

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.11475 of 2023

AFR

JDL Lime Stone & Dolomite Mines, Petitioners
through its proprietor Sri Gaurang
Jalan & Another

-versus-

State of Odisha, through its Principal
Secretary, Department of Steel & Mines, Opposite Parties
Bhubaneswar & Others

Advocates appeared in the cases:

For Petitioners : Mr. Pitambar Acharya, Sr. Advocate
Mr. S.S.Tripathy, Advocate

For Opposite Parties : Mr. Ashok Ku. Parija,
Advocate General
Mr. P.P. Mohanty,
Addl. Govt. Advocate

CORAM:
THE CHIEF JUSTICE
MR. JUSTICE D. DASH

JUDGMENT

20.02.2024

Chakradhari Sharan Singh, CJ.

1. A mining lease was executed on 21.02.1974 by the Collector, Sundargarh on behalf of the State of Odisha in favour of the late Ram Avatar Jalan, in accordance with the Mines and Minerals Concessions Rules, 1960 in respect of the land having description in Part-I of the schedule to the said lease of limestone and dolomite ore over an area of 573.0536 hectares in village

Dharuara, Lanjiberna, Kukuda, Bihabandh and Falsakani under Sadar Sub-Division of Sundargarh Districts for 20 years i.e. upto 20.02.1994. After expiry of the validity period of said lease deed, the lessee continued with mining operation under the deemed extension provision of Section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 (in short, 'MMDR Act'), admittedly, with the permission of the competent authority under the State, in terms of an interim order of this Court dated 11.02.2015 passed in Miscellaneous Case No. 18700 of 2014 arising out of W.P.(C) No. 21203 of 2014.

2. The petitioner No.2 in the present proceeding is the son and thus legal heir of the late Ram Avatar Jalan. Certain amendments came to be introduced in the MMDR Act by Mines and Minerals (Development and Regulation) Amendment Act, 2015 (Act 10 of 2015) with effect from 12.01.2015 including the insertion of Section 8-A therein, Sub-Section 3 thereof contemplates that all the mining leases granted before the commencement of the Act 10 of 2015 shall be deemed to have been granted for 50 years.

3. Manifestly, invoking the provision under Sub-Section (3) of Section 8-A of the MMDR Act, the validity period of the original lease dated 21.02.1974 has been extended in the case of the lessee to 20.02.2024, by a supplementary deed executed on 30.03.2016. petitioner No.2, who is the legal heir of late Ram Avatar Jalan, has approached this Court by filing the present writ application, primarily seeking a direction that he should be

allowed to conduct mining operations based on the original lease deed dated 21.02.1974 read with Section 8-A (3) of the MMDR Act for an additional period equivalent to the period (09.01.2012 to 05.11.2015) for which the petitioner could not conduct the mining operations because of interruptions/disruptions caused by the State authorities, which the lessee could not reasonably prevent or control. The *force majeure* clause (Clause 4 of Part-F) of the lease agreement read with Rule 12 (1)(ff) of the Minerals (Other than Atomic and Hydro Carbons Energy Mineral) Concession Rules, 2016 (in short, 'Rules of 2016') is the substratum of the petitioners' claim.

4. We have heard Mr. Pitambar Acharya, learned Senior Counsel appearing on behalf of the petitioners assisted by Mr. S.S. Tripathy, learned counsel and Mr. Ashok Kumar Parija, learned Advocate General of the State assisted by Mr. P.P. Mohanty, learned Additional Government Advocate for the State-opposite parties.

5. The facts in this case are not at all in dispute which need to be taken note of, at the outset before dealing with the issues raised and submissions advanced on behalf of the rival parties.

