
(2018) 06 CAL CK 0100
In the Calcutta High Court
Case No : W.P.4642 (W) of 2017

Arun Kataruka

APPELLANT

Vs

Secretary, W.B. Commerce & Industries Dept. & Ors.

RESPONDENT

Date of Decision : 06-06-2018

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 10A, 10A2A, b, c, 11, 11A, 15, 15(D), 61, 62
General Clauses Act 1897 — Section 6
West Bengal Minor Minerals Concessions Rules 2016 — Rule 61, 62, 62(2)
Constitution of India, 1950 — Article 14

Citation : (2018) 06 CAL CK 0100

Hon'ble Judges : RAJASEKHAR MANTHA, J

Bench : Single Bench

Advocate : Utpal Majumdar, Aniruddha Sinha, Abhishek Banerjee, Billwadal Bhattacharya

Final Decision : Dismissed

Judgement

Rajasekhhar Mantha, J.

1. The writ petitioner challenges an order dated 20th October 2016 by which his application for renewal of Lease for mining of Blackstone was rejected by the Respondent No.1.
2. The facts of the case are that on the 29th of May 2007 the petitioner was granted a Lease for mining Blackstone, in about 1.39 Acres of land at Mouza-Kadampur, under Barabazar Police Station, in the District of Purulia in West Bengal.
3. The said Lease was initially for 5 years with an option for renewal for a further period of 5 years. The petitioner accordingly commenced mining operations.

4. On 18th October 2011, the petitioner applied for renewal of the Lease. On the 25th of April 2013 the State asked the petitioner to obtain an

Environmental Clearance (EC) from the concerned authorities. The said EC was submitted by the petitioner on the 12th of June 2015.

5. Upon failure of the State to decide the application for renewal the writ petitioner filed W.P.No.666(w) of 2016. The said Writ Petition was disposed

of by a Coordinate Bench of this Court on the 9th of February 2016 directing the authorities to take a decision on the petitioner's application for renewal.

6. Pursuant thereto the Respondent No.1, after hearing the writ petitioner passed the impugned order rejecting the petitioner application for renewal.

7. The principal ground for rejection was that since after coming into force of the West Bengal Minor Minerals Concessions Rules 2016 and in view

of Section 61 thereof, all applications for Lease, made prior to the notification of the Act would become null and void. The relevant part of the said

order is set out herein below :-

â??3. It appears that the Application for Renewal was made as per WB Minor Minerals Rules, 2002(hereinafter referred as WBMM Rules, 2002).

Presently, the existing and future mining Lease applications are guided under WB Minor Minerals Concession Rules, 2016 and as per rule 61 of such

rules, all mining Lease applications have been declared to be ineligible if not saved under proviso to such rules. The rule 61 is reproduced below:

â??All applications for mining Lease of minor minerals including the reclassified minor minerals vide SO No-423(E) dated 12th February, 2015

received prior to the giving effect to this rules irrespective of its duration of pendency shall become ineligible. Provided that if the applicant has been

issued a Grant Order or Letter of Intent (LOI) or any other Government Order requiring the alteration of applicant's position then his mining

Lease application may be considered after due compliance of the all the necessary conditions.

4. On scrutiny of the purported memorandum referred above, I find it to be a mere memorandum asking the applicant to acquire the Environment

Clearance in addition to other requisite papers as under the WBMM Rules, 2002 there was no provision for Environment Clearance. The

memorandum was meant to comply with the direction of the Hon'ble Supreme

Court of India in IA No-12-13 of 2011 in SLP(C) No-1962819629

of 20/09 in matter of Deepak Kumar vs. State of Haryana wherein the Honâ??ble Supreme Court of India made the Environment Clearance

mandatory for all mining Leases. The memorandum does not constitute a Grant Order or Letter of Intent (LoI) or a Government Order as approved

by the appropriate authority.

5. The prevailing rules of 2016 does not allow the grant of renewal of mining Lease of minor minerals and the relevant provisions of the Mining Lease

Deed as executed by and between the applicant and the Government of West Bengal shall be deemed to be amended in view of the new rules so, the

applicant has lost the right of renewal of mining Lease.

6. Above all, the recent judgements of the Honâ??ble Supreme Court of India in WP(Civil) No-423/2010 and WP(Civil) No10/2011 (commonly

known as 2G Judgment), in the Presidential Reference Case dated 12/04/2012 and WP(Crl.) No120/2012 in the matter of Manohar Lal Sharma Vs.

