

(2015) 04 KL CK 0097

In the High Court Of Kerala

Case No : W.A. No. 232 of 2015 and connected cases

Geologist

APPELLANT

Vs

Sunil Kumar

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Control of National Highways (Land and Traffic) Act, 2002 — Section 2(c)

Land Acquisition Act, 1894 — Section 17

Railways Act, 1989 — Section 10(1), 11, 11(a), 14, 16

Citation : (2015) 3 ILR Ker 89 : (2015) 3 KLT 42

Hon'ble Judges : Ashok Bhushan, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : C.R. Syamkumar, Government Pleader, for the Appellant; K.R. Sunil, C.S. Dias, S. Subhash Chand and Babu S. Nair, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhushan, C.J—These three Writ Appeals raise common questions of law and facts, hence, they have been heard together and are being disposed of by this common judgment. Brief facts giving rise to the Writ Appeals are:

"W.A. No. 327 of 2015 arises from the judgment dated 12.12.2014 in W.P(C). No. 30330 of 2014. The parties shall be referred to as referred in the Writ Petition. The petitioner, a sub-contractor, employed by a firm, "K.K. Builders" for the purpose of supply of ordinary earth for the construction of a new Railway Track from Karyamcode Bridge to Pallikkara Railway Gate of the Southern Railway, filed W.P(C). No. 30330 of 2014 seeking a writ of mandamus directing the District Collector to issue No-Objection Certificate to the petitioner for removing red earth from properties comprised in R.S. No. 628/2 of the Cheruvathoor Village. Further direction has been sought for issuing mining permit on the basis of the No-Objection Certificate granted by the District Collector for the removal of red earth from the land comprised in R.S. No. 628/2 of the Cheruvathoor Village. The petitioner's case in the Writ Petition was that he

was given sub-contract for removal of earth from R.S. No. 628/2 belonging to one Aravindakshan, who made a statement that he has no objection for removal of red earth. The petitioner made an application before the District Collector for giving No-Objection Certificate. By Exhibit P3, the Tahsildar submitted a report dated 16.9.2014 on the application recommending issuance of No-Objection Certificate in order to obtain environmental clearance. The petitioner's case further was that he was informed that environmental clearance from the State Level Environment Impact Assessment Authority is required for getting NOC. In the above background, the Writ Petition was filed."

2. W.A. No. 232 of 2015 arises out of the judgment dated 2.12.2014 in W.P(C). No. 29439 of 2014. The petitioner's case in the Writ Petition was that he, being a contractor, has been authorised by M/s. United Construction Company Engineering Contractors, who is a railway contractor, to supply red earth for the purpose of doubling the railway track between Chengannoor-Chingavanam. The petitioner's case further was that he was also granted mining permit dated 18.8.2014 for extraction of red earth, which permit was valid upto 1.11.2014. The petitioner, before expiry of the permit, had made an application dated 31.10.2014 for renewal of permit. An order was passed by the learned Single Judge directing the Government to consider the representation submitted by the petitioner. The Government on 1.12.2014 rejected the application of the petitioner seeking renewal of permit. The Government in its order dated 1.12.2014 took a view that the railway track doubling work was awarded to another company and the petitioner is not being granted any contract by the Railway and further it was held that environmental clearance is necessary for excavation of red earth. Reference has been made to the Government order dated 21.2.2014 and memorandum dated 24.12.2013 of the Ministry of Environment and Forests.

3. A counter affidavit was filed by the District Geologist in the Writ Petition, where it was pleaded that environmental clearance is necessary for removal of red earth. The petitioner, in the above background, filed the Writ Petition seeking a writ of mandamus to renew the mining permit of the petitioner.

