
(2016) 09 GAU CK 0033
In the Gauhati High Court
Case No : Writ Petition No. 19 of 2016

Chandan Bora

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-09-2016

Acts Referred:

Assam Minor Mineral Concessions Rules, 1994 — Rule 6, Rule 8(2)
Assam Minor Mineral Concessions Rules, 2013 — Rule 79(2)
Constitution of India, 1950 — Article 166(1), Article 77(1)
Forest (Conservation) Act, 1980 — Section 2</p>
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<p>Citation : (2017) AIR(Gauhati) 17 : (2016) 6 GauLJ 595 : (2016) 5 GauLT 277 : (2017) 1 NEJ 168</p>
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<p>Hon'ble Judges : Mr. Arup Kumar Goswami, J.</p>
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<div data-bbox="139 493 349 511" data-label="Text">
<p>Bench : Single Bench</p>
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<p>Advocate : Mr. K.N. Choudhury, Senior Advocate, Mr. M. Sarania, Advocate, for the Respondent No. 7; Mr. R.K. Bora, Advocate and Mr. P.K. Bora, SC, Forest, for the Respondent Nos. 3, 4, 5 and 6; Mr. M. Choudhury, Advocate, for the Petitioner; Mr. S.C. Keyal, Asstt. S</p>
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<p>Final Decision : Disposed Off</p>
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<p>Mr. Arup Kumar Goswami, J. - Heard Mr. A. D. Choudhury, learned counsel for the writ petitioner in WP(C) No. 5693/2015 and WP(C) No. 4214/2015 and Mr. M. Choudhury, learned counsel for the writ petitioner in WP(C) No. 19/2016. Also heard Mr. K. N. Choudhury, learned senior counsel, appearing for respondent No.11 in WP(C) No. 5693/2015 and WP(C) 4214/2015 and also for respondent No. 7 in WP(C) No.19/2016. Mr. R.K. Bora and Mr. P.K. Bora, learned standing counsel, Forest, appearing for respondent Nos.4, 6, 5, 6, 7, 8, 9, 10 in WP(C) No. 5693/2015 and WP(C) 4214/2015 and also for respondent Nos. 3, 4, 5, 6 in WP(C) No. 19/2016 as well as Mr. S.C. Keyal, learned Assistant Solicitor General of India, appearing for respondent Nos.1, 2 and 3 in WP(C) No.5693/2015 and WP(C) No. 4214/2015 and also for respondent Nos.1 and 2 in WP(C) No.19/2016 are also heard.</p>
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2. WP(C) No.5693/2015 and WP(C) No.19/2016 raise identical questions of law and facts and reliefs claimed are also similar. WP(C) No.4214/2015 was earlier filed by the petitioner in WP(C) No.5693/2015. However, because of subsequent developments, WP(C) No.5693/2015 was filed and at the very outset, learned counsel for the petitioner in WP(C) No.5693/2015 and WP(C) No.4214/2015 submits that WP(C) No.4214/2015 has been rendered infructuous. WP(C) No.5693/2015 is filed by a registered Society comprising of members who are settlement holders and/or otherwise engaged in the business of sand/stone mahal. Writ petitioner in WP(C) No.19/2016 is engaged in the business of mining of minor minerals and other ancillary businesses and participates in tender processes as and when tenders are issued by the Department of Environment & Forest for settlement of sand and other quarries.

3. The respondents in WP(C) No.19/2016 are also respondents in WP(C) No.5693/2015. In addition, some more respondents in the Departments concerned are also arrayed. In that sense, parties, factual matrix and reliefs prayed for being more or less identical, learned counsel for the parties submit that they will address their arguments on the basis of pleadings in respect of WP(C) No.5693/2015. Accordingly, arguments have been heard on that basis and the present judgment is delivered with reference to pleadings and parties in WP(C) No.5693/2015.

4. At the very outset, it will be appropriate to put on record that Assam Minor Mineral Concession Rules, 1994 (for short, "1994 Rules"), was repealed by Assam Minor Mineral Concession Rules, 2013 (for short, "2013 Rules"), as much of the arguments advanced had centered around on these two Rules.

5. The facts relevant for the purpose of disposal of the writ petitions, as presented in WP(C) 5693/2015, are that the writ petitioner came to learn that a new sand mahal by the name of Kordoiguri Sand Quarry No. 3, in Kulsi Reserved Forest, for an area of 1 Hector (Ha) for extraction of 2.5 Lakh Cubic Meter of sand was going to be opened and the same was going to be settled without inviting any open tender purportedly in compliance of an order of this Court dated 26.05.2015, passed in WP(C) 1545/2015 preferred by the respondent No. 11 of the present writ petition, whereby this Court directed the respondent authorities to take a decision regarding the grievance expressed by the respondent No. 11 of the present writ petition. The writ petition was filed by the present respondent No. 11 seeking a writ of mandamus directing the respondents therein to allow the writ petitioner (respondent No. 11 herein) to operate the sand mahal in terms of the Final Approval dated 11.06.2014, issued by the Deputy Conservator of Forest (Central), Government of India. Based on the pleadings in WP(C) 1545/2015, the petitioner came to learn that on the basis of an application dated 15.09.2011 of the respondent No.11, the Deputy Secretary, Government of Assam, Environment and Forest, forwarded a proposal dated 29.02.2012 for diversion of 1 Ha of forest land for opening of Kordoiguri Sand Quarry No. 3 in favour of the respondent No. 11, to the Chief Conservator

of Forest (Central), Government of India, Ministry of Environment and Forest, for approval of the same under Section 2 of Forest Conservation Act, 1980 (for short, "FC Act"). By communication dated 25.03.2013, the Deputy Conservator of Forest (Central), Government of India, intimated the Principal Secretary to the Government of Assam, Environment and Forest Department, that the Central Government had conveyed its "approval in principle" for diversion of 1 Ha of forest land (river bed) for collection of sand in Pantan Reserved Forest (Kordoiguri Sand Quarry No. 3) in favour of the respondent No. 11 subject to fulfilment of certain conditions as enumerated therein.

