Sarda Mines Pvt. Ltd. And Another Vs State Of Odisha And Others

Writ Petition (Civil) Nos.17905, 3115, 6905 Of 2021 And Contc No. 3650 Of 2021

Court: Orissa High Court

Date of Decision: Jan. 10, 2022

Acts Referred:

Constitution of India, 1950 â€" Article 226, 227#Customs Act, 1962 â€" Section 27#Mines and Mineral (Development and Regulation) Act, 1957 â€" Section 8, 8(2), 8(3), 8A, 8A(3), 8A(4), 8A(5), 8A(6), 8A(9), 9, 13, 16, 17A(2), 17(2), 17(4), 30#Mining Lease (Modification of Terms) Rules, 1956 â€" Rule 4, 7(1)#Mineral Concession Rules, 1949 â€" Rule 11(1)(iv)#Mineral Concession Rules, 1960 â€" Rule 31(1), 31(2), 37, 39, 63#Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 â€" Rule 58

Hon'ble Judges: Dr. S. Muralidhar, CJ; B.P. Routray, J

Bench: Division Bench

Advocate: Kapil Sibal, Gopal Jain, Satyajit Mohanty, Ashok Kumar Parija, P.K. Muduli

Final Decision: Disposed Of

Judgement

Dr. S. Muralidhar, CJ.

Introduction

1. These are three writ petitions and one contempt petition filed by M/s. Sarda Mines Pvt. Ltd. (SMPL) (Petitioner No.1) and its Director and Shareholder (Petitioner No.2).

2. In W.P.(C) No.3115 of 2021, the Petitioners have sought a direction to the Opposite Party-Department of Steel and Mines, State of Odisha (DSM) to execute a lease deed

in favour of Petitioner No.1 (SMPL) ""for the remaining bifurcated period of 10 years of the 30 years period"" in terms of the directions dated 28th June and 18th December,

1991 of this Court in OJC No.2567 of 1984 and 30th June 1998 in OJC No.1803 of 1986 and also in terms of the order dated 11th February, 1999 passed by the DSM.

3. The prayer in W.P.(C) No.6905 of 2021 is for quashing of a demand notice dated 8th February, 2021 issued by the Joint Director of Mines, Joda, District: Keonjhar (JDM)

(Opposite Party No.1) in the writ petition directing the Petitioner to pay a sum of Rs.2045.51 crores as compensation on excess production; quashing the notice dated 20th

May, 2021 issued by the JDM asking SMPL not to cross the pro rata limit of production against the quantity stipulated in the Environmental Clearance (EC), accorded by the

Ministry of Environment and Forest (MoEF), Government of India and in case the said limit is already reached, to stop production immediately; to quash a letter dated 21st

May, 2021 by which SMPL was informed by the JDM that on verification from the I3MS login, it was found that SMPL had already achieved production of 22,75,848 MT

thus crossing the pro rata limit of production and therefore, SMPL was asked to stop production of iron ore in the mines 'immediately'.

4. In the third writ petition i.e. W.P.(C) No.17905 of 2021, SMPL, Petitioner No.1 and its Director and Shareholder (Petitioner No.2) have challenged an order dated 20th

May, 2021 issued by DSM, Government of Odisha, retrospectively revising the date of renewal of lease deed which was executed on 14th August, 2001 to 1st August 1964.

5. Apart from the above, CONTC No.3650 of 2021 has been filed by SMPL alleging that the Opposite Parties have willfully disobeyed the order dated 7th June, 2021 passed

by this Court in I.A. No.7623 of 2021 in W.P.(C) No.6905 of 2021.

Background facts

6. The background facts are that two mining leases (Block-A and Block-B) over an area measuring 2590.4 acres and 2340.2 acres respectively in village Murgabeda and

Soyabali of Thakurani Iron Ores Mines in Keonjhar District were granted in favour of late Shri Babu Hiralal Sarda by the then Raja of Keonjhar by a lease deed dated 1st

August, 1934. The leases were originally granted for a period of 30 years commencing 1st August, 1934 and expiring on 31st July, 1964. The lease deed had a clause providing

for renewal for another period of thirty years.

7. Shri Hiralal Sarda died in 1947, whereafter his son Shri Baijnath Sarda carried on the mining operation. On 4th September 1956, the Mining Lease (Modification of Terms)

Rules, 1956 (Ã¢â‚¬Ëœ1956 RulesÃ¢â‚¬â„¢) was issued. Under Rule 4 of the 1956 Rules, existing leases were required to be brought in conformity with the Mines and Minerals

(Development and Regulation) Act, 1957 (MMDR Act).

8. In respect of the mining lease over an area of Ac 2340. 20 dec in Soyabali, the Controller of Mining Leases (CML), Northern Region issued a show cause notice (SCN)

dated 28th May, 1957 under Rule 6 of the 1956 Rules inter alia stipulating that the dead rent shall be enhanced to Rs.5/- per acre per annum for iron ore and Rs.10/- per acre

per annum for manganese ore; that except for the modifications made by the said SCN, the lease would be subject to the Rules made or deemed to have been under Sections

13 and 16 of the MMDR Act and that the royalty should be payable in accordance with Section 9 of the MMDR Act instead of according to the stipulations in the lease deed.

9. On 28th May, 1957 the CML issued a show cause notice (SCN) to the erstwhile lessee, Shri Baijnath Sarda, under the 1956 Rules stating that the two leases required

modification in respect of the period of royalty and dead rent. The relevant portion of the SCN stated that the lease would be subject to the Mineral Conservation

Development Rules, 1955 (MCD Rules, 1955) and if any clause of the lease was inconsistent with any provision of the MCD Rules then the provisions in the lease to the

extent of such inconsistency would cease to have effect. Subsequently, on 13th August 1958 the CML issued a revised SCN stating that in view of the fact that the MMDR

Act had come into effect from 1st June, 1958 the earlier SCN issued on 28th May, 1957 required amendment.

10. By order dated 30th July, 1959 it was also stipulated that the lessee should pay rent for the surface area used for the purposes of mining, surface rent at such rate not

exceeding the land revenue and cesses assessable on the land as specified by the State Government under Rule 11(1)(iv) of the Mineral Concession Rules, 1949 (MC Rules

1949).

11. On 24th September, 1959 the erstwhile lessee Shri Baijnath Sarda, not being satisfied with the aforementioned order of the CML, filed revision applications before the

Central Government under Rule 7(1) of the 1956 Rules. By an order dated 10th October, 1962 the Central Government partly allowed the two revision applications by

substituting the lease period of 30 years from 1st August 1934 with the period of 20 years and nine months from that date. The renewal was to be regulated according to the

law and rules in force. The relevant portion of the said order read as under:

the words Ã¢â‚¬Ëœperiod of the lease shall be 30 years counting from 01.08.1934; renewal to be regulated according to the law and rules in force when it falls dueÃ¢â‚¬â„¢ shall be read as,

Ã¢â‚¬Ëœperiod of the lease shall be 20 years nine months counting from 01.08.1934; renewal to be regulated according to law and rules in force when it falls dueÃ¢â‚¬â„¢".

12. When no orders were passed by the State Government on the renewal application filed by the lessee within 90 days, it was deemed to be rejected under the relevant

provisions of MCR Rules, 1960. Shri Baijnath Sarda thereafter filed a revision application before the Central Government under Section 30 of the MMDR Act, 1957

challenging the deemed rejection of the renewal application.

13. On 11th January, 1963 the revisional authority allowed the revision application and directed the State government to decide the renewal application. Thereafter, by an order

dated 29th April, 1963 the State Government recommended to the Central Government the grant of renewal of both the mining leases, for a period of twenty years. Since no

approval was communicated under Rule 63 of the MC Rules, 1960 by the Central Government Shri Baijnath Sarda filed a second revision application on 23rd July, 1963.

14. While the above revision application was pending, the Central Government invoked Sections 17 (2) and (4) of the MMDR Act as it then stood and issued a notification

dated 12th January, 1965 to reserve the area for which Shri Baijnath Sarda had applied for renewal, in favour of a Public Sector Undertaking (PSU). Acting on the above

notification, the Central Government, by an order dated 9th February, 1965, rejected the recommendation of the State Government for renewal of the lease applied for by Shri

Baijnath Sarda.

15. Shri Baijnath Sarda then filed OJC Nos.30 of 1965, 123 of 1965 and 124 of 1965 in this Court questioning the Central GovernmentÃ¢â‚¬â„¢s decision to reject his renewal

application as well as the notification dated 12th January, 1965. In terms of the averments made in the said writ petitions, it appeared that Shri Sarda was in continued

possession of the mining lease area; paying rents and performing all other acts as a lessee.

16. By a common order dated 22nd December, 1967 this Court allowed the aforementioned writ petitions thereby quashing the Central Government notification dated 12th

January, 1965 as well as the order dated 9th February, 1965 passed by the Central Government rejecting the renewal application filed by Shri Baijnath Sarda. The Central

Government was directed to decide the renewal application afresh after giving Shri Baijnath Sarda an opportunity of being heard.

17. On 17th December, 1968 the revisional authority allowed the revision application filed by Sri Sarda and directed the State Government to grant renewal of the mining

leases over an area of Ac 2340. 20 dec in village Thakurani for a period of 30 years. It is pointed that under Section 8(2) of the MMDR Act, as it stood then, the mining lease

in case of iron ore or bauxite could be renewed ""for a period of not exceeding 30 years"".

18. Shri Baijnath Sarda died on 28th July, 1974. The lease came to be operated by his son Shri Kanheya Lal Sarda. On 13th December, 1984 the State Government decided to

reserve the area for exploitation by PSUs of the State Government under Section 17A (2) of the MMDR Act and a notification to this effect was issued. Being aggrieved by

the above notification, Shri K.L. Sarda, the successor-in-interest to Shri Baijnath Sarda filed OJC Nos.2567 of 1984, 1368/1985 and 1369 of 1985. On account of the death of

Shri K.L Sarda during the pendency of the said petitions, he was substituted by one of his sons Shri Mohan Lal Sarda as Petitioner by an order dated 20th March, 1987.

19. By an order dated 28th June 1991, this Court allowed the said petitions and directed the State Government to carry out the order dated 17thÃ, December, 1968 passed by

the Central Government and further to grant renewal of the mining lease in question for a period of 30 years.

20. Section 8 of the MMDR Act as it is existed in 1991 read thus:

8. Periods for which mining leases may be granted or renewed.

(1)The period for which a mining lease may be granted shall not exceed twenty years.

(2)A mining lease may be renewed for two periods each not exceeding ten years:

Provided that no mining lease granted in respect of a mineral specified in the First Schedule shall be renewed except with the previous approval of the Central Government.

