
(2014) 08 BOM CK 0084

In the Bombay High Court

Case No : Writ Petition Nos. 210, 221, 222, 223, 224, 286, 291, 292, 293, 307, 341, 344, 345, 348, 350, 351, 352, 354, 361, 363, 371, 373, 374, 375, 376, 377, 378 and 434 of 2014 and Miscellaneous Civil Application No. 471 of 2014 in Writ Petition No. 341 of 2014

Lithoferro

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3

Constitution of India, 1950 — Article 299

Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 — Section 4, 5

Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 8, 8(2), 8(3)

Citation : (2015) 3 ABR 32

Hon'ble Judges : U.V. Bakre, J; R.V. More, J

Bench : Division Bench

Advocate : R. Dada, D. Khambatta and S.D. Lotlikar and I.M. Chagla, Senior Advocates, Parag Rao, Swati Kamat Wagh, Fatima Noronha, Abhijeet Kamat, Sahish Mahambrey, D. Pangam, V. Agarwal, S.P. Munj, Riyaz Chagla, H.D. Naik, Abhijeet Gosavi, Amay Phadte, Ninad Laud, Abhijit Gosavi, Nikhil Vaze, Nitin Sardesai, Deep Shirodkar and L. Raghunandan, Advocate for the Appellant; A.N.S. Nadkarni, Advocate General, D. Lawande, Government Advocate, P. Dangui and N. Pai, Additional Government Advocates, A. Prabhudesai, S.S. Rebello and Amogh Prabhudesai, Additional Government Advocates, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

R.V. More, J.—Rule. Rule made returnable forthwith. Heard by consent.

2. The above writ petitions pertain to renewal of mining leases. Initially, the petitioners sought directions to the State Government to decide their applications for renewal of the mining leases filed in the year 2007. Some petitions,

thereafter, came to be amended, thereby seeking directions to the State Government to execute the second renewal lease deeds. Since the issues raised in these writ petitions are common, and the writ petitions have been analogously heard, the same are being disposed of by this common judgment.

BRIEF BACKGROUND AND FACTS OF THE CASE

2A. On 19th December, 1961, Goa was liberated and became a part of Indian Union. On 1st October, 1963, the Mines and Minerals (Development & Regulation) Act, 1957 (hereinafter, referred to as "the MMDR Act") was made applicable to the Union Territory of Goa. Prior to liberation of Goa, the Portuguese who were ruling Goa had granted mining concessions in perpetuity to the concessionaires. On 10th March, 1975, the Controller of Mining Leases, by issuance of notification, called upon every lessee and sub-lessee to file returns under Rule 5 of the Mining Leases (Modification of Terms) Rules, 1956 and sent copies of the notification to the concessionaires in Goa. The concessionaires, aggrieved by this notification, challenged it before the Bombay High Court, at Panaji, Goa. The Bombay High Court restrained the Union Government from enforcing the said notification against the concessionaires.

The Parliament, thereafter, passed the Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 (for short, "the Abolition Act"). On 23rd May, 1987, the President of India, gave his assent to the Abolition Act. Section 4 of the Abolition Act abolished the mining concessions and declared that with effect from 20th December, 1961 every mining concession will be deemed to be a mining lease granted under the MMDR Act and the provisions of the MMDR Act will apply to such mining leases. Section 5 of the Abolition Act further provided that the concession holder shall be deemed to have become a holder of the mining lease under the MMDR Act in relation to the mines to which the concession relates and the period of such lease was to extend upto six months from the date on which the Abolition Act received the President's assent.

On 14th October, 1987, sub-Rules (8) and (9) were inserted in Rule 24A of the Mineral Concession Rules, 1960 (for short "the MC Rules") which deal with the mining leases in Goa, Daman and Diu. In terms of the proviso to sub-Rule 8 of Rule 24 of the MC Rules, the Government of Goa extended the time for making applications for the first renewal by a period of one year. Within this period of one year, the leaseholders made applications for first renewal. Initially, the State Government granted first renewal for a period of 10 years i.e. 22nd November, 1987 to 21st November, 1997. Subsequently, in view of the amendment to Section 8 of the MMDR Act, the renewal was extended from 10 to 20 years and the period of 20 years expired on 22nd November, 2007. Before expiry of the period of the first renewal, the petitioners preferred applications u/s 8(3) of the MMDR Act to the State Government for renewal of their mining leases.