The Divisional Forest Officer, Kamrup West Division, thereafter, by his letter dated 23.04.2013, requested respondent No. 11 to deposit an amount of Rs. 10,81,774/- in favour of the Chief Conservator of Forest and Nodal Officer. By another letter dated 15.05.2013, respondent No. 10 informed the Chief Conservator of Forest (Central), Assam Circle, that the user agency had fulfilled all conditions as set out by the Government of India and, therefore, extraction of sand may be allowed subject to production of environment clearance certificate. By a communication dated 11.06.2014, the Deputy Conservator of Forest (Central), Government of India, intimated the Principal Secretary, Government of Assam, Environment and Forest, that Final Approval had been granted under Section 2 of the FC Act for diversion of 1 Ha of forest land (river bed) for collection of sand in Pantan Reserved Forest (Kordoiguri Sand Quarry No. 3) in favour of the respondent No. 11. Another communication dated 07.07.2014 was issued by the Deputy Conservator of Forest (Central), Government of India, addressed to the Principal Secretary, Government of Assam, Environment and Forest, incorporating an additional condition, being condition No. 19, in the Final Approval to the effect that the validity of the approval for collection of sand as per quantity specified in the mining plan is for a period of five years with effect from 12.06.2014. The respondent No. 11 had submitted a representation as necessary permission to start the quarry had not been accorded and, in response thereto, the Under Secretary to the Government of Assam, Environment and Forest, by communication dated 21.12.2014, requested the Principal Chief Conservator of Forest to take action as per 2013 Rules and as no action was taken, respondent No. 11 had approached this Court by filing WP(C) 1545/2015.

6. An affidavit was filed by the respondents No. 1, 2 and 3. In the said affidavit no comment was made on the application of the 2013 Rules as it was a subject matter of the State Government. It is pleaded that the proposal dated 29.02.2012 was received in the office of respondents No. 2 and 3 on 05.03.2012 and that the respondents had no knowledge about the status of the land proposed for diversion other than the information made available by the State Government in the proposal submitted. It is averred that the action taken by the respondents, based on the recommendation and request submitted by the State Government of Assam, was in conformity with the norms and guidelines under Section 2 of the FC Act.

7. Respondent No. 10 had also filed an affidavit stating that he had, under Rule 2(1)(e) and Rule 3(b) of the 2013 Rules, decided to settle the Kordoiguri Sand Quarry No. 3 in favour of respondent No. 11. It is asserted that the application filed by the respondent No. 11 as well as the "In Principle Approval" had been conveyed prior to the coming into force of the 2013 Rules.

8. In the affidavit filed by respondent No. 11, it is averred that the writ petitioner has no locus standi to file the writ petition as no rights of the members of the association had been infringed as well as for the reason that the president of the association, who had represented the association, was not a member of the association. Questions have been raised with regard to nomenclature of the association also. It is stated that the respondent No. 11 had made an application to the respondent No. 10 along with Form-A under the Forest Conservation Rules, 2003 (for short, "2003 Rules"), for opening of a new sand mahal under Rule 6 of 1994 Rules, in the river bed of Kulsi in (a) Kordoiguri and (b) Koimari of Pantan Reserved Forest, and for giving the same on lease. Pleadings have been offered with reference to the steps taken and communications exchanged by different authorities leading to grant of in Principle Approval and the Final Approval by the Central Government. The respondent No. 11 had also deposited money amounting to Rs. 7,30,000/- and Rs. 3,51,774/- by way of demand draft.

9. Now is the time to take note of the submissions of the learned counsel for the parties.

(A) Submissions of Mr. A.D. Choudhury:

(i) On the date when the respondent No.11, Basanta Kalita, filed his application dated 15.09.2011, there was no quarry by the name of No. 3 Kordoiguri Sand Mahal and, therefore, 1994 Rules are not applicable as by the time Final Approval was granted, 2013 Rules had come into play.

(ii) Even if it is assumed that the 1994 Rules are applicable, then also, having regard to the provisions of Rule 8(2) of the 1994 Rules, the application will be deemed to have been rejected, approval not having been granted within a period of 6(six) months. In order to attract Rule 79(2) of the 2013 Rules, the expression "action taken etc.", as finding place therein, would necessarily signify execution of a lease deed and not a mere pendency of an application and, therefore, In Principle Approval as well as the Final Approval granted in the name of respondent No. 11 are ex-facie illegal and not sustainable in law as no mining lease could have been granted under 2013 Rules without competitive bidding.

(iii) When the approval was granted by the Central Government under Section 2 of the FC Act, 2013 Rules are the extant Rules under MMDR Act, which prescribes grant of mining lease, etc. only on the basis of auction/Notice Inviting Tender and, therefore, the in Principle Approval and Final Approval granted in the name of the respondent No.11 would run contrary to the provisions of 2013 Rules.

(iv) So far as mining lease is concerned, the condition precedent as contained in

MMDR Act shall prevail over any other statute as it is a special statute governing mining conditions and so far as the conservation and protection of forest etc. are concerned, FC Act will have precedence. In order to get a mining contract or lease, he contends that twin requirements ? both under the MMDR Act as well as in FC Act have to be scrupulously observed and fulfilled and if any of the requirements is absent, mining lease cannot be granted.

(v) The statutory payments made by the respondent No.11 is for the purpose of conservation and protection of the forest and the same will not necessarily entitle the respondent No.11 to get a mining lease in his favour as both the issues are distinct and separate. Any statutory payment made by a party is liable to be refunded and, therefore, there is no question of any prejudice being suffered by the respondent No.11. In absence of any provision under the 2013 Rules for direct settlement, the approval granted by the Central Government is severable. His contention is that approval granted for deforestation can survive on its own even if offending portion of the said approval granting some right to the respondent No.11 is set aside.