(3)Notwithstanding anything contained in sub-section (2), if the Central Government is of opinion that in the interests of mineral developments it is necessary so to do, it may, for reasons to be

recorded, authorize the renewal of a mining lease for a further period or periods not exceeding in each case the period for which the mining lease was originally granted.

21. Thereafter the State Government filed Misc. Case No.5974 of 1991 in the disposed of writ petition seeking modification of the order dated 28th June, 1991 in which it was

inter alia prayed that the period of renewal should be restricted to 20 years as per Section 8(2) of the MMDR Act, 1957.

22. On 18th December, 1991 this Court modified its earlier order dated 28th June 1991 as under:

7. The second legal hurdle is said to be that as per section 8(2) of the Act, a mining lease cannot be renewed for a period up to 30 years which was the direction of this Court. Reference to

section 8(2) of the Act shows that a mining lease of a present type may be renewed for one period not exceeding twenty years. But then, section 8(3) of the Act permits renewal for a further

period not exceeding the period for which the lease was originally granted on the authorization of the Central Government. As in the present case, the Central Government itself had ordered for

renewal for 30 years, we are of the view that the renewal in the present case may first be made for a period of twenty years to be extended thereafter by another ten years, which would comply with the requirement of section 8(3) of the Act. We have taken this view because in the Act as enacted in 1957, mention had been made about the aforesaid period of renewal, despite which the

Central Government directed in 1968 to renew the lease for 30 years, may be because the original lease was for 30 years. So, we may read the Central Government's authorization for renewing the

lease for a further period of 10 years.

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10.We therefore, modify our order only in one regard. The same is that instead of renewal for 30 years at a time, the same would be for 20 to start with, which period shall be extended by 10

years without any further action or step taken by the leaseholder, and without requiring any fresh order of any authority in this regard.

23. It is pointed out that by the time the above order was passed, Section 8(3) of the MMDR Act was amended and the amended Section 8(3) read as under:

(3) Notwithstanding anything contained in sub-section (2), if the Central Government is of opinion that in the interests of mineral development it is necessary to do so, it may, for reasons to be

recorded, authorize the renewal of a mining lease for a further period or periods not exceeding in each case the period for which the mining lease was originally granted.

24. The State Government thereafter filed Civil Appeal Nos.39-40 and 41-42 of 1993 in the Supreme Court of India against the orders dated 28th June 1991 and 18th

December, 1991 passed by this Court.

25. During pendency of the above civil appeals, it was noticed that OJC No.1803 of 1986 which had to be heard with OJC No.2567 of 1984 had been left out. An order was

passed on 21st August, 1996 by the Supreme Court in the pending civil appeals directing this Court to dispose of OJC No.1803 of 1986 expeditiously.

26. During pendency of the proceedings in this Court as well as the Supreme Court of India, the Sarda family is stated to have filed a compromise petition along with an

interim application for modification of the orders dated 28th June, 1991 and 18th December, 1991 in OJC No.2567 of 1984 and other cases in this Court. While requesting the

State Government to renew in terms of the said compromise petition, the Sarda family was to relinquish its claim in respect of Block A. On 22nd June, 1998 the State

Government filed a reply to the said application stating inter alia that it had no objection to renewing the lease in respect of Thakurani Iron Ore Mines Block B and

withdrawal of civil appeals pending before the Supreme Court.

27. In OJC No.1803 of 1996 a settlement was reached between the State Government and the Sardas represented by erstwhile lessees on 3t0h June, 1998. The relevant

protion of the order recording the terms of settlement reads as under:

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On perusal of the purported compromise petition, we find that the members of the Sarda family have compromised the matter among themselves indicating inter alia that the claim for renewal in respect of the mining lease for Block-A of Thakurani Mines has been abandoned and they seek renewal of mining lease in respect of Block-B alone.

10.The affidavit dated 24.06.1998 filed by the State of Odisha clearly states that it is willing to renew the lease in favour of the Sarda family only in respect of Block-B and further the State is not

inclined to pursue the above Civil Appeals and are inclined to withdraw the same provided both the warring parties abandon/relinquish their claim for renewal of lease in respect of Block-A.

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11.It is found further that the terms of the compromise relate to modification of order of this Court made earlier in the three writ applications stated above which is pending in Civil Appeals

before the Apex Court. This Court cannot deal with a matter which is pending before the Apex Court while the Apex Court is in seisin over the same. It is submitted by the learned counsel for all

the parties that even in the present writ application the parties can enter into a comprehensive compromise to protect and preserve their interest and the compromise if found lawful can be

recorded by this Court, and the present writ application can be disposed of. The matter should be brought to the notice of the Apex Court duly and necessary orders may be obtained.

12.We find ex facie there is merit in the contention of the learned counsel for the respective parties. Certainly, this Court cannot pass any order accepting the terms of compromise so far as

matters pending before the Apex Court, but can certainly take notice all the events relevant for disposal of the present writ application and the matter thereafter can be referred to the Apex

Court for disposal of the matters pending there.

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15.It is also recorded that this compromise if effected to avoid all controversies between the parties and also to shorten the litigation. It is intended as also contended that the claim for renewal

of mining lease in respect of Block-A is abandoned to enable the State of Orissa to deal with the said Block for consumption by others and the mining lease so far as Block-B is concerned will

be renewed for thirty years from the date of renewal and the State has taken such stand for the benefit of the State itself as also for the benefit of other parties as law permits.Ã¢â‚¬â€‹

28. The State Government withdrew Civil Appeal Nos.39-40 and 41-42of 1993 before the Supreme Court and this was recorded in the Supreme CourtÃ¢â‚¬â„¢s order dated 15th

July, 1998. On 21st July 1998, Shri

M L Sarda and Shri S L Sarda, as legal heirs of the erstwhile lessee, submitted an application before the State Government for renewal of the mining lease for period of 30

years in respect of Block-B of Thakurani Iron Ore mines over an area of Ac 2340.20 dec. The said letter referred to the compromise petition in this Court on the basis of

which OJC No.1803 of 1986 had been disposed of.

29. On 13th August, 1998 the State Government issued its ""terms and conditions"" enquiring whether the same was acceptable to the erstwhile lessee. The relevant portion of

the said letter reads as under:

Ã¢â,¬Å“Sir,

I am directed to invite a reference to your letter dated 21.7.98 and terms and conditions given in the compromise petition dt. 5.1.98 by the legal heir of the two branches of Sarda family before the

HonÃ¢â,¬â„¢ble High Court of Orissa in OJC No. 1803/1986 and the terms and conditions stated in the withdrawal petition filed by the State Govt. In the Civil Appeal No. 39, 40, 41 and 41/1993

before the Supreme of India and the petition filed by Sri Mohanlal Sarda, son of late Kanhilal Sarda before the HonÃ¢â,¬â„¢ble Supreme Court in the abovenamed civil Appeals No. 39/93, 40/93,

41/93 &42/93 of HonÃ¢â,¬â„¢ble Supreme Court of India directing that Ã¢â,¬Å“the appeals are allowed to be dismissed as withdrawn, as prayed for. Ordered accordingly."" I am desired to enquire

whether you accept the following terms and conditions that would govern the grant renewal of mining lease in respect of the application read above. Your reply as per enclosed proforma

should reach Govt. on or before 14th September, 1998 failing which it will be considered that do not accept the condition.

1.The lease will be subject to the general terms and conditions laid down in the Model Form of Mining Lease adopted by the State Govt. and, in addition, to the following conditions:

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(iii)The lease will be granted for a period of 30 years from the date of execution of the lease. The grant order is subject to submission of duly approving mining plan within a period of six months

from the date of issue of this letter. If the approved mining plan is not received within the stipulated period of six months then action will be taken to reject the application without further

reference to you.

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Ã, (v)The assignment will be liable to cancellation if it be found that it was in excess of the limits of the authority possessed by the State Government.

30. Shri S.L. Sarda (representing the S.L. Sarda branch of the family) and Shri M.L. Sarda (representing late Shri K.L. Sarda branch of the family) jointly wrote a letter to the

State Government on 21st August, 1998 accepting all the terms and conditions as laid down by the State Government, Odisha in its letter dated 13th August, 1998. It was

further stated as under:

We do hereby also agree that we shall abide by all the terms and conditions and provisions laid down now, and as may be amended from time to time in the Mines & Minerals (Regulation &

Development) Act, 1957 and the Mineral Concession Rules, 1960.Ã¢â,¬â€‹

31. It is stated that by the proceeding dated 11th February, 1999 the State Government accepted the relinquishment of Block-A of Thakurani Iron Ore Mines and granted

renewal of mining lease in favour of the erstwhile lessee in respect of Block-B of Thakurani Iron Ore Mines over an area of Ac 2340.20 for a period of 30 years from the

date of execution of the lease deed.

32. On 22nd July, 1999 the Collector, Keonjhar sought a clarification from the State Government as to how a renewal could be for a period of 30 years in view of the

restriction under Section 8 (2) of the MMDR Act, 1957 which stipulated that no renewal can be granted for period of more than 20 years. The relevant portion of Section 8 of

the MMDR Act as of 1999 read as under:

8. Periods for which mining leases may be granted or renewed.

(1)The maximum period for which a mining lease may be granted shall not exceed thirty years:

Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years.

(2)A mining lease may be renewed for a period not exceeding twenty years.

(3)Notwithstanding anything contained in sub-section (2), if the State Government is of opinion that in the interests of mineral development it is necessary so to do, it may, for reasons to be

recorded, authorise the renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each

case.

(4)Notwithstanding anything contained in sub-section (2) and sub-sections (3), no mining lease granted in respect of mineral specified in Part A or Part B of the First Schedule shall be renewed

except with the previous approval of the Central Government.

33. On 13th July, 2001 the State Government issued a fresh grant order to the effect that Shri S L Sarda and Shri M L Sarda will be allowed to execute the lease for a period

of 20 years in conformity with the order of this Court. The relevant portion of the said order reads as under:

I am directed to invite reference to your letter no. 1884 dated 22.07.1999 on the above subject and to say that Sri Sundarlal Sarda and Sri Mohanlal Sarda may be allowed to execute the above

Renewal Mining Lease over an area of 2340.20 acres of 947.046 hects. for Iron ore for a period of 20 (twenty years) arrived at after final survey and demarcations subject to the provisions of the

Mines and Minerals (Development & Regulation) Act. 1957 and Mineral Concessions Rule 1960 and subject to compliance of all the required formalities and erections of pucca boundary

pillars before execution of Renewal Mining Lease. After execution, four copies of the executed deed may be sent to the Government and one copy to the Director of Mines, Orissa. The period of

expiry of the prescribed time limit may be treated as further period allowed to the grantee under Rule 31 (1) of the Mineral Concession Rule, 1960 for the purpose of execution. But the renewal of

Mining Lease should be executed within two months from the date of this condition there after execution, the party will carry on mining operations. The Ministry of Environment & Forest,

Government of India vide their letter No.8/55/2000-FC, dated 21.6.2000 have conveyed their approval under Sec.2 of Forest (Conservation) Act, 1980 for diversion of 865.276 hects. of forest land

for mining of iron ore for period of (20) twenty years.