4. W.A. No. 284 of 2015 has been filed against the judgment dated 18.12.2014 in W.P(C). No. 34254 of 2014. The petitioner claimed to be owner of properties comprised in Re.Sy. Nos. 394/5, 6, 8, 7, 3, 9, 12, 10, 02, 11, 14, 4, 13, 1, 5, 379/1 and 398/5,9 in Block No. 2 of Kidanganoor Village at Pathanamthitta District. The petitioner submitted an application before the District Collector for getting No-Objection Certificate. The petitioner claimed to have entered into an agreement, under which the petitioner had to supply red earth. The petitioner refers to the permit granted for extraction of red earth upto 30.6.2014. The petitioner's case was that he made an application for extension of permit, on which a report was submitted by the Village Officer. The petitioner also placed reliance on the judgment dated 2.12.2014 in W.P(C). No. 29439 of 2014. The petitioner on the above background filed the Writ Petition with the following

reliefs:

"i) Issue a writ of certiorari or any other appropriate writ order or direction, commanding the 2nd respondent to issue NOC to the petitioner for removing red earth from the petitioner's property in Re.Sy. Nos. 394/5, 6, 8, 7, 3, 9, 12, 10, 02, 11, 14, 4, 13, 1, 5, 379/1, 398/5, 9 in Block No. 2 of Kidanganoor Village at Pathanamthitta District, under the provisions of the Kerala Minor Mineral Concession Rule.

ii) Issue a writ of mandamus or any other appropriate writ order or direction, commanding the 9th respondent to issue a mining permit to the petitioner on the basis of NOC from the 2nd respondent for removing the red earth from the petitioner's property in Re.Sy. Nos. 394/5, 6, 8, 7, 3, 9, 12, 10, 02, 11, 14, 4, 13, 1, 5, 379/1, 398/5, 9 in Block No. 2 of Kidanganoor Village at Pathanamthitta District, under the provisions of the Kerala Minor Mineral Concession Rule."

5. The learned Single Judge, vide judgment dated 2.12.2014 in two Writ Petitions which gave rise to the first two Writ Appeals and vide judgment dated 18.12.2014 in the Writ Petition which gave rise to the third Writ Appeal directed to grant short term permit without insisting for environmental clearance to remove the quantity of red earth recommended by the Tahsildar and also to transport the same to the railway site. In the Writ Petitions giving rise to second and third Writ Appeals the learned Single Judge issued a direction for renewal of the permit without obtaining environmental clearance.

6. The State Government as well as the State authorities, aggrieved by the abovementioned directions, have come up with the Writ Appeals challenging the aforesaid judgments of the learned Single Judge.

7. We have heard Sri. C.R. Syamkumar, learned Senior Government Pleader appearing for the appellants, Sri. C.S. Dias, learned Standing Counsel for the Railways, Sri. Subhash Chand and Sri. Babu S. Nair, learned counsel for the respondents.

8. It is submitted by the learned Special Government Pleader that extraction of red earth is not permissible without obtaining environmental clearance. It is submitted that the Government order dated 21.1.2014 clearly contemplated obtaining environmental clearance before extraction of red earth. It is submitted that the writ petitioners have not been asked by the Railway administration to carry on any work. It is submitted that S. 11 of the Railways Act, 1989, which has been relied on by the petitioners, is not applicable, since the said Section is applicable with regard to carrying out work by the Railway administration. It is further submitted that for carrying out the work by the Railway administration in the property belonging to the Railway, no environmental clearance may be required, but in so far as private land on which permission is sought for, for extraction of red earth, environmental clearance is clearly required. It is submitted that the learned Single Judge committed error in directing for grant of mining permit without obtaining environmental clearance. It is submitted that

the Writ Appeals be allowed setting aside the directions of the learned Single Judge with liberty to the petitioners to obtain environmental clearance and thereafter make request for grant of short term permit.

9. Learned counsel for the petitioners, refuting the submission made by the learned Government Pleader, contended that the red earth is required for the purpose of Railway work, i.e., doubling of Railway track, for which work no environmental clearance is necessary by virtue of S. 11 of the Railways Act, 1989. It is submitted that the petitioners have been duly authorised by the Railway contractor/Railway to supply red earth of a specified quantity, hence the work is Railway work, which has to be carried on in public interest. It is submitted that for the work of the Railway, which is a work in public interest, no environmental clearance is necessary. It is submitted that the judgments of the learned Single Judge is perfectly correct and the appeals deserve to be dismissed. Learned counsel for the petitioners have also placed heavy reliance on a Division Bench judgment of the Bombay High Court reported in *The Goa Foundation and another Vs. The Konkan Railway Corporation and others*, AIR 1992 Bom 471 : (1994) 1 MhLj 21 .