6. The mining lease for Limestone and Dolomite over an area of 573.0536 hectares was granted in favour of the lessee, as noted above, with effect from 21.02.1974. The original lessee had surrendered a part of the lease area which was consequently reduced to 39.42 hectares of land. Before the expiry of the said

lease period, an application was filed by the lessee seeking the first renewal of the lease in accordance with the provisions under Rule 24-A of the Minor Mineral Concession Rules, 1960 (in short, 'Rules of 1960') made by the Central Government in the exercise of its power conferred under Section 13 of the MMDR Act. The renewal application remained pending before the State Government. The lessee, however, continued the mining operations by virtue of Sub-Rule 6 of Rule 24-A of the Rules of 1960 till 07.11.2009. Therefore, the lessee was asked by the Deputy Director of Mines, Rourkela by an office letter No. 14247 (25) Mines dated 07.11.2009 to stop the mining operations on the ground of non-availability of statutory clearances. The lessee is said to have intimated the Deputy Director of Mines, Rourkela, upon obtaining all statutory clearances namely:- (i) duly approved valid mining plan/scheme, (ii) forest clearances, (iii) environmental clearances in respect of the mining lease, and (iv) a consent by the State Pollution Control Board (SPCB), to restart the mining operations.

7. The Deputy Director of Mines, Rourkela recommended to the Director of Mines on 16.01.2013 for the resumption of the mining operation. The Additional Secretary to the Government of Odisha was apprised of the compliance of statutory clearances regarding the mining lease area by the Director of Mines, Odisha with a recommendation for resumption of the mining operations. On 16.05.2012 the lessee was asked to appear for a personal hearing by the Additional Secretary to the State Government on

the application filed by the lessee for resumption of the mining lease. Another date was fixed for a personal hearing on 28.12.2012. In the meanwhile, the lessee filed a revision application before the Central Government under Section 30 of the MMDR Act challenging the order dated 25.06.2012 of the Director of Mines, Odisha rejecting the Mining Dues Clearance Certificate (MDCC) application filed by the lessee on 30.05.2012 which was registered as Revision Application No. 22(53)/2012/RC. On 07.01.2014 the revision application of the lessee was disposed of with a direction to the State Government to allow the resumption of the mining operation till the expiry of the current lease period i.e. up to 20.02.2014 (20 years) from 20.02.1994. The Revisional Authority in its order mentioned that the State Government might take appropriate measures for recovery of legally recoverable dues from the petitioners.

8. In the background of the submissions and the counter submissions which have been advanced on behalf of the parties, it is deemed apt to reproduce the relevant portion of the said order dated 07.01.2014:

“16. This revision petition is not about determining the correctness or otherwise of the demand of Rs.2,10,23,401/- raised by the state Government on the basis of the report of the Accountant General, Odisha. It is for the State Govt. to give a complete account and particulars of the dues which the revisionist is liable to pay and the revisionist may submit appropriate representation in case he wants to dispute the demand raised by the State Government. If the dues are legally recoverable the State Government may refuse or reject

the grant of MDCC which will dis-entitle the revisionist from getting the RML in future. The State Government may, however, take into consideration the provisions of newly inserted Rule 2(iia) of the MC Rules as amended by the Mineral Concession (Amendment) Rules, 2012 which defines “illegal mining”.

17. The Revisionist, at the time of hearing and also in his written arguments that he has subsequently filed, has pressed to declare this amount as “not recoverable under the law”, but since the issue of recoverability or otherwise of this amount is not a fact-in issue of this Revision Petition, it is not necessary to decide the matter at this stage.

18. There can be no doubt that the current lease period which started on 21.02.1994 will continue till 20.02.2014. The mining operation was suspended for want of environmental clearance of the MoEF and since that clearance has been obtained and filed by the revisionist there should be no bar on his resuming the mining operations during the subsistence of the lease period.

19. In view of the observation above, the State Government is directed to allow the resumption of the mining operation till the expiry of the current lease period i.e. up to 20.02.2014. In the meantime, the State Government may take appropriate measures for recovery of any legally recoverable dues from the revisionist. With these observations and directions the above revision petition is disposed of.”

9. The lessee was allowed to resume of mining operation through a letter dated 08.10.2014 issued by the Department of Steel and Mines under the signature of the Addl. Secretary, Government of Odisha.

10. As has been noted hereinabove, Section 8-A came to be inserted in the MMDR Act with effect from 12.01.2015 which reads as under:

“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:

Provided that nothing contained in this section shall prevent the State Governments from taking an advance action for auction of the mining lease before the expiry of the lease period.