A copy of the model form of the renewal of Mining lease is enclosed and another copy is being sent to the party separately.

34. On 14th August, 2001 the State Government executed a mining lease in favour of Shri S.L. Sarda and Shri M.L.Sarda in Block B of Thakurani Iron Ore Mines for a

period of 20 years i.e. 14th August 2001 to 13th August 2021. The renewal clause under the lease deed reads as under:

3. The mining lease is renewable in terms of the provisions of the Act and the rules made thereunder. Provided that the State government may for reasons to be recorded in writing reduce the

area applied for.

If the lease is in respect of minerals specified in the First Schedule to the Act, the renewal will be subject to prior approval of the Central Government.

If the lessee/lessees be desirous of taking a renewed lease of the premises hereby demised or of any parts of them for a further terms from the expiration of the term hereby granted and is

otherwise eligible, they shall prior to expiration of the last mentioned term give to the State Government twelve calendar months previous notice in writing and shall pay the rent, rates and

royalties herby reserved and shall observe and perform the several covenants and agreements herein contained and on the part of the lessee/lessees to be observed and performed up to the

expiration of the term hereby granted. The State Government on receipt of application for renewal, shall consider it in accordance with the provisions of the Act and the rules made thereunder

and shall pass orders as it deems fit. If renewal is granted, the State Government will at the expenses of the lessee/lessees and upon his executing and delivering to the State Government if

required a counterpart thereof execute and deliver to the lessee/lessees a renewed lease of the said premises for a further terms of 20 (twenty) years at such rents, rates and royalties and by

such covenants and agreements, including this present covenant to renew as shall be in accordance with the Mineral Concession Rules, 1960, applicable to iron ore on the day next following

the expiration of the term hereby granted.

35. On 7th June 2006, on an application made by Shri S.L. Sarda and Shri M.L. Sarda, the State Government passed an order allowing the transfer of the mining lease in

favour of SMPL under Rule 37 of the MC Rules, 1960. On 22nd June, 2006 Ã¢â‚¬Å“transfer of mining leaseÃ¢â‚¬ was signed by the erstwhile lessees i.e. Shri S.L. Sarda and Shri

M.L. Sarda, SMPL and the State Government. The relevant portion of the said deed reads as under:

Whereas by virtue of an indenture of lease dated the 14th August, 2001 and registered at Book No.1, volume 55, from Page 155 to 234 Sl.No.1541 (original on 14th August 2001) in the office of

the sub-registrar of Keonjhar (Place) (hereinafter referred to as lease) the original whereof is attached herein and marked as 'A' entered into between the State Government (therein called the

lessor) and the transferor (therein called the lessee), the transferor is entitled to, search for, win and work the mines and minerals in respect of Iron Ore (name of minerals) in the lands described

in the Schedule thereto and also in Schedule annexed hereto for the terms and subject to the payment of the rents and royalties and observance and performance of lessees covenants and

conditions in the said deed of lease reserved and contained including the covenant not to assign the lease or any interest there under within the sanction of the State Government.Ã¢â‚¬â€‹

36. On 31st Ã‚ March, 2014 the mining operations in the Thakurani Block B were stopped for want of the subsisting Environmental Clearance (EC) beyond 31st March 2014.

CEC Reports

37. Thereafter, on 25th April 2014, the Central Empowered Committee (CEC) constituted by the Supreme Court of India, pursuant to the directions inC ommon Cause v.

Union of India (2014) 14 SCC 155 [W.P.(C) No.114 of 2014] submitted an interim report categorizing mines into different lists based on whether the mines possessed the

requisite ECs. SMPLÃ¢â‚¬â„¢s mining lease was placed at Sl.No.9 of List R-2 which comprised of 102 mining leases that did not have statutory clearances.

38. The CEC by a letter dated 10th July, 2014 sought the response of the State Government inter alia as to why the renewal of the subject of mining lease was granted by the

State Government after a gap of 35years which was not in conformity with the MMDR Act or the MC Rules, 1960. On 20th July, 2014 the State Government submitted its

response to the CEC setting out the history of litigation from 1963 to 1998 and stated that the renewal had been granted in terms of the orders of this Court and the Supreme

Court.

39.The CEC filed its final report dated 16th October, 2014 stating that the SMPL had worked the mine as per the EC granted on 29th October, 2008 for 15 MTPA but that the

said EC never became operational since the corresponding forest clearance (FC) was not granted. It was pointed out that no mining activity had been carried on between

1964 and 2001. According to the CEC, the first renewal for the mine in question should have been from 1964 to 1984 and thereafter from 1984 to 1994.

40. Thereafter owing to the non-renewal of the EC dated 29th October, 2008 and closure of mining operations, SMPL addressed a letter dated 3rd November, 2014 to the

MoEF and CEC, Government of India to allow them to work on the basis of the EC dated 22nd September, 2004 as an interim arrangement pointing out that it was co-

terminus with the lease period. The said request was accepted by letter dated 15th January, 2015. However, it was made subject to the review based on the decision of the

Supreme Court on ownership related issues.

41. On 12th January, 2015 the amendment made to the MMDR Act by the Amendment Act 2015 came into force. For the purpose of the present petition, the relevant

provisions are Sections 8 and 8A of the MMDR Act as amended which read as under:

8. Periods for which mining leases may be granted for renewed.

(1)The provisions of this section shall apply to minerals specified in Part A of the First Schedule.

(2)The maximum period for which a mining lease may be granted shall not exceed thirty years:

Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years.

(3)A mining lease may be renewed for a period not exceeding twenty years with the previous approval of the Central Government.

Iron ore is not a mineral specified in Part A of the First Schedule. Hence, under the extant law, there is no provision for renewal of any minerals not specified in Part A of the First Schedule.

8-A Period of grant of a mining lease for minerals other than coal, lignite and atomic minerals.

(1) The provisions of this section shall apply to minerals other than those specified in Part A and Part B of the first Schedule.

(2) On and from the date of the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, all mining leases shall be granted for the period of fifty years.

(3) All mining leases granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be deemed to have been granted for a period of

fifty years.

(4) On the expiry of the lease period, the lease shall be put up for auction as per the procedure specified in this Act.

(5) Notwithstanding anything contained in sub-section (2), (3)and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and

Regulation) Amendment Act, 2015, where mineral is used for captive purpose, shall be extended and be deemed to have been extended up to a period ending on 31.3.2030 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the

condition that all the terms and conditions of the lease have been complied with.

(6) Notwithstanding anythingÃ‚ contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development

and Regulation) Amendment Act, 2015, where mineral is used for other than captive purpose, shall be extended up to a period ending on 31.3.2020 with effect from the date of expiry of the

period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that ll the

terms and conditions of the lease have been complied with.

(7) Any holder of a lease granted, where mineral is used for captive purpose, shall have the right of first refusal at the time of auction held for such lease after the expiry of the lease period.

(8) Notwithstanding anything contained in this section, the period of mining lease, including existing mining leases, of government companies or corporations shall be such as may be

prescribed by the Central Government.

(9) The provisions of this section, notwithstanding anything contained therein, shall not apply to a mining lease granted before the date of commencement of the Miners and Minerals

(Development and Regulation) Amendment Act, 2015, for which renewal has been rejected, or which has been determined, or lapsed.

42. On 8th May, 2015 the State Government issued a letter to the SMPL calling upon it to show cause as to why the period of renewal of the lease deed dated 14th August,

2001 be not revised retrospectively from 14th August 2001 to 13th August 2021 as the third renewal period. The period of first renewal was sought to be corrected as 1st

August 1964 to 31st July, 1984 and the second renewal from 1st August, 1984 to 1st August, 2004.

43. The aforementioned letter was challenged by SMPL in this Court by filing W.P.(C) No.9428 of 2015 insofar as it revised the period of the renewal of the mining lease. By

an order dated 6th August 2019 the said writ petition was disposed of by this Court with a direction to the Opposite Parties as under:

5Ã¢â‚¬Â¦It would be open for the petitioner to raise all such contentions which are germane including the jurisdiction. In that event, the authority shall deal with each of the contentions that would

be raised by the petitioner before passing a reasoned order. The final order that would be passed by the authority shall not be implemented for a period of four weeks from the date of passing

such order. With the above observation & direction, the writ petition stands disposed of.

The Supreme Court orders in the Common Cause case

44. Meanwhile, on 2nd August 2017 the Supreme Court passed a judgment in the Common Cause case (supra). It was noted that as far as SMPL was concerned, it had not

agreed to the CECÃ¢â‚¬â„¢s calculations regarding excess mining as stated in its report dated 16th October, 2014. It was directed, therefore, that this issue would be heard

independently.

45. Subsequently, on 12th November 2018 the Supreme Court passed a judgment in I.A. Nos.40, 42 and 61 of 2015 in Writ Petition (C) No.114 of 2014 C(ommon Cause v.

Union of India). The Supreme Court directed the CEC to rework the compensation payable by SMPL for excess production. Taking first year of production as financial year

2004-05, it was held that the entire extraction of iron ore and mines must be considered forcal culation of excess production. The relevant observations of the Supreme Court

in this regard read as under:

13. We leave it to the Central Empowered Committee (CEC) to quantify the penalty to be imposed on SMPL from 22nd September, 2004 and based on the terms of the environmental clearance.

The calculation should also take into consideration our conclusion that the environmental clearance is not retrospective and the first year of production, in view of the environmental clearance

granted to SMPL would be 2004-2005. Any mining in excess of the environmental clearance by SMPL would be and is illegal.

....

21. It is quite clear to us even from the above chart that the interpretation sought to be given by learned counsel for SMPL to the environmental clearance was never intended and if it was, then

the unfortunate consequence would be that the environmental clearance must be held to be invalid and quashed, resulting in greater damage to the interests of SMPL than envisaged. On a

realistic interpretation to the environmental clearance, for the purposes of calculating excess or illegal production of iron ore, the entire extraction of iron ore ROM is required to be taken into

consideration.

