

(2012) 10 AHC CK 0211

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No's. 35523, 37391, 37784 and 40215 of 2012

Chandar Bhushan Misra and
Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Oct. 12, 2012

Acts Referred:

- Companies Act, 1956 - Section 617
- Mines and Minerals (Development and Regulation) Act, 1957 - Section 15, 21, 21(1), 21(4), 21(4A)
- Prevention of Food Adulteration Act, 1954 - Section 1, 10, 16, 16(1)(a), 16(1)(a)(i)
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 18, 4, 4(1), 4(1A), 6

Citation: (2012) 11 ADJ 286 : (2013) 2 ALJ 107 : (2013) 3 EFLT 24

Hon'ble Judges: Ashok Bhushan, J; Abhinava Upadhyay, J

Bench: Division Bench

Advocate: Mukesh Prasad, Sabhajeet Nishad, Sukesh Kumar, M.V. Verma, Jamal Ali, V.S. Parmar and Krishna Mohan, for the Appellant; C.B. Yadav, Bal Krishna and C.S.C., for the Respondent

Judgement

Hon'ble Ashok Bhushan, J.

All these writ petitions raising common question of law, have been heard together and are being decided by this common judgment.

Counter and rejoinder-affidavits have been exchanged in Writ Petition No. 35523 of 2012 (Chandar Bhushan Mishra and another v. State of U.P. and others), which is being treated as leading writ petition.

For deciding all these writ petitions, it is sufficient to refer to the pleadings in leading writ petition.

Brief facts of the case, as emerge from pleadings of the parties in Writ Petition No. 35523 of 2012, are; petitioner No. 1 made an application on 13th May, 2011 in Form-A for grant of licence for storage of mineral under Rule 8 of the U.P. Mines (Prevention of Illegal Mining, Transportation and Storage) Rules, 2002 (hereinafter referred to as the 2002 Rules). The application mentioned Plot No. 253Ka, Village Eerai, Tahsil Khaga, district Fatehpur where the minerals were to be stored. Another application was made by petitioner No. 1 dated 14th June, 2012 for grant of storage licence under 2002 Rules in Plot Nos. 187 Ka, 189, 192 and 447, Village Adhaul, Tahsil Khaga, district Fatehpur. The petitioner No. 2 made an application for grant of licence for storage of minerals on 15th June, 2012 on Plot Nos. 789 and 793, Village Hasanpur Akodia, Tahsil Khaga, district Fatehpur. The petitioners claim to have taken the aforesaid plots on rent from the tenure-holders. A notice was published in the newspaper dated 16th July, 2012 informing that stock of sand illegally stored at six different places has been seized which is to be auctioned on 23th July, 2012. In the notice 2500 cubic meter of sand illegally stored at Plot No. 253Ka, Village Eerai, 2000 cubic meter of stand at Plot Nos. 187Ka, 189, 192 and 477, Village Adhauli and 1500 cubic meter of sand at village Hasanpur Akodia was mentioned. The petitioners have come up in this writ petition praying for quashing the notice dated 16th July, 2012 published on 18th July, 2012 notifying auction of illegally stocked sand.. Petitioner No. 1 submitted an application on 18th July, 2012 to the District Magistrate, Fatehpur stating that stocked sand belongs to him which he has purchased from Earai Morang Khadan after taking Form MM-11 which was stored by him in expectation of grant of licence. The petitioner No. 1 further stated that he is ready to pay the fine which is to be imposed on account of his fault. Similar application was given by the petitioner No. 2 stating that he had purchased the sand from lease holder Santosh Kumar on the basis of Form MM-11. He further stated that his sand be not auctioned. This Court entertained the writ petition on 31st July, 2012 and passed an interim order to the effect, "Till the next date seizure of the sand as already made shall continue but the stock stored shall not be auctioned".

2. A counter-affidavit has been filed by the District Magistrate stating that the application for grant of storage licence by petitioner No. 1 was not proper since petitioner No. 1 was co-owner of only 1/6th portion of the plot and there was no consent of 5/6th portion of the tenure-holders. It was stated that at six places illegal storage of sand was found for which no storage licence was obtained, hence the same were seized under sub-rule (2) of Rule 13 of the 2002 Rules. It was further stated that Rule 13(2) of the 2002 Rules provides for giving show-cause notice only to those persons who have been granted storage licence. The petitioners having stored the sand without there being valid storage licence, the storage is illegal and the petitioners are not entitled for any relief in the writ petition.

