period from the date of execution of lease or discontinuance of production and dispatch.

22. Pursuant to the above, on 16 June 2021 the Respondent No.2 i.e. Directorate of Geology and Mining, State of Maharashtra issued an order declaring the Petitioner's lease executed on 6 April 2017 to have lapsed as it had not commenced mining operation as stipulated under the amended Section 4A(4) of Mines Act as noted above, read with Rule 20 of the Minerals Concession, Rules, 2016. Thus, the mining lease of the Petitioner was declared as lapsed with

effect from 16 June 2021 by the said order of respondent no. 2.

23. The Petitioner being aggrieved by the lapsing order dated 16 June 2021 addressed a letter to the Respondent No.2 mainly for revocation of such order and for the grant of hearing to the Petitioner. Accordingly, a hearing was scheduled on 21 December 2022.

24. The Respondent No.3 through the Hon'ble Minister passed the impugned order dated 24 March 2023. Accordingly, order dated 16 June 2021 of lapse of petitioner's lease issued by Respondent No.2 was set aside and the Petitioner was allowed to commence its production and dispatch on or before 28 March 2023, noting that the Petitioner could not commence its mining operation as it did not possess the EC. The Petitioner thereafter applied for a mining code to the Respondent No.1. However, the Petitioner's request for the grant of mining code was refused by Respondent No.5 vide email dated 17 October 2023. This was mainly on the ground that the lease deed executed on 6 April 2017 i.e. after a period of two months from the statutory deadline of 11 January 2017 under the amended Section 10A(2)(c) of the Mines Act, would be deemed to be void *ab-initio*, under Section 19 of the Mines Act. The State Level Environmental Impact Assessment Authority received petitioner's proposal for grant of TOR on 11 November 2023, until such date the petitioner had no EC.

25. Further to the above, the Respondent No. 3 by the second another impugned order dated 9 February 2024, once again extended the time for the

Petitioner to commence production and dispatch for another one year upto 28 March 2024 subject to the condition that no further extensions shall be granted. The earlier extension was by the Hon'ble Minister's impugned order dated 24 March 2023, upto 28 March 2023.

26. It is in the above backdrop that the Petitioner has approached this court under Article 226 of the Constitution of India.

Submissions

27. The petitioner through Mr. Meghani would first submit that the respondents in the present case have acted in a manner which is highhanded, arbitrary, in breach of principles of natural justice by depriving the petitioner of its fundamental as well as constitutional rights.

28. Mr. Meghani would submit that as the amendment to Section 4A(4) of the Mines Act is prospective, respondent no.3 ought not to have imposed and/or applied the time period of two years and consequently Respondent no.4 ought not to have restricted the extension for a further period of one year only. The time period of two years or a further period of one year to commence production and dispatch of minerals would apply only to lease deeds executed by the State Government on or after 28 March 2021 i.e. from the date of the amendments to the Mines Act and not prior thereto.

29. The petitioner had acquired vested rights to mine bauxite in terms of the lease. The petitioner had all times with due diligence acted and taken all

steps to undertake the mining operations at the earliest in terms of the provisions of Section 4A(4) as prevalent on the date of execution of the lease deed i.e. on 6 April 2017. By subsequent amendment no fetter could have been imposed on such a right and hence Section 4A(4) as amended on 28 March 2021 cannot be given retrospective effect.

30. According to the petitioner, in the alternative, in computing the period of two years and further extension of one year, the period from 16 June 2021 to 3 April 2023 (time consumed in challenging the lapse order) and similarly the period from 3 April 2023 till 9 February 2024 (time taken to get an extension order) must be excluded, to mean that out of total of 36 months w.e.f. 28 March 2021 an aggregate period of about 32 months cannot be considered in reckoning the period as stipulated under Section 4A.

31. It is the petitioner's case that having already applied for EC and TOR in 2015 and 2016 respectively, it was vigilant and compliant enough under the erstwhile Section 4A of the Mines Act to start mining operations. The petitioner rights in executing the mining lease were protected in light of such compliance under the erstwhile Section 4A of the Mines Act. The petitioner would rely upon certain authorities to buttress his proposition to the effect that every statute is *prima facie* prospective, unless it is by necessary implication made to have retrospective effect. The substitution of the words 'mining operation' by the words 'production and dispatch' under Section 4A(4) by amending Act of

2021 has to only pertain to fresh mining leases executed after 28 March 2021 i.e. the date of amendments coming into force and not to the mining lease which have already existed on the said date. This is to show that the amendment to the said provision is purely prospective in nature.

32. The petitioner would submit that on account of the retrospective effect of amended Section 4A, the petitioner's fundamental rights guaranteed under part -III of the Constitution, i.e. Article 14, 19 and 21 have been abridged. Section 10A(2)(c) of the Mines Act, 1957 according to the petitioner contain the term 'granted'. There was neither a mention of the word 'registered' or 'executed' and thus the term 'granted' as appearing in the provision should be read as such.

33. The petitioner relying on the letter/order issued by the respondent no.5 dated 11 January 2017 would contend that the intention of the respondent no.5 was only for compliances with LOI before 11 January 2017 and upon such completion a grant order is to issue in respect of the mining lease and not for registration or execution of the mining lease. The petitioner complied with the statutory requirement by executing the lease deed on 6 April 2017 i.e. within the framework of the letter/order dated 11 January 2017. The petitioner would submit that the letter of the respondent no.5 dated 27 November 2018 which provided a clarification on Section 10A(2)(c) along with the letter dated 11 January 2017 is misconstrued by the respondents. The intention of the legislature was to ensure compliance of the LOI conditions on or before 11 January 2017.

34. The petitioner would next submit that Rule 8(4) of the Mineral Concession Rules, 2016 is inconsistent with Section 10A(2)(c) of the amended Mines Act. The said rule adds the words 'execution, registration' which are not found in the parent statutory provisions. Hence, Rule 8(4) is ultravires the provisions of Section 10A(2)(c) of the Mines Act. To this, reference is made to the settled law that statute will prevail over subordinate legislation when the two are not in conflict. In this context the petitioner would submit that from a perusal of the letter dated 27 November 2018 it would become evident that it is ultravires the statute insofar as it states that the execution and registration of mining lease are mandatory for it to be construed as grant under Rule 8(4) of the Mineral Concession Rules. Such Rule violates the petitioner's fundamental right under Article 14 as also that under Article 19(1)(g) and Article 21 of the Constitution of India. Since the said Rule abridges the fundamental right of the petitioner it is contrary to Article 13 of the Constitution of India.

35. The petitioner would submit that the letter dated 3 July 2009 in regard to prior approval of the mining lease by the respondent no.5 in favour of the petitioner vested right in the petitioner which was expressly saved by Section 10A(2)(c) of the Mines Act, 1957. The respondent no.1 gravely erred in failing to take such settled legal position into account.

36. The respondent through Ms. Helekar and Ms. Vyas would strongly oppose the petition. Ms. Helekar would refer to the reply dated 2 April 2024 on

behalf of respondent nos.1 and 5 filed by Shri. Naresh Kumar Katariya, Deputy Controller of Mines and Officer-in-Charge, Indian Bureau of Mines, Goa. At the outset Ms. Helekar would submit that the reliefs sought by the petitioner runs contrary to the statutory scheme, mandate and provisions of the Mines Act, 1957 and Rules thereunder. Granting of such reliefs would have wide ranging implications on the auction regime as introduced by the Mines Amendment Act, 2015 by permitting backdoor entry for grant of mining lease which will run parallel to the auction regime stipulated under the Mines Act. This is not a legally acceptable position.

37. According to respondent nos.1 and 5, by way of the 2015 amendment to the Mines Act a two year mandatory timeline has been prescribed for execution of mining leases, under Sections 10A(2)(c) of the Mines Act, 1957. Such mandatory period of two years had already lapsed on 11 January 2017 i.e. the cut-off date as provided under the said provision. The petitioner has failed to get its lease executed in accordance with such mandatory provision by virtue of which it stands lapsed. Further, in the year 2021, by an amendment brought in the Mines Act, more particularly in Section 10A(2)(d), such area has to be put up for auction. Thus, the petitioner is straight away not eligible for any relief by virtue of Section 10A(2)(d) of the Mines Act, 1957 which come into force and effect from 28 March 2021.

38. The respondent would next submit that the petitioner is not entitled for any relief under the clear provisions of Rule 8 which were very much

prevented when the petitioner's mining lease was executed on 17 April 2021. The petitioner cannot take any advantage of its omission which was much subsequently from 2 November 2021. In any event, when such Rule existed in the statute, it is in consonance and conformity that the provisions of the parent statutes i.e. Section 10A(2)(c) of the Mines Act which is not challenged by the petitioner.

39. The respondent would submit that the petitioner has deliberately overlooked and not referred to the mandatory provisions of Section 10A(2)(c) of the Mines Act as it may not suit the petitioner's interest, however, if such provision is read as a whole, as is, it would be clear that the legislative mandate is for the grant of mining lease within two years from the date of the commencement of the Mines Amendment Act, 2015 i.e. on or before 11 January 2017 and nothing beyond that. Therefore, the phrase '*the mining lease shall be granted*' has to be read with 'within a period of two years' along with the phrase 'subject to fulfillment of the conditions of the previous approval or of the letter of intent' in harmony or in consonance as the law would mandate. The legislature has not just intended for completion of conditions of previous approval letter or letter of intent but the process of grant of mining lease itself has to culminate into a mining lease deed within the stipulated period of two years commencing from 12 January 2015 i.e. the date of commencement of the Mines Amendment Act, 2015. It is for this reason that the phrase 'mining lease shall be granted' which ought to be read as to be executed was consciously used by the legislature,

prescribing a two year period in this regard.

40. According to the respondent by prescribing the cut-off date of 11 January 2017 in Section 10A(2)(c) of the Mines Act has a purpose. This is to ensure that the two years eligibility period is limited and does not continue till perpetuate as that would tantamount to granting rights to the applicant to squat over the area without commencing mining operations, contrary to public interest. Thus, by prescribing the cut-off date of 11 January 2017, if the application has not culminated into the execution of a mining lease, the applicant ought to be rendered ineligible. Diluting or extending the cut-off date will tantamount to grant of mining lease other than through auction which would ex facie violate the statutory mandate under Section 10A(2)(d) of the Mines Act, as it is after expiry of such two year period that the areas are to be put up for auction under the said provision.