(vi) He has submitted that for all intents and purposes, WP(C) No.4214/2015 has been rendered infructuous. WP(C) No.4214/2015 was filed when in Principle Approval was granted by the Central Government and while filing WP(C) No.5693/2015, apart from the Final Approval granted, In Principle Approval is also challenged.

(vii) Reliance is also placed on the following judgements:

(a) State of Assam and Others v. Om Prakash Mehta and Others, (AIR 1973 SC 678) (b) India Tobacco Co. Ltd. v. The Commercial Tax Officer, Bhavanipore and Others, (1975) 3 SCC 512, (c) State of Tamil Nadu v. M/s Hind Stone and Others, (1981) 2 SCC 205, (d) Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala and Others, (2002) 1 SCC 633, (e) Howrah Municipal Corpn. and Others v. Ganges Rope Co. Ltd. and Others, (2004) 1 SCC 663, (f) Commissioner of Municipal Corporation, Shimla v. Prem Lata Sood and Others, (2007) 11 SCC 40, (g) Monnet Ispat and Energy Limited v. Union of India and Others, (2012) 11 SCC 1, (h) Commercial Tax Officer, Rajasthan v. Binani Cements Limited and Another, (2014) 8 SCC 319, (i) Manohar Lal Sarma v. Principal Secretary and Others, (2014) 9 SCC 516 (j) Gulf Goans Hotels Company Limited and Another v. Union of India and Others, (2014) 10 SCC 673 (k) Muneer Enterprises v. Ramgad Minerals and Mining Limited and Others, (2015) 5 SCC 366 (l) Sulekhan Singh and Company and Others v. State of Uttar Pradesh and Others, (2016) 4 SCC 663.

(B) Submissions of Mr. M. Choudhury:

(i) He has endorsed the submission of Mr. A.D. Choudhury. In addition, he has relied on Section 14 as well as Section 15 of the MMDR Act to contend that approval granted under Section 2 of the FC Act has to be confined to deforestation activities and the same cannot be extended to grant of a lease

which falls in the domain of MMDR Act. The mining lease granted vide impugned order dated 28.08.2015 is in contravention of Section 19 of the MMDR Act.

(C) Submissions of Mr. K.N. Choudhury:

(i) The application filed by the respondent No.11 was not under 1994 Rules but was under the Net Present Value Rule. 2013 Rules was notified on 16.03.2013 and in Principle Approval was granted by the Minister concerned on 21.02.2013, file having been put up on 19.02.2013 and, therefore, the in Principle Approval having been granted, there was no proceeding pending and the action was formalized and, therefore, it is saved by Rule 79(2) of the 2013 Rules.

(ii) Drawing attention of the Court to Sections 3(c) and 3(e) as well as Section 14 of the MMDR Act, he has emphasised the legislative intent. According to him, reliance placed on Section 19 of the MMDR Act is entirely misconceived as the said Section has no application to minor minerals. Provisions contained in Sections 5 to 13 of MMDR Act are not applicable to minor minerals and Rules framed under Section 15 of MMDR Act will only be applicable. On the date when the respondent No.11 had submitted his application, the concept of competitive bidding was foreign to the 1994 Rules. As 1994 Rules continued to hold the field, importing of an idea such as competitive bidding is not tenable. The thrust of his argument is that action taken under 1994 Rules is concluded and, therefore, saved under Rule 79(2) of the 2013 Rules. Proviso to Rule 79(2) talks only about the terms and conditions of the agreement and it does not deal with the mode of settlement. All that is stipulated therein is that if the terms and conditions of an agreement of an existing lease are in contravention of the lease to be executed under the 2013 Rules, the same are required to be modified accordingly.

(iii) There being no dispute that in Principle Approval had been granted by the Minister concerned during the currency of 1994 Rules, the Final Approval granted on compliance of the requirements set out in the in Principle Approval letter, would relate back to the date of granting of in Principle Approval and, therefore, on that count also, it is immaterial that Final Approval was granted in the year 2014 after coming into force of 2013 Rules.

(iv) Reliance is placed on the following judgements:

- (a) T.N. Godavarman Thirumulpad v. Union of India and Others, (2006) 1 SCC 1,
- (b) T. N. Godavarman Thirumulpad v. Union of India and Others, (2014) 6 SCC 150.

(D) Submission of Mr. R.K. Bora and Mr. P.K. Bora:

(i) They have endorsed the submission of Mr. K.N. Choudhury, learned Senior counsel appearing for the respondent No. 11.

10. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

11. As the learned counsel for the parties have drawn the attention of the Court

to relevant provisions of FC Act, MMDR Act, 1994 Rules and 2013 Rules, at the very outset it considered appropriate to reproduce the provisions which have some bearing in the issues involved in the case.

A. FC Act:

2. Restriction on the de-reservation of forests or use of forest land for nonforest purpose.

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation - For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(b) any purpose other than re-afforestation; but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

B. MMDR Act:

3. In this Act, unless the context otherwise requires:-

(a) "mineral" includes all minerals except mineral oils;

(c) "mining lease" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;

(d) "mining operations" means any operations undertaken for the purpose of winning any mineral;

(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;

14. Sections 5 to 13 not to apply to minor minerals - The provisions of sections 5 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals.

15. Power of State Governments to make rules in respect of minor minerals.- (1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

(1A) 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) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;

(b) the time within which, and the form in which, acknowledgement of the receipt of any such applications may be sent;

(c) the matters which may be considered where applications in respect of the same land are received within the same day;

(d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;

(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;

(f) the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;

(h) the manner in which the rights of third parties may be protected (whether by way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;

(i) the manner in which the rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reasons of any quarrying or mining operations shall be made in the same area or in any other area selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;

(j) the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concession may be transferred;

(k) the construction, maintenance and use of roads, power transmission lines, tramways, railways, aerial ropeways, pipelines and the making of passage for water for mining purposes on any land comprised in a quarry or mining lease or other mineral concession;

(l) the form of registers to be maintained under this Act;

(m) the reports and statements to be submitted by holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements shall be submitted;

(n) the period within which and the manner in which and the authority to which applications for revision of any order passed by any authority under these rules may be made, the fees to be paid therefor, and the powers of the revisional authority; and

(o) any other matter which is to be, or may be prescribed.