3. The petitioners in the rejoinder-affidavit have brought on the record certain reports submitted on their applications for grant of storage licence, however, the fact is not denied that licence has not been granted.

4. Sri Mukesh Prasad, learned counsel appearing on behalf of the petitioners contended that auction notice has been issued by the respondents without giving any notice or opportunity to the petitioners. The petitioners have purchased the sand from the lease holders on the basis of Form MM-11 issued by the lease holders which could have been produced by the petitioners had a notice was given to the petitioners. Referring to Sections 4, 21(4) and 21(4A) of the Mines and Minerals (Development and Regulations) Act 1927 Act (hereinafter referred to as the 1927 Act), it is contended that the seized stock of sand could have been confiscated only after an order is obtained from the Court competent to take cognizance of the offence. In the alternative, it is submitted that Sections 21(4) and 21(4A) of the 1927 Act is not applicable in case of storage of sand, hence the sand was not liable to be seized or auctioned. It is further submitted that seizure of stock of sand is not permissible if the same has been purchased on the basis of Form MM-11 from a lease holder since the stock of sand is not illegally mined sand and seizing such sand shall cause great hardship on the person storing the sand as well as to such individual who purchases sand for use in the construction of their houses and building. It is submitted that large number of people purchase sand from lease holder or from stores for their personal consumption in construction of their houses and requiring storage licence from those persons is impractical and not contemplated under the law.

5. Sri C.B. Yadav, learned Additional Advocate General, appearing for the State, contended that admittedly the petitioners have no storage licence, hence they were not entitled to store any sand and the sand stored by the petitioners being contrary to Rule 2002, no error has been committed by the State in seizing the same and proceeding to auction the said illegally stored sand. It is further submitted that under Rule 13(2) of the 2002 Rules, the notice is required to be given to only those persons who have storage licence and when petitioners did not claim any storage licence, they were not entitled for any notice under Rule 13(2) of the 2002 Rules. He submitted that it is not necessary that prosecution be initiated in each and every case of illegal storage and without initiating proceeding for prosecution, the State is fully empowered to auction the illegally stored sand.

6. We have considered the submissions of learned counsel for the parties and perused the record.

7. Before we proceed to consider the rival submissions of learned counsel for the parties, it is useful to refer to certain statutory provisions covering the field.

8. After the enforcement of U.P. Zamindari Abolition and Land Reforms Act, 1950, all estate situate in Uttar Pradesh vested in the State after declaration by notification issued u/s 4 of the 1950 Act. u/s 6 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 all rights, titles and interest of all the intermediaries ceases and vests in the State of Uttar Pradesh free from all encumbrances. Section 6(a) of the 1950 Act, which is relevant for the purpose, is quoted below:

6(a) All rights, title and interest of all the intermediaries:

(i) in every estate in such area including land (cultivable or barren) grove-land, forests (whether within or outside village boundaries), trees (other than trees in village abadi, holding or groves), Fisheries, tanks, ponds, water channels, ferries, pathways, abadi sites hats, bazars and melas (other than hats, bazars and melas held upon land to which Clauses (a) to (c) of sub-section (1) of Section 18 apply) and

(ii) in all sub-soil in such estates including rights, if any, in mines and minerals, whether being worked or not, shall cease and be vested in the State of Uttar Pradesh free from all encumbrances.

9. The Regulation of Mines and Minerals Development being subject-matter of Entry-54 of List-I under VII Schedule of the Constitution, the Parliament enacted the Mines and Minerals (Development and Regulation) Act, 1957 to provide for development and regulation of mines and minerals. Section 4 of the 1957 Act contains general restrictions on undertaking, prospecting and mining operations. Section 4(1) and 4(1-A), which are relevant for the purpose, are quoted below :

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

Provided that nothing in this subsection shall affect any prospecting or mining operations undertaken in any area in accordance with the term and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement.

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, [the Atomic Minerals Directorate for Exploration and Research] of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government Company within the meaning of Section 617 of the Companies Act, 1956.

Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.

(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

10. Section 15 of the 1957 Act empowers the State Government to make rules in respect of minor minerals. Section 21 of the 1927 Act deals with penalties. Section 21 of the 1927 Act, which is relevant for the purpose, is quoted below :

21 Penalties.--(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of Section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty-five thousand rupees, or with both.