In the year 2010, the Central Government appointed Justice Shah Commission u/s 3 of the Commissions of Inquiry Act, 1952 to inquire into the illegal mining of

iron ore and manganese ore in contravention of the provisions of the MMDR Act, the Forests (Conservation) Act, 1980, the Environment (Protection) Act, 1986 and other rules and guidelines issued thereunder. Justice Shah Commission submitted its interim report in March, 2012 to the Ministry of Mines, Union of India. In the month of September, 2012, the Justice Shah Commission Report on Goa was tabled in the Parliament along with an Action Taken Report of the Ministry of Mines and on 10th September, 2012 State Government passed an order suspending all mining operations in the State of Goa with effect from 11th September, 2012.

On the basis of the findings of the report of the Justice Shah Commission on illegal mining in the State of Goa, Goa Foundation filed Writ Petition (C) 435 of 2012 in the Supreme Court as Public Interest Litigation, praying for directions to the Union of India and the State of Goa to take steps for termination of the mining leases of the lessees involved in the mining in violation of the aforesaid Acts. Various mining lessees of the State of Goa and the Goa Mining Association also filed Writ Petitions in this Court for a declaration that the report of Shah Commission is illegal and for quashing the findings in the report of the Justice Shah Commission and for quashing the order dated 10th September, 2012 of the State Government suspending all mining operations in the State of Goa, as also the order dated 14th September, 2012 of the Ministry of Environment and Forests, Government of India, directing that the Environmental Clearances granted to the mines in the State of Goa be kept in abeyance. The said writ petitions were transferred to the Supreme Court for hearing along with the hearing of Writ Petition (Civil) No. 435/2012 filed by Goa Foundation.

Three Judge Bench of the Honourable Supreme Court, by Judgment dated 21st April, 2014, allowed Writ Petition (Civil) No. 435/2012, in terms of the directions contained in para 71 thereof. Consequently, the transferred petitions also came to be disposed of. By this Judgment, the Honourable Supreme Court held that the deemed mining leases of the lessees in Goa expired on 22nd November, 1987 and maximum of 20 years renewal period of the deemed mining leases in Goa also expired on 22nd November, 2007 and consequently, mining by the lessees after 22nd November, 2007 was held illegal. It was also held that it was for the State Government to decide, as a matter of policy, in what manner mining leases are to be granted in future, but the constitutionality or legality of the decision of the State Government can be examined by the Court in exercise of its power of judicial review. It was further held that the State Government may grant mining leases of iron ore and other ores in Goa in accordance with its policy decision and in accordance with the MMDR Act and the Rules made thereunder, in consonance with the constitutional provision.

3. In view of the provisions of Section 5 of the Abolition Act, the concession holder deemed to have become a holder of mining lease under the MMDR Act in relation to the mines to which the concession relates and the period of such lease was extended upto six months from the date when the Abolition Act received the

President's assent, i.e. 22nd November, 1987. In terms of proviso to Rule 24A(8) of the MC Rules, the Government of Goa extended this period by further one year, within which period, the petitioners preferred an application for first renewal, which came to be granted initially for a period of 10 years. The said period was subsequently increased to 20 years. This extended period of 20 years expired on 22nd November, 2007. The petitioners before expiry of first renewal period, filed applications for second renewal of the mining leases. During the pendency of Writ Petition (C) 435/2012, these applications were processed by the State Government under the provisions of the MMDR Act and the MC Rules.

The State Government also framed Goa Mineral Policy, 2013, which was duly gazetted on 28th September, 2013 and was placed on record before the Supreme Court in Writ Petition (C) 435/2012. The State Government, in terms of this policy, in principle, agreed to renew 28 leases. These leaseholders were also asked to pay stamp duty. In some cases, after payment of the stamp duty, decision u/s 8(3) of the MMDR Act was taken to renew the leases and that decision is also gazetted. Thus, the petitions are classified in three categories mentioned hereinbelow:

- (A) Where there is notification issued in the Official Gazette after taking a decision for renewal;
- (B) Where there is a decision for renewal and there is stamp duty collected; and
- (C) Where there are renewal applications made and are still pending.

All the petitioners initially sought directions to the State Government to decide their applications for renewal filed in the year 2007. However, the petitions which fell in the first two categories were subsequently amended and directions were sought against the Government to execute second renewal lease deeds.