(5) Notwithstanding anything 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 captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 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 anything 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 and be deemed to have been extended up to a period ending on the 31st March, 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 all 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.

(7A) Any lessee may, where mineral is used for captive purpose, sell mineral up to fifty per cent of the total mineral produced in a year after meeting the requirement of the end use plant linked with the mine in such manner as may be prescribed by the Central Government and on payment of such additional amount as specified in the Sixth Schedule:

Provided that the Central Government may, by notification in the Official Gazette and for the reasons to be recorded in writing, increase the said percentage of mineral that may be sold by a Government company or corporation:

Provided further that the Central Government may, by notification in the Official Gazette and for reasons to be recorded in writing, amend the Sixth Schedule so as

to modify the entries mentioned therein with effect from such date as may be specified in the said notification.

(8) Notwithstanding anything contained in this section, the period of mining leases, including existing mining leases, of Government companies or corporations shall be such as may be prescribed by the Central Government:

Provided that the period of mining leases, other than the mining leases granted through auction, shall be extended on payment of such additional amount as specified in the Fifth Schedule:

Provided further that the Central Government may, by notification in the Official Gazette and for reasons to be recorded in writing, amend the Fifth Schedule so as to modify the entries mentioned therein with effect from such date as may be specified in the said notification.

Explanation.--For the removal of doubts, it is hereby clarified that all such Government companies or corporations whose mining lease has been extended after the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (10 of 2015), shall also pay such additional amount as specified in the Fifth Schedule for the mineral produced after the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021.

(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 Mines and Minerals (Development and Regulation) Amendment Act, 2015 (10 of 2015), for which renewal has been rejected, or which has been determined, or lapsed.”

11. In consonance with the provisions of sub-section (3) of Section 8-A of the MMDR Act, it was recommended by the State

Government for extension of the lease period of the lessee up to 20.02.2024, being 50 years from the date of the original lease. Accordingly, a supplementary lease deed came to be executed on 30.03.2016 by the Collector, Sundargarh on behalf of the State of Odisha in favour of the lessee. Since the controversy raised in the present proceeding largely revolves around, the said supplementary lease deed, the contents of the same are being reproduced hereinbelow:

“WHEREAS the lessee/lessees has/have executed a mining lease deed on date 21/02/1974 in accordance with the Mineral Concession Rules, 1960 (hereinafter referred to as the said Rules), in respect of the land and described in Part I of the schedule of the said lease of Limestone & Dolomite Ore over an area of 573.0536 hecets, in village Dharuara, Lanjiberna, Kukuda, Bihabandh and Falsakani under Sadar Sub-Division of Sundargarh District, which has been registered vide original No.377 & duplicate No.378, Book No.I, Volume-10, Pages 47 to 143 in the office of District Sub-Registrar, Sundargarh on date 11.03.1974 (hereinafter referred to as the said lease);

AND, WHEREAS the period of the said lease deed was valid from 21.02.1974 to 20.02.1994.

AND WHEREAS after expiry of the validity period of the said lease deed, the lessee had continued to conduct mining operations in the said lease under the deemed extension provisions of section 8 of the Mines and Minerals (Development and Regulations) Act, 1957 (hereinafter referred as the MMDR Act) with the permission of the party of the First Part till date as per interim order dtd.11.02.2015 passed in Misc. Case No.18700 of 2014 arising out of W.P.(C) No.21203 of 2014 of Hon'ble High Court of Odisha.

AND, WHEREAS the MMDR Act has been amended with effect from 12.01.2015 and section 8A has been inserted in the said Act, providing for extension of validity period of lease granted in the past under the provisions of the said Act, subject to fulfillment of conditions provided therein;

AND WHEREAS, the Lessee surrendered the area over 533.633 hecets. and the Government accepted it from 30.10.1989 and the Government of Odisha has decided to extend the validity period of the lease upto 20th February, 2024 over an area of 39.42 hecets. vide letter No.III (LD) SM-13/2010-46/SM, dt. 04.01.2016 of Govt. in Department of Steel & Mines, Odisha in village Dharuara under Sadar Sub-Division of Sundargarh District.”