46. By letter dated 11th December, 2018 the CEC requested the MoEF and CEC to clarify the quantum of RoM permissible in terms of the EC dated 22nd September, 2004

and pre-revision quantum or RoM that has been taken into account while revising the annual production capacity from 4 MTPA lumps to 15 MTPA RoM in the EC dated 29th

October, 2008. On 14th March, 2019 the Government of Odisha submitted a written note of submission to the CEC stating therein that in view of the judgment of the Supreme

Court, the interpretation of the EC dated 22nd September, 2004 has attained finality and there appeared no scope for a different interpretation.

47. On 8th May, 2019 the CEC recomputed the penalty to be imposed on SMPL for excess production taking the permissible production limit as 6.154 MTPA iron ore and

submitted its report before the Supreme Court. The said penalty amounted to Rs.933.60 crores.

48. In the light of the above CEC report, SMPL filed I.A.No.186810 of 2019 in W.P.(C) No.114 of 2014 in the Supreme Court for resumption of mining operations subject to

submission of appropriate undertaking or any other instruments towards securing payment of penalty for alleged excess production of minerals. In the said I.A., an order was

passed by the Supreme Court on 15th January, 2020 directing as under:

5. In view of the above, the application is allowed in the following terms:

(i) SMPL is granted one month's time to deposit the dues assessed by CED in its report dated 08.05.2019.

(ii) In addition, SMPL shall file an undertaking to comply with all the rules, regulations and other mandatory provisions for carrying out mining operation.

(iii) After complying with directions (i) and (ii) above, SMPL can resume its mining operations in the leased area for the remainder of its lease period.

49. It is stated that subsequently on 28th January, 2020 SMPL paid Rs.933.60 crores for excess production of iron ore and finally resumed its mining operation on 1st

February, 2020.

50. On 6th October, 2020 the JDM, Joda in Keonjhar district issued a show cause notice (SCN) to SMPL stating inter alia as under:

On verification it has been noticed that, you have undertaken production of Iron Ore ROM for quantity of 17,25,800 MT & 32,35,460 MT during the month of February and March-2020

respectively which seems to be beyond the normal capacity and doubtful.

You are therefore asked to show cause for the above doubtful production, within three days of receipt of this letter.

51. SMPL replied to the SCN on 8th October, 2020 clarifying that it had sustained losses and that it had produced minerals well under its maximum annual capacity of 6.154

MTPA iron ore RoM as stipulated under the 2004 EC. It also drew attention to the Office Memorandum (OM) dated 14th May, 2020 issued by the MoEF and CEC regarding

flexibility of mineral production irrespective of calendar plan subject to a maximum capacity in the EC. According to SMPL, in the said OM the MoEF and CEC notified that

change in the sequence of operations of mining is also allowable as long as there is no change in the peak production capacity, total mine lease and mine closure plan.

52. On 14th December, 2020 the SMPL submitted an additional submission in response to the SCN stating that there was no concept of pro rata monthly production in the

2004 EC.

53. Another SCN was issued on 7th January 2021 by the JDM, Joda to SMPL stating that a penalty could be imposed on it under Section 21(5) of the MMDR Act. SMPL

then sought a personal hearing by its letter dated 25th January, 2021 in response to the SCN.

54. The JDM then issued the impugned demand notice dated 25th January, 2021 imposing a penalty of Rs.20,56,38,43,567/- on the same day as the personal hearing and the

submission of the SMPL in response to the SCN. SMPL then filed a revision application dated before the Central Revisional Authority, Ministry of Finance, Delhi dated 1st

February, 2021 under Section 30 of the MMDR Act.

Writ Petitions in this Court

55. With the revision application not being listed, the Petitioner filed W.P.(C) No.5025 of 2021 in this Court on 8th February, 2021 seeking a stay on the demand. However,

while this was pending the JDM, Joda withdrew the earlier demand notice dated 25th January, 2021 and issued a fresh demand notice on 8th February 2021 levying a new

penalty on SMPL for a sum of Rs.2046 crores based on a different set of calculations without providing any legal or factual reasons. This was challenged by SMPL by filing

W.P. (C) 6905 of 2021. On 24th February, 2021 while issuing notice in the writ petition, this Court stayed the impugned demand. This interim order was extended by an order

dated 12th May, 2021.

56. Meanwhile, on 25th January, 2021 W.P.(C) No.3115 of 2021 was filed by SMPL for a direction to the State of Odisha to execute a lease deed for the remaining period of

10 years out of the 30 years renewal that the SMPL claims entitlement in terms of the orders dated 28th June 1991 and 18th December 1991 in OJC No.2657 of 1984 and the

order 30th June 1998 in OJC No.1803 of 1986 as well as in terms of the order dated 11th February, 1999 passed by the State Government. Notice in the said writ petition was

issued on 1st February 2021.

57. By order dated 20th May, 2021 the State disposed of the show cause proceedings in terms of this CourtÃ¢â‚¬â„¢s order dated 6th August 2019 in W.P.(C) No.9428 of 2015 by

holding that the validity of the lease would expire on 13th August, 2021 and further action will be taken for auctioning of the mining lease after the expiry of the said mining

lease period. The aforementioned order dated 20th May, 2021 was challenged by SMPL and its Director in W.P.(C) No. 17905 of 2021.

58. A notice dated 20th May, 2021 was issued by the JDM asking SMPL not to cross the pro rata limit of production against the quantity stipulated in the EC, accorded by the

MoEF and in case the said limit was already reached, to stop production immediately. On the very next day i.e. 21st May, 2021 the JDM wrote to SMPL stating that on

verification from the i3MS login, it was found that SMPL had already achieved production of 22,75,848 MT thus crossing the pro rata limit production and therefore, SMPL

was asked to stop production of iron ore in the mines 'immediately'.

Order dated 7th June 2021

59.This Court on 7th June, 2021 allowed the I.A. No.7690 of 2021 filed by SMPL, seeking to amend W.P.(C) No.6905 of 2021 to challenge the aforementioned letters dated

20th and 21st May, 2021. In I.A. No.7623 of 2021 seeking stay of the aforementioned letters, this Court passed the following order on 7th June 2021:

Ã¢â‚¬Å“I.A. No.7623 of 2021

3. This interlocutory application has been filed by the Petitioner seeking stay of the operation of the communications dated 20th and 21st May 2021, issued by the Joint Director of Mines, Joda,

District-Keonjhar (Opposite Party No.1). By the first mentioned letter dated 20th May, 2021 the Opposite Party No.1 informed that the Petitioner should not exceed the pro-rata limit of

production of iron ore as against the quantity stipulated in the Environmental Clearance (EC) dated 22nd September 2004 in respect of the Thakurani Block-B Iron Mines.

4. By the second communication dated 21st May 2021, the Petitioner was informed that the Petitioner had already achieved production of 22,75,848 MT which had crossed the pro-rata limit of

production.

5. The Petitioner states that on the above basis, the Petitioner is being prevented from producing and dispatching the already mined quantity of iron ore and all its operations would cease in

due course thus causing it tremendous losses.

6. Notice was issued in this application on 31st May 2021. In response to the reply filed, a rejoinder has also been filed thereto.

7. This Court has heard the submission of Mr. Kapil Sibal, learned Senior Counsel for the Petitioner and Mr. Ashok Kumar Parija, learned Advocate General for the State (Opposite Parties).

8. Mr. Kapil Sibal, learned Senior counsel for the Petitioner submits that both the above letters have been issued without any prior intimation to the Petitioner and by misconstruing the

clarification issued by the Ministry of Environment, Forest and Climate Change (MoEF) in regard to the earlier EC granted on 22nd September, 2004.

9. The genesis of the present issue lies in the judgment dated 2nd August, 2017 of the Supreme Court of India in Writ Petition (Civil) No.114 of 2014 (Common Cause v. Union of India) where

inter alia while discussing the report of the Central Empowered Committee CEC) constituted by the Supreme Court on the issue of calculations made of the quantity of both iron ore and

manganese ore mined in excess of the mining plan, the Supreme Court explained that the basis of the calculation as follows:

(a) the production during the year 1993-94 has been considered as the permissible production during each year till the mining lease did not have the environmental clearance;

(b) the permissible production for the year in which the environmental clearance was obtained for the first time has been considered on pro rata basis of (a) the prescribed annual production

and (b) the date of the grant of the environmental clearance. For this purpose the environmental clearance granted on or before 15th of a month has been considered valid for the entire month.

Where the environmental clearance has been granted after 15th of a month it has been considered valid from the subsequent month. For example if the environmental clearance for a mining

lease has been granted say on 10th October, 2008 for an annual production of say 12 lakh MT then in that case the permissible production for the mining lease for the year 1008-09 would be

taken as 6 lakh MT (12x6/12 lakh MT) and 12 lakh MT per annum in the subsequent year; and

(c) wherever a mining lease having environmental clearance has been granted revised environmental clearance for a higher production the permissible annual production for the year, during

which the revised environmental clearance has been granted, has been considered on pro rata basis of the quantities prescribed in the earlier environmental clearance and the revised

environmental clearance. For example if the mining lease was having environmental clearance for annual production of 12 lakh MT and say on 28th September, 2009 it has been granted revised

environmental clearance for annual production of say 24 lakh MT then in that case the permissible production for the year 2009-10 would be taken as 18 lakh MT (12x6/12+24x6/12) and 24 lakh

MT per annum in subsequent years"".

10. Immediately relevant for the purpose of the present application is the observation in para (b) above where it was clarified that where the mining lease is granted to a party during the financial

year the quantity that is permissible to be produced would be calculated pro rata for the balance period of that year. It may be noted also that specific to the Petitioner, a separate judgment

dated 12th November 2018 was passed by the Supreme Court in I.A. Nos. 40 and 61 of 2015 and I.A. 111989 of 2018 in which inter alia it was noted that for the period 2017-21 the total Run of

Mine (ROM) quantity permissible to be mined is 30.770 metric tonnes (MT).

11. As regards the issue whether the above requirement to work out the quantity pro rata is confined only to the first year, there appears to have been correspondence exchanged between the

CEC on the one hand and the MoEF on the other. In response to a query raised in this behalf by the CEC by its letter dated 11th December 2018 specific to the case of the present Petitioner, the

MoEF by its letter dated 21st December, 2018 clarified that the EC dated 29th October 2008 was granted for enhancement of the production of iron ore from 4 million metric tonnes per annum

(TPA) of lump iron ore (equivalent to 6.154 MTPA ROM) to 15 million TPA (ROM).