(2) Any rule made under any provision of this Act any provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both, and in the case of continuing contravention, with an_ additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of Section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the Court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such Court.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal procedure, 1973, an offence under sub-section (1) shall be cognizable.

11. Section 22 of the 1927 Act provides for cognizance of offence and Section 23A provides for compounding of offences. Section 23C has been inserted by Act No. 38 of 1999 empowering the State Government to make rules for preventing illegal mining, transportation and storage of minerals. Section 23 of the 1927 Act is quoted below:

23C. Power of the State Government to make rules for preventing illegal mining, transportation and storage of minerals.--(1) The State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) establishment of check-posts for checking of minerals under transit;

(b) establishment of weigh-bridges to measure the quantity of mineral being transported;

(c) regulation of mineral being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given;

(d) inspection, checking and search of minerals at the place of excavation or storage or during transit;

(e) maintenance of registers and forms for the purposes of these rules;

(f) the period within which and the authority to which applications for revision of any order passed by any authority be preferred under any rule made under this section and the fees to be paid therefor and powers of such authority for disposing of such applications; and

(g) any other matter which is required to be, or may be, prescribed for the purpose of prevention of illegal mining, transportation and storage of minerals.

(3) Notwithstanding anything contained in Section 30, the Central Government shall have no power to revise any order passed by a State Government or any of its authorised officers or any authority under the rules made under sub-sections (1) and (2).

12. In exercise of power u/s 23C of the 1957 Act, the State of U.P. has framed rules, namely, the Uttar Pradesh Mines (Prevention of Illegal Mining, Transportation and Storage) Rules, 2002. Rules 3 and 5, which prohibit transportation of minerals without valid transit pass, are as follows :

3. Prohibition Section 23-C(1).--No person shall transport, carry or cause to be transported, carried any mineral by any means from its raising place to any other place without a valid transit pass issued by the holder of mining lease or mining permit or prospecting licence as the case may be.

5. Issue of Transit Pass.--(1) The transit pass shall be issued by the holder of mining lease or mining permit or prospecting licence for major minerals in "Form G" appended to these rules and for minor minerals in "Form MM-11" appended to Rules 1963.

(2) The holder of licence for storage of minerals shall issue the transit pass in "Form C" for lawful transportation of minerals from the store.

13. Chapter-III of the 2002 Rules deals with storage of minerals. Rule 8 provides for licence for storage of minerals in Form-A. Rule 11 provides for restrictions on storage and transportation of minerals. Rule 12. enjoins maintenance of correct account of minerals by storage licensee. Rule 13. provides for inspection and checking of the storage of minerals. Rules 11, 12 and 13, which are relevant for the purpose, are quoted below:

11. Restriction on storage and transportation of minerals.--No person shall,-

(a) store any mineral in any place without obtaining a licence,

(b) store any mineral within 50 meters from any public road, railway track or any public premises,

(c) use any land for storage of minerals, which do not belong to him or is not held by him/her under valid tenancy,

(d) transport the minerals from storage premises to any other place without issuing transit pass in "Form C" appended to these rules.

12. Maintenance of correct account of minerals.--(1) The holder of such licence shall keep all times a correct and intelligible account of mineral(s) purchased, stored or dispatched in "Form G" appended to these rules.

(2) The holder of the licence for storage of the minerals shall submit a copy of correct account of mineral, stored and transported by him every month to the District Officer, under whose jurisdiction the premises of storage is situate in "Form E" appended to these rules.

13. Inspection and checking of the storage of minerals.--(1) For the purpose of checking of the stored minerals or for any purposes connected with the Act or rules made thereunder, the District Officer or the Officer authorised by the State Government may,

(a) enter, inspect any such storage premises,

(b) weigh, measure or take measurement of stock of mineral (s) lying in the store,

(c) examine any document, book, register or record in the possession,

(d) take extracts from or make copies of such document, book, register or records,

(e) summon on order the production of any such document, book, register or records as is referred to in clause (c),

(f) summon or examine any person having the control of or connected with any stock of the mineral,

(g) call for such information or return as may be considered necessary.