41. The respondent would then place reliance on Rule 8 of the Mineral Concession Rules which are in clear conformity with the provisions of Section 10A(2)(c) of the Mines Act. The said Rule was very much in existence when the mining lease of the petitioner was executed on 6 April 2017. It clearly stipulates that the failure to execute such mining lease on or before 11 January 2017 would lead to the forfeiture of any right in this regard. As such Rule is in conformity with the statutory provision which in no manner has assailed or challenged by the petitioner, the contention of the petitioner that such Rule violates the

fundamental right of the petitioner is completely devoid of merit and cannot be accepted.

42. The respondent in the context of the cut-off date of two years stipulated under Section 10A(2)(c) which makes a mining lease executed after 11 January 2017 void and in-operated, would be in consonance with the well settled legal principle that when a provision under the statute prescribes a thing to be done in a particular manner then it is to be done only in that particular manner and no other. Thus, the statutory time limit of two years, if not complied would run contrary to Section 19 of the Mines Act and has to be followed in letter and spirit.

43. The respondents would submit that in the present case on the cut-off date of 11 January 2017 the petitioner only had a prior approval of respondent no.5 but that is of no consequence. As the petitioner would also not dispute, such conditions in the prior approval were not complied. Thus, merely having such prior approval under Section 5(1) of the Mines Act does not aid any right whatsoever. It is so because the prior approval of respondent no.5 under Section 5(1) is hedged with fulfillment of other statutory conditions like obtaining EC as mentioned in such prior approval granted by the respondent no.5 as on 3 July 2009. In other words, the period of two years under Section 10A(2)(c) is sacrosanct and cannot be altered. For such reason, the mining lease of the petitioner is rendered invalid and lapsed suo motu after the statutory cut-off date of 11 January 2017.

44. The respondents would submit that the pretext of delay on the part of the respondents taken as a major ground by the petitioner to save its lease from lapsing is no ground whatsoever either in fact or in law to claim inapplicability of the provisions of a statute and thereby to seek for a declaration to exclude such period of purported delay from the period of two years as contemplated under Section 4A(4) of the Mines Act.

45. The respondents would contend that the petitioner has unduly stressed on the provision of Section 4A(4) of the Mines Act as amended w.e.f. 28 March 2021. In the event the petitioner's lease by invalidity automatically lapses for non-compliance of Section 10A(2)(c) of the Mines Act after 11 January 2017 there is no requirement to go any further. As such lease would run contrary to the provisions of Section 19 after the cut-off date of 11 January 2017 it would be rendered as void under such provision. In any event and without prejudice the petitioner has also not complied with the provisions of Section 4A(4) as would applicable prior to its substitution. The petitioner is thus in no manner entitled for any extension after 11 January 2017. In fact, when the regime for grant of mining lease has changed from first cum first serve basis to that of auction, the Court would fail in its duty to afford public trust by directing grant of mining lease in favour of the petitioner after the cut-off date of 11 January 2017. Thus, in such circumstances the petitioner cannot demand the issuance of writ of mandamus from the Court for the grant of mining lease which would be in complete contravention of the statutory provision.

46. The respondents would submit that there is no vested right of the petitioner for mining much less for mining in any particular area. Though the petitioner is ineligible for any consideration under Section 10A(2)(c) of the Mines Act, there is no embargo on the petitioner to participate in the auction process for the subject area as and when the same is available for auction in accordance with the current regime of grant of mineral concessions under the Mines Act. For such reason, there is no prejudice to the petitioner.

47. The respondents would urge that the Mines Act is a part of the ninth schedule to the Constitution of India as such Article 31-B is applicable. Consequently as clearly provided under Article 31-B the contention of infringement of fundamental right under Article 14 and/or 19 is not available to the petitioner. The respondents in support of such proposition has placed gainful reliance on the decision in *Larsen and Tubro Vs. Union of India & Ors.*; *Savita Rawat Vs. State of MP & Ors.*

48. Ms. Vyas, Additional G.P. appearing of the State of Maharashtra has also opposed the petition. She would rely on the reply affidavit dated 4 March 2025 of Ms. Bhagyashree Nandkumar Joshi, District Mining Officer, Ratnagiri. She would refer to Rule 20 of the Mineral Concession Rules, 2016 to submit that the order dated 16 June 2021, passed by respondent no.2 declaring the mining lease of the petitioner to have lapsed is within the four corners of law. The

provisions under Rule 20 of the Mineral Concession Rules, 2016 provides for situations when a mining lease shall lapse. In the given case as the petitioner failed to comply with the terms and conditions provided under the said Rule 20, the fallout would be the lapse of such lease. It is pertinent to note that even under the provisions of the said Rule prior to its substitution i.e. before 2 November 2021, as the petitioner-lessee failed to make the application within the stipulated period of two years, the lease has lapsed on expiry of such two year period. For such reason and taking into account the lapse of such lease, the petitioner cannot get any relief and the petition deserves to fail on such count.

49. The petitioner through Mr. Meghani in rejoinder would reiterate the stand of the petitioner as summarized above. Mr. Meghani would categorically deny the case of the respondents in their reply. The petitioner would submit that it has fulfilled all required conditions as stipulated in the prior approval dated 3 July 2009 issued by the Central Government except the procurement of EC certificate, which according to the petitioner was exempted by the order dated 4 January 2017 passed by respondent no.5. The petitioner is therefore being illegally deprived of the grant of the mining code and the mining lease.

50. In rejoinder, the petitioner would submit that there seems to be a dispute between the centre and State of Maharashtra, the ill effects of which are being suffered by the petitioner with great prejudice being caused to it. According

to the petitioner, a conjoint reading of Section 10A(2)(c), the order dated 4 January 2017, the letter dated 11 January 2017 and finally the lease as executed makes it clear that the petitioner was in total compliance with all applicable laws and therefore saw no reason to approach the Court at that time. It is also submitted that the respondents have not dealt with the petitioner's contention of issuing the mining code and has maintained silence in this regard. For all such reasons, the petitioner would pray that the petition is meritorious and it be allowed.

Analysis:

51. To begin with we would first refer to the prior approval in respect of the subject mining lease granted in favour of the petitioner by respondent no.5, dated 3 July 2009, which is extracted below:-

"No.4/73/2004-MIV

New Delhi, the 3/7/09

To

*The Secretary to the Govt. of Maharashtra,
Industries, Energy and Labour Department,
Mantralaya, Mumbai-400032*

Subject: Grant of mining lease for Bauxite over an area of 62.77 hect. In village Sakhari, Tah-Mandangad, District Ratnagiri in favour of M/s. Ashapura Minechem Ltd. for a period of 20 years.

Sir,

I am directed to refer to Government letter of even No. dated 23/08/2004 and to say that the Government of India as per their letter No.4/73/2004-MIV dated 03/07/2009 has conveyed the approval of Central Government under section 5(1) of the Mines and Mineral (Development and

Regulation) Act 1957 to grant mining lease for Bauxite over an area of 62.77 hect's in Village- Sakhari, Tahsil-Mandangad, Dist. Ratnagiri to M/s Ashapura Minechem Ltd.,Mumbai for a period of twenty years.

A copy of Government of India's letter dated 03/07/2009 for grant of mining lease is enclosed herewith.

The proposed area statement for grant of mining lease (62.77 ha)is enclosed.

You are requested to submit the necessary clearance certificate from the competent authority wherever necessary under the relevant Acts/Rules, including the Forest Conservation Act,1980, Environment Protection Act,1986, the Mineral Conservation and Development Rules 1988,Environmental Impact Assessment Notification 1994 and its subsequent amendments within six months from the receipt of this letter. You are also requested to submit the approved Mining plan from Indian Bureau of Mines, Nagpur within six months from the receipt of this letter to process the matter further.

A copy of map of proposed area is enclosed herewith.”

(emphasis supplied)

Such prior approval issued under Section 5 of the Mines Act was followed by a letter of intent issued by the respondent no.4-State of Maharashtra dated 12 August 2009 asking the petitioner to submit the necessary Clearance Certificate from the competent authority as mandated, inter alia, under the Environment Protection Act and Rules within six months and also furnish the approved mining plan within six months from the receipt of such letter to respondent no.4 for further processing. The letter/LOI dated 12 August 2009 reads thus:-

*“No.MMN-1004/C.R.654/IND-9,
Industries, Energy & Labour Deptt.,
Mantralaya, Mumbai – 400 032.
Date : 12.08.2009*

To

*M/s Ashapura Minechem Ltd.,
287,D.N. Road Jivan Udyog Building,
Fort,Mumbai 400 001*

*Subject- Application for grant of mining lease for Bauxite over an area of
62.77 hect's in Village-Sakhari, Tahsil-Mandangad, Dist. Ratnagiri by
M/s M/s Ashapura Minechem Ltd., Mumbai for a period of twenty years.*

Sir,

*I am directed to refer to Government letter of even No.dated
23/08/2004 and to say that the Government of India as per their letter
No.4/73/2004-MIV dated 03/07/2009 has conveyed the approval of Central
Government under section 5(1) of the Mines and Mineral (Development and
Regulation) Act 1957 to grant mining lease for Bauxite over an area of 62.77
hect's in Village- Sakhari, Tahsil-Mandangad, Dist. Ratnagiri to M/s Ashapura
Minechem Ltd.,Mumbai for a period of twenty years.*

*A copy of Government of India's letter dated 03/07/2009 for grant of
mining lease is enclosed herewith.*

The proposed area statement for grant of mining lease (62.77 ha)is enclosed.

*You are requested to submit the necessary clearance certificate from the
competent authority wherever necessary under the relevant Acts/Rules,
including the Forest Conservation Act,1980, Environment Protection
Act,1986 and Rules the Mineral Conservation and Development Rules*

1988, Environmental Impact Assessment Notification 1994 and its subsequent amendments within six months from the receipt of this letter. You are also requested to submit the approved Mining plan from Indian Bureau of Mines, Nagpur within six months from the receipt of this letter to process the matter further.