12. Without raising any dispute about the period of the lease and the date of termination of such lease as contemplated in the said supplementary lease deed, the lessee continued with the mining operation, apparently under the said lease deed which is coming to an end on 20.02.2024. It is the petitioners’/lessee’s own case that more than 6 years after the execution of the lease deed on 30.03.2016, he made a representation on 04.07.2022 before the Principal Secretary, Department of Steel and Mines, Odisha, Bhubaneswar for restoring the mining lease for a period of 3 years and 10 months in the light of clause 4 of Part-IX of the lease deed dated 21.02.1974, akin to clause 4 of Part-IX of Form-K of the Mineral Concession Rules read with Rule 12(1)(ff) of the Rules of 2016, thus, invoking *force majeure* clause. Clause 4 of Part-IX of the original lease deed dated 21.02.1974 reads as under:

“4. Failure on the part of the lessee to fulfil any of the terms and conditions of this lease shall not

give the Central or State Government any claim against the lessee/lessees or be deemed a breach of this lease, in so far as such failure is considered by the said Government to arise from force majeure, and if through force majeure the fulfillment by the lessee of any of the terms and conditions of this lease be delayed, the period of such delay shall be added to the period fixed by this lease. In this clause the expression “Force Majeure” means Act of God, war, insurrection, riot, civil, commotion, strike, earthquake, tide storm, tidal wave, flood, lightening, explosion, fire, earthquake and any other happening which the lessee could not reasonably prevent or control.”

(Emphasis supplied)

13. Rule 12(1)(ff) of the Rules of 2016 has also a similar *force majeure* clause, which reads thus:

“12. Terms and conditions of a mining lease:- (1)

xxx xxxx xxxx xxxx

(ff). failure on the part of the lessee to fulfill any of the terms and conditions of the Act and rules made thereunder or under the mining lease shall not give the Central Government or State Government any claim against the lessee or be deemed a breach of the lease, in so far as such failure is considered by the relevant Government to arise from force majeure. In the event of any delay by the lessee to fulfill any of the terms and conditions of the Act and rules made thereunder or under the mining lease on account of a force majeure event, the period of such delay shall be added to the period fixed by these rules or the mining lease.

In this clause the expression “force majeure” means act of God, war, insurrection, riot, civil commotion, strike, earth quake, tide, storm, tidal wave, flood, lightning,

explosion, fire, earthquake and any other happening which the lessee could not reasonably prevent or control.”

(Emphasis supplied)

14. It is precisely, the petitioners’ case that despite submission of all requisite clearances, the State of Odisha functionaries did not allow the lessee to carry out the mining activities from 09.01.2012 to 05.11.2015. Inaction on the part of the State Government granting permission to resume the mining operation after submission of the statutory clearance certificates qualifies for the expression “any other happening which the lessee could not reasonably prevent or control”; and comes within the definition of *force majeure* under Clause 4 of Part-IX of the lease agreement read with Rule 12(1)(ff) of the Rules of 2016.

15. It is also the petitioners’ case that because of the lapses on the part of the State Government, as the petitioners could not carry out the mining operation for the period from 09.01.2012 to 05.11.2015 that period should be directed to be added to the period fixed in the lease.

16. Mr. Pitambar Acharya, learned Senior Counsel on behalf of the petitioners has strenuously argued that the period of lease for which a lessee has to carry out mining activities is statutory given the clear mandate of Section 8-A of the MMDR Act, sub-section 3 of which in no uncertain terms lays down that the mining lease granted before commencement of the said Act shall be “deemed to have been granted for a period of 50 years”. By