SUBMISSIONS OF THE PETITIONERS

4. The learned Senior Counsel/Counsel appearing for the petitioners in various petitions, made the following submissions:

- (i) Before expiry of the term of the first renewal, the petitioners filed applications for renewal of the second renewal of the mining leases.
- (ii) Mining plans for the second renewal were approved by the Indian Bureau of Mines (IBM). The Government of Goa, thereafter, recommended the second renewals and sought report of the IBM.
- (iii) The IBM recommended the second renewal for 20 years, with detailed reasons, after having considered whether mining was in the interest of mineral development. The State Government, thereafter, took a decision to grant second renewal of the mining leases u/s 8(3), read with sub-Rule (3) of Rule 24A of the MC Rules for a period of 20 years from 2007 to 2027.
- (iv) The State Government, thereafter, introduced the Indian Stamp Act (Goa

Amendment) 2012, which came into effect from 14th November, 2012 and issued demand notices to the petitioners seeking payment of stamp duty for execution of the lease deeds. The petitioners paid the stamp duty approximately amounting to Rs. 370 Crores.

(v) As stated above, the Government framed policy regarding renewal of mining leases known as "Goa Mineral Policy, 2013". This policy was placed on record of the Supreme Court in Writ Petition (C) No. 435/2012.

(vi) Brief resume of arguments on behalf of Goa Government to the effect that 28 leases have been ordered to be renewed, was placed on record of the Honourable Supreme Court in Writ Petition (C) No. 435/2012.

(vii) In respect of 4 mining leases, there was valid environmental clearance and thereafter, the Government passed orders u/s 8(3) for second renewal.

(viii) In respect of cases where the Government passed orders u/s 8(3) of the MMDR Act, the Government sought payment of security deposit and demarcation charges, which were paid. Thereafter, the Government called upon such leaseholders to depute their representatives for verification of boundaries which the Government did and a plan was accordingly prepared.

(ix) Learned Senior Counsel submitted that the State Government issued various orders from time to time and these orders are also acted upon. They further submitted that the right to second renewal is vested in the petitioners inasmuch as the petitioners have paid huge stamp duty pursuant to the directions of the State Government. They also submitted that the petitioners legitimately expected that the Government would execute the second renewal lease deeds and the Government is now estopped from refusing execution of second renewal lease deed, taking shelter of the Judgment of the Apex Court.

(x) Learned Senior Counsel submitted that the Apex Court judgment in Writ Petition (C) No. 435 of 2012 cannot be an impediment in the way of Government to execute the second renewal lease deed.

(xi) Learned Senior Counsel submitted that in the light of the above submissions, the petitions are required to be allowed, by directing the State Government to execute the second renewal of the lease deeds in respect of the cases in which stamp duty is already paid and in cases where stamp duty is not paid, the Government be directed to decide all the applications filed by the petitioners for second renewal of the leases, expeditiously.

SUBMISSIONS OF THE LEARNED ADVOCATE GENERAL ON BEHALF OF THE RESPONDENT, STATE OF GOA.

5. Mr. A.N.S. Nadkarni, learned Advocate General appearing for the State of Goa, fairly stated that the State Government has not and does not resile from the statements made in the Goa Mineral Policy, 2013 and in the resume of arguments before the Supreme Court to the effect that 28 leases have in fact

been decided and have been ordered to be renewed. The learned Advocate General also stated that the State Government would have considered the other pending applications for renewal and decided the same in accordance with law. However, in view of the Apex Court Judgment in Writ Petition (C) No. 435 of 2012, the State Government could not execute the lease deeds in respect of the 28 leases, nor could decide the pending applications u/s 8(3) of the MMDR Act.

The learned Advocate General took us through the Judgment of the Apex Court in Writ Petition (C) 435/2012 and relied upon the observations of the Supreme Court in paras 67, 68, 69 and 70. The learned Advocate General submitted that the Honourable Supreme Court has held that the deemed mining leases of the lessees in Goa expired on 22nd November, 1987 and the maximum of 20 years renewal period of the deemed mining leases in Goa as provided under subsection (2) of Section 8 of the MMDR Act, read with sub-Rules 8 and 9 of Rule 24-A of the MC Rules expired on 22nd November, 2007. The learned Advocate General submitted that in view of these findings of the Supreme Court, there is no question of renewal of the mining leases. The learned Advocate General submitted that in terms of the Supreme Court decision, it is for the State Government to grant fresh leases in accordance with the policy which is yet to be framed. The learned Advocate General submitted that the Supreme Court has kept Writ Petition (C) 435/2012 pending and, therefore, it is for the petitioners to approach the Supreme Court and seek appropriate orders. The learned Advocate General submitted that the orders on which the petitioners rely, at the most show that the Government in principle has agreed for renewal of the leases for a further period of 20 years and the same was not a final decision. He submitted that in terms of the said decision of the Apex Court, it is for the State Government to frame a fresh mining policy and after framing the same, to decide granting of fresh mining leases.