A copy of map of proposed area is enclosed herewith.”

(emphasis supplied)

A conjoint reading of the aforesaid two communications would bring to the fore that the letter of prior approval dated 3 July 2009 was purely conditional and contingent upon the petitioner complying with the amended provisions of the Mines Act, Mineral Concession Rules, 1960 and other applicable allied laws including Environment Protection Act and Rules and the notification dated 27 January 1994 as issued and amended by the Ministry. The subsequent letter of intent (supra) issued by the State-respondent no.4 also reiterated compliance of such requirements by the petitioner as set out in the letter of prior approval dated 3 July 2009 and the LOI.

52. At this juncture we may refer to the definition of mineral concession as defined under Section 3(ae) of the mines Act and Section 5 of the Mines Act which stipulates that previous approval of the Central Government is mandatory for the grant of mineral concession, for minerals as specified in part A of the first schedule to the said Act, which includes the petitioner's mineral i.e. bauxite. Section 3(ae) and 5 of the Mines Act reads thus:-

“Section 3

3. Definitions

In this Act, unless the context otherwise requires -

....

.....

.....

3 (ae) “mineral concession” means either a reconnaissance permit, prospecting license, mining lease, composite licence [exploration licence] or a combination of any of these and the expression “concession” shall be construed accordingly;

Section 5

5. Restrictions on the grant of mineral concession

*3(1) A State Government shall not grant a *[mineral concession] to any person unless such person—*

(a) is an Indian national, or a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013) ; and

(b) satisfies such conditions as may be prescribed:

PROVIDED that in respect of any mineral specified in Part A and Part B of the First Schedule, no [mineral concession] shall be granted except with the previous approval of the Central Government:

.....

.....

.....

Explanation: For the purposes of this sub-section, a person shall be deemed to be an Indian national,—

(a) in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and

(b) in the case of an individual, only if he is a citizen of India].

(2) No mining lease shall be granted by the State Government unless it is satisfied that—

(a) there is evidence to show that the existence of mineral contents in the area for which the application for a mining lease has been made in accordance with such parameters as may be prescribed for this purpose by the Central Government;

(b) there is a mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned

PROVIDED that a mining lease may be granted upon the filing of a mining plan in accordance with a system established by the State Government for preparation, certification, and monitoring of such plan, with the approval of the Central Government.”

The above provision would thus make the approval of the Central Government mandatory to mean compliance, of such requirements in totality including all the conditions stipulated therein. Sub-section (2) of Section 5 also stipulates that no mining lease shall be granted unless the mining plan is duly approved by the Central Government or State Government. At this juncture, it may be observed that the petitioner has not complied with the mandatory conditions as stipulated in the prior approval of the Central Government dated 3 July 2009 followed by the LOI dated 12 August 2009 issued by the respondent no.4-State. The petitioner does not controvert that it has not obtained the

mandatory EC as noted in the prior approval letter and the LOI. The petitioner has given reasons for such non-compliance which we consider hereafter to test the applicability of the petitioner's contentions.

53. In such context, we may at the outset refer to the mining plan issued by the respondent no.5 dated 26 August 2011 which clearly provided that such mining plan is approved without prejudice to any other laws applicable. This cannot be construed as implied approval of the government in terms of any other provisions of the Mines Act, Mineral Concession Rules, 1960 or the allied laws including Environment Protection Act, 1986 and the Rules thereunder. So also, the provisions of the Mines Act, Rules and Regulations made thereunder require compliance as stated in the said document, clearly making it conditional for the purpose of grant of mining lease. This was followed by modified mining plan dated 26 November 2015, issued by respondent no.5 which made the approval by the said respondent subject to the conditions set out therein which are similar to those as set out in the mining plan of 26 December 2011. We may observe that the petitioner has not fulfilled such conditions as set out in the mining plan of 25 December 2011 and the modified mining plan of 26 November 2015, *inter alia*, it has not been able to obtain the mandatory EC as stipulated therein. At this juncture, it may be noted that Section 5(2) of the Mines Act categorically provides that no mining lease shall be granted unless the mining plan is approved by the Central Government or State Government. Such approval would mean compliance of all conditions in the said plan and not in piece meal as the

petitioner would want it to be. Such contention stares in the face of Section 5 of the Mines Act and for the reasons elaborated below, it cannot be accepted.

54. We now advert to the vital statutory provision for the present proceedings being Section 10A of the Mines Act which was inserted by the 2015 amendment Act w.e.f. 12 January 2015. This provision in our view would have a significant impact in deciding the lis between the parties. Section 10A of the Mines Act reads thus:-

“10A. Rights of existing concession holders and applicants

(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 commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015:-

(a) applications received under Section 11A of this Act;

(b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the licensee, as the case may be,-

(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of minerals contents in such land in accordance with such parameters as may be prescribed by the Central Government;

(ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(iii) has not become ineligible under the provisions of this Act; and

(iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by the State Government:

[PROVIDED that for the cases covered under this clause including the pending cases, the right to obtain a prospecting licence followed by a mining lease or a mining lease, as the case may be, shall lapse on the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021:

PROVIDED FURTHER that the holder of a reconnaissance permit or prospecting licence whose rights lapsed under the first proviso, shall be reimbursed the expenditure incurred towards reconnaissance or prospecting operations in such manner as may be prescribed by the Central Government.]

(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 minerals specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this sub-section except with the previous approval of the Central Government.

(d) in case where right to obtain licence or lease has lapsed under clause (b) and (c), such areas shall be put up for auction as per the provisions of this Act:

PROVIDED that in respect of the minerals specified in Part B of the First Schedule where the grade of atomic minerals is equal to or greater than the threshold value, the minerals concession for such areas shall be granted in accordance with the rules made under section 11B.”

(emphasis supplied)

A perusal of the provisions of Section 10A indicates that it is inserted by way of amendment to the Mines Act, w.e.f. 12 January 2015. What is important for the present proceedings is sub-clause (c) of sub-section (2) of the said provision. A plain reading of sub-section (2)(c) of Section 10A would make it abundantly clear that the mining lease shall be granted subject to fulfillment of conditions of previous approval or letter of intent within a period of two years from the date of amendment i.e. 12 January 2015. This would mean that the fulfillment of conditions by a lessee in the prior approval dated 3 July 2009 of respondent no.5 or the LOI of the State Government dated 12 August 2009 ought to be complied with in totality, on or before 11 January 2017. It is thus clear that the statutory provision itself provides a cut-off date of 11 January 2017 under sub-section (2)(c). The provision as it stands makes such cut-off date non-negotiable.

55. We may observe that on such cut-off date of 11 January 2017, the petitioner did not fulfill the conditions as set out in the prior approval of the

Central Government dated 3 July 2009 issued under Section 5(1) of the Mines Act. Though the LOI dated 12 August 2009 had also been issued the mandatory requirement complying with the provisions under the Environment Protection Act, Rules and the notifications dated 27 January 1994 and 14 September 2006, which have not been fulfilled by the petitioner on the cut-off date of 11 January 2017, including obtaining the mandatory EC. Thus, the legislative intent for the purpose of granting mining lease is clear as crystal. This is to mean that the lessee/applicant is required to fulfill all conditions as envisaged under the Mines Act and Rules on or before the statutory cut-off date of 11 January 2017. In our view, non-compliance of mandatory conditions by the petitioner in the form and manner as contemplated by Section 10A(2)(c) goes to the root of the matter. The fact remains that such conditions as stipulated in the prior approval of respondent no.5 issued under Section 5 read with the LOI of the State Government dated 12 August 2009 were not complied with by the petitioner as on 11 January 2017, in the manner so prescribed. It is petitioner's own admission that the petitioner has never challenged the validity or vires of Section 10A(2)(c) of the amended Mines Act. The said provision is applicable to the petitioner in the form and manner it is so worded and not as the petitioner would want to construe it to be.

56. The petitioner in response to the above would place reliance on an order dated 4 January 2017 issued by the Ministry of Mines, Government of India which reads thus:-

“MINISTRY OF MINES**ORDER**

New Delhi, the 4th January, 2017

S.O. 27(E). - Whereas difficulties have arisen in giving effect to the provisions of clause (c) sub-section (2) of Section 10A of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (10 of 2015), in so far as it relates to fulfilment of conditions laid in the letter of intent (by whatever name called) issued by the State Governments within a period of two years from the date of commencement of the said Act.

Now, therefore, in exercise of the powers conferred by the sub-section (1) of Section 24 of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (10 of 2015), the Central Government hereby makes the following order to remove the difficulties relating to fulfilment of conditions laid in the letter of intent, namely:-

1. Short title and commencement.- *(1) This order may be called the Mines and Minerals (Development and Regulation) Removal of Difficulties Order, 2017.*

(2) It shall come into force on the date of its publication in the Official Gazette.

2. Environmental Clearance.- *Notwithstanding anything contained in clause (c) of sub-section (2) of Section 10A of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (10 of 2015), it is clarified that where the condition of obtaining environmental clearance has not been complied with by the applicant on or before 11th January, 2017, but all other conditions specified in previous approval or the letter of intent have been fulfilled, the applications shall be considered under that section and mining lease shall be granted by the concerned State Governments in accordance with the notifications issued under the Environment (Protection) Act 1986 (29 of 1986):*

Provided that no mining activity shall commence unless and until the

applicant obtain environmental clearance as laid down under the Environment (Protection) Act, 1986 and the rules made there under.”

The petitioner would submit that the above order clearly provides that as long as the applicant/lessee complies with all other conditions as set out in the previous approval or letter of intent except for the EC, the application for grant of mining lease shall be considered and granted. For such reason, though the petitioner has not complied with the condition regarding obtaining the EC as required under the prior approval and LOI, this order, according to the petitioner, carves out an exception. This is not correct.