12. In particular the following comments of the MoEF in its letter dated 21st December, 2018 are relevant:

(iii) The project proponent in its letter no. SLML/TIOM/0501, dated May 01, 2003 submitted to Ministry has mentioned that ""the ultimate capacity of mine will be 4.00 mil.te/annum lump ore

and this production will be achieved from 17th year onwards. Please refer Table 2.5 lat page 1-17 of EIA where it is mentioned that the lump ore and ROM produced during the last five

years will be 20.00 mil.te/annum and ROM 6.154 mil.te/annum respectively"". Copy of letter dated 01.05.2003 is enclosed at Annexure-V for your ready reference. In view of the above as

mentioned in the EC dated 22.09.2004 to achieve the rated capacity of 4.0 MTPA during the 17th year, the ROM from the above table may be read as 6.154 MTPA (ROM) w.r.t. 4.0 Million

Tonnes per annum (MTPA)] of Iron Ore (lump)."" (emphasis in original)

13. As pointed out by the Petitioner, the issue has been further clarified on 21st April, 2021 by MoEF by a letter the relevant portion of which reads as under:

1. This has reference to your representation dated 18.02.2021 wherein, a clarification has been sought from the Ministry in regard to the interpretation of Hon'ble Supreme Court judgment in

WP(C) 114 of 2014 pertaining to the pro rata applicability of Environmental Clearance. It is also contended in the representation that one of mining members of PHDCC has been provided with

an opinion of Justice Lokur, who was the presiding judge of the Hon'ble Supreme Court which delivered the Common Cause judgment by a mining lease holder. In the said opinion he has

reiterated that the pro rata formula is relevant only in the first year of the EC and not during subsequent years of operations. The production permitted as per the EC granted would be pro-rated

only in the year of grant.

2. The matter has been examined in the Ministry and the legal opinion from the Department of Legal Affairs, Ministry of Law and Justice has been obtained. Based on the above, it is informed

that as far as legal interpretation of Supreme Court judgment referred above is concerned, Ministry is also of the view that the pro-rata formula is relevant only in the first year of the EC and

not during subsequent years of mining operations."" (emphasis supplied)

14. In view of the above clarification in the MoEF the stand taken by the Opposite Party in the letter dated 21st May, 2021 that there was excess production of iron ore by the Petitioner beyond

the stipulated quantity in terms of EC does not appear to be correct. Clearly the pro rata calculation of the permissible quantity to be produced was relevant only for the first year in which the

EC was granted and not to the subsequent years.

15. In that view of the matter, it is directed that the letters dated 20th and 21st May, 2021 issued by the Opposite Party will not operate and the Petitioner will not, during the pendency of this

petition, be prevented on the basis of the said two letters from producing and removing the quantity of iron ore subject of course to the Petitioner complying with all other applicable conditions

in terms of the licence/lease and EC already granted in its favour, and as further clarified by the MoEF.

16. The I.A. is disposed of in the above terms.Ã¢â‚¬â€‹

Contempt Petition

60. According to SMPL, despite the above order, it was not allowed to remove the stock of iron ore. Accordingly, SMPL filed contempt case i.e. CONTC No.3650 of 2021 in

which notice was issued by this Court on 7th July, 2021. In the meanwhile, the order dated 7th July, 2021 was challenged by the State of Odisha in the Supreme Court by filing

SLP (C) No.9042 of 2021.

61. While the said SLP was pending on 8th October, 2021 this Court passed the following order on CONTC No.3650 of 2021:

1. Ms. Kirti Mishra, learned counsel, who appears for the State of Odisha in the Supreme Court, informs the Court that the Special Leave Petition (Civil) No.9042 of 2021 of the State against the

order of this Court was filed way back in July, 2021 itself and despite best efforts it has not been able to be listed till date.

2. On the other hand, Mr. Gopal Jain, learned Senior Advocate appearing for the Petitioners, points out that three adjournments have already been granted to the Opposite Parties on the

ground that the SLP is pending. He places reliance on the judgments of the Supreme Court in Madan Kumar Singh v. District Magistrate, Sultanpur, (2009) 9 SCC 79, Collector of Customs v.

Krishna Sales (P) Ltd. 1994 Supp.(3) SCC 73 and H. Phunindre Singh v. K.K. Sethi, (1998) 8 SCC 640 and submits that the mere pendency of the SLP in the Supreme Court without there

being a stay of the order passed by this Court, would not by itself operate as a 'deemed stay' and that this CourtÃ¢â‚¬â„¢s order must be given effect to in letter and spirit. He points out that the

Petitioners are suffering huge losses on account of the Opposite Parties not implementing the specific direction issued by this Court permitting the Petitioners to remove the iron ore stock

already mined.

3. In the above circumstances, the Court is constrained to now direct that if on or before 1st November, 2021 the directions issued by this Court in para 15 of the order dated 7th June, 2021 are

not complied with, then the Opposite Parties-Contemnors shall remain personally present before this Court on the next date.

4. List on 1st November, 2021.

5. An urgent certified copy of this order be issued as per rules.

62. The matter was listed next on 3rd November, 2021 when the following order was passed by this Court:

Ã¢â‚¬Å“1. Mr. P. K. Muduli, learned Additional Government Advocate points out that there is an advance list for 9th November, 2021 brought out in the Supreme Court, which indicates Special

Leave Petition (Civil) No.9042 of 2021 is listed at serial number 23 of that list. It is added by Ms. Kirti Mishra, learned counsel, who appears for the State of Odisha in the Supreme Court, that

this is not the final list for the 9th November, 2021 and that the final list would be published in a few days.

2. In the meanwhile, it has been agreed by both Mr. Gopal Jain, learned Senior Counsel for the Petitioners as well as Mr. Ashok Kumar Parija, learned Advocate General that the quantity of

mined stock which the Petitioners seek to remove from the leasehold area can be kept separately within the leasehold area and earmarked in the presence of the Deputy Director of Mines, Joda.

This earmarking should take place before the next date and this would be subject to further orders of this Court.

3. List on Friday i.e. on 12th November, 2021 at 2 PM.

4. Personal appearance of the Officers, who are present in virtual mode pursuant to the order of this Court dated 1st November, 2021, is dispensed with for the time being.

63. It appears that thereafter the SLP(C) No.9042 of 2021 was listed before the Supreme Court of India and the following order was passed by it:

Heard Mr. Rakesh Dwivedi, learned Senior counsel appearing for the petitioners and Mr. Gopal Jain, learned Senior counsel, who is on caveat, for Respondent Nos.1 & 2 and carefully perused

the material available on record.

During the course of hearing, Mr. Gopal Jain, learned Senior counsel appearing for Respondent Nos.1 and 2 has brought to our notice a copy of Order dated 311-2021 passed by the High Court

of Orissa at Cuttack in Contempt Case No.3650 of 2021, Paras 2, 3 and 4 thereof are extracted below:

Ã¢â‚¬Å“2. In the meanwhile, it has been agreed by both Mr. Gopal Jain, learned Senior Counsel for the petitioners as well as Mr. Ashok Kumar Parija, learned Advocate General that the quantity of

mined stock which the Petitioners seek to remove from the leasehold area can be kept separately within the leasehold area and earmarked in the presence of the Deputy Director of Mines, Joda.

This earmarking should take place before the next date and this would be subject to further orders of this Court.

3. List on Friday i.e. on 12th November, 2021 at 2 PM.

4. Personal appearance of the Officers, who are present in virtual mode pursuant to the order of this Court dated 1st November, 2021, is dispensed with for the time being.Ã¢â‚¬â€‹

In view of the above, there is no need to pass any Order in this matter.

However, we request the High Court to hear and dispose of the Writ Petition and the Contempt Petition, pending adjudication before it, together within the time schedule fixed by it for the

purpose.

All parties would be at liberty to raise their respective contentions before the High Court at the time of hearing of the matters.

We request the High Court not to proceed any further with contempt proceedings against the petitioners till the matter is decided by it.

With the above observations, the Special Leave Petition is disposed of.

Pending applications filed in the matter also stand disposed of.Ã¢â‚¬â€‹

Submissions on behalf of the Petitioners

64. Mr. Kapil Sibal, learned Senior Counsel and Mr. Gopal Jain, learned Senior Counsel appearing for SMPL advanced the following submissions:

(i) The order dated 20th May, 2021 passed by the Opposite Parties revising the commencement date of renewal of the mining lease from 14th August, 2001 to 1st August,

1964, a date 37 years earlier, is totally illegal, absurd and a colourable exercisable of power by the State violating the PetitionersÃ¢â‚¬â„¢ rights under Articles 14 and 19 of the

Constitution of India.

(ii) Under Rule 58 of the MC Rules, 2016 only clerical and arithmetical errors arising from Ã¢â‚¬Å“accidental slip/omission made within two years from the date of the order be

corrected by the Government Authority/OfficerÃ¢â‚¬. The lease deed dated 14th August 2001, which is effectively an order of the State Government, cannot possibly be

corrected or revised nearly twenty years thereafter i.e. on 20th May, 2021. The State Government thereafter had no jurisdiction to make any such correction.

(iii) The orders on the SCN preceding the above order were reserved on 11th October, 2019. The said order dated 20th May, 2021 was pronounced after an inordinate delay

of 19 months which is in itself a violation of the principles of natural justice and in disobedience of the order dated 6th August, 2019 passed by this Court in W.P.(C) No.9428

of 2015 which had asked the State Government to decide the matter in four weeks.

(iv) The order dated 20th May, 2021 revising the date of commencement of renewal of the lease as 1964 is in violation of the order dated 30th June, 1998 passed by this Court

in OJC No.1803 of 1986 which has attained finality. Inasmuch as this Court has held that Ã¢â‚¬Å“the mining lease so far as Block B is concerned, to be renewed for 30 years

from the date of renewalÃ¢â‚¬, this Court had already held that the lease extension/renewal is valid from 2001 and 2031. Even in the subsequent order dated 18th December,

1991 this Court held that the renewal would be for 30 years by directing that Ã¢â‚¬Å“instead of renewal for 30 years at a time, the same would be for 20 years, which shall be

extend for 10 years without any further action.Ã¢â‚¬ Thus, in fact, this Court already held that the lease extension/renewal would be valid from 2001 till 2031. Accordingly, the

stand of the State Government in this regard is totally untenable. It was also contrary to the conduct of the parties. A settlement was arrived at between the earlier lessees and the State Government which was recorded in the consent order dated 30th June, 1998 of this Court in OJC No.1803 of 1986. It was therefore, contrary to the

representation that the Government itself made in the year 1991 and again 1998.