(2) Until rules are made under sub-section (1), any rules made by a State Government regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty or dead rent, whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals: Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years.

19. Prospecting licences and mining leases to be void if in contravention of Act.- Any reconnaissance permit, prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect.

Explanation:- Where a person has acquired more than one reconnaissance permit, prospecting licence or mining lease and the aggregate area covered by such permits, licences or leases, as the case may be, exceeds the maximum area permissible under section 6, only that reconnaissance permit, prospecting licence or mining lease the acquisition of which has resulted in such maximum area being exceeded shall be deemed to be void.

(C) 1994 Rules:

3. Prohibition of mining or quarrying operations without mining lease or mining

permit:

(1) Notwithstanding anything contained in any Instrument Act, rule or regulation, no person shall undertake any mining or quarrying operations in any area except under and in accordance with the terms and conditions of a mining lease or mining permit, as the case may be granted in accordance with the provisions of these rules:

Provided that nothing in this sub-rule shall affect any mining operations undertaken in any area in accordance with the terms and conditions of a lease/permit granted before the commencement of these rules, which is on force at the time of such commencement.

(2) No mining lease or mining permit shall be granted in respect of minor minerals otherwise than in accordance with the provisions of these rules.

4. Restrictions on the grant of mining lease or mining permit:

(1) No mining lease/permit shall be granted to a person who is not an Indian National except with the previous approval of the Government.

(2) No mining lease/permit shall be granted in respect of any land notified by the State Government as reserved for the use of the Government, local authorities or for any other public or for special purposes except with the previous approval of the State Government.

(3) No mining lease/permit shall be granted in reserved and protected forest areas without clearance from the Forest Department and without consulting the Divisional Forest Officer concerned. The competent officer shall consult the Divisional Forest Officer before making his own recommendations for the grant of the lease/permit.

Provided that if any reference by the competent authority to the Divisional Forest Officer concerned fails to elicit any reply within 60 days from the date of reference, the concurrence of the Divisional Forest Officer shall be presumed:

Provided further that if there be any difference of opinion between the competent authority and the Divisional Forest Officer, the Deputy Commissioner of the District or in case of autonomous hill district, the Chief Executive Member of the District Council shall decide on point or points of difference and his decision thereon shall be final.

6. Application for grant of mining lease:

(1) An application for grant of a mining lease shall be made to the Director in respect of the minor minerals specified in Schedule-"XI" and to the Principal Conservator of Forest or his authorised agents in respect of minor minerals specified in Schedule "Y" in FORM - "A".

(2) Every application for the grant or renewal of the mining lease/permit shall be accompanied by ?

(i) a fee of two hundred rupees:

(ii) a valid clearance certificate on payment of mining dues such as royalty, dead rent, surface rent, etc. payable under the Act or the rules made there-under from the Director.

Provided that where a person has furnished an affidavit to the satisfaction of the Director or the Principal Chief Conservator of Forest or his authorised agent that he does not hold or has not held a mining lease/permit, it will not be necessary for him to produce the said valid clearance certificate.

Provided further that where any injunction has been issued by a court of law or any other competent authority staying the recovery of any such mining dues, the non-payment thereof shall not be treated as disqualification for the purpose of granting or renewing, the said mining lease/permit.

Provided also that grant of clearance certificate under clause (ii) shall not discharge the holder of such certificate from the liability to pay the mining dues which may subsequently be found to be payable by him under the Act or the rules made there-under.

(iii) a deposit of five hundred rupees for meeting the preliminary expenses in connection with the grant of mining lease/permit.

(3) The Director or the Principal Chief Conservator of Forests or his authorised agents may, for reasons to be recorded in writing, relax the provisions of clause (ii) of sub-rule (2).

8. Disposal of application for mining lease:

(1) An application for the grant of a mining lease shall be disposed of within six months from the date of its receipt, after making such enquiries as the competent authority may deem fit.

(2) If an application is not disposed of within the period specified in sub rule (1), it shall be deemed to have been refused.

(D) 2013 Rules:

2(q): "mineral concession" means a mining lease or a mining contract or permit in respect of minor mineral and includes quarrying permits and any other mineral concession, permitting the mining of minor mineral in accordance with the provisions of these rules;

2(r): "mining contract" means a mining contract given on behalf of the Government to carry, win, work and carry away any minor mineral(s) specified therein through a competitive bidding process;

2(t): "mining lease" means a lease granted under these rules to mine, search, undertake excavation for winning of mineral and to carry away any minor mineral(s) specified therein;

2(u): "mining operations" means any operation carried out for the purpose of winning any mineral except mineral oils;

2(v): "mining plan" means a plan prepared by a recognised qualified person (RQP) on behalf of mineral concession holder of minor mineral and includes progressive and final mine closure plans;

2(w): "mineral product" means minerals in any processed form, bricks, dressed stone, rock aggregates, chips, ballast, stone dust, and/or any product to be prepared from minerals without involving any chemical changes;

Rule 3: A mining lease or a mining contract or permit or any other concession or license or transit pass or permit or license or control or regulation of mining or other actions under these rules, etc. shall be granted/taken by:

(a) The Director in respect of minor minerals for industrial and specific uses as specified in Schedule "X".

(b) The Principal Chief Conservator of Forests and Head of Forest Force, Assam or any other authorised by the Government by notification in this behalf in respect of minor minerals for uses other than in industry as specified in Schedule "Y";

Rule 8: (1) No mining lease shall be granted by the competent authority unless it is satisfied that there is evidence to show that the area for which grant of mining lease is considered has been prospected earlier for minor minerals or the existence of minor minerals therein has been established otherwise.