57. On a careful perusal of such order we do not find merit in such submission. This is so because that the said order of 4 January 2017 merely provides for obtaining the EC certificate subsequently where it could not be obtained on or before 11 January 2017. At the same time, the said order clearly lays down that no mining activity shall commence until the applicant obtains the EC as laid down under the Environment Protection Act and Rules, retaining such mandatory requirement to obtain the EC. In the given case, the petitioner has not only failed to obtain the required EC and failed to comply with such conditions under the Environment Protection Act on 11 January 2017 i.e. the statutory cut-off date. But also, even thereafter as on 6 April 2017 when the mining lease was executed, there was no compliance by the petitioner of the conditions stipulated in the prior approval issued by respondent no.5 dated 3 July 2009 and/or the subsequent LOI dated 12 August 2009. The order of 4 January 2017 does not in

any manner water down the requirement, *inter alia*, of obtaining EC mandatory before commencing any mining activity. Accepting the petitioner's submission, it would tantamount to complete misreading and negating of the statutory provisions under the Mines Act including the said order dated 4 January 2017.

58. The petitioner in the pleadings has also relied on a notification of the Government of India dated 5 January 2017 which though stated to be enclosed is not annexed to the petition. The relevant clauses/paragraphs of the notification reads thus:-

"5. Further, in respect of cases pending because of environmental clearance, (EC), after taking legal opinion with concurrence of MoL&J & MoEF&CC we have issued notification dated 4.1.2017 (available on the website of Ministry of Mines) under the powers conferred by sub section 1 of section 24 of MMDR Amendment Act, 2015 in which the State Governments have been enabled to grant the lease without necessitating EC at this stage, provided that EC can be obtained prior to commencement of the mining activity. These leases so executed, would entail to be treated null and void if the EC is finally rejected.

6. In this way, such pending cases, where mining plan was sanctioned but cases were pending because of EC, FC and settlement of forest rights, the States have been facilitated by the Central Government to be able to grant the lease expeditiously. Now it is up to the States how promptly they grant the lease in respect of these saved cases.

7. Apart from these, there are certain cases pending for action/ decision with the State Government mostly with Mining Dept. and some with Revenue Dept. These cases pending with the Directorate of Mining and Geology or Forest Department or State Pollution Control Board, and other departments of your State also need to be expedited before the prescribed time limit.

8. Considering the urgency of the matter, it is felt that the Mining Department, along with the other concerned departments/ organizations where the cases are pending in the State, may be immediately directed to take required steps for grant of leases in these cases within the timeline, i.e. 11.01.2017.”

(emphasis supplied)

The above notification issued by the Government of India reiterates that the authorities are directed to take the necessary steps to grant the leases to strictly adhere with the timeline, statutory cut of date of 11 January 2017. There is a noteworthy facet in these proceedings. Just one day after the said notification of 5 January 2017, the petitioner addressed a letter dated 6 January 2017 to respondent no.2 is in the nature of an application for the grant of mining lease referring to the earlier application dated 15 September 2003 and certain other correspondence as set out in the subject caption. The letter/application of the petitioner dated 6 January 2017 reads thus:-

“Date: 06th January 2017

*To,
The Principal Secretary,
Department of Mines and Geology,
Mantralaya, Mumbai – 400 032.*

Subject: Execution of Mining Lease.

Ref.: 1) Application for grant of mining lease for Bauxite over an area of 62.77 Ha in Village-Sakhri, Tehsil-Mandangad, Dist. Ratnagiri, for a period of twenty years (Copy enclosed)

2) Your letter No. MMN-1004/C.R.654/IND-9 dated 12.08.2009 (Copy enclosed)

- 3) Section 10-A (2)(c) of MMDR Act, 1957.
- 4) Mining Plan Approval Letter by Indian Bureau of Mines dated 26th November 2015. (Copy enclosed)
- 5) Ministry of Mines Order published in The Gazette of India – Extraordinary Part II Section 3 (ii) by Government of India on 04th January 2017 (Copy enclosed)
- 6) Government of India Letter No.7/1/2016-MIN dated 05th January 2017 (Copy enclosed).

Dear Sir,

As you are aware, we have already filed an application dated 15.09.2003 for grant of mining lease for Bauxite over an area of 62.77 Ha in Village- Sakhri, Tehsil-Mandangad, Dist. Ratnagiri, for a period of twenty years. **We have been granted a Letter of Intent (LOI) dated 12.08.2009 by your good office apart from prior approval from Central Government dated 03.07.2009 with regard to the grant of mining lease.**

We produce herewith an extract of Section 10-A (2)(c) of MMDRA Act, 1957:

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:

As per the said section, it has been made mandatory that mining leases with regard to mining sites for which LOI has been issued should be granted within a period of two years of the commencement of the said Act.

Thus, in view of the above referred letters in No. 5 and No. 6 we have complied with the terms and conditions of LOI. We hereby request you to issue the

necessary orders to the concerned authority/department for the execution of the mining lease at the earliest.

Request you to look in to the matter and do the needful at the earliest.”

A perusal of the above brings to fore the fact that the petitioner in making the above application is fully aware and has the complete knowledge of all mandatory compliances which are necessary in the grant of mining lease. Accordingly, the petitioner had to comply with the terms and conditions of the letter of approval dated 3 July 2009, issued by respondent no.5 followed by the LOI dated 12 August, 2009, issued by the State, as also compliance of the provisions under the Environment Protection Act, 1986 and Rules and EIA notifications dated 27 January 1994 and 14 September 2006. Despite this, the petitioner in its application incorrectly states that he has complied with the terms and conditions of the LOI, which clearly has not been done.

59. For the reasons noted above, we are not able to accept that such conditions have been done away with the government's order dated 4 January 2017 and/or 5 January 2017 which in fact reiterate the requirements set out in the prior approval and LOI respectively. The letter of Central Government dated 5 January 2017 in fact directs the concerned departments where cases are pending in the State to take requisite steps for grant of leases within the statutory timeline of 11 January 2017. Thus, it is apparent that the application of the petitioner dated 6 January 2017 is misconstrued and misleading. Not only this, but the petitioner has also failed to comply with the terms and conditions of the mining

plan dated 26 December 2011 and the modifying mining plan dated 26 November 2015 which was issued on a without prejudice basis and contingent upon compliance by the petitioner, with the provisions under the Mines Act and other allied laws including the Environment Protection Act, 1986 and Rules. All of this brings to light that the petitioner has not complied with the statutory mandate under Section 10A(2)(c) for having a valid mining lease in law, on or before the statutory cut-off date of 11 January 2017, which is sacrosanct and non-negotiable. The petitioner has also placed heavy reliance on what it calls as the grant order dated 11 January 2017, issued by respondent no.4-State Government. By this order, the State Government had sanctioned the grant of mining lease for a period of 50 years in favour of the petitioner. The following clause from such document is noted below:-

“T) As per the Notification of Ministry of Mines No. 7/1/2016.M-IV(Part 1) dtd 4/1/2017, No mining activity shall commence unless and until the applicant obtains environmental clearance as laid down under the environment (Protection) Act, 1986 and the rules made there under.

U) These leases so executed, would entail to be treated null and void if the EC is finally rejected.”

The above document in fact clearly notes two vital aspects. Firstly, it reiterates that no mining activity shall commence unless and until the applicant obtains the EC as laid down under the Environment Protection Act and Rules. Secondly, the leases so executed shall be null and void if the EC is finally rejected.

As discussed above, the law mandates that the EC has to be obtained before commencing any mining activity. In any event, no mining activity could commence unless and until the EC was obtained which is also provided in the said letter dated 11 January 2017.

60. Accordingly, reliance placed on such letter by the petitioner is an attempt to stray away from the mandatory provisions of the Mines Act, the conditions in the prior approval letter and LOI, which is not acceptable. In this context the Supreme Court in the case of ***Common Cause Vs. Union of India***¹ has categorically held that there is no doubt that a new mining project after 27 January 1994 would require a prior EC. Similarly in ***Deepak Kumar & Ors. Vs. State of Haryana & Ors.***² the Supreme Court has observed that mining operations going on at certain blocks in Rajasthan without complying with the conditions imposed for EC and proper sanction be immediately stopped. The Supreme Court has in the said case deprecated inaction on the part of the officials in permitting such mining leases to operate. Further, the Supreme Court in a recent decision in ***Vanashakti Vs. Union of India***³ has made certain poignant observations as thus:-

“23. Apart from the fact that the very concept of grant of ex-post facto EC is illegal, it is not possible to understand why the Central Government made efforts to protect those who committed illegality by not obtaining prior EC in terms of the EIA notification. As the EIA notification was eleven years old when

1 (2017) 9 SCC 499

2 2014 16 SCC 698

3 2025 SCC OnLine SC 1139

the 2017 notification was issued, there was no equity in favour of those who committed such gross illegality of not obtaining prior EC. The persons who acted without prior EC were not illiterate persons. They were companies, real estate developers, public sector undertakings, mining industries, etc. They were the persons who knowingly committed illegality. We, therefore, make it clear that hereafter, the Central Government shall not come out with a new version of the 2017 notification which provides for the grant of ex-post facto EC in any manner.”

What the petitioner in the present facts and circumstances is seeking for is the grant of ex post facto EC as the same was not obtained by him as on the statutory cut-off date of 11 January 2017. The petitioner's reliance on the letter/order of the Central Government dated 4 January 2017, 5 January 2017 and the grant order of the State Government dated 11 January 2017 is to submit that it is open to the petitioner to obtain an ex post facto EC. Until it is so rejected, the petitioner has duly complied with the statutory requirements. Such submission would be in the teeth of the recent judgment of the Supreme Court in Vanshakti (supra) wherein whilst making strong observations against the Central Government in the context of not obtaining prior EC, the Supreme Court has observed that such persons have committed illegality by not obtaining prior EC in terms of the Environment Impact Assessment Notification. Therefore, to accept the contentions of the petitioner in this regard would run contrary not only to the statutory framework under the Mines Act and Rules but also violate the decisions of the Supreme Court. Such course can never be accepted being legally forbidden and impermissible.

61. We would now advert to the submissions of the petitioner in regard to Rule 8 of the Mineral Concession Rules, 2016. The said Rule reads thus:-

“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 acknowledgment of receipt of the letter of compliance to the applicant in Schedule II within a period of three days of receipt thereof.

(2)

(3)

(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."