10. We have considered the submissions of learned counsel for the parties and have perused the records.

11. There are two main issues, which arose for consideration in these Writ Appeals, i.e.:

"I. Whether Section 11 of the Railways Act, 1989 shall override the requirement of obtaining environmental clearance under the Environment (Protection) Act, 1986 and the notifications issued thereunder in respect to the lands which are involved in the present Writ Appeals?

II. Whether for extraction of sand by the petitioners from the survey numbers involved in the Writ Petitions, which are owned by private individuals, no environmental clearance is required under the notification issued under the Environment (Protection) Act, 1986 and the extraction is permissible by means of a short term mining permit looking to the nature of purpose for which land is sought to be extracted?"

12. Both the issues being inter connected are being taken together. The learned Single Judge in its judgments has relied on S. 11 of the Act, 1989 as well as the judgment in *Goa Foundation's case* (supra) for directing the Geologist to grant short term permit or renew the permit without insisting environmental clearance. S. 11 of the Act, 1989 is a part of Chapter IV of the Act, 1989, which is to the following effect:

"11. Power of railway administrations to execute all necessary works.-- Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of this Act and the provisions of any law for the acquisition of land for a public purpose or for companies, and subject also, in the

case of a non-Government Railway, to the provisions of any contract between the non-Government railway and the Central Government, a railway administration may, for the purposes of constructing or maintaining a railway--

(a) make or construct in or upon, across, under or over any lands, or any streets, hills, valleys, roads, railway, tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes, oil-pipes, sewers, electric supply lines, or telegraph lines, such temporary or permanent inclined-planes, bridges, tunnels, culverts, embankments, aqueducts, roads, lines of railways, passages, conduits, drains, piers, cuttings and fences, in-take wells, tube wells, dams, river training and protection works as it thinks proper;

(b) alter the course of any rivers, brooks, streams or other water courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them and divert or alter either temporarily or permanently, the course of any rivers, brooks, streams or other water courses or any roads, streets or ways, or raise or sink the level thereof, in order to carry them more conveniently over or under or by the side of the railway;

(c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway;

(d) erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery apparatus and other works and conveniences as the railway administration thinks proper;

(da) developing any railway land for commercial use;

(e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead;

(f) erect, operate, maintain or repair any telegraph and telephone lines in connection with the working of the railway;

(g) erect, operate, maintain or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railway; and

(h) do all other acts necessary for making, maintaining altering or repairing and using the railway."

13. Section 11 of the Act, 1989 enumerates the power of Railway administrations to execute all necessary works. From the facts as noted above, all the petitioners, who have filed the Writ Petitions claimed to be sub-contractors from a Railway contractor, who has been granted contract to supply red earth for Railway line/doubling of Railway line. The work of construction of Railway line/doubling of Railway line is admittedly not being done on the survey numbers in which the petitioners are claiming right of extraction of red earth. S. 11 empowers the Railway administrations to carry out any work as enumerated in S. 11. The present is a case where the petitioners are claiming right to mine/extract

red earth from the survey numbers owned by private persons. No work as enumerated in S. 11 is being done in the re-survey numbers involved in the Writ Petition. S. 11 of the Act, 1989 is wholly inapplicable. Sub-clause (a) of S. 11 empowers the Railway administrations for the purpose of constructing or maintaining a railway in or upon, across, under or over any lands.....Sub-clause (b) of S. 11 empowers the Railway administrations for the purposes of constructing or maintaining a railway to alter the course of any rivers, brooks, streams or other water courses.... Sub-clause (c) of S. 11 empowers the Railway administrations for the purposes of constructing or maintaining a railway to make drains or conduits into, through or under any lands.....Similarly, Sub-clause (d) of S. 11 empowers the Railway administrations to erect and construct such houses, warehouses, offices and other buildings.... Sub-clauses (e), (f) and (g) are not attracted in the present case. Sub-clause (h) of S. 11 empowers the Railway administrations to do all other acts necessary for making, maintaining, altering or repairing and using the railway. The key words under S. 11(a) are "make or construct in or upon, across, under or over any lands, or any streets,.....Section 11, as noted above, empowers the Railway administrations for the purpose of constructing or maintaining a railway, notwithstanding anything contained in any other law for the time being in force to do various acts "for the purpose of constructing or maintaining a railway". In the present case we are concerned with the activity of excavation of red earth from the land in different survey/re-survey numbers as mentioned above. The act, which is empowered by the above provision is to make or construct in or upon, under or over any lands. Thus, the act, which is envisaged under S. 11(a) must be comprised in the words "make or construct". The word "make" has been defined in P. Ramanatha Aiyar's Law Lexicon 3rd Edition in the following words:

"TO MAKE". In itself involves a conscious act on the part of the maker." (per COLLINS, J., *Dickins v. Gill* (1896) 2 QB 310)

"To make", in the mechanical sense, does not signify to create out of nothing, for that surpasses all human power. It does not often mean the production of a new article out of materials entirely raw, but generally consists in giving new shapes, new qualities, or new combinations to matter which has already gone through some other artificial process.

The word "make" includes also the power to amend, alter or rescind. *V.V. Ruia Vs. S. Dalmia*, AIR 1968 Bom 347 : (1968) 70 BOMLR 20 . [Securities Contracts (Regulation) Act (42 of 1956), S. 10(1)]"

The plain meaning of the word "make" does not include a mining activity, i.e., the activity of excavation of red earth. The second word used in S. 11(a) is "construct". The word "construct" has been defined in P. Ramanatha Aiyar's Law Lexicon 3rd Edition as follows:

""Construct", with its grammatical variations, in relation to a building, means to construct, reconstruct, erect, re-erect, extend or alter structurally a building.

[Control of National Highways (Land and Traffic) Act, 2002 (13 of 2003), S. 2(c)]"

"Construction" includes construction of building as well as alteration or repairs. Construction of a road as contemplated under S. 11(a) has to be understood as carrying out any work by the Railway administration on lines of railways. Obviously, the activity, which is being claimed by the petitioners on the land of extraction of red earth cannot be said to be covered by S. 11(a). A plain reading of S. 11 of the Act, 1989 clearly indicates that no work is being carried out in the survey numbers owned by private persons or by the Railways, nor in any of the contracts. Hence, S. 11 on its plain reading is not attracted in the present case."

14. The judgment, which has been relied on by learned counsel for the petitioners, i.e., Goa Foundation's case (*supra*), was a case where the Central Government decided to provide a broad gauge railway line from Bombay to Mangalore and thereafter to extend to the State of Kerala and for that purpose the Konkan Railway Corporation Ltd. was set up. A public interest litigation was filed alleging that drawing of Railway line shall affect the environment and no clearance has been obtained under the Environment Protection (Amendment) Act, 1986 and the notification dated 19.2.1991 was issued by which restrictions on the setting up or extension of industries, operations or processes in the coastal regulation zone has been prescribed. In the above context, the Division Bench referred to S. 11 and held that there was no necessity to obtain environmental clearance by virtue of S. 11 of the Act, 1989. It is relevant to note that in the above case the Corporation has acquired the land on which the Corporation intended to proceed to lay down the Railway line. The said fact has been clearly noted in paragraph 3 of the judgment in the following words:

"3. The Corporation has filed Return sworn by Mr. B. Rajaram, Chief Engineer of Konkan Railway Corporation for Goa Sector and it is pointed out that after the Corporation was constituted the entire route was surveyed and the line required for the project had been demarcated and the land acquisition process has already commenced. The Corporation has already secured possession of 80% of the required land by applying urgency clause under S. 17 of the Land Acquisition Act. The Corporation has also awarded several contracts for construction of bridges, tunnels and work has commenced all along the line. Several engineers have been posted on the field and the physical progress achieved is about 20% of the total length of line. The Corporation had chalked out the programme to complete the line by October, 1994. The Corporation points out that an amount of Rs. 330 crores has been invested and the projected investment for the current year is Rs. 400 crores. The Corporation points out that the maximum length from north to south of State of Goa is 105 Kms. and the terrain is intersected by hilly spurs running down from the Western ghats and a number of streams which together form an important network of waterways for inland navigation. The Corporation further points out that the alignment for Goa Sector was finalised in December 1990 and when a few Goans raised objection to the proposed alignment, the Railway Ministry appointed Mr. M. Menezes, an eminent Goan