2. If any illegality is found in the stock of the minerals, the District Officer or the officer authorised by the State Government in this behalf may issue a notice to such licensee to explain his case within thirty days from the receipt of the notice and if no explanation is submitted within stipulated time or the explanation so submitted is not found satisfactory then the licence may be determined by the District Officer and if the stock so checked is found without any lawful authority, the same may be seized and confiscated.

14. Rule 15 of the 2002 Rules provides for appeal against an order passed by the District Officer or the officer authorised by the State Government in exercise of power conferred under the rules.

15. The 2002 Rules have been framed in exercise of power u/s 23C of the 1957 Act inserted by Act No. 38 of 1999 for preventing illegal mining, transportation and storage of minerals and for the purposes connected thereto. Thus the main purpose of the 2002 Rules is to prevent illegal mining, transportation and storage of minerals. The 2002 Rules, thus, has to be given an interpretation so as to advance the object of the rules as has been enjoined by Section 23C of the 1957 Act.

16. The submission, which needs to be considered first, is as to whether the authorised officer requires an order of the competent Court for disposal of the minerals seized in exercise of power under the 2002 Rules. Sub-section (4A) of Section 21 of the 1957 Act, provides that any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4) shall be liable to be confiscated by an order of the Court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such Court. Sub-section (4A) of the 1957 Act refers to sub-section (4). Sub-section (4) of Section 21 provides that whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land.....". Sub-section (4) of Section 21 uses the phrase "person raises, transports or causes to be raised or transported". Sub-section (4) of Section 21 is thus attracted when a person raises or transports minerals without any lawful authority. The storage of mineral is not covered by sub-section (4) of Section 21. It is relevant to note that Section 21(1) provides that whoever contravenes the provisions of sub-section (1) or sub-section (1A) of Section 4 shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twenty-five thousand rupees or with both. Sub-section (1A) of Section 4 of the 1957 Act provides that no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of the 1927 Act and the rules made thereunder. Thus the prohibition u/s 4(1A) is attracted on storage of mineral also and whosoever contravenes sub-section (1A) of Section 4 is liable to be punished u/s 21(1) of the 1957 Act. Although u/s 21(1) of the 1957 Act storage in contravention of the 1957 Act and the 2002 Rules is made punishable but sub-section (4) and

sub-section (4A) of Section 21 does not refer to storage. Thus Section 21(4) and Section 21(4A) is not attracted on storage and it is not necessary that for confiscation of the sand an order as contemplated under sub-section (4A) of Section 21 is to be obtained. However, offence is committed when storage is made in contravention of the 2002 Rules and the cognizance of the offence u/s 22 of the 1957 Act can be taken which can also be compounded u/s 23A of the 1957 Act. Thus the contention of learned counsel for the petitioners that an order was required to be obtained from the competent Court cannot be accepted.

17. The submission next pressed by the learned counsel for the petitioners is that Rule 13(2) of the 2002 Rules, which empowers seizure and confiscation, refers to inspection and checking of the storage of minerals of a licence holder. He submits that petitioners having not yet been granted licence, Rule 13 of the 2002 Rules is not attracted. The issue, thus to be considered, is as to whether Rule 13 of the 2002 Rules could have been invoked by the authorities for seizure of the sand illegally stored by the persons who have no storage licence.

18. As observed above, the object and purpose of the 2002 Rules was to check illegal mining. A lease holder who excavate sand from leased area is obliged to transport the said mineral after issuing Form MM-11 but it was felt that several persons were storing the minerals who were not lease holders and selling the sand without there being any restriction encouraging illegal mining. Rule 13 of the 2002 Rules provides for checking of the stored minerals or for any purpose connected with the Act or rules made thereunder. Rule 13 of the 2002 Rules does not confine checking only to mineral stored by the licensee. The power has been given to effectuate the purpose and object of the 2002 Rules and Section 23C of the 1957 Act. The 2002 Rules have to be interpreted in a manner to give full effect to the rules to achieve the object for which they were framed. The Apex Court had occasion to consider the principles of statutory interpretation in the case of [Reserve Bank of India and others Vs. Peerless General Finance and Investment Company Ltd. and another](#), . following was laid down by the Apex Court in paragraph 27 of the said judgment:

27...In the matter of construction of enabling statutes the principle applicable is that if the Legislature enables something to be done, it gives power at the same time, by necessary implication, to do everything which is indispensable for the purpose of carrying out the purpose in view. [See : Craies on Statutes, 7th Edn. p.258]. It has been held that the power to make a law with respect to any subject carries with it all the ancillary and incidental powers to make the law effective and workable and to prevent evasion. [See : [Sodhi Transport Co. and others Vs. State of U.P. and others](#),].