It is true that the said Rule was omitted with effect from 2 November 2021 and the petitioner would contend that this Rule ought not to be referred to. However, this very same contention has been dealt with by the Delhi High Court in the decision of *Arcelormittal India Private Limited & Anr. Vs. Union of India & Ors.*⁴ a judgment referred to by Ms. Helekar, where the Delhi High Court had the occasion to deal with a situation similar to the present proceedings. In this context the following paragraphs are noteworthy:-

"41. Thus, reading the provision of Section 10A of the MMDR Amendment Act, 2015 and Rule 8 of the Mineral Concession Rules, 2016 makes it crystal clear that the legislative mandate is for obtaining the prior approvals for grant of mining lease within a period of two years from the date of commencement of MMDR Amendment Act, 2015 i.e. on or before 11th January, 2017 and not beyond that. By prescribing the cut off date of 11th January, 2017, the Legislature has envisaged that if on or before the cut off date the requisite approvals have not been obtained, the case of the applicant would be rendered ineligible. In such cases, the said area is to be dealt with in accordance with the provisions of MMDR Act and Rules framed thereunder, which prescribe that the grant of mineral concession has to be done through auction.

42. The mere fact that the Mineral Concession Rules, 2016 has been withdrawn, the same does not mean that the cut off date of 11th January, 2017 has lost its relevance. The cut off date of 11th January, 2017 is a statutory provision, as laid down in MMDR Act, which categorically provides that all the requisite previous approvals in terms of LOI have to be fulfilled within a period of two years from

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the date of commencement of the said Act.

43. Therefore, the contention of the petitioner that since Rule 8(4) of the Mineral Concession Rules, 2016 has been omitted, the bar of 11th January, 2017 ceases to apply to the petitioner, also cannot be accepted. It is to be considered that Section 10A(2)(d) of MMDR Act which was inserted w.e.f. 28th March, 2021 clearly provides that all cases where right to obtain a lease has lapsed under Section 10A(2)(c) of MMDR Act, shall be put up for auction. It has been explained on behalf of UOI that it is only after the insertion of Section 10A(2)(d) of MMDR Act on 28th March, 2021 that Rule 8 was omitted on 02nd November, 2021, because the date of lapsing of all applications had long gone and a specific provision for putting the same to auction had also been made. Therefore, the submission that with the omission of Rule 8, the cut off date itself has gone, is clearly erroneous and must be rejected.

44. There is another aspect of the matter. Merely on the strength of Section 10A(2)(c) of the MMDR Act, the petitioner cannot claim any absolute right for grant of mining lease even after 11th January, 2017, as the same is subject to certain mandatory conditions. It is only upon fulfilment of the twin conditions, as envisaged under Section 10A(2)(c) of MMDR Act on or before 11th January, 2017, that an applicant would be considered eligible for grant of mining lease under Section 10A(2)(c) of MMDR Act. Thus, on the cut off date of 11th January, 2017, the petitioner only had approval under Section 5(1) of the MMDR Act. Though LOI had been issued in favour of the petitioner vide letter dated 10th June, 2008, the requirement of the LOI for approval under Section 2 of FC Act, 1980 as well as the EC had not been fulfilled by the petitioner on the cut off date of 11th January, 2017. Section 10A(2)(c) of the MMDR Amendment Act, 2015, categorically envisages that mining lease shall be granted subject to fulfilment of the conditions of the previous order or of the LOI within a period of two years from the date of the commencement of the Amendment Act i.e. 11th January, 2017. Thus, as per the legislative intent, an applicant for grant of mining lease under the Old Regime was required to fulfil the conditions as envisaged in the Act and the Rules on or before 11th January, 2017. As noted

hereinabove, in terms of the Removal of Difficulties Order, only EC Certificate could be obtained subsequently in cases where it could not be obtained.”

We are in complete agreement with the above observations, on the interpretation of Rule 8 of Mineral Concession Rules, 2016. In our view, Section 10A(2)(c) and Rule 8 need harmoniously read so as to further the aim, object and purpose of the Mines Act and Rules. Given that the said Rule 8 is in the nature of a machinery provision, it is intra vires the said section being Section 10A(2)(c) which is not assailed by the petitioner. Therefore, there is no merit in the petitioner's contention that Rule 8 Sub-clause 4 is violates the petitioner's fundamental rights it so claims.

62. We may observe that the rationale of such harmonious construction of the said provisions would be that because the date of lapsing had long gone, a specific provision for putting such lapsed leases to auction was made, by the legislature. One would find such provision under Section 10A(2)(d) of the Mines Act. The said provision which came into force and effect from 28 March 2021 by virtue of amendments to the Mines Act reads thus:-

“(d) in cases where right to obtain license or lease has lapsed under clauses (b) and (c), such areas shall be put up for auction as per the provisions of this Act: PROVIDED that in respect of the minerals specified in Part B of the First Schedule where the grade of atomic minerals is equal to or greater than the threshold value, the mineral concession for such areas shall be granted in accordance with the rules made under section 11B.”

We also find substance in the contention of Ms. Helekar and the averments made in the affidavit-in-reply of respondent no.5, according to which, it is a statutory requirement post the 2015 amendment to the Mines Act to put in place an auction regime, in larger public interest. This is to ensure that the mines which are state largesse are not unnecessarily blocked for private/vested interests. The petitioner has chosen to remain silent on this vital aspect of the matter.

63. The petitioner would however, contend that Rule 8 would infringe the petitioner's fundamental rights under Article 14, 19 and 21 of the Constitution of India. Such submission is legally not tenable. The issue of the petitioner not having any fundamental right in mining is no longer res integra as held by the Supreme Court in *Monnet Ispat and Energy Ltd. Vs. Union of India*⁵ wherein the Supreme Court held that no person can claim any right in any land belonging to the government or in any mines in any land belonging to the government except as provided under the 1957 Act and the 1960 Rules. No person has any fundamental right to claim that he should be granted mining lease or prospecting licence or permitted reconnaissance operation, in any land belonging to the government. We find force in the submission of the respondent that as Mines Act is a part of the Ninth Schedule to the Constitution of India, by virtue of which Article 31-B becomes applicable, rendering the submission of the petitioner on alleged violation of such rights in the given facts, untenable.

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64. We now come to the petitioner's challenge to a letter dated 27 November 2018 issued by respondent no.5-Ministry of Mines, Government of India in regard to mineral concessions for major minerals falling under Section 10A(2)(c) of the amended Mines Act, 2015, on the ground that it is bad in law. The said communication reads thus:-

***" F. No. 7/4/2018-M.IV
Government of Mines
Ministry of Mines***

***Shastri Bhawan, New Delhi
Dated: 27 November, 2018***

To,
Principal Secretary/Secretary,
In Charge of Department of Mines & Geology,
All States and UTs (As per list)

Subject: Mineral concessions for major minerals falling under Section 10A(2)(c) reg.

Sir,

It has come to the notice of Ministry of Mines that some State Governments have granted or are in the process of granting mining lease for major minerals after 11.01.2017 which were saved only for 2 years under Section 10A(2)(c) of the MMDR Amendment Act, 2015.

2. You would be aware that the MMDR Amendment Act, 2015 came into force with effect from 12.01.2015. As per Section 10A(2)(c) of the amended Act, applications where previous approval of the Central Government was conveyed under Section 5(1) for grant of mining lease or where a Letter of Intent (LoI) was issued by the State Government for grant of mining lease, were saved from becoming ineligible, provided the lease was granted (i.e. executed & registered) subject to fulfillment of conditions of the previous approval of LoI, within a

period of two years from the date of commencement of the amended Act i.e. up to 11.01.2017. The date within which such saved cases had to be converted into a mining lease has already lapsed. Hence, no mining lease can be granted beyond 11.01.2017 on the mineral concessions covered under Section 10A(2)(c) as it would be treated to be ab-initio void under Section 19 of the Act for being in contravention of the Act.

3. Moreover, execution and registration of the mining lease are mandatory to construe it as grant of mining lease as per the provisions of Rule 8(4) of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016.

4. Therefore, you are requested to send the details of such cases, if any, [covered under Section 10A(2)(c)] where mining lease was executed and registered after 10.01.2017 by the State Government. As they are ab-initio void under Section 19 of the Act for being in contravention of the Act, you are requested to take appropriate action and send the compliance in this regard to the Ministry at the earliest.

Yours faithfully,

(A K Mallik)

Under Secretary to the Govt. of India

Telephone No.011-23384743

E-mail address: ak.mallik@nic.in”

Apropos the above, it may be noted that the Delhi High Court in the Decision of ***Arcelormittal India Private Limited & Anr.*** (supra) had the occasion to deal with an identical submission. This was in the context of a challenge to such letter on the ground that it refer to Rule 8(4) of the Mineral Concession Rules, 2016 (supra). As this Rule was omitted w.e.f. 2 November 2011 the

petitioner would contend that it cannot be relied upon, as noted by us above. As correctly observed by the Delhi High Court, the mere fact that the said Rule has been withdrawn, does not in any way mean that the cut-off date of 11 January 2017 as reflected under Section 10A(2)(c) of the Mines Amendment Act has lost relevance. Such cut-off date is statutory under the Act, which categorically provides that all requisite previous approvals in terms of the LOI issued by the State Government have to be fulfilled within a period of two years from the commencement of the Mines Amendment Act i.e. from 12 January 2015. The respondent no.5 in such view of the matter directed its counterparts of the State Governments to furnish details of leases covered under Section 10A(2)(c) where they were so executed after 11 January 2017 by the State Governments, failing which, such leases would be void ab initio under Section 19 of the Mines Act. It is to make such statutory position clear that the said letter was issued by respondent no.5. We, therefore, do not find any infirmity much less illegality in the said communication which is issued in due compliance with the statutory provisions under the Mines Act. We thus find the submission of the petitioner to set aside the same, as untenable and legally unsustainable.

65. At this juncture, we would refer to an order dated 16 June 2021, passed by the respondent no.5. The said order reads thus:-

“Date. 16 June 2021
No. STC/1049/Show cause notice/2017/1469
Registered Ad

Read : 1. Government of Maharashtra Order No. MMN-1004/C.R.654/Ind-9, dated 11/01/2017
2. Minerals (Other than Atomic & Hydrocarbons Energy Minerals) Concession Rule -2016 sub rule 20
3. Government of Maharashtra letter no. MNG-0719/P.K.43/Ind-9, Dated 25/02/2021.