The Principal Secretary & Ors. (Allocation of coal blocks) have ordered for abolition of discretionary power in case of government contracts. The

Honâ??ble Supreme Court of India in the Presidential Reference Case, inter alia has observed that : â??the action of the State, whether it relates to

distribution of largesse, grant of contracts, or allotment of land, is to be tested on the touchstone of Article 14 of the Constitution.â??

8. Mr. Utpal Mazumdar, Ld Advocate for the petitioner placed Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 which

specified the areas rule making permitted to States.

9. According to Mr. Mazumdar, the expression renewal not having been used in Section 15 of the 1957 Act, the State Legislature could not have made

any rules, to affect the right of renewal. He therefore submits that an application for renewal cannot be read into the bar under Rule 61 of the 2016

Rules.

10. Mr. Billwadal Bhattacharya, Learned Advocate, appearing for the State, however, countered this argument by contending that if Mr.

Mazumdarâ??s submission is accepted then the State could not have covenanted a right of renewal under the principal lease in the first place. Hence

the provision for renewal itself would be rendered without authority negating the petitionerâ??s cause of action. I am inclined to accept such

submission.

11. In addition thereto, Mr Bhattacharya submits that subâ?"section D of Sub-rule 1A of section 15 specifically authorises the States to make rules not

only for grant of minor mineral concessions but also for renewal thereof.

12. An application for â??renewal of Leaseâ? is actually an application for fresh Lease. This is the dicta laid down by the Honâ??ble Supreme

Court in State of Gujarat Vs. Nirmalaben S. Mehta reported in (2016) 10 SCC Page 240 at Paragraph 30 the Apex Court stated as follows:-

30. Further, the High Court has erred in not noticing the well-settled legal proposition as laid down by this Court in Gajraj Singh case [Gajraj Singh v.

STAT, (1997) 1 SCC 650] , on the point that the grant of renewal of the Lease in respect of the mining area in question is a fresh grant. The relevant

paragraphs read thus: (SCC p. 671, paras 3738)

â??37. In Provash Chandra Dalui v. Biswanath Banerjee [Provash Chandra Dalui v. Biswanath Banerjee, 1989 Supp (1) SCC 487] this Court drew

the distinction between the meaning of the words â??extensionâ?? and â??renewalâ??. It was held that: (SCC p. 496, para 14)

â??14. â?| a distinction between â??extensionâ?? and â??renewalâ?? is chiefly that in the case of renewal, a new Lease is required while in the case of

extension the same Lease continues in force during additional period by the performance of stipulated act. In other words, the word â??extensionâ?

when used in its proper and usual sense in connection with a Lease, means prolongation of the Lease.â??

38. It is settled law that grant of renewal is a fresh grant though it breathes life into the operation of the previous Lease or licence granted as per

existing appropriate provisions of the Act, rules or orders or acts intra vires or as per the law in operation as on the date of renewal. The right to get

renewal of a permit under the Act is not a vested right but a privilege subject to fulfilment of the conditions precedent enumerated under the Act.

Under Section 58 of the repealed Act, renewal of a permit is a preferential right and refusal thereof is an exception. But the Act expresses different

intention. Sections 66, 70, 71 and 80 prescribe procedure for making application and compliance of the conditions mentioned therein. Existence of the

provisions of the Act consistent with the repealed Act is a precondition. Grant of renewal under Section 81 is a discretion given to the authority (STA

or RTA) subject to the conditions and the requirement of law. Discretion given by a statute connotes making a choice between competing

considerations according to rules of reason and justice and not arbitrariness or whim but legal and regular. Sections 70 and 71 read with Section 81 do

indicate that grant of permit or renewal thereof is not a matter of right of course. It is subject to rejection for reasons to be recorded in support

thereof. Therefore, right to renewal of a permit under Section 81 is not a vested or accrued right but a privilege to get renewal according to law in

operation and after compliance with the preconditions and abiding the law.â??

13. The said position was reiterated by the Supreme Court in Goa Foundation Vs. Sesa Sterlite Ltd reported in (2018) 4 SCC 2118, at Paragraph 57.

â??57. Learned counsel for the mining Lease holders contended that the very same learned judges that decided Goa Foundation permitted the State

Government in Common Cause v. Union of India¹⁶ to consider granting a second renewal of mining Leases under Section 8(3) of the MMDR Act.