Engineer and retired Chairman of the Railway Board to consider the objections and submit an investigation report. The report was submitted on November 16, 1991 and Mr. Menezes recommended a few alterations with a view to avoid the alignment passing through the crowded villages the commendations made by Mr. Menezes were accepted by the Railway Ministry and the Corporation has accordingly altered the initial alignment. The Corporation further points out that to ascertain whether there would be an adverse effect on the environment and ecology and, if so, to suggest mitigative steps, the Corporation commissioned services of a Government Enterprise known as Rail India Technical and Economical Services (RITES). The services commissioned by the Corporation are of an internationally recognised Consultancy Organization and is manned by eminent persons expert in the field of ecology, environment and allied subjects. The Project Team reported that there will be no air pollution, no significant noise produced by the Railways and not even the green forest will be disturbed or the marine/fish life would be affected. The Project Team considered alternative alignments suggested and came to the conclusion that the proposed alignment by the Corporation and which is approved by the Government of Goa and Central Government is preferable to all other suggestions. The Corporation then points out that an area of 216 hectares, of land have already been taken possession of by the Corporation in the State of Goa and contracts for construction of major and minor bridges to the tune of Rs. 137 crores over rivers Zuari and Mandovi have already been awarded and work has commenced at ten locations. The total expenditure incurred in Goa Sector is to the order of Rs. 22 crores and that is about 10% of the entire project cost in Goa. The Corporation then points out that the claim of the petitioners that the alignment would adversely affect the environment and ecology of the State of Goa is nothing but a figment of imagination and objections are raised with ulterior motives. The Corporation points out that the provisions of the Environment Act and Notifications issued thereunder are not binding upon the Railway Administration and Corporation, apart from the fact that all requisite steps for ensuring that the environment will not be adversely affected are already undertaken. The Corporation further points out that the alleged breach or violation of the provisions of Forests (Conservation) Act and the Regulation about cutting of trees under the Trees Act is without any merit.

The Government of Goa and the Conservator of Forests supported the claim of the Corporation while the Ministry of Environment through their counsel made it clear that the Ministry is fully conscious of the mitigative steps taken by the Corporation and necessary precaution will be taken to ensure that the ecology and the environment of the places from where the alignment passes is not disturbed."

15. In the above context, the Division Bench in paragraph 8 of the judgment has made the following observations:

"8.....The Corporation is also right in the contention that the provisions of the

Environment Act have no application in respect of work undertaken in exercise of powers conferred under S. 11 of the Railways Act, 1989. S. 11, inter alia, provides that notwithstanding anything contained in any other law, the Railway Administration may, for the purposes of constructing or maintaining a railway, make or construct in or upon, across, under or over any lands, or any streets, hills, valleys, roads, streams, or other waters, rivers as it thinks proper. The wide ambit of the provisions of S. 11 and the non-obstante Clause makes it extremely clear that the provisions of the Environment Act do not bind the construction or maintenance of a railway line. The Railways Act is a legislation enacted subsequent to the Environment Act and the Corporation is right in claiming that for the purpose of providing railway line, clearance is not required even though the line passes over the railways, rivers, creeks, etc. in view of the specific provisions of S. 11 of the Railways Act....."

16. Thus, in the above case, the Railway administrations was proceeding to carry out the work on the land, which was acquired by the Railway. The said case was not a case of carrying out any work in any private land, nor the said was a case of carrying out any mining operation in a private land for extraction of sand. The said case is clearly distinguishable and does not help the appellants.

17. One of the submissions made by learned counsel for the petitioners is with regard to Kochi Metro Rail. The Government of Kerala has already granted exemption from obtaining permit for removal of minor minerals. He submits that same analogy should be applied with regard to the work of the Railway in which the petitioners are excavating red earth for the purpose of Railway.