ORDER

Whereas a mining lease for Bauxite has been granted to M/s Ashapura Minechem Ltd. over an area of 62.77 Hee. in Sakhari village in Mandangad Tahsil of Ratnagiri District for the period of 06/04/2017 to 05/04/2067 and the above said lease has been executed on 06/04/2017.

Whereas the lessee has not submitted returns for the year from 2017-18 and the lessee has not commenced mining operation for more than two years and has not applied explaining the reasons for the same within stipulated time. Thus, the lessee has violated the rule 53 of Mineral Conservation & Development Rule-2017 and rule 20 of Minerals (Other than Atomic & Hydrocarbons Energy Minerals) Concession Rule-2016 respectively.

Therefore, as per the powers conferred under rule 20 of Minerals (Other than Atomic & Hydrocarbons Energy Minerals) Concession Rule-2016 vide Industries, Energy & Labour Department, Government of Maharashtra notification No.MNG-0716/C.R.63/Ind-9, Dated 22/09/2016 and Government of Maharashtra letter no MNG-0719/P.K.43/Ind-9, Dated 25/02/2021, I, The Director, Geology & Mining, Government of Maharashtra declares the above mining lease as lapsed.

Sd/-

*Director,
Directorate of Geology & Mining,
Government of Maharashtra, Nagpur"*

By the said order, the respondent no.5 has come to a reasoned conclusion that the petitioner-lessee has not submitted the returns from 2017-18 and has not commenced with the mining operation for more than two years and has also not applied explaining the reasons for the same within the stipulated

time. In view thereof, under Rule 20 of the Mineral Concession Rules, 2016, the mining lease of the petitioner has lapsed. We find that such order is passed in conformity with the statutory mandate and the provisions of the Mines Act and Rules as set out thereunder. However, it is pertinent to note that such order was reversed by the impugned order of respondent no.3 dated 24 March 2023 mainly on the ground that the petitioner was not heard when the order dated 16 June 2021 was passed by respondent no.2. In any event, in our view, as we have observed below, the reversal of the said order of 16 June 2021 does not assist the petitioner. This is inasmuch as the mining lease had lapsed by operation of law on 11 January 2017, under Section 9A(2)(c) of the Mines Act as amended. Such lapsed, or dead lease by operation of law cannot be resurrected.

66. We would now advert to the impugned letters dated 24 March 2023 issued by respondent no.3 along with subsequent letter of 9 February 2024. The said communications have been issued in the backdrop of Section 4A of the amended Mines Act. Before we delve into the nuances, it is pertinent to refer to Section 4 of the Mines Act which reads thus:-

“4. Prospecting or mining operations to be under licence or lease

(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or of a exploration licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder.

PROVIDED that nothing in this sub-section shall effect any prospecting or

mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

.....

.....

(1A) No person shall transport or stone or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder (inserted by Act 38 of 1999, w.e.f. 18-12-1999.).

(2) ⁶[No ⁷[mineral concession]] shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.”

It is clearly spelt out in the above provision that no person shall undertake mining operations in any area including that of a mining lease except in accordance with the terms and conditions of such mining lease. Adherence to the terms and conditions of such mining lease is imperative. Further, it prescribes that no mineral concession shall be granted except as in the manner provided under the Mines Act and Rules. In other words, no deviation from the provisions is permissible. It is in such context that Section 4A has been incorporated. Section 4A of the Mines Act reads thus:-

“4A. [Termination of prospecting licences, exploration licences or mining leases]

(1) ...

(2) ...

(3) ...

⁶ Substituted for “No prospecting licence or mining lease”, *ibid*.

⁷ Substituted for “reconnaissance permit, prospecting licence or mining lease” by Act 16 of 2021, dt. 28-3-2021, w.e.f. 28-3-2021.

(4) Where the holder of a mining lease fails to undertake production and dispatch for a period of two years after the date of execution of the lease or, having commenced production and dispatch, has discontinued the same for a period of two years, the lease shall lapse on the expiry of the period of two years from the date of execution of the lease or, as the case may be, discontinuance of the production and dispatch:

PROVIDED that the State Government may, on an application made by the holder of such lease before it lapses and on being satisfied that it shall not be possible for the holder of the lease to undertake production and dispatch or to continue such production and dispatch for reasons beyond his control, make an order, within a period of three months from the date of receipt of such application, to extend the period of two years by a further period not exceeding one year and such extension shall not be granted for more than once during the entire period of lease:

PROVIDED FURTHER that such lease shall lapse on failure to undertake production and dispatch or having commenced the production and dispatch fails to continue the same before the end of such extended period.”

The petitioner would contend that the above provision cannot be applied retrospectively as it was introduced w.e.f. 28 March 2021 and should thus apply only prospectively. In such backdrop, we refer to the relevant portion of the said communication which reads thus:-

“OBSERVATIONS

7. I have gone through the written submission along with its annexure, the relevant provisions of the Mines and Minerals (Development & Regulation) Act 1957, MMDR (Amendment) Act 2015 and MMDR (Amendment) Act 2021 and MCR Rules, 1960 and 2016.

8. The amendment Act 2021 envisages an extension for a period of one year in cases where the holder of a mining lease fails to undertake production and dispatch, for two years either after the execution of the lease or having

discontinued production and dispatch for a period of two years having commenced the same. It is also certified that this extension can only be granted once during the entire period of the lease.

9. This period of two years has to be continues.

10. In view of outbreak of COVID-19 and consequent lockdowns, the Central Government as per order No.MVI-16/44/2020-Mines-V1 dated 14 October, 2021, has extended the period of production and dispatch specified under sub section (4) of section 4A of the Act by Six months from the date of expiry of the period specified or extended under the sub section.

11. This extension is subject to the condition that the existing lease must be existed on the 1st April, 2020 and the period of two year is or was expiring after the 1st April, 2020.

12. The procedure to lapse a mining lease has been prescribed u/r 20 of the MCR 2016. It is provided under rule 20 (2) that the lapsing of a mining lease should be recorded with reasons through an order by the state Government and must be communicated to the lessee.

13. Sub Rule (3) of rule 20 of MCR 2016 provides that where a lessee in unable to commence the production and dispatch either after execution of the lease or after discontinuance for reasons beyond its control, is allowed to submit an application to the S.G. explaining the reasons, before the lapse of lease. The State Govt. after examining the adequacy and genuineness of the reasons can pass an order under sub rule (6) extending the period of two years by further period of one year.

14. However, the amended (Sub Rule (7) of Rule 20 has declared all lease revival applications submitted under the third proviso of Sub Section (4) of Section 4 (A), and which were not disposed of on or before 28th March, 2021 as lapsed.

15. The Hon'ble Apex Court in the case of Common cause Vs Union of India held that a lease cannot be lapsed automatically as the holder could have valid reasons for non-commencement or discontinuance which could be because of an order passed by the authority or any legal compulsion.

16. Shortage of minerals in the domestic market cannot be overcome by lapsing existing leases.

17. In the present case it is not disputed that the mining operations were not commenced due to non-receipt of Environment Clearance.

18. Meanwhile, the MMDR (Amendment) Act, 2015 came in to force. The then section 4A (4) and Rules 20 were containing the words "mining operation" until substituted by the words "production and dispatch" by an amendment, Act 2021.

19. As per MCR 2016, prior to amendment on 2021 "mining operation" were explained as follows:

"Mining operations shall include the erection of machinery, laying of tramway or construction of a road or any other operation undertaken for the purpose of winning of minerals".

20. A provision of the Act cannot be retrospective. Therefore the amended provisions of section 4 A (4) of the MMDR (Amendment) Act, 2021 were came into force on 28.03.2021.

CONCLUSION

In the present case, the mining operations could not commenced due to non receipt of Environment Clearance. Obtaining of EC is an operation undertaken for the purpose of winning of mineral. This qualifies term mining operations and proves that it is an adequate and genuine reason for non-commencement of mining operations under section 4 A (4) of the MMDR (Amendment) Act, 2021.

In view of the above circumstances the non-commencement is justified and therefore the lessee has to commence the production and dispatch on or before 28th March 2023. The order of DGM, Nagpur declaring the lease as lapsed issued on 16.06.2021 under rule 20 (6) of MCR, 2016 is not sustainable as it was issued without giving an opportunity of hearing and hence liable to be quashed and set aside. Therefore the lease was substring on 28.03.2021 and entitled to commence production and dispatch on or before 28.03.2023.

ORDER

In exercise of the powers conferred upon the State Government under section 4A (4) of MMDR (Amendment) Act, 2021 and Rule 20 of the MCR 2016, I pass the following order,

1. The order issued by Director, Geology and Mining, Nagpur dated 16.06.2021 is quashed and set aside.

2. *The lessee M/s Ashapura Minechem Ltd. is allowed to commence the production and dispatch on or before 28th March 2023.*
3. *The Director, Geology and Mining, Maharashtra is directed to take further necessary action in the matter.*
4. *The order should be communicated to all concerned.”*

A bare perusal of the above context it is to be noted that the Hon'ble Minister has observed that sub-section 4 of Section 4A cannot be applied retrospectively and has to be applied prospectively w.e.f. 28 March 2021. Accordingly, the Hon'ble Minister has extended the period of commencement of mining operations which later was changed to production and dispatch from the amendment of 28 March 2021 to 28 March 2023 i.e. for a period of two years as set out in the amended provision. However, the petitioner would contend that the said provision under sub-section (4) of Section 4A will not apply to leases executed prior to such period i.e. to the present lease which was executed on 6 April 2017. Considering this submission it is apposite to refer to the provision as it existed prior to its substitution, which reads thus:-

“(4) Where the holder of a mining lease fails to undertake mining operations for a period of one year after the date of execution of the lease or, having commenced mining operations, has discontinued the same for a period of one year, the lease shall lapse on the expiry of the period of one year from the date of execution of the lease or, as the case may be, discontinuance of the mining operations:

PROVIDED that the State Government may, on an application made by the holder of such lease before it lapses and on being satisfied that it will not be possible for the holder of the lease to undertake mining operations or to

continue such operations for reasons beyond his control, make an order, within a period of three months from the date of receiving of such application, subject to such conditions as may be prescribed, to the effect that such lease shall not lapse:

PROVIDED FURTHER that such lease shall lapse on failure to undertake mining operations or inability to continue the same before the end of a period of six months from the date of the order of the State Government:

PROVIDED ALSO that the State Government may, on an application made by the holder of a lease submitted within a period of six months from the date of its lapse and on being satisfied that such non-commencement or discontinuance was due to reasons beyond the control of the holder of the lease, revive the lease within a period of three months from the date of receiving the application from such prospective or retrospective date as it thinks fit but not earlier than the date of lapse of the lease:

PROVIDED ALSO that no lease shall be revived under the third proviso for more than twice during the entire period of the lease.”