Therefore the requirement in Goa Foundation for the grant of â??fresh Leases (2014) 14 SCC 155 must be understood in a manner similar to what

was directed in Common Cause. We are unable to accept this contention. The direction given in Common Cause was an interim direction and not a

final direction as in Goa Foundation. Moreover, the facts in both cases are not at all similar so as to warrant a similar order being passed or

understood. Finally, the fact that the same set of learned judges thought it fit to direct the grant of â??fresh Leases in one set of cases and thought it fit

to direct consideration of a â??second renewal in another set of cases indicates that the learned judges were aware of the difference in directions.

Therefore when the leaned judges directed the grant of â??fresh Leases in Goa Foundation it was a deliberate and conscious decision distinct and

different from granting a second renewal of expired mining Leases.

59. As mentioned in the Grant of Mining Leases Policy there were several options available to the State of Goa. It took the view that all its options

were foreclosed post the decision of the High Court and it was obliged to grant a second renewal of the mining Leases. We have already held that this

was not so and that the decision to grant a second renewal of the mining Leases was erroneous and fresh Leases were required to be granted in

accordance with the decision in Goa Foundation. In view of our conclusion, the

discussion on whether the State of Goa should have auctioned the mining Leases through a process of competitive bidding is now rendered academic. However, since detailed submissions were made by learned counsel on both sides, including by the learned Additional Solicitor General, we propose to express our views on the subject.â??

14. I therefore hold that the petitionerâ??s application for Renewal of Lease is in the nature of an application for fresh Lease and has been rendered ineligible under Section 61 of the Rules of 2016. The petitionerâ??s argument based on Section 15 of the 1957 Act cannot be sustained.

15. Sri Mazumdar, next made submissions on the interpretation of Rule 61 of the West Bengal Minor and Minerals Concessions Rules 2016. He placed Section 61 of the said Act which is set out herein below.

â??61. Declaration of ineligibility of the pending minor mineral applications for mining Lease including the applications of reclassified major minerals.-

All applications for mining Lease of minor minerals including the reclassified minor minerals vide SO No.-423 (E) dated 12th February, 2015 received prior to the giving effect to this rule irrespective of its duration of pendency shall become ineligible.â??

16. According to him, all the sections and words used in the Rules are clear and unambiguous. He therefore contends that the said section only renders applications for a fresh Lease ineligible and not applications for renewal of old Leases. It is also submitted that the Court should stick to the plain language of statute.

17. Sri. Mazumdar, has placed various paragraphs extracted from the 8th Edition of the book â??Principles of Statutory Interpretation,â? by Justice G.P. Singh. He contends that words cannot and should not be read into an Act because Courts cannot act as Legislators. There cannot be a back door method to legislation by supplying words that can lead to an interpretation that would be different from a plain reading of the words in the statute.

18. It is however an equally essential rule of interpretation that a provision of statute must be seen purposively, in harmony with the other provisions.

The conflict between the Literal Interpretation and Purposive Interpretation has been addressed by the Honâ??ble Supreme Court in the Case of

Abhiram Singh Vs C D Commachen reported in (2017) 2 SCC 629. After discussing the existing dicta on the subject the Honble Supreme Court held

as Follows:-

Literal versus Purposive interpretation

36. The conflict between giving a literal interpretation or a purposive interpretation to a statute or a provision in a statute is perennial. It can be settled only if the draftsman gives a long-winded explanation in drafting the law but this would result in an awkward draft that might well turn out to be

unintelligible. The interpreter has, therefore, to consider not only the text of the law but the context in which the law was enacted and the social

context in which the law should be interpreted. This was articulated rather felicitously by Lord Bingham of Cornhill in *R. (Quintavalle) v. Secy. of*

State for Health [*R. (Quintavalle) v. Secy. of State for Health*, 2003 UKHL 13 : (2003) 2 AC 687 : (2003) 2 WLR 692 (HL)] when it was said: (AC

p. 695 CH, paras 8-9)

“8. The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed.

But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an

approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which

may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration

on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every

statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect

some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the

controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of

the situation which led to its enactment.