(2) Any minor mineral deposits, where the competent authority decides such areas to be operated under a lease, may be granted on mining lease; subject to rule 5, for a period ordinarily not less than 10 years but not exceeding 20 years following a competitive bid process as provided under Chapter 6 of these rules:

Provided that the competent authority may, wherever it deems necessary, pre-qualify the bidders, with the pre-qualification criteria determined upfront, by inviting expressions of interest through a public notice, and limit the bidding process among such pre-qualified bidders.

(3) In case the competent authority accepts the bid, the payment of earnest money, initial bid security, security and advance instalment shall be made in accordance with the provisions contained in Chapter 6 of these rules.

(4) The highest bid received shall become the "annual dead rent" amount payable by the lessee. The rate of annual dead rent initially determined on the basis of competitive bids/auctions shall be increased @25% on completion of each block of three years.

Explanation: If the initially determined amount of annual dead rent is Rs. 100/, it shall be increased to Rs. 125/- with the commencement of the fourth year and to Rs. 156.25 with the commencement of the 7th year and so on and so forth for

the next each block of three years.

(5) A lease deed shall be executed by the successful bidder with the competent authority in the prescribed Form ML-1, appended hereto, within the period as prescribed under rule 17 of these rules.

(6) The lessee shall pay royalty in advance in respect of each of the minor minerals extracted or removed or consumed by him or by his agent, manager, employee etc. The royalty shall be payable at the rates prescribed in the First Schedule appended to these rules.

Rule 76: A mineral concession granted under these rules, in whatever form, shall commence from the date of execution of the agreement or from such date as specified therein.

Rule 79 (1): The Assam Minor Mineral Concessions Rule, 1994 as amended from time to time, in their application to the State of Assam are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or proceedings commenced under the "Assam Minor Mineral Concessions Rule, 1994" as amended from time to time shall be deemed to have been done, taken or commenced under these rules:

Provided that wherever the terms and conditions of any mineral concession, granted before the commencement of these rules, are inconsistent with or repugnant to these rules, the same shall be deemed to have been modified in accordance with these rules from the date of notification thereof.

12. In *T. N. Godavarman Thirumulpad v. Union of India and Others*, reported in (2006) 1 SCC 1, the Apex Court was considering the question as to what measures are required to be taken to compensate for the loss of forest land as also to compensate for the effect on the ecology when forest land is used for non-forest purposes. In other words, the issue was whether before diversion of forest land for non-forest purposes and consequential loss of benefits accruing from the forest, should the user agency of such land be not required to compensate for the diversion? It was in the aforesaid context the Supreme Court had posed the question as to whether the user agency is required to make payment of Net Present Value (NPV) of such diverted land so as to utilise the amount so received for getting back in the long run the benefits which are lost by such diversion as also the guidelines that should be issued for determination of NPV, etc. NPV is the present value (PV) of net cash flow from a project discounted by the cost of capital. NPV is a method by which future expenditures (cost) and benefits are levelled in order to account for the time, value of money and the basic object behind NPV is to levelise cost. The Supreme Court had also examined a notification dated 23.04.2004 issued by the Ministry of Environment and Forest (MoEF), which was issued in exercise of the powers conferred under Section 3(3) of the Environment (Protection) Act, 1986 (for short, the "EP Act"), constituting an authority known as Compensatory Afforestation Fund Management and

Planning Authority (for short, "CAMPA) for the purpose of management of money towards compensatory afforestation, NPV and any other money recoverable in pursuance of the orders of the Apex Court and in compliance with the conditions stipulated by the Central Government while according approval under the FC Act for non-forestry uses of the forest land. T.N. Godavarman Thirumulpad, reported in 2014 (6) SCC 150, the Apex Court had issued certain directions and modifications in respect of release of fund under CAMPA.

13. The respondent No. 1, in paragraph 3.1 of the affidavit-in-opposition had submitted that he had filed the application under Rule 6 of the 1994 Rules by depositing necessary fee along with Form A on 15.9.2011. Rule 6 of the 2003 Rules requires that every user agency, who wants to use any forest land for non-forest purpose shall make his proposal in Form A appended to the said Rules when proposal is for seeking first time approval under Section 2 of the FC Act. User agency means any person, organisation or company or department of the Central or State Government making a request for diversion or de-notification of forest land for non-forest purpose or using forest land for non-forest purpose in accordance with the permission granted by the Central Government under the FC Act or the 2003 Rules. Rule 6(2) of 2003 Rules requires every State Government or other authority, in case of a proposal requiring prior approval under Section 2 of the FC Act, to send the proposal to the Central Government in appropriate form. In the instant case, in the Form A, nature of the project was shown as lease on sand deposit for 20 years with 5 yearly periodic provision in a plot of 1.0 Ha reserved forest land on payment of net present value (NPV) under FC Act which was indicated as Rs. 7,30,000.00.

The application of the respondent No. 11 was processed at various levels. By a letter dated 28.11.2011, the respondent No. 8 submitted a proposal to the Principal Secretary to the Government of Assam, Environment and Forest, for opening a new Kordoiguri Sand Quarry No. 3 in Pantan Reserved Forest. Request was made by the said letter to forward the proposal to the Government of India. By a letter dated 29.12.2012, the proposal of the respondent No. 11 was forwarded to the respondent No. 2 for seeking approval for diversion of forest land under Section 2(ii) of FC Act for leasing of the same to the respondent No. 11. By communication dated 25.3.2013, the respondent No. 3 conveyed in Principle Approval of the Central Government for diversion of 1.0 Ha of forest land (river bed) for collection of sand in Pantan RF (Kordoiguri Sand Quarry No. 3) in favour of the respondent No. 11 subject to the conditions enumerated therein. Thereafter, by letter dated 23.4.2013, issued by the respondent No. 10, the respondent No. 11 was directed to deposit an amount of Rs. 10,81,774.00 (NPV Rs. 7,30,000.00 + Compensatory afforestation Rs. 2,34,516.00 + over head cost Rs. 1,17,258.00) in the form of Demand Draft in favour of the respondent No. 8. The respondent No. 11 deposited the aforesaid amount by two numbers of Bank Draft dated 30.4.2013 and a letter dated 15.5.2013 was issued by the respondent No. 10 to the respondent No. 8 informing him that the respondent No. 11 had fulfilled all conditions as required by the letter 25.3.2013