19. The Apex Court in the case of [The Forest Range Officer and others Vs. P. Mohammed Ali and others](#), , held that interpretation has to be made so as to make it effective instrument. Following was laid down in paragraph 7 of the said judgment:

7...This Court adopted the doctrine of purposive interpretation to prevent corruption, a penal offence. In [The Municipal Corporation of Greater Bombay and others Vs. The Indian Oil Corporation Ltd.,](#) , this Court adopted purposive construction in the definition of the word "building" for the purpose of levy of property tax under the Bombay Municipal Corporation Act to include oil storage-tanks to be "building" and held that the language of a statutory provision is not static vehicle of ideas and concepts and as ideas and concepts change, as they are bound to do in any country like-ours with the establishment of a democratic structure based on egalitarian values, the meaning and content of the statutory provision undergo a change. The law does not operate in a vacuum. It cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate. The Judge has to inject flesh and blood in the dry skeleton provided by the legislature and invest it with a meaning which will harmonise the law with the prevailing concepts and values and make it an effective instrument for delivering justice.

20. When Rule 13(1) of the 2002 Rules cannot be restricted to mean empowering the authorised officer to inspect only stores of licence holder, the application of Rule 13(2) can also not be limited to licence holders only. Giving interpretation to Rule 13(2) that the said power can be exercised only against a person having storage licence, the whole purpose and object of the 2002 Rules shall be frustrated. If such interpretation is given the minerals of persons who have storage licence thus can only be seized and confiscated and the persons having no licence, no action can be taken against them under the 2002 Rules whereas the very object and purpose of framing 2002 Rules was to prevent illegal mining, transportation and storage. Thus Rule 13 of the 2002 Rules has to be interpreted in a manner that the power to be exercised by the authorised officer can be both against the persons having a licence and also against the persons having no licence and illegally storing the minerals. The persons having no licence cannot be put in a better footing than the persons having licence. The persons having no licence are clearly committing offence under the 1957 Act and the 2002 Rules and the action against the persons having licence can be taken only after proper inspection made by the authorities. Thus the power under Rule 13(2) of the 2002 Rules can be exercised by the District Officer also against the persons who did not possess any licence and all action which can be taken against the licence holder who commits offence under the 2002 Rules and the 1957 Act, can very well be taken against the persons who illegally stored the mineral without any licence.

21. The submission, which was next pressed by learned counsel for the petitioners, is that if it is held that every person has to obtain storage licence, the same will be impractical since the person who purchases sand for their personal consumption for making construction, shall also be liable to obtain storage licence.

22. From Rules 3 and 5 of the 2002 Rules, as quoted above, it is clear that no person can transport any mineral by any means without a valid transit pass and under Rule 5(2) of the 2002 Rules a person having licence for storage of mineral shall also issue transit pass in Form-C for lawful transportation of the minerals from the store. A person having Form-C issued by a storage licensee is ample proof that the said form has been issued after purchasing it from the store. Form-D of the 2002 Rules, which is a register of account for minerals purchased, stored or dispatched as referred to under Rule 12, clearly indicates that storage licensee has to keep details of sale price of the minerals transported from stock. The storage of minerals by storage licensee is obviously for sale of minerals and the person who purchases minerals from a storage licensee for his personal consumption will transport the said minerals by a valid Form-C and it cannot be said that the said person is taking the mineral illegally. There cannot be any requirement for storage licence by a person transporting the minerals under Form-C after purchasing the same from storage licensee for his personal consumption and the apprehension of learned counsel for the petitioners that all persons who use sand even for their personal consumption have to obtain a storage licence is misconceived. The storage of minerals in context of the 2002 Rules is a storage of mineral by licensee for purposes of sale. One of the definitions of the word "storage" as given in P. Ramanatha Ayer, Second Edition 1997, is as follows : The term "storage" means storage of the article for sale and not for any other purpose.