operation of the said provision, the petitioners had a right to carry out the mining activities for the full total period of 50 years beginning from the date of the first lease deed i.e. 21.02.1974. He contends that there were apparent lapses/laches on the part of the lessor in allowing the lessee to carry out the mining work from 09.01.2012 to 05.11.2015 and, therefore, in terms of the *force majeure* clause of the agreement read with Rule 12(1)(ff) of the Rules of 2016, it was obligatory on the part of the competent authority to extend the period of lease beyond 20.02.2024, in a manner that the petitioners can avail total 50 years of the mining operation. He has placed reliance on the decision of the Supreme Court in the case of *Beg Raj Singh vs. State of U.P. and Others*, reported in (2003) 1 SCC 726 and a Division Bench decision of Delhi High Court in the case of *Dharam Veer v. Union of India*, reported in *ILR (1988) II Delhi 71*, to bolster his contentions. He has argued that the State Government has wrongly considered the supplementary lease deed to be a renewal of the lease granted to the lessee earlier, rather it was a simple case of resumption of the mining activities in continuation with the first lease executed on 21.02.1974 by operation of sub-section (3) of Section 8-A of the MMDR Act. He submits that the State-opposite parties caused an unlawful interruption in carrying out the mining activities by the lessee in the present case for the period from 09.01.2012 to 05.11.2015.

Relying on the decision in the case of *Dharam Veer (supra)* he has argued that on analogous principles, this case may

not appear to be a case of *force majeure*, but the unlawful interruption of enjoyment has been caused to the lessee which was beyond his control. The doctrine of *force majeure* applies by virtue of its definition in the original lease deed read with Rule 12(1)(ff) of the Rules of 2016. Similar arguments have been advanced by him, referring to the decision of the Supreme Court in *Beg Raj Singh (supra)*.

17. Mr Ashok Kumar Parija, learned Advocate General representing on behalf of the State-opposite parties, *per contra*, has argued that the decision rendered by the Supreme Court in the case of *Beg Raj Singh (supra)* and that by the Delhi High Court in *Dharam Veer (supra)* have no application in the facts and circumstances of the present case, firstly for the reason that the said decisions were rendered before coming into force of the Act 10 of 2015 with effect from 12.01.2015 whereby Section 8-A of the MMDR Act was introduced, having a deeming clause to the effect that all mining lease activities granted before commencement of the MMDR Act shall be deemed to have been granted for a period of 50 years. He contends that the right of the petitioners/lessee to carry out the mining activities based on the original agreement dated 21.02.1974 will stand terminated after completion of 50 years i.e. 20.02.2024, by operation of law.

He has argued that sub-section (4) of Section 8-A of the MMDR Act stipulates “auction of lease as per the procedure specified in this Act on the expiry of the lease period”. He contends that if the submissions which have been advanced on

behalf of the petitioners are to be accepted, the statutory mandate under Section 4 of the MMDR Act will come to a halt. He has placed heavy reliance on a coordinate Bench decision of this Court dated 19.11.2019 rendered in *W.P.(C) No.21564 of 2019 (Ramesh Prasad Sao v. State of Odisha and Others)* where this Court, after having taken note of the decisions in *Beg Raj Singh (supra)* and *Dharam Veer (supra)*, has held that the lessee in that case after having accepted the supplementary lease without any demur in 2015 could not raise any objection for the period before execution of the lease deed. Relying on the aforementioned decision in the case of *Ramesh Prasad Sao (supra)* he has argued that the lease period having been accepted by the lessee and the lessor in consonance with the Act 10 of 2015, the petitioners cannot be allowed to operate the mines beyond 31.03.2020.

He has also drawn our attention to the Division Bench decision rendered by the Karnataka High Court in the case of *Shantipriya Minerals Pvt. Ltd. vs. State of Karnataka*, reported in *(2020) 4 AIR Kant R 660 : 2020 SCC Online Kar 414* in which the Karnataka High Court has dealt extensively with the provisions of Section 8-A of the MMDR Act. He has submitted that after having taken note of the legislative background, the Karnataka High Court has held that the intention of the legislature is reflected there in Sub-section (4) of Section 8-A of the MMDR Act which clearly provides that on the expiry of the lease period, the lease shall be put up for auction as per the procedure prescribed in the said Act. Therefore, on expiry of the extended