9. There is, I think, no inconsistency between the rule that statutory language retains the meaning it had when Parliament used it and the rule that a

statute is always speaking. If Parliament, however long ago, passed an Act applicable to dogs, it could not properly be interpreted to apply to cats; but

it could properly be held to apply to animals which were not regarded as dogs when the Act was passed but are so regarded now. The meaning of

“cruel and unusual punishments” has not changed over the years since 1689, but many punishments which were not then thought to fall within that

category would now be held to do so. The courts have frequently had to grapple with the question whether a modern invention or activity falls within

old statutory language: see Bennion, *Statutory Interpretation*, 4th Edn. (2002) Part XVIII, Section 288. A revealing example is found in *Grant v.*

Southwestern and County Properties Ltd. [*Grant v. Southwestern and County Properties Ltd.*, 1975 Ch 185 : (1974) 3 WLR 221] , where Walton, J.

had to decide whether a tape recording fell within the expression “document” in the Rules of the Supreme Court. Pointing out (at p. 190) that the

furnishing of information had been treated as one of the main functions of a document, the Judge concluded that the tape recording was a

document.

37. In the same decision, Lord Steyn suggested that the pendulum has swung towards giving a purposive interpretation to statutes and the shift

towards purposive construction is today not in doubt, influenced in part by European ideas, European community jurisprudence and European legal

culture. It was said: [*R. (Quintavalle) case [R. (Quintavalle) v. Secy. of State for Health*, 2003 UKHL 13 : (2003) 2 AC 687 : (2003) 2 WLR 692

(HL)] , AC p. 700 C-F, para 21]

“21. The adoption of a purposive approach to construction of statutes generally, and the 1990 Act [Human Fertilisation and Embryology Act,

1990] in particular, is amply justified on wider grounds. In *Cabell v. Markham* [*Cabell v. Markham*, 148 F 2d 737 (2d Cir 1945)] Learned Hand, J.

explained the merits of purposive interpretation [at p. 739]:

“Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the

meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to

make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and

imaginative discovery is the surest guide to their meaning.”

The pendulum has swung towards purposive methods of construction. This

change was not initiated by the teleological approach of European

Community jurisprudence, and the influence of European legal culture generally, but it has been accelerated by European ideas: see, however, a

classic early statement of the purposive approach by Lord Blackburn in *River Wear Commissioners v. Adamson* [*River Wear Commissioners v.*

Adamson, (1877) LR 2 AC 743 at p. 763 (HL)] . In any event, nowadays the shift towards purposive interpretation is not in doubt. The qualification is

that the degree of liberality permitted is influenced by the context, e.g. social welfare legislation and tax statutes may have to be approached

somewhat differently.â??

To put it in the words of Lord Millett: â??We are all purposive constructionists now.â? [â??Construing Statutesâ?, (1999) 2 Statute Law Review

107, p. 108 quoted in *Principles of Statutory Interpretation* by Justice G.P. Singh, 14th Edn. revised by Justice A.K. Patnaik at p. 34]

38. In *Bennion on Statutory Interpretation* [6th Edn. (Indian Reprint) p. 847] it is said that:

â??General judicial adoption of the term â??purposive constructionâ? is recent, but the concept is not new. Viscount Dilhorne, citing Coke, said that

while it is now fashionable to talk of a purposive construction of a statute the need for such a construction has been recognized since the seventeenth

century. [*Stock v. Frank Jones (Tipton) Ltd.*, (1978) 1 WLR 231 at p. 234] In fact the recognition goes considerable further back than that. The

difficulties over statutory interpretation belong to the language, and there is unlikely to be anything very novel or recent about their solution â?| Little

has changed over problems of verbal meaning since the Barons of the Exchequer arrived at their famous resolution in *Heydon case*[*Heydon Case*,

(1584) 3 Co Rep 7a : 76 ER 637] . Legislation is still about remedying what is thought to be a defect in the law. Even the most â??progressiveâ?

legislator, concerned to implement some wholly normal concept of social justice, would be constrained to admit that if the existing law accommodated

the notion there would be no need to change it. No legal need that is â?|.â??

39. We see no reason to take a different view. Ordinarily, if a statute is well drafted and debated in Parliament there is little or no need to adopt any

interpretation other than a literal interpretation of the statute. However, in a welfare State like ours, what is intended for the benefit of the people is not

fully reflected in the text of a statute. In such legislations, a pragmatic view is required to be taken and the law interpreted purposefully and

realistically so that the benefit reaches the masses. Of course, in statutes that have a penal consequence and affect the liberty of an individual or a

statute that could impose a financial burden on a person, the rule of literal interpretation would still hold good.