18. The Kerala Minor Mineral Concession Rules, 1967 have been amended by the Kerala Minor Mineral Concession Amendment Rules, 2014 published in the Kerala Gazette on 26.2.2014. In Rule 57, after clause (ba) of sub-rule (2), a new clause, clause (bb) has been added to the following effect:

"(bb) Notwithstanding anything contained in these rules, a contractor in the employ of the Delhi Metro Rail Corporation quarrying minor minerals from the land acquired for Kochi Metro Rail Project including poramboke, for bona fide purposes, coming under the works of the Kochi Metro Rail Project, shall be exempted from obtaining a quarrying permit or quarrying lease and payment of royalty for removing minor minerals."

19. The newly inserted clause (bb) of sub-rule (2) of Rule 57 grants exemption from obtaining quarrying permit or quarrying lease and payment of royalty for removing minor minerals. One important provision in the Rule, which is relevant for the present case is that the said exemption is for "quarrying minor minerals from the land acquired for the Kochi Metro Rail Project, including poramboke.....Thus, the above exemption granted to the Kochi Metro Rail Corporation is with respect to particular project and further with regard to land which has been acquired for the Kochi Metro Rail Project. Even the analogy drawn by the petitioner from the above provision cannot be held to be attracted,

since the present is not a case where the survey/re-survey numbers in which right of excavation of earth is claimed has been acquired by the Railways. Thus, no benefit can be taken by the petitioners from the aforesaid clause (bb) of sub-rule (2) of Rule 57 added as per the Kerala Minor Mineral Concession (Amendment) Rules, 2014.

20. In this context, S. 14 of the Railways Act, 1989 is also relevant. S. 14 gives right to the Railway for temporary entry upon land to remove obstruction, to repair or to prevent accident. That too, on a land adjoining the Railway. S. 14 intended that the Railway can carry out any portion in any land belonging to any private land or construct any work. The said intendment would have been clear from the enactment. For argument sake, even if it is accepted that under S. 11 of the Act, 1989, the Railway administrations is intended to carry out any work in any land, the Railway itself is not carrying out any work in the survey numbers, as noted above, S. 11 is clearly inapplicable.

21. The provisions of S. 11 of the Railways Act, 1989 indicate that even for owners and occupiers of land adjoining the Railway "accommodation works" is contemplated by railway under S. 16, which are affected by any railway work. Section 16(1) of the Railways Act, 1989 is as follows:

"16. Accommodation works.--(1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely:--

(a) such crossings, bridges, culverts and passages over, under or by the sides of, or leading to or from, the railway as may, in the opinion of the State Government, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made; and

(b) all necessary bridges, tunnels, culverts, drains, water sources or other passages, over, under or by the sides of the railway, of such dimensions as will, in the opinion of the State Government, be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as it was before the making of the railway or as nearly as possible."

From the above scheme of the Act it is clear that any act cannot contemplate carrying out any work in the land of any private owners without any compensation or accommodation work. There being no such contemplation of carrying out any work in the survey/re-survey numbers in which the petitioners are claiming right of excavation of land, it is clear that the provisions of S. 11 or any other provisions of the Railways Act, 1989 are not attracted in the present case.

22. So far as requirement of obtaining short term permit for excavation of earth, the issue has already been decided by a Division Bench of this Court in W.P.(C). No. 31148 of 2014 and connected cases. It is useful to extract paragraph 82 of

the said judgment, which has clearly laid down that no mining can be done without obtaining environmental clearance. Paragraph 82 of the judgment in W.P. (C). No. 31148 of 2014 and connected cases is as follows:

"82. In view of the foregoing discussion, we come to the following conclusions.

(i) In case where quarrying/mining/lease which were existing on the date of issuance of Notification dated 14.09.2006 or on the date of issue of the order dated 18.05.2012 by the Government of India, Ministry of Environment and Forests with regard to area less than 5 hectares no environmental clearance with regard to extraction of minor mineral is required. Notification dated 14.09.2006 contemplated obtaining environmental clearance only with regard to new projects/new activities.