lease period, the lease has to be put up for auction which is consistent with the objects and reasons and the legislative intent of coming out with the amendment Act to introduce auction as the only method of disposal of mineral concessions. He has argued that with the coming into force of the notification issued by the Government of India in the exercise of powers conferred by clause (e) of Section 3 of the MMDR Act, the mineral 'Dolomite' has been declared to be a minor mineral. He submits that there is no provision *pari materia* with Rule 12(1)(ff) of the Rules of 2016 under the Odisha Minor Minerals Concession Rules, 2016 (in short, 'OMMC Rules, 2016') containing *force majeure* provision. The 'Dolomite' having been declared the minor mineral, the Rules of 2016 shall have no application which has been made in the exercise of the power conferred by Section 13 of the MMDR Act given the clear language of Section 14 thereof. He contends that even on facts, the petitioners have not been able to make out a case to fall within the *force majeure* clause of the original lease deed which deals primarily with failure on the part of the lessee to fulfil any of the terms and conditions of the lease.

He submits, with reference to the chain of events that admittedly, the petitioners did not have the requisite statutory clearances because of which the Deputy Director of Mines stopped the mining operations on 07.11.2009 and there was no mining operation for the period from 07.11.2009 to 06.11.2011. Therefore, by operation of sub-section 4 of Section 8-A of the MMDR Act, the lease lapsed. The petitioners/lessee had in the

meanwhile made an application under Rule 28(2) of the Mineral Concessions Rules, 1960 (in short 'Rules, 1960'). In the aforesaid background, a notice was issued to the petitioners under Rule 26(1) of the Rules, 1960 directing the lessee to appear for a personal hearing on his application for renewal. The lessee appeared for a personal hearing and also applied for issuance of MDCC on 30.05.2012 which was rejected by the Director of Mines on 25.06.2012 noticing dues of Rs.2,10,23,461/- on account of excess production beyond the statutory limit prescribed under Section 21(5) of the MMDR Act. The lessee had made a revision application against the said order under Section 30 of the MMDR Act before the Central Government.

The revision application was finally heard by the revisional authority which was disposed of by an order dated 07.01.2014 whereby it directed the State Government to allow the resumption of the mining operation till the expiry of the current lease period i.e. up to 20.02.2014. In such view of the matter, the petitioners claim that there were lapses on the part of the State for the period from 09.01.2012 to 07.01.2014, which caused disruption in mining operation, in any case, is untenable. Further, in any event, the petitioners cannot claim by way of the right to carry out the mining activities, under the supplementary lease deed beyond the statutory period prescribed under Section 8-A of the MMDR Act and subsequent supplementary lease deed signed by him without any demur.

He submits that the lessee, after having entered into the lease agreement to carry out the mining activities up to 20.02.2024, cannot now turn around to claim that he should be allowed an additional period beyond 20.02.2024, relying on the events before execution of the supplementary lease deed. He has further submitted that apart from the fact that the lessee is estopped by the doctrine of acquiescence to raise a claim for carrying out the mining activities beyond 20.02.2204, his claim is also untenable in view of the clear stipulation under Section 8-A of the MMDR Act.

18. In reply, Mr Pitambar Acharya, learned Senior Counsel for the petitioners has submitted that the coordinate Bench of this Court in the case of *Ramesh Prasad Sao (supra)* has no application in the present case which related to sub-section (6) of Section 8-A of the MMDR Act whereas the petitioners' case lies under sub-section (3) thereof. He has also argued that as a matter of fact, the 'No Dues Certificate' was issued by the Director of Mines on 23.08.2012 itself (Annexure-10) and, therefore, it was highly arbitrary on the part of the State-opposite parties to have stopped the petitioners from carrying out the mining operations. For the same reason, the Division Bench decision of the Karnataka High Court in the case of *Shantipriya Minerals Pvt. Ltd. (supra)* has no application in the background of the present set of facts, he contends.

19. We have carefully perused and examined the rival pleadings on record and have given thoughtful consideration to the rival submissions advanced on behalf of the parties.

20. Before dealing with the rival contentions, it would be profitable to notice briefly the legislative history leading to the enactment of Act 10 of 2015 with effect from 12.01.2015 whereby various amendments were made in the MMDR Act including insertion of Section 8-A therein.