The learned Advocate General submitted that since final decision was not taken by the Government and the decision was taken in principle to grant the second renewal of the leases, the doctrine of promissory estoppel has no application in the present case. He lastly submitted that the petitions are devoid of any merit, and the same are liable to be dismissed.

CONSIDERATION OF THE SUBMISSIONS OF THE RESPECTIVE COUNSEL

6. From the submissions of the learned Senior Counsel/Counsel appearing for the respective petitioners and the learned Advocate General appearing for the State of Goa, and from the record, the following undisputed facts emerge:

(A) The State Government in terms of the provisions of Section 8(2), read with the provisions of Section 24A(3) of MC Rules, granted first renewal to the petitioners for a period of 20 years, which period expired in the year 2007.

(B) Before expiry of the period of first renewal, the petitioners preferred applications for second renewal of the mining leases.

- (C) The mining plans were approved by the IBM;
- (D) The Government sought report of IBM in terms of the provisions of Section 24A(3) of the MC Rules.
- (E) The IBM recommended second renewal for 20 years, subject to satisfaction that the mining was in the interest of mining development.
- (F) The Government of Goa introduced the Indian Stamp Act (Goa Amendment) Act, 2012;
- (G) Demand Notices were issued to the petitioners individually, asking them to pay the enhanced stamp duty. The petitioners, accordingly, deposited the same.
- (H) In some cases, order u/s 8(3), [inadvertently stated as the order u/s 8(2)] is also passed and the same is duly published in the Official Gazette.

7. The fact that the Government of Goa took decision to renew 28 leases is borne out from the following documents:

(I) The State of Goa framed "Goa Mineral Policy, 2013" and gazetted it on 28th September, 2013. This policy was placed on record of the Apex Court in Writ Petition (C) 435/2012. Clauses 10.2, the said policy, inter alia, declared as follows:

"10.2. There shall be no working of mines based on deemed extension status. As of today, 28 renewal applications have been decided. The renewal applications pending shall be decided within 3 months provided all clearances are in place. As on date, except those mines which are renewed, those others that may be renewed, only shall be allowed to work. Mines which are deemed extension status, shall not be allowed to work and such applications shall be decided in accordance with law as expeditiously as possible and not later than six months from today."

(II) In the brief resume presented by the State of Goa and placed on record of the Supreme Court, in Writ Petition (C) 435/2012, it is inter alia, mentioned thus:

"...Presently in the State of Goa, it is found that the Applications for Renewal were filed well within time as contemplated by Rule 24A of the Mineral Concession Rules, 1960. Presently, the State has ordered renewal of 28 mining leases, granted in principle approvals and has collected Renewal Fees/Stamp Duty from 27 Mining Leases.."

(III) On or about 21st February, 2013, the State Government passed an order requiring the petitioners whose leases were decided to be renewed, to pay the enhanced stamp duty in accordance with the amended provisions of the Indian Stamp Act. The Order discloses that the Government, in principle, has agreed for renewal of the mining leases and the concerned leaseholders were directed to make the payment of the stamp duty.

(IV) The Government of Goa, in its Affidavit-in-reply dated 25th June, 2014, filed

in Writ Petition No. 292/2014, in para 15 made the following statement:

"15.... These 28 leases were renewed after 2007 when indeed, the Hon'ble Supreme Court has held that Goa Mining leases have expired in the year 2007 and further these leases were renewed u/s 8(2) which the Hon'ble Supreme Court held that the renewals had to be u/s 8(3). On both these counts, the question of the Petitioners relying upon 28 leases on the strength of the so-called renewals which are non est and a complete nullity.... It is possible that some cases are renewed u/s 8(3) of MMDR Act."

(V) In paras 23, 24 and 25 of the said affidavit, the Government made the following averments:

"23. I further state that the Hon'ble Supreme Court in between in the year 2014 has delivered a Judgment holding that the leases have expired in view of the same even the renewals which were granted post 2007, also fall into an area whose validity becomes doubtful; nonetheless the State Government is entitled to and will take a view on the same in the policy.