23. In the case of [Giridhari Ballani Vs. Corporation of Calcutta](#), , while interpreting Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954, had occasion to consider the word "store". Following was laid down in paragraphs 9, 10, 11 and 12:

9. It will be useful to look into the relevant provisions of Sections 7 and 16 of the Act in this connection. Section 7(1) of the Act provides that

no person shall himself or by any person in his behalf manufacture for sale, or store, sell or distribute-

(i) any adulterated food;...

A person becomes liable to be punished u/s 16 of the Act if " such person-

1(a) Whether by himself or by any person on his behalf imports into India or manufactures for sale, or stores, as well as distributes any article of food in contravention of any provision of this Act or any rule made thereunder,..." Mr. Ghosh contends that the expression "store" in either of the sections is not qualified and relies in support of this contention on a decision of the Assam High Court by a single Judge of the said Court in [Bherudhan Charadia Vs. State and Another](#) . He has argued that the offence would be complete if it is proved that the appellant stored ghee and it was not necessary for the prosecution to prove that it was stored with a view to sell it in future. He has submitted that where the language of an Act is

explicit and the intention of the Legislature can be clearly gathered from them, effect must be given to it whatever may be the consequences.

10. But in order to interpret a particular expression used in the language of an Act it is necessary to look into the context in which the particular word has been used.

...the primary duty of a Court of law is to find natural meaning of the words used in the context in which they occur, that context including any other phrases in the Act which may throw light on the sense in which the makers of the Act use the words in dispute." (See Cases on Statute Law 6th Edition at page 67).

11. This very question arose for decision before a Division Bench of the Allahabad High Court in *Narain Das v. State*. The Division Bench in holding that the word "store" in Section 7 of the Act meant storing for sale and that storing for the purpose other than sale did not constitute an offence u/s 16(1)(a)(i), observed as follows at page 83 :

Under Section 7 manufacture of adulterated food is not prohibited. What is prohibited is its manufacture for sale. There appears no reason why manufacture of adulterated food, should be treated differently from its storage. The expression "or store" is preceded by the words "manufacture for sale" and is followed by "sale".

Therefore, the context in which "store" is used indicates that it means storing for sale. It must be read as taking colour from the expressions "manufacture for sale" and "sale" with which it is associated in the Section 1 respectfully agree with the views thus expressed by the Allahabad High Court (See also *Food Inspector, Kozhikode v. Punsai Desai*, [The Public Prosecutor Vs. Sami Venkataraman](#), .

12. A Division Bench of this Court in *Jogesh Chandra Das v. District Board of Naida* in Revn No. 632 of 1960 (Cal) (unreported) referred approvingly to the decision of the Kerala High Court mentioned above. In the said case it was held that the word "store" as appearing in Section 10 of the Act meant storing for sale, and not storing simplicities. This was also the view expressed by another Division Bench of this Court in *Corporation of Calcutta v. Ghusiram Agrawalla* in Criminal Appeal No. 297 of 1991 (Cal) (also unreported), as will appear from following observations of this Court in the said case.

It cannot be said to be the intention of the Legislature that mustard oil as such, irrespective of the purpose for which it was stored, if found adulterated, will come within the mischief of the section.

In my opinion interpretation of the expression "store" as appears either in Section 7 or Section 16 without reference to the purpose of storing is likely to lead to an absurd result. Endeavour should be made to avoid interpretation of the language of a section in a way that may lead to absurdity. The contention of Mr. Ghosh in this regard must, therefore, be repelled.

24. Again similar view was taken in the case of [Rameshwar Dass Radhey Lal Vs. The State](#) . Following was laid down in paragraph 8 :

8... It is settled rule of interpretation of statutes that even words may be added and the construction of a sentence may be changed in order to obtain a harmonious construction of a statutory provision and in order to avoid absurdities and oddities obviously not intended by the legislature. Applying those principles I hold that the "storage" in the opening part of " Section 7 of the Act means storing for sale and not for any other purpose. In the view I have taken of this matter I am supported by the judgment of a Division Bench of the Allahabad High Court in Narain Das v. State, AIR 1962 All 82. It was held in that case that the word "store" in Section 7 of the Act means storing for sale and storing of adulterated food for purposes other than sale (e.g. merely as security) does not constitute an offence u/s 16(1)(a) of the Act.