and requesting him that the user agency be allowed to extract sand subject to production of environment clearance certificate from the appropriate authority. The Conservator of Forest, Nodal and FC Act, wrote a letter dated 31.8.2013 to the Principal Secretary to the Government of Assam, Environment and Forest, indicating compliance of the conditions as enumerated in the letter dated 25.3.2013 granting in Principle Approval. In the said letter, it was mentioned that after coming into force of 2013 Rules, mining leases are to be granted following a competitive bid process as contrasted with grant of mining leases on the basis of application on first-come-first-serve basis under the 1994 Rules. By the said letter, he requested the Government to take an appropriate decision and also suggested obtaining of legal opinion, if necessary. By letter dated 3.9.2013 issued by the respondent No. 5 addressed to the respondent No. 3, compliance report was submitted with regard to the conditions imposed in the letter dated 25.3.2013. By a letter dated 15.1.2014, the Officer on Special Duty, Ad hoc CAMPA, constituted by the Apex Court vide order dated 5.5.2016 in I.A. No. 1337 with I.A. Nos. 827, 1122, 1216, 1473 in Writ Petition No. 202/1995 (T.N. Godavarman Thirumalpad v. Union of India and Ors.), addressed to the Additional Principal Chief Conservator of Forest, North Eastern Regional Office, confirmed the receipt of the amount of Rs. 10,81,774.00 deposited by the respondent No. 11. Thereafter, the respondent No. 3 addressed a letter dated 11.6.2014 conveying "Final Approval" of the Central Government under Section 2 of FC Act for diversion of 1.0 Ha of forest land in favour of the respondent No. 11 subject to 18 conditions as enumerated therein. In continuation of the said letter dated 11.6.2014, the respondent No. 3 intimated an additional condition being condition No. 19 to the effect that the validity of the approval for collection of sand as per quantity specified in the mining plan is for a period of five years with effect from 12.6.2014.

14. The respondent No. 11 had approached this Court earlier by filing WP(C) No. 1545/2015 alleging inaction on the part of the respondents despite the Central Government having granted Final Approval by letter dated 11.6.2014 as a result of which he was unable to extract sand from the quarry. Contention was advanced on behalf of the petitioner, as reflected in the final order dated 26.5.2015 passed in the aforesaid case, that a needless controversy and confusion had been created because of coming into force of 2013 Rules. Reliance was also placed upon Rule 79 of 2013 Rules. Considering the nature of the grievance expressed, the writ petition was disposed of directing the respondents to take appropriate decision in the matter preferably within 30.6.2015. Thereafter, the respondent No. 10, in exercise of powers conferred under Rule 2(i) (e) and Rule 3(b) of 2013 Rules decided to settle Kordoiguri Sand Quarry No. 3 in favour of the respondent No. 11 and requested the Principal Chief Conservator of Forest and Head of Forest Force to approve the same.

15. Section 2 of the FC Act prohibits a State Government or any other authority to de-reserve any reserved forest or from allowing any forest land or any portion thereof for any non-forest purpose or assigning any forest land or any portion

thereof from assigning by way of lease or otherwise to any private person or to any entity not owned, managed or controlled by Government except with the prior approval of the Central Government and as the proposal in the instant case was for diversion of forest land, approval of the Central Government had to be sought for. In Principle Approval was granted by the Central Government, on conditions, amongst others, that the user agency shall transfer the cost of compensatory afforestation over 2.0 Ha of degraded forest land identified in Luki Reserved Forest, Singra Range to Ad hoc CAMPA and that the State Government shall charge NPV of the forest land diverted under the proposal in question from the user agency as per the judgment of the Apex Court dated 28.3.2008 and 9.5.2008 in I.A. No. 566 in WP(C) No. 202/1995 and as per guideline issued by the Ministry of Environment and Forest dated 5.2.2009. It is an admitted position that the respondent No. 11 had paid the amount of NPV and compensatory afforestation. It is also not in dispute that proposal was submitted to the Central Government seeking approval under Section 2 of the FC Act indicating specifically that diversion of forest land is sought for leasing out the same to the respondent No. 11.

16. The application submitted by the respondent No. 11 under Section 6 of the 1994 Rules was evidently for grant of a mining lease. Section 6 visualised submission of an application for grant of a mining lease, which in terms of Section 2(g) meant a lease granted to mine, quarry, bore, dig or search for the purpose of win, work and carry away any minor mineral specified therein. Apparently, for grant of a mining lease under the 1994 Rules, notice inviting tender for competitive bidding was not contemplated. It appears from the letter dated 31.8.2013 that mining leases were granted on the basis of application on first-come-first-serve basis under the 1994 Rules. When the proposal was submitted for approval to the Central Government, the 1994 Rules was in force and therefore, when the respondent No. 11 had submitted the application, it was within the four corners of 1994 Rules when it was mentioned that lease is sought to be given to the respondent No. 11.

17. However, by the time Final Approval by the Central Government was granted on 11.6.2014, 2013 Rules had come into force on 16.3.2013. Rule 8(2) of 2013 Rules provides that, subject to Rule 5, mining lease may be granted, for a period ordinarily not less than 10 years but not exceeding 20 years following a competitive bid process as provided under Chapter 6. Undisputedly, under 2013 Rules, mining lease cannot be granted on the basis of an application. 2013 Rules is framed under Section 15(1) and Section 23(C) of the MMDR Act. Section 19 of the MMDR Act, amongst others, provides that any mining lease granted or acquired in contravention of the Act or any Rules made there under shall be void and of no effect. I am unable to accept the submission of Mr. K. N. Choudhury that Section 19 of MMDR Act has no application inasmuch as Section 14 of MMDR Act had expressly laid down that only Sections 5 to 13 of MMDR Act will have no application in respect of minor minerals. As observed in Anjum M.H. Ghaswala (supra), normal rule of construction is that when a statute vests certain power in

an authority to be exercised in a particular manner, then the said authority has to exercise it only in the manner provided in the statute itself.