21. On a close reading of the “Statement of Objects and Reasons”, it can be easily discerned that the legislature thought that the MMDR Act as it then existed did not permit auctioning of mineral concessions. Further, in the opinion of the legislature, auctioning of the mineral concessions would improve the transparency in allocation and the Government would also get an increased share of the value of mineral resources. It was noticed that certain provisions of law relating to the renewal of mineral concessions were found to be wanting in enabling quick decisions with a resultant slowdown in the grant of new concessions and renewal of the existing ones.

22. It was in this background, *inter alia*, Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 was promulgated on 12.01.2015 which later became an Act, i.e., Act 10 of 2015. One of the salient features of the MMDR Amendment Bill 2015 as mentioned in the statement of objects and reasons was the removal of discretion in the procedure for allowing

mineral concessions. Sub-clause (1) of para-6 of the statement of objects and reasons reads as under:

“6. The salient features of MMDR Amendment Bill, 2015 are as follows:

(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.

(ii) xxx xxx xxx”

23. Referring to the statement of objects and reasons behind the enactment of the Act 10 of 2015, the Karnataka High Court in the case of *Shantipriya Minerals Pvt. Ltd. (supra)* has held that one of the basic objects of the Act 10 of 2015 was to make auction as the only mode of grant of mining concession as the existing provisions of the MMDR Act did not permit auctioning of mineral concessions. Another object was to eliminate discretion and improve transparency in the allocation of mineral resources. Another salient feature, *inter alia*, of Act 10 of 2015 was ‘removal of discretion’ and the introduction of the auction to be the sole method of allotment of mineral concession. By the amendment, the tenure of the mining lease was extended from 30 years to 50 years. We respectfully concur with the view taken by the Division Bench of the Karnataka High Court in the case of *Shantipriya Minerals Pvt. Ltd. (supra)* while referring to the basic objects of Act 10 of 2015.

24. After having observed so, the Karnataka High Court in case of *Shantipriya Minerals Pvt. Ltd. (supra)* has viewed that by virtue of sub-Section 4 of Section 8-A of the MMDR Act, 1957, wherever extension of mining lease is granted under any of the provisions of Section 8-A on expiry of the extended lease period, the lease had to be put up for auction and, extension beyond the period provided in sub-Section 6 of Section 8-A of the Act cannot be granted. We are in respectful agreement with the said view also of the Karnataka High Court in the case of *Shantipriya Minerals Pvt. Ltd. (supra)*.

25. The division Bench of this Court in the case of *Ramesh Prasad Sao (supra)* had the occasion to deal with a similar circumstance where the petitioner of that case claimed restoration of lost period relying on clause-4 of Form-K, Part-IX of Mineral Concessions Rules, 1960, the *force majeure* clause on the similar ground that interruption/disruption were caused for a considerable period of 10 months and 20 days, mainly, on account of the act or omission on the part of the authorities of the State Government and pendency of the various legal proceedings before this Court and the Supreme Court in respect of mines in question in that case. This Court, after having referred to the decisions in the case of *Beg Raj Singh (supra)* and *Dharam Veer (supra)* concluded in paragraph 13.1 which reads as under:

“13.1 In view of MMDR Amendment Act, 2015, and more particularly there is no extension on record after 2013 and the petitioner having accepted the supplementary lease deed of 2015 up

to 31st March, 2020, in our considered opinion, it would not be appropriate to extend the lease period or grant the petitioner 45 months and 9 days contrary to Section 8A(6) of the MMDR Act. x x x x x x x x x x x. Having accepted the supplementary lease, without any demur in 2015, the petitioner cannot possibly raise any objection for the period prior to execution of the said lease.”

26. We find substance in the submissions made by Mr. Parija, learned Advocate General that the present case is squarely covered by the coordinate Bench decision of this Court in the case of *Ramesh Prasad Sao (supra)*. We see no reason, based on the submissions advanced on behalf of the petitioners to take a different view than what was taken by this Court in the case of *Ramesh Prasad Sao (supra)*.