I am also fortified in the construction which I have placed on the word "store" contained in Sections 7 and 16 of the Act by a Division Bench judgment of the Kerala High Court in [Food Inspector, Kozhikode Vs. Punsil Desai](#) . In that case it was held that the words "for sale" in Section 7 should be read into the words "store" and "distribute" appearing in that section. On that basis the Kerala High Court held that it is only storage for sale which is prohibited u/s 16 of the Act and not storage simpliciter. Adulteration implies an element of deceit. It does not intend to prohibit a householder from adulterating any food for consumption or even for distribution otherwise than by way of sale. Any other construction of the word "store" in Section 7 would mean that misbranded container of food contained in a private house would render the owner or occupier of the house liable to the punitive actions prescribed by the Act. A reference to Clause (iii) and (iv) of Section 7 also indicates that the opening words of the section are intended to apply to articles manufactured or stored for sale or actually sold or distributed by way of sale.

25. Now the question, which has to be next considered, is as to whether notice was also required to be issued as contemplated by Rule 13(2) of the 2002 Rules against a person who has been found to have stored the minerals without there being storage licence. Rule 13(2) of the 2002 Rules contemplates issue of notice to licence holder for seizure and confiscation. Sub-rule (2) of Rule 13 contains a rule of natural justice to give an opportunity to person who is alleged to have illegally stored the minerals. Reading Rule 13(2) of the 2002 Rules literally indicates that rule making authorities contemplated giving notice to licensee only to explain illegality found in the stock. Rule 13(2) further contemplates that if no explanation is submitted within stipulated time or the explanation so submitted is not found satisfactory then the licence may be determined and further if the stock so checked is found without any lawful authority, the same may be seized and confiscated. The Rule 13(2) thus contemplates seizure and confiscation in the event no explanation is submitted or explanation is not found satisfactory. Due to this reason 30 days time is contemplated to be given to the licensee.

26. In the present case none of the petitioners have any storage licence under the 2002 Rules, hence there is no occasion of giving 30 days notice to them for determination of their licence but, as observed above, restricting power under Rule 13(2) of the 2002 Rules only against licensee shall frustrate the very purpose and object of the 2002 Rules which is prevention of illegal storage of minerals. Thus a person who does not have licence and is found storing the minerals, has clearly committed offence within the meaning of the 1957 Act and violated Rule 11(a) of the 2002 Rules. Thus apart from prosecuting the offender in accordance with the 1957 Act or compounding the offence under the 1957 Act, the power of seizure and confiscation of the sand given under Rule 13(2) can very well be utilised against such offender.

27. The submission of the petitioner is that for auctioning the sand, which is alleged to be stored by the petitioners, notice is required. The confiscation of sand has adverse consequence and principles of natural justice shall be met if notice is given to person illegally storing the minerals before confiscation. There may be situation where the competent authority may proceed to prosecute the offender by lodging a complaint or may compound the offence. In the present case, there is no material to indicate that any complaint of offence has been made and the authorities have proceeded with the auction of the sand. We are of the view that before auctioning sand, which has been seized by the authorities on the ground of illegal storage, a notice to the person from whom the illegally stored sand has been seized, shall meet ends of justice. The notice before auction of the sand is to be given whether any complaint of offence has been made or not. We make it clear that authorities are fully empowered to seize the sand which is found to be illegally stored by a person without there being any licence i.e. found in violation of Rule 11(a) of the 2002 Rules. However, before the sand is auctioned an opportunity to the person illegally storing the sand is necessary. We hasten to add that notice of 30 days, as contemplated in Rule 13(2) of the 2002 Rules, may not be applicable in a case where a person illegally storing the sand is not a licensee, however, a notice giving opportunity to such person before auctioning the sand shall meet the ends of justice.

28. In the cases before us, although the stock of sand has been seized by the authorities but the same has not yet been auctioned. However, the allegations against the petitioners having already come on the record and none of them having storage licence, we are of the view that ends of justice be served in giving liberty to the petitioners to submit their representations before the District Officer concerned within a period of two weeks from today placing their case on the allegation of illegal storage. The District Officer may take an appropriate decision after considering their explanation. It shall be open for the District Officer to take appropriate decision including the decision for compounding the offence/decision for auctioning in the sand in the event the same is found to be illegally stored. The said decision shall be taken by the District Officer within two weeks from the date of

submission of representations alongwith a certified copy of this order. With the aforesaid directions, all the writ petition is disposed of.