24. Whether or not such renewals which have taken place, were lawful, whether such renewals were permissible and what happens to such alleged renewals when indeed the Hon'ble Supreme Court has held that the leases have expired in 2007 is in issue which has to be decided by a State Government and not in writ jurisdiction. These are matters to be decided by the Hon'ble Supreme Court and not the law.

25. I further state that the Hon'ble Supreme Court has held that the renewals ought to be u/s 8(3) in the year 2007. The renewals granted if were found to be under sub-section (2) of Section 8 which was an exercise impermissible in law. That being the legal position, the earlier so called renewals proceeded on an erroneous assumption that it was a matter of first renewal which the Hon'ble Supreme Court had now pronounced as not being first renewal and the first renewal had come to an end; on this premise itself the said so-called renewals are non est in the eyes of law; unless the State after examination finds them to be u/s 8(3) of the MMDR Act."

EFFECT OF THE JUDGMENT OF THE SUPREME COURT IN WRIT PETITION (C) NO. 435 OF 2012.

8. At the outset, we would like to consider the submission made by the learned Advocate General appearing for the State of Goa that in view of the observations of the Supreme Court in its Judgment in Writ Petition No. 435/2012 the petitioners should approach the Supreme Court. The learned Advocate General vehemently argued that this Court should not interpret the judgment of the Supreme Court and should relegate the parties to the Honourable Supreme Court to seek clarification. The learned Advocate General submitted that this is necessary in the teeth of the directions of the Apex Court and the fact that the petitioners' applications for renewal were pending during the pendency of the

Writ Petition before the Apex Court, and the Apex Court has not given any direction in that regard. We are unable to accept the submission of the learned Advocate General in the light of the decision of the Apex Court in M/s. Indian Petrochemicals Corporation Ltd. and Another Vs. Shramik Sena, . In this case, the Supreme Court expressed its disapproval to the approach of the Division Bench of this Court in relegating the petitioner therein to the Honourable Supreme Court to seek clarification rather than deciding the matter on merits. The observations of the Supreme Court in para 8 therein, are relevant, which are reproduced hereunder:

"8. We have perused the impugned order of the High Court. We are unable to appreciate the approach of the High Court. Even when it was faced with diametrically apposite (sic opposite) interpretation of the judgment of this Court, it was expected of the High Court to decide the case (Writ Petition) on merit according to its own interpretation of the said judgment. Instead the High Court after referring to rival contentions of the parties, in para 3, observed thus:

"In our view, the right course for the Petitioner will be to approach the Apex Court and to seek a clarification of the said order. Mr. Singhvi is agreeable to take necessary steps."

And having directed the appellants herein to take back the employees for a period of four months or until order is passed by this Court, whichever is earlier, disposed of the writ petition."

The Apex Court, ultimately, set aside the order of the High Court and restored the writ petition to the file of the High Court to decide the same on merits, expeditiously. The said decision makes it clear that it is the duty of this Court to interpret the Judgment of the Apex Court and the petitioners herein cannot be directed to approach the Apex Court for clarification.

9. Having held that it is the duty of this Court to interpret the judgment of the Apex Court in Writ Petition (C) 435/2012, let us examine the said judgment, whether it impedes or prohibits the execution of the second renewal of the mining leases pursuant to the orders of the State Government. A perusal of the judgment in Writ Petition (C) 435/2012 makes it abundantly clear that the Supreme Court has held that the mining operations beyond 2007 should not have been carried on, on the basis of the deemed extension clause contained in Rule 24A(6) of the MC Rules and the mining by the lessees beyond 2007, was illegal. In our considered opinion, the Judgment of the Supreme Court clearly reaffirms the obligation of the State Government to consider all the applications for renewal u/s 8(3) of the MMDR Act, which is evident from the following facts:

The Supreme Court has neither declared Section 8(3) of the MMDR Act invalid or unconstitutional, nor has taken Section 8(3) off of the statute book. On the contrary, the Supreme Court has affirmed the power of the State Government to grant second renewal of the leases u/s 8(3) of the MMDR Act. In paras 23 and 24, the Supreme Court rejected the submission of the learned Counsel appearing

for the petitioner therein made in para 19. Paras 19, 23 and 24 of the judgment are reproduced hereinbelow:

"19. Mr. Prashant Bhushan, learned Counsel for the Goa Foundation, however, submitted that Sub-section (2) of Section 8 of the MMDR Act prior to its amendment provided that a mining lease may be renewed for only ten years and, therefore, if the deemed mining leases of the lessees expired on 22.11.1987, even if the lease was renewed on the application of first renewal made by the lessees in Goa, the period of lease under the first renewal would expire on 21.11.1997 and after 21.11.1997, there can be no deemed extension. Alternatively, he submitted that Sub-section (2) of Section 8 of the MMDR Act as amended by Act 25 of 1994 provided that the mining lease may be renewed for a maximum period not exceeding twenty years. He submitted that as the deemed mining leases expired on 22.11.1987, the lessees would be entitled to a renewal for a maximum period of twenty years upto 21.11.2007 and after 21.11.2007, the lessees would not be entitled to any renewal and hence the lessees were not entitled to operate the lease beyond 21.11.2007.