A bare perusal of the above would bring to the fore that such provision which existed prior to its amendment clearly postulates to two pre-requisites (a) an application to be made by the applicant/lessee before the lease lapses (b) such application has to be made within the time frame resulting in an order passed by the State Government to be fulfilled in the manner stipulated in such provision. Due to absence of fulfillment of such conditions in the present case where the lease as noted above had long lapsed by the operation of law on 11 January 2017 as mandated under Section 9A(2)(c) of the Mines Act it could never have been revived. Therefore, even taking the submission of the petitioner at face value that Section 4A(4) as amended from 28 March 2021 shall not apply to leases executed

prior to such date is of no assistance to the petitioner in any manner whatsoever. Further, the petitioner would submit that obtaining the mandatory EC is for the purpose of winning of mineral (i.e. a part of extraction of minerals from the soil) qualifies the expression 'mining operation' under the unamended Section 4A(4) of the Act, which would be a good reason for non-commencement of mining operations under such unamended Section 4A(4). However, in that case as discussed (supra) a mandatory EC for the purpose of mining operation cannot be dispensed with as also categorically held by the Supreme Court, in cases of mining operations. In any event, the provisions under the Mines Act read with the prior approvals, LOI issued by the State Government as also the grant order of the State Government dated 11 January 2017 on which the petitioner places heavy reliance, also makes the obtaining of the EC prior to commencement of mining operations mandatory. Thus, the said submission is also of no assistance to the petitioner which deserves to be rejected. A perusal of the other impugned communication dated 9 February 2024 issued by respondent no.3 is now adverted to, which reads thus:-

"No.-MNG-0722/C.R.133/Ind-9(B)

Date: 9th February, 2024

ORDER

Mining lease for Mineral Bauxite have been sanctioned to M/s. Ashapura Minechem Ltd. at Mauje Sakhari, Tal. Mandangad, Dist.Ratnagiri, their details are as under:-

<i>Order No.and Date</i>	<i>Area</i>	<i>Execution Date</i>	<i>Total Period</i>
<i>MMN 1004/C.R.65</i>	<i>62.77 Ha.</i>	<i>06.04.2017</i>	<i>06.04.2017 to</i>

4/Ind-9

05.04.2067

And whereas, the provision in Section 4A(4) of the MMDR Act reads as follows,

Where the holder of a mining lease fails to undertake production and dispatch for a period of two years after the date of execution of the lease or, having commenced production and dispatch, has discontinued the same for a period of two years, the lease shall lapse on the expiry of the period of two years from the date of execution of the lease or, as the case may be, discontinuance of the production and dispatch:

Provided that the State Government may, on an application made by the holder of such lease before it lapses and on being satisfied that it shall not be possible for the holder of the lease to undertake production and dispatch or to continue such production and dispatch for reasons beyond his control, make an order, within a period of three months from the date of receipt of such application, to extend the period of two years by a further period not exceeding one year and such extension shall not be granted for more than once during the entire period of lease:

Provided further that such lease shall lapse on failure to undertake production and dispatch or having commenced the production and dispatch fails to continue the same before the end of such extended period.

And whereas, based on the above provision, the said mining lease was lapsed by the Director, Directorate of Geology and Mines vide order dated 16/06/2021

And Whereas, accordingly, in respect of the said mining lease, the Hon'ble Minister (Mines) in accordance with the provisions of Section 4-A of the Mines and Minerals (Development and Regulation) Act, 1957, (Amendment) Act, 2021 and Rule 20 of the Mineral Concession Rules 2016 conducted the hearing on dated 21/12/2022.

And Whereas, after the hearing, the Hon'ble Minister (Mines), by order dated 24/03/2023, the deadline of production and Dispatch for this mine was given till 28/03/2023

And whereas, however, as the said period was very insufficient, for the mining lease holder, to start mining, to get the mining plan approved by the Indian Bureau of Mines, to reach the mineral level by Geo-Physical Survey and drilling, to prepare and approve the revised mining plan accordingly. It is also necessary to obtain Consent to Operate from MPCB, therefore to meet these conditions, M/s. Ashapura Minechem Ltd. as per rule 20 (3) of the Mineral Concession Rules, 2016 to start production and dispatch in said mining leases submitted

application on date 11/04/2023 to Director, Directorate of Geology and Mining for granting extension of 01 year from the date of 28/03/2023. Hence Director Geol And whereas, the provision in Section 4A(4) of the MMDR Act reads as follows,

Where the holder of a mining lease fails to undertake production and dispatch for a period of two years after the date of execution of the lease or, having commenced, production and dispatch, has discontinued the same for a period of two years, the lease shall lapse on the expiry of the period of two years from the date of execution of the lease or, as the case may be, discontinuance of the production and dispatch:

Provided that the State Government may, on an application made by the holder of such lease before it lapses and on being satisfied that it shall not be possible for the holder of the lease to undertake production and dispatch or to continue such production and dispatch for reasons beyond his control, make an order, within a period of three months from the date of receipt of such application, to extend the period of two years by a further period not exceeding one year and such extension shall not be granted for more than once during the entire period of lease:

Provided further that such lease shall lapse on failure to undertake production and dispatch or having commenced the production and dispatch fails to continue the same before the end of such extended period.

And whereas, based on the above provision, the said mining lease was lapsed by the Director, Directorate of Geology and Mines vide order dated 16/06/2021

And Whereas, accordingly, in respect of the said mining lease, the Hon'ble Minister (Mines) in accordance with the provisions of Section 4-A of the Mines and Minerals (Development and Regulation) Act, 1957, (Amendment) Act, 2021 and Rule 20 of the Mineral Concession Rules 2016 conducted the hearing on dated 21/12/2022.

And Whereas, after the hearing, the Hon'ble Minister (Mines), by order dated 24/03/2023, the deadline of production and Dispatch for this mine was given till 28/03/2023

And whereas, however, as the said period was very insufficient, for the mining lease holder, to start mining, to get the mining plan approved by the Indian Bureau of Mines, to reach the mineral level by Geo-Physical Survey and drilling, to prepare and approve the revised mining plan accordingly. It is also necessary to obtain Consent to Operate from MPCB, therefore to meet these conditions, M/s. Ashapura Minechem Ltd. as per rule 20 (3) of the Mineral Concession

Rules, 2016 to start production and dispatch in said mining leases submitted application on date 11/04/2023 to Director, Directorate of Geology and Mining for granting extension of 01 year from the date of 28/03/2023. Hence Director Geology and Mining vide letter dated 10.07.2023 submitted the proposal to the State Government for further action.

Now therefore, exercising the powers conferred upon the State Government under section 4A(4) of the MMDR Act 2021 and under Rule 20(6) of the MCR 2016 and interest of mineral of state, the State Government is pleased to grant one year extension to recommence the production and dispatch from the said lease i.e. up to 28/03/2024, subject to the condition that no further extension of time for production and dispatch shall be granted to this mine. If the production and dispatch could not be started on or before 28/03/2024 then the lease will be liable to be lapsed under the amended clause 4A (4) of The Mines and Minerals (Development and Regulation) (Amendment) Act, 2021.

(Laxmikant Dhoke)
Joint Secretary,
Government of Maharashtra”

In this regard, we may observe that the above would tantamount to reviving a lapsed lease by an executive action which has lapsed due to operation of law on 11 January 2017, as a result of the petitioner’s own non-compliance of the conditions in the prior approval dated 3 July 2009 followed by the LOI issued by the State Government dated 12 August 2009. In fact as discussed above, such lease is rendered non-est as it would be in breach of Section 19 of the Mines Act. In any event, *arguendo*, the extension so granted by respondent no.3 under the said letter dated 9 February 2024 would result in granting the petitioner more than one extension which is ex facie impermissible and illegal under the statutory scheme of the Mines Act. Such extensions cannot be granted in respect of leases which lapsed by operation of law and hit by Section 19 of the Mines Act. As discussed above, even under the amended and/or unamended provisions of

Section 4A(4) of the Mines Act, the petitioner is ex facie ineligible to any benefit of any extension in a manner that the law would mandate. We therefore cannot subscribe to the submissions of the petitioner that the time granted to the petitioner by the impugned orders was not adequate to comply with the mandatory statutory requirements including obtaining the EC under the Mines Act and Rules. With regard to such extensions given under the impugned orders dated 24 March 2023 and 9 February 2024 we may observe that it is settled law that the concept of equality as envisaged under Article 14 is a positive concept which cannot be enforced in a negative manner. If such claims are enforced, which are contrary to law, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order. Judicial process cannot be abused to perpetuate illegalities. Two wrongs can never make a right. The Supreme Court in ***Ekta Shakti Foundation Vs. Government of NCT of Delhi***⁸ was pleased to make these observations in light of the settled law cited by it, which would govern the facts and circumstances in the proceedings before us.

67. At this juncture we would test the petitioner's submission in regard to the relaxation of application of Section 4A of the Mines Act read with Rule 20(1) of the Mineral Concession Rules, 2016. Rule 20(1) of the 2016 MCR Rules reads thus:-

“20. Lapsing of the mining lease

(1) Where production and dispatch has not commenced within a period of

⁸ (2006) 10 SCC 337

two years from the date of execution of the mining lease, or is discontinued for a continuous period of two years after commencement of production and dispatch, the mining lease shall lapse.