(v) The order passed by the Government of Odisha on 11th February, 1999 acknowledged that the renewal had to be for 30 years. There was a distinction between the grant

of the lease and execution of the lease deed as was explained by the Supreme Court of India in Gujarat Pottery Works Pvt. Ltd. v. B.P. Sood, Controller of Mining

Leases for India AIR 1967 SC 964.

(vi) Further, as long as the orders dated 28th June, 1991 and 18th December, 1991 of this Court and the consent order dated 30th June, 1998 continued, the State Government

was bound to honour the said orders and grant renewal for the lease for 30 years from 14th August 2001 onwards. Reliance is placed on the decision in Board of Trustees of

Port of Kandla v. Hargovind Jasraj (2013) 3 SCC 182 to urge that ""no order bears a label of its validity or invalidity on its foreheadÃ¢â‚¬ and unless set aside, it will have to

be complied with.

(vii) The lease deed dated 14th August, 2001 was not in violation of the MMDR Act. In terms of Rule 31(2) of the MC Rules, 1960 the period of lease always commences

from the date of execution and registration of the lease deed. Form K relied upon by the State Government does not contain any hard and fast stipulation and it is open to

suitable variations in the facts and circumstances of a particular case. The period between 1964 and 2001 was spent in litigation because the State Government did not comply

with the binding orders dated 17th December, 1968 of the Central Government read with the order dated 18th December, 1991 of this Court.

(viii) The execution of the lease deed was strictly in terms of the MMDR Act and the Rules and statutory grant order dated 11th February, 1999 read with the clarification

dated 13th July, 2001 issued by the State Government. The grant order dated 11th February, 1999, passed in compliance with the directions of this Court clearly mentioned that

the period of lease would commence from the date of execution of the lease deed. Further the order dated 13th July, 2001 of the State Government clarified that the balance

period of ten years would be treated as granted period under Rule 31(1) of the MC Rules and that the lease would be executed without any formal application and without any

break.

(ix)It was erroneous on the part of the State Government to contend that SMPL not being party to the earlier orders and agreements could be expected to carry out the lease

for the remaining period of lease which was transferred to it by the erstwhile lessees i.e. Shri M.L. Sarda and Shri S.L. Sarda. SMPL had stepped into the shoes of Shri M. L.

Sarda and Shri S.L. Sarda and has taken over the right, title and interest which includes right of extension of 30 years under the consent order as well as the grant order dated

11th February, 1999.

Ã‚ (x) There is a deliberate misinterpretation by the State of Section 8A(6) of the MMDR Act as amended. The renewal in terms of the said provision would in the case of

SMPL be for a period of 30 years from 2001 to 2031. Therefore, the present extension sought by the SMPL was fully protected even under the amended Section 8A (6) of the MMDR Act.

(xi) The original lease deed dated 1st August 1934 provided for extension of 30 years. This was reiterated on 17th December, 1968 by the Central Government. This Court in

its orders dated 28th June, 1991 and 18th December, 1991 acknowledged that the renewal would be for 30 years. The compromise decree dated 30th June, 1998 also

acknowledged this right of the lessees. A challenge to the above compromise decree in Civil Appeals filed by the State Government stood withdrawn on 15th July, 1998. The

consequential order dated 13th August, 1998 issued by the State Government, the renewal order dated 11th February, 1999 and the letter dated 13th July 2001 also

acknowledged this.

(xii) EvenÃ, inÃ, termsÃ, ofÃ, theÃ, judgmentÃ, ofÃ, theÃ, SupremeÃ, CourtÃ, iCn ommon Cause v. Union of India (2016) 11 SCC 455, the scope of Section 8A of

the MMDR Act was clarified as continued in the lease period Ã¢â,¬Å“upto the actual period contemplated by the renewal orderÃ¢â,¬. In the present, the renewal order was dated

11th February, 1999 of the total renewal period of 30 years granted on 11th February, 1999 and the lease for 20 years had been executed. The lease for the balance tenure

was yet to be executed. The Petitioners were in effect not seeking a renewal for the period 2021 to 2031 but only the execution for formal lease for the renewal already

granted for a period of 30 years.

(xiii) The question of adjusting the lease period from 1963 to 1974 within the 30-year lease renewal period was therefore misconceived. In any event, being fully aware of the

transit permits issued during the period 1963 to 1994, the State Government consented in 1998 to extension for a further period of 30 years. It was not open to the State

Government to now contend that the period from 1963 to 1984 should be adjusted against the said period of 30 years. Relying on the judgment in P.K. Vijayan v.

Kamalakhami Amma (1994) 4 SCC 53 it was contended that the State Government is barred by the principles of constructive res judicata from raising a plea of reduction of

the grant period by a period of ten years.

(xiv) A compromise decree cannot be modified except by mutual consent. Reliance is placed on the decision in Suvaran Rajaram Banderkar v. Narayan R. Bandekar

(1996) 10 SCC 255. Reliance is also placed on the decision in Beg Raj Singh v. State of U.P. (2003) 1 SCC 726 to contend that where a party was wrongly disallowed to

operate a mining lease, he must be allowed to operate it for the full period of lease and relief cannot be denied solely because of loss of time in prosecuting proceedings in a

judicial forum.

Submissions on behalf of the State

65. Mr. Ashok Kumar Parija, learned Advocate General appearing for the Opposite Parties made the following submissions:

(i) A distinction had to be drawn between the rights accrued as far as Shri M.L.Sarda and Shri S.L. Sarda are concerned and those in favour of SMPL. In terms of the

tripartite lease deed dated 14th August 2001, SMPL would be entitled to operate the lease only as regards the balance lease period.

(ii) The lease deed expressly stated that the lease was only for a period of 20 years. It further recorded that any request for renewal would be considered in terms of the

Ã¢â‚¬Å“Act and Rules made thereunderÃ¢â‚¬. In other words, there was no obligation on the State Government, even in terms of the said lease deed, to grant renewal of the lease

contrary to the prevailing statutory provisions. It was obvious and agreed to by all parties that the renewal would be regulated by the MMDR Act and the Rules made

thereunder.

(iii) SMPL came to the picture only on 23rd June, 2006 by which time the law had changed and the grant of lease had to be governed by the provisions of Section 8A (4) of

the MMDR Act which was very clear that on the expiry of the lease period, the lease had to be put up for auction. This change, introduced with effect from 12th January,

2015 could not have been anticipated at the time of execution of the lease deed on 14th August, 2001 and even when SMPL became a transferee from the Sardas on 23rd

June, 2006. The balance period of lease in terms of Section 8A (6) of the MMDR Act was only up to 13th August 2021 and not beyond that date.

(iv) The consent decree recorded by this Court noted that the statutory provisions would have to govern the question of renewal of the lease. Form K or Ã¢â‚¬Å“in a form as near

theretoÃ¢â‚¬ does not mention renewal of lease. Even the letter dated 13th July, 2001 of the State Government limits the period to 20 years. The documents regarding transfer of

the lease dated 7th June, 2006 only mentions the balance period and nothing about any right of renewal.

(v) The order dated 18th December, 1991 of this Court modified the period of 30 years to 20 years acknowledging the statutory provisions. No relief could be granted by this

Court contrary to statutory provisions. Reliance is placed on the decisions in A.P. Christian Medical Educational Society v. Govt. of A.P. (1986) 2 SCC 667; Union of

India v. Kirloskar Pneumatic Co. Ltd. (1996) 4 SCC 453 and Vice Chancellor, University of Allahabad v. Anand Prakash Mishra (Dr.) (1997) 10 SCC 264.

(vi) Mr. Parija placed emphasis on the observations of the Supreme Court of India in Common Cause (supra) where it was made clear that after the expiry of the existing

lease period, a leaseholder would not be entitled to renewal. As regards pending renewal applications, they would be considered provided they had been made prior to 12th

January, 2015. The rights flowing from the lease deed were subject to the MMDR Act and the Rules framed thereunder. The renewal of lease could not be contrary to the

statutory provisions. Reliance is placed on the decisions in State of Assam v. Om Prakash Mehta (1973) 1 SCC 584a nd Ramlal and Sons v. State of Rajasthan (1976) 1

SCC 112.

(vii) Considerable reliance was placed on the decision in D.K. Trivedi & Sons v. State of Gujarat (1986) Supp SCC 20 to urge that the lease deed in Form K is a statutory

lease deed and the obligations of a lessee would flow only from such a lease. In this context, reliance was also placed on the decisions in Indian Charge Chrome Ltd. v.

Union of India (2006) 12 SCC 331; B. Rudragouda v. Union of India MANU/DE/1043/201. 9Reliance was placed on the decision in Income Tax Officer v. J.B.

Mangharam and Co (1964) 53 ITR 638 (SC) to urge that all rights specified under settlement/compromise would always be superseded by an amending law.

(viii) The question of constructive res judicata would not arise when it was a compromise recorded by a Court particularly since there was no adjudication. Reliance is placed on the decisions in Pulavarthi Venkata Subba Rao v. Valluri Jagannadha Rao AIR 1967 SC 591 and Daryao v. State of U.P. (1962) I SCR 574.

(ix) When subsequent to a decision rendered by a Court, the law has changed, the earlier decision would not operate as res judicata. Reliance is placed on the decisions in

Alimunnissa Chowdharani v. Shyam Charan Roy 1905 (1) CLJ 176 and Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy (1970) 1 SCC 613.

(x) The subsequent change in law rendered the earlier compromise decree inexecutable and this was not impermissible in law. Reliance is placed on the decisions in Vidya

Sagar v. Sudesh Kumari (1976) 1 SCC 115, Sabitri Dei v. Sarat Chandra Rout (1996) 3 SCC 301a nd Haji Sk. Subhan v. Madhorao (1962) Supp (1) SCR 123 to

emphasize that the law as existing on the date of decision would be applicable. Reliance is also placed on the decision in State of Tamil Nadu v. M/s. Hind Stone (1981) 2

SCC 205.

(xi) By the conduct there was a waiver by the erstwhile lessees to the right of renewal. Reliance is placed on the decision in Kanchan Udyog Ltd. v. United Spirits Ltd.

(2017) 8 SCC 237. As regards the inter pretation of Section 8(3)and 8A of the MMDR Act, as amended, reliance is placed on the decision in TISCO Ltd. V. Union of India

(1996) 9 SCC 709 and Common Cause (supra). Reliance is also placed on the decision of this Court in Tata Iron & Steel Co. Ltd. v. Union of India (1995) SCC Online

Ori 310.