23. Sub-section (1) of Section 8 of the MMDR Act, which provides the maximum and minimum periods for which a mining lease may be granted will not apply to deemed mining leases in Goa because Sub-section (1) of Section 5 of the Abolition Act provides that the period of such deemed mining leases will extend upto six months from the date of assent notwithstanding anything contained in the MMDR Act. In other words, notwithstanding anything contained in Sub-section (1) of Section 8 of the MMDR Act, the period of a deemed mining lease in Goa was to expire on 22.11.1987 (six months from the date of assent). Under Sub-section (2) of Section 8 of the MMDR Act, a mining lease may be renewed for a period not exceeding twenty years. Subsection (3) of Section 8, however, provides that notwithstanding anything contained in Sub-section (2), if the State Government is of the opinion that in the interest of mineral development, it is necessary so to do, it may for reasons to be recorded, authorise the renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case. Thus, renewal beyond the first renewal for a period of twenty years is conditional upon the State Government forming an opinion that in the interest of mineral development, it is necessary to do so and also conditional upon the State Government recording reasons for such renewal of a mining lease in respect of iron ore which is not specified in Part A and Part B of the First Schedule. In *Tata Iron and Steel Co. Ltd. v. Union of India and Anr.* (supra), this Court has held that the language of Sub-section (3) of Section 8 is quite clear that ordinarily a lease is not to be granted beyond the time specified in Sub-section (2) and only if the Government is of the view that it would be in the interest of mineral development, it is empowered to renew lease of a lessee for a further period after recording sound reasons for doing so. This Court has further held in the aforesaid case that this measure has been incorporated in the legislative scheme as a safeguard against arbitrariness and the letter and spirit of the law must be

adhered to in a strict manner.

24. The MC Rules have been made u/s 13 of the MMDR Act by the Central Government and obviously could not have been made in a manner inconsistent with the provisions of the Act. Sub-rule (6) of Rule 24A of the MC Rules provides that if an application for the renewal of a mining lease made within the time referred to in Sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of the lease shall be deemed to have been extended by a further period till the State Government passes order thereon. This sub-rule cannot apply to a renewal under Sub-section (3) of Section 8 of the MMDR Act because the renewal under this provision cannot be made without express orders of the State Government recording reasons for renewal in the interest of mineral development. In other words, so long as there is a right of renewal in the lessee which in the case of a mining lease is for a maximum period of twenty years, the provision regarding deemed extension of a lease can operate, but if the right of renewal of a mining lease is dependent upon the State Government forming an opinion that in the interest of mineral development it is necessary to do so and the State Government recording reasons therefor, a provision regarding deemed extension till orders are passed by the State Government on the application of renewal cannot apply. We are, therefore, of the opinion that Sub-rule (6) of Rule 24A of the MC Rules will apply to a case of first renewal under Sub-section (2) of Section 8 of the MMDR Act other than a case covered under Sub-rule (9) of Rule 24A of the MC Rules, but will not apply to renewal under Sub-section (3) of Section 8 of the MMDR Act. In our view, the deemed mining leases of the lessees in Goa expired on 22.11.1987 under Sub-section (1) of Section 5 of the Abolition Act and the maximum of 20 years renewal period of the deemed mining leases in Goa as provided in Sub-section (2) of Section 8 of the MMDR Act read with Sub-rules (8) and (9) of Rule 24A of the MC Rules expired on 22.11.2007."

Admittedly, there is no challenge to Section 8(3) of the MMDR Act and it can hardly be suggested that this provision is impliedly struck off by the Supreme Court.