18. In *Muneer Enterprises (supra)*, the Apex Court held that when the grant, operation and termination of mining lease is governed by the MMDR Act and Mining Concession Rules, any one of those factors, i.e., either grant of lease, operation of the mines based on which grant and the termination of it either by way of surrender at the instance of the lessee or by way of termination at the instance of the State, must be carried out strictly in accordance with the prescribed stipulations of the provisions of the MMDR Act and the Mining Concessions Rules. It was further held that any mining lease granted originally or renewed subsequently in contravention of the provisions of the MMDR Act or any Rules or any order made there under, to be void and of no effect as the expression used in Section 19 is mandatory. It was also categorically laid down that carrying on any non authorised activity in a forest land can only be with the prior approval of the Central Government under Section 2 of the FC Act and, therefore, for a mining lease to remain valid, the twin requirements of the approval of the Central Government under the proviso to Section 5(1) of the MMDR Act and Section 2 of the FC Act have to be fulfilled. However, it must be noted, as noticed earlier, that Section 5 of MMDR Act is not attracted in case of minor minerals.

19. In *Binani Cements Limited (supra)*, the Apex Court reiterated that when a general law and a special law dealing with some aspect dealt with by the general law are in question, the rule adopted and applied is one of harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed.

20. In *Manohar Lal Sarma (supra)*, in the context of the Coal Mines (Nationalization) Act, 1973, and the MMDR Act, had observed that nothing should be read in the aforesaid two Acts, which results in destruction of the policy, purpose and scheme of the two Acts and that there is interplay in between the two Acts.

21. In *Monnet Ispat and Energy Limited (supra)*, on the principles relating to doctrine of legitimate expectation, the Apex Court observed that the doctrine of legitimate expectation, which is founded on the principle of reasonableness and fairness, can be invoked as a substantive and enforceable right. Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking the doctrine of legitimate expectation. The expectation must be justifiable, legitimate and protectable and protection of legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit. It is reiterated that no one has legal or vested right to the grant or renewal of a mining lease. In *Sulekhan Singh (supra)*, the

Apex Court reiterated the principles enunciated in *M/s Hind Stone, Monnet Ispat and Energy Limited*.

22. Mr. A.D. Choudhury had submitted that the application for grant of mining lease submitted by the respondent No. 11 was not disposed of within a period of six months as enjoined under Rule 8(1) of 1994 Rules and therefore, the same stood rejected after six months from 15.9.2011 under Rule 8(2), the same having not been disposed of and had relied on *Om Prakash Mehta (supra)*. *Om Prakash Mehta* was in the context of Rule 24 of Minor Concession Rules, 1960. Rule 24(1) and 24(2) of the Minor Concession Rules, 1960, required an application for grant of a mining lease and application for renewal of a mining lease to be disposed of within nine months from the date of receipt. Rule 24(3) stipulated that if any application is not disposed of within the period of ninety days, as specified in Rule 24(1), it shall be deemed to have been refused. Rule 24(2) appearing in Rule 24(3) was omitted later on. Explanation to Rule 54 laid down that where State Government fails to dispose of an application for grant or renewal of a prospecting licence, or a mining lease within the period prescribed in respect thereof, the State Government shall be deemed to have made order refusing the grant or renewal on the date on which such period expires. The Apex Court held that no person can claim any right in any land belonging to the government, or in any mines in any land belonging to the Government except in accordance with MMDR Act and the 1960 Rules, or any right except those created or conferred by the Act. The Apex Court rejected the contention advanced that the provision of deemed rejection of renewal is unreasonable and therefore be struck down as right, if any, is a creation of, and only flows from MMDR Act and Rules 1960 and, therefore, one has to abide by the Rules of 1960 and take the consequences.

23. In the instant case, creation of a quarry was involved apart from obtaining of approval from the Central Government under Section 2 of the FC Act. The question of grant of lease would arise only after quarry is created. Therefore, in the considered opinion of the Court, the application of the respondent No. 11 cannot be said to be deemed to have been rejected by the application of Rule 8(2) of 1994 Rules.

24. While the petitioners urge that in the facts and circumstances of the case, 2013 Rules applies, the respondents contend that Rule 79(2) of 2003 Rules saves the action taken or proceedings commenced under 1994 Rules and therefore, it must be held that the 1994 Rules would be applicable and consequently, the respondent No. 11 will be entitled to run and operate the quarry in question.

25. In *India Tobacco Co. Limited (Supra)*, the Apex Court observed that repeal of a repealing Act does not revive anything repealed thereby but the operation of the Rule is not absolute and is subject to appearance of a different intention, which may be explicit and implicit, in the repealing statute. Repeal connotes abrogation or obliteration of one statute by another, from the statute book as completely as if it had never been passed. When an Act is repealed, it must be

considered as if it had never existed except as to past and closed transactions.

26. Repeal is not a matter of form but one of substance depending on the intention of the legislature. If the intention indicated in the subsequent legislation, expressly or by necessary implication, was to abrogate the former legislation, either wholly or in part, it will be a case of total repeal. On the other hand, if the intention was to modify the former legislation by way of engrafting of an exception or granting an exemption, such modification would not amount to repeal.

27. It is correct as contended by Mr. K.N. Choudhury that in Principle Approval was granted by the Minister of the Department concerned on 21.2.2013. Based on that, he had submitted that action contemplated in respect of the proposal submitted by the State Government was concluded and formalized and therefore, it is saved by Rule 79(2) of the 2013 Rules. I am unable to accept the said submission.