(2) The lapsing of a mining lease shall be recorded through an order issued by the State Government and shall also be communicated to the lessee.

(3) Where a lessee is unable to commence the production and dispatch within a period of two years from the date of execution of mining lease or discontinuation of production and dispatch for reasons beyond its control, he may submit an application to the State Government, explaining the reasons for the same and stating the further time required, at least three months before the expiry of such period of two years:

PROVIDED that where the lessee has failed to make the application within the time stipulated above due to the reasons beyond his control but has made application before the lapse of lease under sub-rule (1), the State Government may condone the delay in making the application and in such case the State Government shall pass an order under sub-section (6) before the lapse of lease:

PROVIDED FURTHER that where the lessee has failed to make the application within the time stipulated above or delay in making the application has not been condoned by the State Government, the lease shall lapse in accordance with sub-rule (1).

(4)

(5)

(6)

(7) Any application for revival of the mining lease submitted under the third proviso to sub-section (4) of section 4A, as it stood prior to commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021, namely, the 28th March, 2021, which is not disposed of by the State

Government prior to the said date, shall lapse on the said date.”

As the above was introduced by an amendment brought about under Section 13 of the Mines Act w.e.f. 4 March 2016, it would be apposite to also refer to Rule 28 of the erstwhile Mineral Concession Rules, 1960 which reads thus:-

“28. Lapsing of leases

(1) Where production and dispatch has not commenced within a period of two years from the date of execution of the mining lease or is discontinued for a continuous period of two years after commencement of production or dispatch, the mining lease shall lapse on the expiry of the period of two years from the date of execution of the lease or, as the case may be, discontinuance of the production and dispatch.

(2) The lapsing of the mining lease shall be recorded through an order issued by the State Government and shall also be communicated to the lessee.

(3) Where a lessee is unable to commence the production and dispatch within a period of two years from the date of execution of the mining lease or discontinuation of production and dispatch for reasons beyond his control, he may submit an application to the State Government, requesting for an extension of such period of two years by a further period not exceeding one year, explaining the reasons for the same, at least three months before the expiry of such period of two years:

PROVIDED where the lessee has failed to make the application within the time stipulated above, the lease shall lapse on expiry of the period of two years.

(4) Application made under sub-rule (3) shall specify-

(a) the reasons on account of which it will not be possible for the lessee to undertake mining operations or continue production and dispatch;

(b) the manner in which such reasons are beyond the control of the lessee;

(c) the steps that have been taken by the lessee to mitigate the impact of such reasons; and

(d) the period of extension sought.

(5) Every application under sub-rule (3) shall be accompanied by a fee of two hundred rupees.

(6) The State Government shall, after examining the application, pass an order, within a period of three months from the date of receipt of the application made under sub-rule (3) or the date on which the mining lease would have otherwise lapsed, whichever is earlier, either granting or rejecting such request:

PROVIDED that such mining lease shall lapse on failure to undertake production and dispatch or inability to continue production and dispatch within the extended period of one year.

PROVIDED FURTHER that such extension shall not be granted for more than once during the entire period of lease.

(7) The State Government shall communicate to the Coal Controller's Organisation, Nominated Authority and Ministry of Coal the order recorded under sub-rule (2) or issued under sub-rule (6) within fifteen days of recording or issuing of such order."

A conjoint reading of Rule 20 of the amended Rules and Rule 28 of the Mineral Concession Rules, 1960 would also make it clear that if the production or dispatch has not commenced within the stipulated period of two years from the date of execution of the mining lease or is discontinued for a continuous period of 2 years after commencement of such production or dispatch then the lease shall lapse. Even on such count the petitioner has no case, even as contemplated under the said Rules, the lapsed or dead lease of the petitioner can never be revived.

68. As the last straw on the camel's back, the petitioner seeking relaxation of Section 4A read with Rule 20 of the Mineral Concession Rules, 2016 is not tenable, as resorting to such course is statutorily forbidden. Such submission would *ex facie* in breach of the provisions under the Mines Act and

Rules. Accordingly, such contention being completely without merit deserves to be rejected outright.

69. Further to the above, we may refer to the email communication dated 17 October 2023 issued by the respondent no.5 to the petitioner, rejecting the request of the petitioner for the grant of mining code. The said communication reads thus:-

“Sir,

With reference to your previous email dated 04.10.2023 regarding the request for issuance of mine code, it is to inform you that the mining lease deed for mineral Bauxite over an area of 62.77 hectares situated near Village Sakhari, Taluka-Mandangad, District-Ratnagiri, Maharashtra. It has come to this office's knowledge that the subject lease deed, executed by the State Government of Maharashtra on 06.04.2017 in favor of M/s Ashapura Minechem Ltd, was carried out by the State Govt. after a period exceeding two months from the deadline, which was set at 11.01.2017. This is in V contravention of the MM(D&R) Amendment Act 2015 and Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concession Rules -2016.

Furthermore, I would like to draw your attention to the communication received from the Ministry of Mines, dated 27.11.2018, vide its letter no. F. No. 7/4/2018-M. IV. In this communication, it was clearly advised to the concerned State Governments that any Mining Lease (ML) executed and registered after 11.01.2017 in respect of the cases saved under Section 10A(2) (c), would be deemed ab initio void under Section 19 of the MMDR Act due to their contravention of the Act.

In light of the aforementioned provisions and guidelines, the matter has been duly examined and this is to inform you that this office is unable to consider your request for the generation of a mine code.

Encl: Ministry of Mines letter no. dated 27.11.2018”

A bare reading of the above communication would make it abundantly clear that respondent no.5-Ministry of Mines reiterating the position of law under Section 10A(2)(c) read with Section 19 of the Mines Act has conveyed that the mining lease of the petitioner executed and registered after the statutory cut-off date of 11 January 2017 considering the non-compliances of the petitioner as on such date has lapsed and cannot be revived. The logical and legal conclusion of such lapse would be refusal of the mining code as conveyed by the said email, warranting no interference.

70. The petitioner would strenuously contend that Section 4A of the Mines Act should be interpreted in a particular manner. This according to the petitioner being that the time taken by the government authorities and/or agencies to pass the revival order dated 24 March 2023 and the subsequent extension order dated 9 March 2024 (i.e. 32 months in aggregate out of 36 months) be excluded. Such contention would require rewriting of the provisions under Section 4A and/or relaxation in the said provision, neither of which is permissible, much less legally tenable. Such course is not contemplated in the said provision. To call upon the Court undertake such exercise would tantamount to exercising powers within legislative domain, which is constitutionally impermissible under the recognized doctrine of Separation of Powers which forms part of the basic structure theory as propounded in the ***Kesavananda Bharati Vs State of Kerala & Anr.***⁹.

⁹ (1973) 4 SCC 225

71. The above submission of the petitioner is not limited to Section 4A but also to its interpretation of Section 9A(2)(c) of the Mines Amendment Act, 2015. In this context it is reiterated that the conditions as prescribed under the LOI have to be fulfilled before the cut-off date of 11 January 2017. In the absence of the same, the petitioner cannot seek execution of the lease deed on the ground that it has fulfilled the condition subsequently. In this context, the privy counsel in the case of ***Nazir Ahmad Vs. King-Emperor: Privy Council***¹⁰ held that “where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden”. This principle was first laid down in the celebrated decision of the Chancery Court in the case of ***Taylor Vs. Taylor***¹¹ where it was held that where a statutory power is conferred for the first time upon a Court and the mode of exercising it is pointed out, it means that no other mode is to be adopted. This principle has been time and again followed by our Courts as recently by the Supreme Court in the case of ***Union of India Vs. Mahendra Singh***¹² where the Supreme Court held that if a particular procedure in filling up the application form is prescribed, the application form should be filled up following that procedure alone. Following such settled principles of law, the submissions of the petitioner suggesting relaxing and/or diluting the statutory provisions under Section 10A(2)(c) read with Section 4A of the amended Mines Act cannot be

10 AIR 1936 PC 253(2)

11 (L.R.) 1 Ch. 426, 431

12 2022 SCC OnLine SC 909

accepted.

72. The petitioner would urge that some right had accrued and become vested in the petitioner vide the prior approval letter of respondent no.5 dated 3 July 2009 followed by the LOI issued by the State Government dated 12 August 2009. As such right had vested in the petitioner, it had been expressly saved by Section 10A(2)(c) of the Mines Act, as amended. The Supreme Court in the case of *State of Rajasthan Vs. Shrawan Kumar Kumawat*¹³ held in categorical terms that there is no vested right with the applicant to seek lease of a government land or over the minerals beneath the soil. It has been held that there is no question of having any fundamental right in mining. Further, no applicant can contend that he is entitled for a lease merely on the basis of a pending application. The Supreme Court also observed that when a decision is taken by a competent authority in public interest by evolving a better process such as auction, a right, if any, to the applicant seeking lease over a government land evaporates on its own. An applicant cannot have an exclusive right in seeking grant of licence of a mineral unless facilitated accordingly by a statute.

73. Thus, accepting the petitioner's submission would run contrary to such settled legal principles as also to the letter and spirit of Section 10A(2)(c) of the Mines Act as amended. The said Section does not save any such right much less vested right which never accrued to the petitioner, who failed to comply with

13 2023 SCC OnLine SC 898

the mandatory conditions under the prior approval letter and/or the LOI, as on the cut-off date of 11 January 2017. In this context the petitioner in the petition has placed reliance on the judgment of the Supreme Court in the case of ***Bhushan Power and Steel Ltd. Vs. State of Odisha***¹⁴. In the said case the Supreme Court held that some kind of right in law came to be vested in the category of cases which led the parliament to make such provision, saving those rights and understandably so. Such situation has not arisen in the given facts to make the said decision applicable to the present case. The subsequent decisions quoted in the petition, citing the decision of ***Bhushan Power*** (supra), stands on completely different facts and circumstances which are of no assistance to the petitioner.

74. In light of the forgoing discussion, there is no merit in the petition. Accordingly, the following order is passed:-

ORDER

- i. The petition is dismissed. No costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]

¹⁴ (2017) 2 SCC 125