10. The Government of Goa framed Goa Mineral Policy, 2013 and placed on record of the Supreme Court in Writ Petition (C) No. 435 of 2012. Resume of the arguments was also placed on record of the Supreme Court in the said petition, on behalf of the State of Goa. In both the documents, the Government stated that 28 leases have been decided to be renewed. Perusal of the said judgment would reveal that the Apex Court in the said Judgment nowhere raised any doubt, much less set aside the order passed by the State Government. The Apex Court has held in the said Judgment that the lessees cannot continue mining on the basis of Rule 24A of the MC Rules, after the period of first renewal. The Supreme Court held that the deemed extension under sub-Rule (6) of Rule 24A of the MC Rules will apply only to first renewal u/s 8(2) of the MMDR Act and not to the second renewal u/s 8(3) of the MMDR Act.

11. The expression "fresh leases" occurring in paragraph 67 of the Supreme Court Judgment, in our considered view, is affirmation of the settled law that grant of renewal of leases is also fresh grants. In this regard, a reference can be made to the decision of the Apex Court in State of M.P. and Others Vs. Krishnadas Tikaram,

In para 71, the Supreme Court directed the State Government to grant mining leases in accordance with its policy decision and in accordance with the MMDR Act and the Rules made thereunder in accordance with the constitutional provision.

12. The Affidavit-in-reply filed on behalf of the State Government in Writ Petition No. 292/2014 in this regard expressly acknowledges and affirms the power of the State Government to grant second renewal of lease u/s 8(3) of the MMDR Act. The affidavit makes specific statement on behalf of the Government that in fact some leases have been renewed u/s 8(3) of the MMDR Act.

13. The contention of the petitioners that the Judgment of the Supreme Court would not be the impediment in execution of the second renewal of the lease deeds is also supported by the order of the Supreme Court in the case of Common Cause vs. Union of India and ors, Writ Petition (Civil) No. 114/2014. In that case, 26 applications for second renewal were pending before the State of Odisha where no express orders of renewal were passed by it. The Supreme Court directed the State Government by an interim order to consider and dispose of the pending applications u/s 8(3) of the MMDR Act within 6 months.

14. The last contention in this regard raised by the learned Advocate General that Writ Petition (Civil) 435/2012 is kept pending and, therefore, the petitioners should approach the Supreme Court for seeking clarification, is also without merit in view of the observations of the Supreme Court particularly in paragraph 70 of the judgment by which the Supreme Court allowed Writ Petition (Civil) No. 435/2013 and consequently all the transferred cases, the IA filed by MPT, as well as other IAs stood disposed of. The Apex Court directed the Expert Committee to submit its final report within six months from the date of the Judgment. The Supreme Court directed the State of Goa to submit the scheme with regard to the Goan Iron Ore Permanent Fund within six months from the date of the judgment. It is only for the aforesaid submission of the report and the scheme that the writ petition would be listed before the Supreme Court as directed by it.

THE PROMISSORY ESTOPPEL/LEGITIMATE EXPECTATION

15. This takes us to consider whether the petitioners are entitled for the directions as claimed in the petitions. The learned Counsel for the petitioners, in this regard, vehemently argued that the doctrine of promissory estoppel/legitimate expectation is squarely applicable to the facts and circumstances of the present case inasmuch as the Government of Goa promised to grant second renewal of mining leases and pursuant to this promise, most of the petitioners paid the stamp duty, running into crores of rupees.

The Apex Court in *State of Bihar and Others Vs. Kalyanpur Cements Ltd.*, has held that in order to invoke doctrine of promissory estoppel, it must establish that:

- (a) a party must make an unequivocal promise or representation by word or conduct to the other party;
- (b) the representation was intended to create legal relations or affect the legal relationship, to arise in the future;
- (c) a clear foundation has to be laid in the petition, with supporting documents;
- (d) it has to be shown that the party invoking the doctrine has altered its position relying on the promise;
- (e) it is possible for the Government to resile from its promise when public interest would be prejudiced if the Government were required to carry out the promise;
- (f) the Court will not apply the doctrine in abstract.

Further, the Apex Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, has held as follows:

"24....The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negated in the *Indo-Afghan Agencies* case and the supremacy of the rule of law was established....The Government cannot, as Shah, J., pointed out in the *Indo-Afghan Agencies* case, claim to be exempt from the liability to carry out the

promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole Judge of its liability and repudiate it "on an ex parte appraisal of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable. Vide *Emmanuel Avodeji Ajaye v. Briscoe* (1964) 3 All ER 556."