27. It would be pertinent at this juncture to notice that admittedly, the supplementary lease deed was executed on 30.03.2016. Under an order passed by the Director of Mines, the lessee was allowed to resume the mining operation from 05.11.2015. The original lessee, without any demur, accepted the terms of the lease deed which not only mentioned the date, i.e., 20.02.2024 up to which the validity period of the lease was being extended, but it contained specific reasons why such extension was being granted up to 20.02.2024 with reference to Section 8-A of the MMDR Act. The lessee continued its mining operation on the strength of the said supplementary lease deed without raising any objection and, thus, knowing it fully well that the validity period of the lease was up to 20.02.2024.

28. As has been noted above, it is not the case of the lessee that there was any disruption or interruption in carrying out the mining activities after resumption from 05.11.2015 till date. The lessee knew that by virtue of Section 8-A of the MMDR Act, the validity period of the lease was being extended up to 20.02.2024 upon completion of 50 years from the date of the original lease, i.e., 21.02.1974. It transpires from the pleadings on record that more than 06 years after execution of lease deed, the lessee made a representation on 04.07.2022 before the Principal Secretary to Department, Department of Steel and Mines (opposite party No.1) to restore the mining lease period for 03 years and 10 months invoking clause-4 of Part-IX of the original lease deed dated 21.02.1974 read with Rule 12(1)(ff) of the Rules of 2016).

29. The lessee, in our considered opinion, cannot be permitted to raise a grievance now after having specifically agreed to the validity period of the lease up to 20.02.2024. After having agreed to the terms and conditions of the supplementary lease deed and acted thereupon, the lessee cannot turn around and raise a grievance in relation to the period before the execution of the supplementary lease deed, which the lessee had not raised at any point in time. The doctrine of acquiescence is an equitable doctrine, which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. (See *Pravakar v. Joint Director, Sericulture*

Department and another reported in (2015) 15 SCC 1.) The term acquiescence means silent assent, tacit consent, concurrence, or acceptance.

30. It is noteworthy that an argument has been advanced on behalf of the petitioners that there cannot be any estoppel against the law and the period during which the lessee was not allowed to continue mining operation, was required to be added beyond the period of 50 years by operation of *force majeure* clause in the original lease deed read with Rule 12(1)(ff) of the Rules of 2016. We do not find any force in such submission. Firstly, for the reason that we have concurred with the view taken by a Division Bench of the Karnataka High Court in the case of *Shantipriya Minerals Pvt. Ltd. (supra)* to the effect that the period of a lease cannot be extended beyond that prescribed period under the provisions of Section 8-A of the MMDR Act. Further, the case of lessee cannot be distinguished from the case of *Ramesh Prasad Sao (supra)* on the ground that was a case of an extension under sub-Section 6 of Section 8-A of the MMDR Act. Sub-Section 6 of Section 8-A is not a *non-obstante* clause and applies in such cases where the mineral is used other than captive purpose and provides that in such circumstance, the same shall be extended and be deemed to have been extended up to a period ending on 31.03.2020 with effect from the date of the expiry of renewal of lease made or till completion of renewal period, if any, or a period of 50 years from the date of grant of such lease, “whichever is later” subject to the condition that all the terms and the conditions

of the lease have been complied with. Sub-section 3 of Section 8-A of the Act is clear in its expression and states that the mining lease granted before the commencement of the Act of 2015 shall be deemed to have been granted for a period of 50 years. On the expiry of the lease period, Section 4 in no certain terms, stipulates that the lease shall be put up for auction as per the procedure specified in the MMDR Act.

31. Keeping in mind the statement of objects and reasons for the enactment of Act 10 of 2015 and the lessee's tacit consent at the time of execution of the lease deed for a period up to 20.02.2024, we are of the opinion that no case is made out for the addition of period beyond 50 years, i.e., beyond 20.02.2024 applying *force majeure* clause, in the present proceeding under Article 226 of the Constitution of India.

32. We, therefore, do not find any merit in the writ petition, which is, accordingly, dismissed.

33. There shall, however, be no orders as to the costs.

(Chakradhari Sharan Singh)
Chief Justice

(D.Dash)
Judge