Analysis and reasons

66. The above submissions have been considered. At the outset it requires to be noticed that the changes brought about to the MMDR Act by the MMDR Amendment 2015

introduced a new regime in the context of mining leases in the country. The SOR of the MMDR Act Amendment Bill 2015 acknowledged that the mining sector had been

subjected to numerous litigations in the earlier three years and many important judgments had been pronounced by the Supreme Court of India besides the judgments on the

issue of allocation of natural resources which had a direct relevance to the grant of mineral concessions. The SOR proceeded to note as under:

4. The present legal framework of MMDR Act, 1957, does not permit the auctioning of mineral concessions. Auctioning of mineral concessions would improve transparency in allocation.

Government would also get an increased share of the value of mineral resources. Some provisions of the law relating to renewals of mineral concessions have also been found to be wanting in

enabling quick decisions. Consequently, there has been a slowdown in the grant of new concessions and the renewal of existing ones. As a result, the mining sector started registering a

decline in production affecting the manufacturing sector which largely depends on the raw material provided by mining sector. The Government has therefore felt it necessary to address the

immediate requirements of the mining sector and also to remedy the basic structural defects that underlie the current impasse.

5. In view of the urgent need to address these problems, the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 was promulgated on 12th January, 2015. The

present Bill is to replace this Ordinance. This bill is designed to put in place mechanic for:

(i) Eliminating discretion;

(ii) Improving transparency in the allocation of mineral resources;

(iii) Simplifying procedures;

(iv) Eliminating delay in administration, so as to enable expeditious and optimum development of the mineral resources of the country;

(v) Obtaining for government an enhanced share of the value of the mineral resources of the country; and

(vi) Attracting private investment and the latest technology;

67. The SOR further explained some of the significant features of the MMDR Amendment Bill, 2015 and in particular the following:

(i) Removal of discretion; auction to be sole method of allotment: The amendment seeks to bring in utmost transparency by introducing auction mechanism for the grant of mineral

concessions. The tenure of mineral leases has been increased from the existing 30 years to 50 years. There is no provision for renewal of leases.

68. Therefore, it is claimed that after the MMDR Amendment Bill which became effective on 12th January, 2015, the concept of renewal of mining leases was virtually non-

existent. This is an important factor to be kept in mind while appreciating what the effect on the arrangements previous to the amendment would be.

69. The following observations in J.B. Mangharam and Co (supra) sets the template for appreciating the issues in the present case. There certain concessions for grant of

mining leases were provided by the State of Madhya Bharat to the Respondents prior to the Constitution of India coming into force. It was explained by the Supreme Court

that irrespective of concessions made prior to April 1st 1950 when the Income Tax Act stood extended to the State of Madhya Pradesh by the Finance Act, 1950, the

Respondents could not rely on the agreement with the former State of Madhya Bharat Ã¢â‚¬Å“which must be deemed to have been superseded by the legislative provisions which

came into force from April 1st 1950Ã¢â‚¬. It was held that the Respondents could get Ã¢â‚¬Å“such concessions as may be allowed to them under the Income Tax Act read with the

consent ordersÃ¢â‚¬â€‹.

70. The starting point for the present litigation is the lease deed itself executed on 14th August, 2001. Whatever may have happened prior thereto, including the orders of this

Court and the compromise decree, the rights of the parties got crystallized only in the said lease deed dated 14th August, 2001. If one carefully peruses that document, it is

seen that it is between the State Government on the one hand and Shri S.L. Sarda and Shri M.L. Sarda on the other, under Rule 39 of the MC Rules, 1960. The document is

itself titled Ã¢â‚¬Å“renewal of mining leaseÃ¢â‚¬ and the period is clearly specified as Ã¢â‚¬Å“14.08.2001, 13.08.2021Ã¢â‚¬. This document does not have preamble clauses. It makes no

reference to the compromise decree or anything stated thereunder. It clearly states that the term 20 years is Ã¢â‚¬Å“next ensuingÃ¢â‚¬â€‹.

71. As far as the rights of renewal are concerned, Clause 3 of Part VIII Form K under the title Ã¢â‚¬Å“Covenants of the State GovernmentÃ¢â‚¬ states that Ã¢â‚¬Å“the mining lease is

renewable in terms of the provisions of the Act and the Rules made thereunder.Ã¢â‚¬ It is plain therefore, that the right of renewal would be subject to the provisions of the

MMDR Act and the MC Rules 1960 in force at the stage of renewal. In other words, there was no promise held out in the said lease deed of any renewal irrespective of the

statutory provisions. In fact, given the settled legal position, there could possibly not have been any such promise held out.

72. Thus on a plain reading of the lease deed dated 14th August, 2001, there is nothing in it which holds out an assurance to the leases that notwithstanding the provisions of

the MMDR Act and the MC Rules, renewal would take place in terms of the orders passed by this Court on 28th June, 1991 and 18th December, 1991 or the compromise

decree recorded on 30th June, 1998. Even from the letter dated 13th July 2001 of the State Government, it is clear that a second renewal of the mining lease has been granted

for a period of 20 years. There is no doubt that the entire exercise has been done in terms of the MMDR Act and the MC Rules 1960. That the mining lease is in Form K

makes this position abundantly clear.

73. There is merit in the contention of the State that by accepting the aforementioned lease deed in Form K, Shri M.L. Sarda and Shri S.L. Sarda should be taken to have, by

their conduct, waived their rights to seek the further renewal for another 10 years. In this context, the following observations in United Spirits Ltd. (supra) are relevant:

Ã‚ Ã¢â‚¬Å“23. ""Waiver by conduct was considered in P. Dasa Muni Reddy vs. P. Appa Rao, (1974) 2 SCC 725, observing as follows:

Ã¢â‚¬Å“13. Abandonment of right is much more than mere waiver, acquiescence or lachesÃ¢â‚¬Â¦..Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which

except for such waiver the party would have enjoyed. Waiver can also be a voluntary surrender of a right. The doctrine of waiver has been applied in cases where landlords claimed forfeiture of

lease or tenancy because of breach of some condition in the contract of tenancy. The doctrine which the courts of law will recognise is a rule of judicial policy that a person will not be allowed

to take inconsistent position to gain advantage through the aid of courts. Waiver sometimes partakes of the nature of an election. Waiver is consensual in nature. It implies a meeting of the

minds. It is a matter of mutual intention. The doctrine does not depend on misrepresentation. Waiver actually requires two parties, one party waiving and another receiving the benefit of

waiver. There can be waiver so intended by one party and so understood by the other. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a

right. The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in questionÃ¢â‚¬Â¦..Ã¢â‚¬â€‹

24. Waiver could also be deduced from acquiescence, was considered in Waman Shriniwas Kini vs. Ratilal Bhagwandas & Co., 1959 Supp (2) SCR 21, observing as follows:

Ã¢â‚¬Å“13Ã¢â‚¬Â¦Ã¢â‚¬Â¦Waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing unless it amounts to a release. It signifies nothing more than an intention

not to insist upon the right. It may be deduced from acquiescence or may be impliedÃ¢â‚¬Â¦.Ã¢â‚¬â€‹

Ã‚

74. The Court now takes up the question of the interpretation of Sections 8 and 8A of the MMDR Act. In Tata Iron & Steel Co. Ltd. v. Union of India (supra) the Supreme

Court of India discussed the purport of the said provisions in the context of renewal of mining leases. After noting Section 8 as it stood prior to the 1994 amendment to the

MMDR Act, it was observed by the Supreme Court in the said decision as under:

34. ...To us, the language of Section 8 (3) is quite clear in its import. Ordinarily, a lease is not to be granted beyond the time and the number of periods mentioned in Clauses (1) and (2). If,

however, the Central Government is of the view that to allow a lessee's lease to be renewed further would be in the interest of mineral development, then, it is empowered to do so, provided there exists on record sound reasons for such an action and those reasons are recorded. Since such a measure has been incorporated in the legislative scheme as a safeguard against

arbitrariness, the letter and spirit of the law must be adhered to in a strict manner.

75. The Supreme Court then proceeded to uphold the order of the High Court which had negatived the plea of the company for renewal of the lease.

76. In Common Cause v. Union of India (supra), the Supreme Court had occasion to interpret Section 8A as inserted by the 2015 Amendment which came into effect from

12th January, 2015. The dispute between the parties before the Court was crystallized in para 23 as under:

23. There is a serious dispute between the rival parties with reference to the interpretation of Sections 8A(3), 8A(5) and 8A(6) of the MMDR Act. Whilst the contention of learned counsel

appearing for the petitioner- Common Cause is, that the benefit of sub-sections (3), (5) and (6) of Section 8A, will extend only to such mining leases as were subsisting on the date of

introduction of the amendment Ã¢â‚¬" 12.1.2015; it is the contention of learned counsel representing the leaseholders, that the above postulation, at the hands of learned counsel for the non-

applicants, is wholly misconceived, and would result in a misreading of the amended Section 8A of the MMDR Act.

77. Having analyzed the SOR of the Bill the Supreme Court explained as under:

29. From a perusal of the extract reproduced above, it is apparent, that the insertion of Section 8A into the MMDR Act, was to address the hardship faced by leaseholders, besides other

reasons, due to the second and subsequent applications for renewal, remaining unattended at the hands of the State Government. The instant amendment to the MMDR Act, introduced a

uniform original grant period of fifty years, for all mining leaseholders. It also excluded renewal(s), after the expiry of the original lease period. Accordingly, no renewal application can now be

filed (after 12.1.2015). Under sub-sections (5) and (6) of Section 8A, in our view, such leaseholders who had moved applications for renewal of captive/non-captive mines, would be entitled to

continue up to 31.3.2030/31.3.2020. The Ã¢â‚¬Å“Objects and ReasonsÃ¢â‚¬ for the amendment to the MMDR Act aim at remedying the position which emerged upon the interpretation of the

provisions of the MMDR Act, as they existed hitherto before. The instant amendment was also directed at remedying the grievances of the mining industry due to Ã¢â‚¬Å“second and subsequent

renewalsÃ¢â‚¬ remaining pending. And also, because the provisions of law relating to renewals had been found to be wanting. The above view is also endorsed by the fact, that Section 8A(9)

deals with a situation wherein Ã¢â‚¬Å“Ã¢â‚¬Â¦renewal has been rejected...Ã¢â‚¬. It is therefore apparent, that sub-sections (5) and (6) of Section 8A of the amended MMDR Act are aimed at situations,

wherein an application for renewal (validly made) has remained unattended. Therefore, for no fault of the leaseholder, he would be subjected to an arbitrary prejudice. It needs to be clarified,

that since an application for renewal cannot be filed after 12.1.2015, an application for renewal as would be treated as having been validly made, ought to have been made before 12.1.2015. We

are of the view, that out of the three contingencies contemplated under sub-sections 8A(5) and 8A(6), referred to above, the first of the contingencies positively, pertains to a situation, wherein

applications validly made for renewal, were pending without any final decision at the hands of the State Government. Because in the absence of a renewal application, the leaseholder can be

taken to have already expressed his disinterest, to continue mining operations. Therefore logically, the words Ã¢â‚¬Å“Ã¢â‚¬Â¦ with effect from the date of expiry of the period of renewal last made Ã¢â‚¬Â¦Ã¢â‚¬,

should relate to an expired lease prior to 12.1.2015, in relation to which a valid application for renewal had already been made.