(ii) Government Order dated 10.01.2014 cannot be relied on by the parties in view of the restraint order issued by the National Green Tribunal dated 27.09.2013 till such time the restraint order continues.

(iii) By amendment of S. 14 by Act 37 of 1986 making S. 4 applicable to minor minerals also the provision contained in S. 4 shall be applicable to mining operations by a person holding mining lease or any other kind of mineral concession. It cannot be accepted that mining operation with effect from 10.02.1987 cannot be continued by a person holding any other mineral concession apart from mining lease.

(iv) Judgment of the Apex Court in Deepak Kumar's case (supra) did not contemplate environmental clearance for an area less than 5 hectares with regard to existing mining lease/mining permits on the date of judgment. Paragraph 29 of the judgment clearly directed that leases of minor minerals including their renewal for an area of less than five hectares be granted by the State/Union Territories only after getting environmental clearance.

(v) Environmental clearance as contemplated by Notification dated 14.09.2006 required environmental clearance for new projects/new activities.

(vi) The Notification dated 14.09.2006 having been applied vide order dated 18.05.2012 of the Government of India, Ministry of Environment and Forests all mining operations for new project and new activities for an area less than 5 hectares after 18.05.2012 required environmental clearance carried through either a mining lease or mining permit.

(vii) Interim order passed by the Apex Court on 27.01.2012 was intended by the Supreme Court to operate till the Rules have been framed by the States taking into consideration the guidelines and recommendations of the Ministry of Environment and Forests.

(viii) As per Rule 68 no mining/quarrying operations can be permitted without there being an approved mining plan. But such rule is subject to exception as engrafted in Rule 66, i.e., for existing lease holders, time has been allowed to

submit mining plan."

23. In view of the foregoing discussions, we are of the view that the learned Single Judge committed error in directing for grant of short term permit/renewal of permit for extraction of sand without environmental clearance. The judgments impugned in these Writ Appeals are unsustainable and are set aside. We, however, leave it open to the petitioners to move appropriate application in accordance with the Kerala Minor Mineral Concession Rules, 2015 for obtaining mining permit for extraction of sand in accordance with the provisions of the Kerala Minor Mineral Concession Rules, 2015.

24. When the matter was heard on 9.4.2015 at the request of the writ petitioners, learned counsel for the petitioners made available before the Court a copy of the minutes of the meeting held on 23.3.2015 under the Chairmanship of the Chief Minister. It is submitted that a decision has been taken that quarrying of earth for Railway doubling works has to be permitted without environmental clearance by the Geology and Mining Department. The subject of the meeting was various issues related to land acquisition for doubling of Railway Tracks in Kottayam, Alappuzha, Pathanamthitta and Ernakulam Districts. The minutes record that after detailed discussion, one of the decisions taken in the meeting is as follows:

"5. Quarrying of earth for Railway doubling works has to be permitted without environmental clearance by the Geology and Mining Department. Government Order in this regard should be issued from Industries Department soon based on the decision in the meeting. (Action - Industries Department)."

25. The minutes of the meeting was regarding the issue relating to land acquisition for doubling of Railway Tracks in Kottayam, Alappuzha, Pathanamthitta and Ernakulam Districts. The proceedings also note that the doubling work is not possible unless acquisition of land for the projects is completed without any delay. It is not clear whether decision No. 5 was with regard to the land which was proposed to be acquired and for that land environmental clearance was not required or whether it relates to land from where red earth can be excavated by a contractor or subcontractors of the Railway. Be that as it may, the issue as to whether environmental clearance is required for sub-contractors for excavation of earth on the basis of any Government order issued in pursuance of the meeting held on 23.3.2015 shall arise only when any such Government orders are issued and such orders are looked into. It is not necessary for this Court to consider any such issue at this stage. Thus, on the basis of the minutes of the aforesaid meeting, the petitioners cannot claim that they have right to excavate earth without obtaining environmental clearance.

In the result, the Writ Appeals are allowed, judgments of the learned Single Judge are set aside and the Writ Petitions are dismissed, subject to the liberty as mentioned in paragraph 24 above.

The parties shall bear their own costs.

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