33. The State, however, contended that the doctrine of promissory estoppel had no application in the present case because the appellant did not suffer any detriment by acting on the representation made by the Government: the vanaspati factory set up by the appellant was quite a profitable concern and there was no prejudice caused to the appellant. This contention of the State is clearly unsustainable and must be rejected. We do not think it is necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise. This position was impliedly accepted by Denning J., in the *High Trees* case when the learned Judge pointed out that the promise must be one "which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact acted on", (emphasis supplied). If a promise is

"acted on", "such action, in law as in physics, must necessarily result in an alteration of position....We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which would result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise.If this is the kind of detriment contemplated, it would necessarily be present in every case of promissory estoppel, because it is on account of such detriment which the promisee would suffer if the promisor were to act differently from his promise, that the Court would consider it inequitable to allow the promisor to go back upon his promise. It would, therefore, be correct to say that in order to invoke the doctrine of promissory estoppel it is enough to show that the promisee has, acting in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment....".

In *Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another*, the doctrine of promissory estoppel, its extent and applicability fell for consideration of the Apex Court. In that case, a representation was made on behalf of the Government for grant of tax concession to new industries. Believing it to be true and acting on it new industry was set up by the appellant entailing substantial investment. The Apex Court held that the appellant since acting on the promise has altered its position, the Government is bound by its representation/promise and subsequent change in policy, in the absence of any official announcement or intimation in that regard, cannot be claimed by Government, so as to absolve it from its binding obligation. The Apex Court further held that the Government policy of granting incentive to new industries cannot be said to be a mere offer nor can the appellant's negotiation with Government to set up industry on that basis be said to be a counter offer.

16. In the case in hand, admittedly, all the petitioners have made applications for second renewal within the time limit i.e. before expiry of the term of first renewal of the mining leases. The mining plans for the second renewal, thereafter, came to be approved by the IBM. The IBM also recorded its subjective satisfaction that the same is in the interest of mineral development. Thus, there is enough material on record to show that the Government agreed to grant the second renewal of mining leases u/s 8(3) of the MMDR Act and thereafter amended the Stamp Act and directed some of the petitioners to pay the stamp duty and even accepted the same. Thus, the Government gave promise that the mining leases would be executed u/s 8(3) and pursuant to the promise, the petitioners altered their position by depositing the huge stamp duty. Therefore, it is now not open for the Government to resile from the promise as it is estopped by the doctrine of promissory estoppel from doing so. The petitioners legitimately expected that

after payment of the stamp duty, the Government would execute the second leases u/s 8(3) of the MMDR Act. In our considered opinion, the principle of promissory estoppel is squarely applicable to the facts of the present case. The Government is reluctant to execute the lease deeds u/s 8(3) only on the ground that it is not open for it to do so in the light of the Apex Court judgment in Writ Petition (C) No. 435/2012. We have already held that the Supreme Court judgment in Writ Petition (C) No. 435/2012 is not an impediment in the Government's way in executing the leases in terms of Section 8(3) of the MMDR Act.

17. Before parting with this Judgment, we must mention that the petitioners have made statements that if this Court directs that lease deeds be executed in favour of the petitioners in form "K" u/s 8(3) of the MMDR Act, and such lease deeds are executed by the State Government in accordance with the directions of this Court, the petitioners will not make any claim on the net proceeds of the ore directed to be appropriated by the State Government, pursuant to the auction as set out in paragraph 71 of the judgment dated 21st April, 2014 passed in Writ Petition (C) No. 435/2012. We accept the said statement of the petitioners. In the light of this statement, we make it clear that whilst renewal of the leases will relate back to the year 2007, the judgment and order of the Supreme Court in Writ Petition (C) No. 435/2012, as stated in para 68 ordering appropriation to the State Government of the sale proceeds of iron ore, will stand and be abided by all the lessees, including the petitioners herein.

18. In the above facts and circumstances, we dispose of the writ petitions by passing the following order:

(I) The Respondent-State of Goa is directed to execute the lease deeds u/s 8(3) of the MMDR Act in favour of the petitioners/lease holders who/which have already paid the stamp duty pursuant to the orders of the Government, in accordance with the Goa Mineral Policy, 2013 placed before the Supreme Court in Writ Petition (Civil) No. 435/2012 and subject to the conditions laid down by the Apex Court in the said Writ Petition.

(II) So far as the petitioners/lease holders who/which have not paid the stamp duty are concerned, the Respondent-State of Goa is directed to decide their renewal applications u/s 8(3), as expeditiously as possible, and preferably within a period of three months from the date of receipt of copy of this order.

Rule is made absolute in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.