19. It therefore follows that there is need to read into the expression "existing applications" for Lease to include applications for renewal of

Leases as well. Such reading is necessary in order to give purposive interpretation to the Section 61 of the Act. If Rule 61 is literally interpreted, no

mining concession would be available for public auction as almost all existing leases have a renewal clause. The purpose of the 2016 Rules would not

be achieved and also stand defeated. I find that a plain reading of section 61, indicates that all pending applications, prior to the 2016 Rules coming into

force have been rendered ineligible. Even while considering the plain meaning of a statute, the statements objects and reasons cannot be forgotten.

20. In Centre for Public Interest Litigation Vs UOI, (2012) 3 SCC Pg 1, popularly known as the 2G Spectrum Case, at Paragraph 96 it was stated that

Auction was "Perhaps" the best method of distribution of State Largess.

"96. In our view, a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods

like first-come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only

interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. In other words, while transferring or

alienating the natural resources, the State is duty-bound to adopt the method of auction by giving wide publicity so that all eligible persons can

participate in the process.

21. The Mines and Minerals Act (Development and Regulation) 1957 came to be amended in the year 2015 to inter alia include auction as the method

of grant of all Mining Concessions.

22. In Bhushan Power & Steel Ltd Vs State of Odisha (2017) 2 SCC Pg 125, the Supreme Court came to address a Lease surviving the 2015

amendment of the Mines and Minerals (Development and Regulation) Act of 1957. The changes brought forth by the 2015 amendment were

addressed by the Court particularly Section 10A, 11, and 11 A of the said Act. The question raised was whether a recommendation of extension of

Lease from the State Govt to the Centre constituted a Letter of Intent within the meaning of Section 10A 2a, b, and c, thereby saving the existing

application and that the same is not hit by Section 10 A. The Honble Supreme Court held as follows :-

19. The Amendment Act, 2015, as is evident from the objects, aims at:(i) eliminating discretion; (ii) improving transparency in the allocation of mineral

resources; (iii) simplifying procedures; (iv) eliminating delay on administration, so as to enable expeditious and optimum development of the mineral

resources of the country; (v) obtaining for the Government an enhanced share of the value of the mineral resources; and (vi) attracting private

investment and the latest technology.

20. The Amendment Act, 2015 ushered in the amendment of Sections 3, 4, 4-A, 5, 6, 13, 15, 21 and First Schedule; substitution of new sections for

Sections 8, 11 and 13; and, insertion of new Sections 8-A, 9-B, 9-C, 10A, 10-C, 11-B, 11-C, 12-A, 15-A, 17-A, 20-A, 30-B, 30-C and Fourth Schedule.

21. These amendments brought in vogue: (i) auction to be the sole method of allotment; (ii) extension of tenure of existing Lease from the date of their

last renewal to 31-3-2030 (in the case of captive mines) and till 31-3-2020 (for the merchant miners) or till the completion of renewal already granted, if

any, or a period of 50 years from the date of grant of such Lease; (iii) establishment of District Mineral Foundation for safeguarding interest of

persons affected by mining related activities; (iv) setting up of a National Mineral Exploration Trust created out of contributions from the mining

Lease-holders, in order to have a dedicated fund for encouraging exploration and investment; (v) removal of the provisions requiring approval

from the Central Government for grant of mineral concessions in case of important minerals like iron ore, bauxite, manganese, etc. thereby

making the process simpler and quicker; (vi) introduction of stringent penal provisions to check illegal mining prescribing higher penalties up to Rs 5

lakhs per hectare and imprisonment up to 5 years; and (vii) further empowering the State Government to set up Special Courts for trial of offences

under the Act.

22. The Amendment Act, 2015, as is evident from the objects, aims at:

23. The West Bengal Minor Minerals Concession Rules 2016 was brought into force after the 2015 amendment to the Mines and Minerals(

Development and Regulation) Act of 1957.

24. Section 61 read with the statements and objects of the 2015 amendment as set out in the Bhushan Steel decision (supra) makes it clear that the

legislature intended to introduce auction as a method for distribution of State largess. A statute must be read in harmony with its objects and

purpose. The bar under Section 61 of the Act must therefore be interpreted after reading into it, to include renewal of Leases. Based on the above the

application of the petitioner must also be understood to have been rendered ineligible.