78. Thereafter, in para 37 the conclusions of the Supreme Court in this regard was summarized. Relevant to the case on hand and the conclusions at paras 37.1 and 37.6

which read as under:

37.1 A leaseholder would have a subsisting mining lease, if the period of the original grant was still in currency on 12.1.2015. Additionally, a leaseholder whose original lease has since expired,

would still have a subsisting lease, if the original lease having been renewed, the renewal period was still in currency on 12.1.2015. Such a leaseholder, would be entitled to the benefit of Section

8A of the amended MMDR Act.

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xxx Ã,

Ã, xxx

37.6 Consequent upon the amendment of Section 8A of the MMDR Act, the regime introduced through sub-sections (5) and (6) thereof, provides for three contingencies where benefits have

been extended to leaseholders whose lease period had earlier been extended by a renewal. Firstly, for a leaseholder whose renewal period had expired before 12.1.2015, and the leaseholder had

moved an application for renewal at least twelve months before the leaseholderÃ¢â‚¬â„¢s existing lease was due to expire, and whose application has not been considered and rejected, the lease

period would stand extended up to 31.3.2030/31.3.2020 (in the case of captive/non- captive mines, respectively). Additionally, a leaseholder whose period of renewal would expire after 12.1.2015,

but before 31.3.2030/31.3.2020, the lease period would stand extended up to 31.3.2030/31.3.2020 (in the case of captive/non-captive mines, respectively). Secondly, where the renewal of the

mining lease already extends to a period beyond 31.3.2030/31.3.2020 (in the case of captive/non-captive mines, respectively), the lease period of such leaseholders, would continue up to the

actual period contemplated by the renewal order. Thirdly, a leaseholder would have the benefit of treating the original lease period as of fifty years. Accordingly, even during the renewal

period, if the period of the mining lease would get extended (beyond the renewal period) by treating the original lease as of fifty years, the leaseholder would be entitled to such benefit. Out of

the above three contingencies provided under sub-sections (5) and (6) of Section 8A, the contingency as would extend the lease period farthest, would ensure to the benefit of the

leaseholder.

79. In view of the amendment to Section 8A of the MMDR Act read with its interpretation as above by the Supreme Court of India, this Court is not persuaded by the

argument of learned Senior Counsel for the Petitioner that a deliberate attempt has been made by the State Government to misinterpret Section 8A (6) of the MMDR Act.

The expression Ã¢â‚¬Å“till the completion of the renewal period if anyÃ¢â‚¬ cannot be interpreted in this case as renewal up to 13th August, 2031. In the absence of an express

clause in the lease deed that permits such renewalÃ, deÃ, horsÃ, theÃ, statutoryÃ, provisions,Ã, theÃ, periodÃ, ofÃ, renewal cannot extend beyond 13thÃ, August, 2021.

The expression Ã¢â‚¬Å“till the completion of the renewal period occurring Section 8A (6) of the MMDR Act can only be 13th August, 2021. Section 8A (6) read with Section 8(4)

of MMDR Act as amended does not permit any automatic extension of the lease deed. The interpretation placed on Ã, Section 8A by the Supreme Court in Common Cause (supra) is final and binding and does not admit of any departure there from. In the present case, what SMPL is seeking is an automatic renewal on the basis of orders and

documents prior to 12th January 2015. None of that can hold good in light of the amendments brought about to the MMDR Act and in particular Section 8A (6) of the MMDR

Act.

80. The reliance placed on the compromise decree which became final between Shri M.L. Sarda, Shri S.L. Sarda and the State Government and which attained finality, does

not help the case of SMPL. Subsequent to the decisions rendered by this Court, the law has undergone a change. Therefore, there is no question of the principles of res

judicata, constructive or otherwise, applying. This has been made explicit in the decision of the Supreme Court in Mathura Prasad Bajoo Jaiswal (supra) where it has been

observed in paras 5 and 7 as under:

5. But the doctrine of res judicata belongs to the domain of procedure: it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to

the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute

between the parties has been determined thereby. A decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties: the ""matter in

issue"" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent court is finally determined between the

parties and cannot be reopened between them in another proceeding. The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata. A matter

in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law

thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the

right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the

right and the relevant law applicable to the determination of the transaction which is the foundation of the right and the relevant law applicable to the determination of the transactions which is

the soured of the right is res judicata. A previous decision on a matter in issue is a composite decision: the decision of law cannot be dissociated from the decision on facts on which the right is

founded. A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent Proceeding be the same as in the

previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the

jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

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xxx Ã,

Ã, xxx

7. Where the law is altered since the earlier decision, the earlier decision will not operate as res judicata between the same, parties: Tarini Charan Bhattacharjee's case. It is obvious that the

matter in issue in a subsequent proceeding is not the same as in the previous proceeding, because the law interpreted is different.

81. Indeed, as explained in Vidya Sagar v. Sudesh Kumari (supra), the subsequent change in the law has rendered the compromise decree inexecutable. There is also merit

in the contention of the State that in as much as the compromise decree was with out any adjudication, it could not constitute res judicata. In Daryao (supra), thisÃ, legalÃ,

positionÃ, wasÃ, madeÃ, clearÃ, byÃ, the SupremeÃ, Court. In Pulavarthi Venkata Subba Rao (supra) it was held as under:

10....The compromise decree was not a decision by the Court. It was the acceptance by the Court of something to which the parties had agreed. It has been said that a compromise decree

merely sets the seal of the court on the agreement of the parties. The court did not decide anything. Nor can it be said that a decision of the court was implicit in it. Only a decision by the court

could be res judicata, whether statutory under s.11 of the Code of Civil Procedure, or constructive as a matter of public policy on which the entire doctrine rests.

82. It is trite that this Court cannot possibly issue a writ of mandamus to the State to renew a mining lease contrary to the prevailing statutory provisions. This legal position has

been made explicit in A.P. Christian Medical Educational Society (supra). In Kirloskar Pneumatic Co. Ltd.(supra), while dealing with a claim for refund underÃ,

SectionÃ, 27Ã, ofÃ, theÃ, CustomsÃ, Act,Ã, itÃ, wasÃ, explainedÃ, byÃ, the Supreme Court as under:

10. According to these sub-sections, a claim for refund or an order of refund can be made only in accordance with the provisions of Section 27 which inter alia includes the period of limitation

mentioned therein. Mr. Hidayatullah submitted that the period of limitation prescribed by Section 27 does not apply either to a suit filed by the importer or to a writ petition filed by him and that

in such cases the period of limitation would be three years. Learned counsel refers to certain decisions of this Court to that effect. We shall assume for the purposes of this appeal that it is so,

notwithstanding the fact that the said question is now pending before a larger Constitution on Bench of nine Judges along with the issue relating to unjust enrichment. Yet the question is

whether it is permissible for the High Court to direct the Authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226

of the Constitution. The power conferred by Article 226/227 is designed to effectuate the law, to enforce the Rule of law and to ensure that the several authorities and organs of the State act in

accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular, the Customs authorities who are the creatures of the Customs Act, cannot be directed

to ignore or act contrary to Section 27, whether before or after amendment. May be the High Court or a Civil Court is not bound by the said provisions but the authorities under the Act are. Nor

can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived. We

are, therefore, of the opinion that the direction contained in clause (3) of the impugned order is unsustainable in law. When we expressed this view during the hearing Mr. Hidayatullah

requested that in such a case the matter be remitted to the High Court and the High Court be left free to dispose of the writ petition according to law.

83. Consequently, this Court upholds the order dated 20th May, 2021 passed by the Opposite Parties rejecting the prayer of the Petitioners for renewal of the mining lease

beyond 13th August, 2021. W.P. (C) Nos. 3115 of 2021 and 17905 of 2021 and all applications pending therein are hereby dismissed.

W.P.(C) No.6905 of 2021

84. Turning now to W.P.(C) No.6905 of 2021, the Court notes that till date no counter affidavit has been filed by the State Government. Although the order dated 7th June

2021 was challenged by the State Government before the Supreme Court of India in SLP (C) No.9042 of 2021, the Supreme Court did not interfere with the said order after

noting the order dated 3rd November, 2021 passed by this Court. In the said order, this Court recorded the agreement reached between the parties that the mined stock which

the Petitioner was seeking to remove can be kept separately within the leasehold area as an interim arrangement during the pendency of the writ petition.

85. Inasmuch as the impugned demand notice dated 8th February 2021 appears to have been issued without giving SMPL a hearing, this Court is of the view that an

opportunity of fresh hearing ought to have been given to SMPL particularly as regards the interpretation of the orders passed by the Supreme Court in Common Cause (supra)

and whether in fact the pro rata calculation of the permissible quantity to be produced was relevant only for the first year in which the EC was granted and not to the

subsequent years. This Court clarifies that the observations in this regard in its order dated 7th June, 2021 should be treated as prima facie. The authority concerned will pass

a fresh order, after hearing SMPL, uninfluenced by the said observations.

86. Accordingly, the following directions are issued:

(i)The impugned demand notice dated 8th February 2021 is hereby set aside.

(ii)SMPL will be heard afresh on the issue of alleged excess production beyond the permissible limit, on a date to be communicated to it one week in advance, within a period

of four weeks from today. All the rights and contentions of the parties vis-a-vis the issue of excess production are kept open to be urged before the authorities.

Ã, (iii)A reasoned order will be passed thereon not later than 7th March, 2022 and communicated to SMPL not later than 11th March, 2022. If the order is adverse to SMPL, it

will not be given effect to till 21st March, 2022. In other words, till 21st March, 2022 no coercive action shall be taken against SMPL. Till that date, the interim arrangement

put in place by this Court by its order dated 3rd November, 2021 in W.P.(C) No.6905 of 2021 will continue.

(iv) W.P.(C) No.6905 of 2021 and CONTC No. 3650 of 2021 and all pending applications therein are disposed of in the above terms.

87.As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High

CourtÃ¢â‚¬â„¢s website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide CourtÃ¢â‚¬â„¢s Notice No.4587, dated 25th

March, 2020 as modified by CourtÃ¢â‚¬â„¢s Notice No.4798, dated 15th April, 2021..

....