28. In *Gulf Goans Hotels Company Limited (supra)*, the Apex Court had held that in the absence of due authentication and promulgation of the guidelines, the contents thereof cannot be treated as an order of the Government and the same would really represent an expression of opinion.

29. All executive actions of the Government of India and the Government of the State are required to be taken in the name of the President under Article 77(1) or the Governor of the State concerned under Article 166(1), as the case may be, and the orders and other instruments made and executed in the name of the President or the Governor of the State, as the case may be, are required to be authenticated in the manner prescribed in the Rules made by the President or the Governor.

Unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the Rules, the same cannot be treated as an order on behalf of the Government. A noting recorded in the file is only a noting simpliciter and it only represents expression of opinion by the particular individual. A noting in the file cannot be treated as a decision of the Government and even if any opinion is expressed in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is authenticated and order is issued in accordance with Article 77 or Article 166 of the Constitution of India. A noting or decision recorded in the file can always be reviewed/reversed/overruled and the Court take cognizance of the earlier noting or decision for exercise of the power of judicial review.

30. In *M/s Hind Stone and Others (supra)*, the Apex Court had held that in absence of any vested right to the grant or renewal in respect of a mining lease, an application for a lease has necessarily to be dealt with according to the Rules in force on the date of the disposal of the application despite the fact that there was a long delay since the making of the application in terms of the earlier Rules.

31. In *Ganges Rope Co. Ltd.* (supra), the question that had fallen for consideration was whether by the order of the Court in which a period was fixed for the Corporation to take a decision on the application for sanction for construction of additional floors, any vested right has been created in favour of the company to seek sanction for the construction of additional three floors irrespective of subsequent amendment to the Building Rules and the resolution of the Corporation putting restrictions on the height of high-rise buildings on G.T. Road. The Apex Court noticed that after the amendment of the Building Rules and the resolution passed by the Corporation there-under, restrictions imposed on heights of buildings on specified wards, roads and localities would apply to all pending applications for sanction. The Apex Court held that non-compliance of the order of the Court to decide the pending application of the respondent by the Corporation cannot result in creation of any vested right in favour of the company to obtain sanction on the basis of the Building Rules as they stood on the date of making application for sanction and regardless of the amendment introduced to the Building Rules.

32. In *Prem Lata Sood* (supra), the Apex Court held that when a statute provides for a right, but enforcement thereof is in several stages, unless and until the conditions precedent laid down therein are satisfied, no right can be said to have been vested in the person concerned.

33. Section 79(2) of the 2013 Rules provides that anything done or any action taken or proceedings commenced under 1994 Rules shall be deemed to have been done, taken or commenced under 2013 Rules. No settlement order was passed or mining lease granted in favour of respondent No. 11 during the currency of 1994 Rules. Section 79(2) basically provides that things done or actions taken, which had attained finality, are saved by deeming such things done or action taken to have been done or taken under the 2013 Rules. The argument of Mr. K. N. Choudhury that proviso to Section 79(2) only provides that if the terms and conditions of an agreement executed under the provisions of the 1994 Rules are only required to be modified in case the terms and conditions are in conflict with the provisions of 2013 Rules, does not take the case of the petitioner any further. Proviso to Section 79(2) makes it clear that even in case of a concluded action, such as, execution of lease under 1994 Rules, which is, otherwise, saved under Section 79(2) of 2013 Rules, terms and conditions not consistent with the mandate of 2013 Rules have to be modified to be in conformity with 2013 Rules. So far as proceedings are concerned, they are on a different footing as a proceeding commenced but not concluded shall be deemed to have been commenced under 2013 Rules. The word, "proceeding", is not defined in the MMDR Act. It is also not defined under 1994 Rules or 2013 Rules. Shorter Oxford Dictionary defines it as "carrying on of action at law, a legal action or process, any act done by authority or a court of law; any step taken in a cause by either party. It means a prescribed course of action for enforcing a legal right. The concept of proceeding is not at all attracted in the present case.

34. The word "vest" is normally used wherein immediate fixed right in present or future enjoyment in respect of a property is created. The word "vest" has also acquired a meaning as an absolute and indefeasible right. In the instant case, the in Principle Approval was also granted on 25.3.2013 after 2013 Rules had come into force and therefore, no right whatsoever, had accrued to the respondent No. 11 during the period when 1994 Rules was holding the field though the respondent No. 11 had submitted his application long before 2013 Rules had come into being. The fact that his application was filed under 1994 Rules will not entitle him for consideration of his application under 1994 Rules notwithstanding that the 1994 Rules was repealed.

35. In view of the above discussion, I am of the considered opinion that the order dated 28.8.2015 granting settlement in favour of the respondent No. 11 cannot be sustained. The Court cannot lose sight of the fact that in Principle Approval as well as Final Approval were granted by the Central Government under Section 2 of the FC Act treating the respondent No. 11 to be the user agency. Materials on record do not indicate that the Central Government was apprised of change of Rules made under MMDR Act. Diversion of forest land was specifically granted in favour of the respondent No. 11 by the Final Approval order dated 11.6.2014 for collection of sand in Pantan Reserve Forest (Kordoiguri Sand Quarry No. 3). In view of the provision of 2013 Rules, it will be impermissible to grant a mining lease to an individual based on an application filed without going for competitive bidding. The diversion of land under FC Act as well as vesting of a right in favour of respondent No. 11 is intrinsically interlinked and is not severable. Either both of them survive or both perish. While setting aside the grant in respect of respondent No. 11 as contained in the Final Approval, diversion of forest land measuring 1.0 Ha in Pantan Reserve Forest cannot be sustained. In that view of the matter, the in Principle Approval as well as the Final Approval are liable to be set aside and quashed in its entirety.

36. In the result, WP(C) No. 19/2016 and WP(C) No. 5693/2015 are allowed as indicated above. WP(C) No. 4214/2015 is disposed of as infructuous.

37. As the respondent No. 11 had made statutory payments in compliance of the in Principle Approval and Final Approval, he will be refunded the amount of Rs. 10,81,774.00 within a period of two months.