25. Mr. Mazumder, thereafter submits by referring to page 418 of the 8th Edition of G.P. Singh's book on Statutory Interpretation that any new

Act must only be prospective not retrospective.

26. Let us consider the petitioner's argument in the light of the objects and purpose of the 2016 Rules and the 2015 Amendment of the 1957 Act. It

does appear from a plain reading of the proviso to Section 61 of the 2016 Rules, that the same is indeed prospective. What are rendered in-eligible are

all pending applications for Lease and or renewal of existing Leases. The consequence of accepting the petitioner's argument would be that, a

large number of mining Leases would be outside the scope of auction, in view of the Renewal Clause in the original lease. If the pending Renewal

applications are not rendered ineligible the objects enactment of Rules of 2016 would be defeated. This argument on behalf of the petitioner thus also

cannot be accepted.

27. There is yet another way to address the petitioner's argument. As indicated by the Apex Court in the Gujarat Vs. Nirmalaben Case (supra)

while considering an application for Renewal, the State is obliged to apply the laws as existing then. Hence since the Renewal is being considered

post the 2016 Rules it cannot be done without following the auction process. The petitioner cannot by pass the auction process even then.

28. Mr. Mazumdar, thereafter relies upon a decision of the Hon'ble Supreme Court of India, in Manuelsons Hotels Private Limited vs State of

Kerala & Ors reported in (2016) 6 SCC 766 for the proposition that the Government is not an exception to the application of the principles of

Promissory estoppel.

29. The facts in the said case before the Apex Court are that by a notification the Tourism Department of the State of Kerala had granted an

exemption from any taxes on a building constructed for the benefit of tourists for a certain period. The notification was aimed at encouraging private

construction to promote tourism in the State of Kerala. Based on the said assurance the assessee had constructed a building which took about 3 years.

After completion of the construction the State went back on its promise and demanded returns to be filed by the Assessee and tax on the construction.

It is in this light that the Honâ??ble Supreme Court had held that the State is not exempted from estoppel.

30. Mr. Mazumdar would argue that the petitioner has invested a huge amount of labour, machinery and infrastructure on the Stateâ??s

representation (as contained in the Lease) that he would have the Lease for a period of 10 years (5 years of the original term plus 5 years of the

renewed term). He also claims to have obtained the EC as directed by the State for the said renewal of Lease. He therefore states that the State is

Estopped from refusing to renew the said Lease.

31. As already stated hereinabove a right of renewal of Lease is not automatic. It is in the nature of an application for fresh lease. The same requires

due consideration of many factors, particularly the applicable laws on the date of Renewal. Once Section 61 comes to force the State authorities are

bound apply the same while considering the application of the petitioner for renewal of pending Lease. It is well established that there is no estoppel

against the law. The principle of estoppel therefore cannot be invoked to compel the State to grant renewal of the Lease in the instant case. The

Manuelsons decision (Supra) having been rendered in a different set of facts has no application in the context of the instant case.

32. There are only 3 exceptions cases falling outside the mischief of the Rule 61. The three categories have been discussed by the Honâ??ble

Supreme Court in the Bhushan Steel Case (Supra). The relevant paragraphs are set out below.

22. Newly inserted provisions of the Amendment Act, 2015 are to be examined and interpreted keeping in view the aforesaid method of allocation of

mineral resources through auctioning, that has been introduced by the

Amendment Act, 2015. Amended Section 11 now makes it clear that the mining Leases are to be granted by auction. It is for this reason that sub-section (1) of Section 10-A mandates that all applications received prior to 12-1-2015 shall become ineligible. Notwithstanding, sub-section (2) thereof carves out exceptions by saving certain categories of applications even filed before the Amendment Act, 2015 came into operation. Three kinds of applications are saved:

22.1. First, applications received under Section 11-A of the Act. Section 11-A, under new avatar is an exception to Section 11 which mandates grant of prospecting licence combining Lease through auction in respect of minerals, other than notified minerals. Section 11-A empowers the Central Government to select certain kinds of companies mentioned in the said section, through auction by competitive bidding on such terms and conditions, as may be prescribed, for the purpose of granting reconnaissance permit, prospecting licence or mining Lease in respect of any area containing coal or lignite. Un-amended provision was also of similar nature except that the companies which can be selected now for this purpose under the new provision are different from the companies which were mentioned in the old provision. It is for this reason, if applications were received even under unamended Section 11-A, they are saved and protected, which means that these applications can be processed under Section 11-A of the Act.

22.2. Second category of applications, which are kept eligible under the new provision, are those where the reconnaissance, permit or prospecting licence had been granted and the permit-holder or the licensee, as the case may be, had undertaken reconnaissance operations or prospecting operations. The reason for protecting this class of applicants, it appears, is that such applicants, with hope to get the licence, had altered their position by spending lot of money on reconnaissance operations or prospecting operations. This category, therefore, respects the principle of legitimate expectation.

22.3. Third category is that category of applicants where the Central Government had already communicated previous approval under Section 5(1) of the Act for grant of mining Lease or the State Government had issued letter of intent to grant a mining Lease before coming into force of the Amendment Act, 2015. Here again, the *raison d'être* is that certain right had

accrued to these applicants inasmuch as all the necessary procedures and formalities were complied with under the unamended provisions and only formal Lease deed remained to be executed.

22.4. It would, thus, be seen that in all the three cases, some kind of right, in law, came to be vested in these categories of cases which led Parliament to make such a provision saving those rights, and understandably so.

33. It is clear from the facts of the instant case the petitioner was not engaged in any prior anticipatory activity. The petitioner's investment in the machinery and equipment had already reaped benefit for 5 years under the original Lease. Obtaining an EC is a statutory requirement. The same by itself therefore cannot confer any legitimate expectation for renewal of existing Leases.

34. It was next argued on behalf of the writ petitioner that in terms of Clause 2 of Section 62 of the 2016 Rules, anything done or any action taken prior to the coming into force of the said Rules, have been saved. This according to the petitioner's counsel would keep alive the obligation in the State under the covenant of renewal in the original Lease as on the date of enforcement of the 2016 Rules.

35. Rule 62 is entitled "Repeal". The said rule is set out herein below:-

"62. Repeal.-(1) The West Bengal Minor Mineral Rules, 2002, is hereby repealed.

(2) Notwithstanding such repeal, anything done, any action taken, or any prosecution started under the said rules, shall be deemed to have been validly done or taken or started, as the case may be, under the corresponding provisions of these rules."

36. A reading of sub-section (1) clearly indicates that the 2002 Rules stood repealed upon coming into force of the said Act. Sub-rule 2 of Rule 62

therefore need to be seen in its true purport. The same is in the nature of a "savings" clause. I am of the view that the expression "anything

done", "any action taken" must be read in the context of the expression "any prosecution". The expression anything done must also be

read in the context of the expression any action taken. What is therefore sought to be saved and continued is any overt action initiated or taken by the

State Authorities in the nature of a prosecution and or penalty under the 2002 Rules. The said interpretation is further strengthened by the expression

â??deemedâ?? to have been taken and validly done or taken or started under these Rules.â? If the interpretation of the petitioner is accepted, the

State would have to keep alive all applications for fresh Lease and renewals thereby rendering nugatory Rule 61 of the 2016 Rules. The

petitionerâ??s argument is therefore without substance.

37. Mr. Mazumdar lastly relies upon Section 6 of the General Clauses Act 1897 dealing with repeal of statutes, to argue that notwithstanding Rule 62

Sub-Rule (1) his application for renewal having been made prior to the coming into force of the 2016, the same shall be deemed to survive. Sec 6 of

the said Act is as follows :

Section 6 in The General Clauses Act, 1897 6 Effect of repeal. Where this Act, or any 1 [Central Act] or Regulation made after the commencement

of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as

aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or

punishment may be imposed as if the repealing Act or Regulation had not been passed.

38. The crucial part of Section 6 is the expression â??unless a different intent appearsâ? (emphasis applied). In view of the discussions on the objects

and purpose of the Rules of 2016 hereinabove, I am of the clear view that an intention completely different appears and exists in the objects and

purpose of the 2016 Rules. Section 6 of the 1897 Act therefore cannot and does not have any application in the facts of the case. Hence the

petitionerâ??s argument in this regard is also liable to be rejected.

39. For the reasons aforesaid the writ petition must fail. W.P.No.4642 (w) of 2017 is dismissed.

40. There shall be no order as to costs. Urgent Website Xerox Certified copy of this order, if applied for, will be made available to the parties on

priority basis after compliance with all necessary formalities.