

(2013) 08 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Writ Petition No. 13505 of 2012

Man Singh Meena and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1
Constitution of India, 1950 — Article 14, 145(3), 19, 19(1)(g), 21
Forest (Conservation) Act, 1980 — Section 2
Mines and Minerals (Development and Regulation) Act, 1957 — Section 10, 11, 11(2), 11(3), 12
Rajasthan Tenancy Act, 1955 — Section 42, 42(b)

Citation : (2013) 08 RAJ CK 0033

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : R.N. Mathur, with Mr. Lokesh Sharma, for the Appellant; A.K. Sharma, with Mr. Rachit Sharma, K.K. Sharma, with Ms. Alankrita Sharma and Mr. R.P. Singh, AAG with Mr. S.K. Saini, for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This writ petition fundamentally challenges the grant of mining leases to the respondent Nos. 5 to 12 in District Banswara on multiple grounds, prime of which is that Banswara District in the State of Rajasthan being a scheduled area under the notification dated 12.02.1980 by H.E., the President of India under Article 244 of the Constitution of India was/is out of bounds to non-tribals as the said legal position has purportedly been enunciated by the Hon'ble Supreme Court in the case of Samatha Vs. State of A.P. and Others, An alternative prayer in the petition is that if the main challenge in the writ petition fails, the petitioner Nos. 2, 3 & 5 be held entitled to reconsideration of their applications for grant of mineral concession submitted pursuant to the notification dated 05.02.2008. All other prayers in the writ petition would be subsumed in the two prayers detailed above. Claiming to be "Meenas" by caste and therefore belonging to the scheduled tribe category in the State of Rajasthan

and residents of District Banswara, the case of the petitioners is that following the judgment of the Hon''ble Supreme Court in the case of Samatha (Supra), the Government of Rajasthan issued circulars on 05.09.2000 as amended on 14.09.2000 and on 18.12.2000 imposing a complete prohibition on the grant to non-tribals of mineral concessions in the Schedule-V areas as notified by the President of India vide notification dated 12.02.1980 in the exercise of power under Article 244 of the Constitution of India. The notification included the Districts of Banswara, Doongarpur, parts of District Udaipur, Parts of District Chhitorgarh, and Abu Road Block under Aburoad Tehsil of Sirohi District. The circulars dated 05.09.2000, 14.09.2000 and 18.12.2000 when challenged, were upheld by a learned Single Judge of the Rajasthan High Court at the Principal Seat, Jodhpur in SBCWP No. 3289/2002, decided on 06.05.2003, whereby the petition filed by Smt. Kanta Jain was dismissed. The order dated 06.05.2003, passed by the learned Single Judge was put to challenge in DB Civil Special Appeal (W) No. 406/2003, which was also dismissed by the Hon''ble Division Bench of this Court on 02.07.2003. Smt. Kanta Jain carried the matter to the Hon''ble Supreme Court where a SLP having been granted, the matter was registered as Civil Appeal No. 770/2004 but dismissed on 14.09.2011. It has been submitted that the consistent stand of the State of Rajasthan in the proceedings taken by Smt. Kanta Jain was that the circulars dated 05.09.2000, 14.09.2000 and 18.12.2000 then in issue imposing a total ban on grant of both major and minor minerals leases/quarry licences etc. to non-tribals in Schedule-V areas was in compliance with the directions of the Hon''ble Supreme Court in the case of Samatha (Supra) and that consequently mineral concessions could not be granted to non-tribals in the scheduled areas. The petitioners submit that in spite of the judgment of the Hon''ble Supreme Court in the case of Samatha (Supra) and the circulars dated 05.09.2000, 14.09.2000 & 18.12.2000 being upheld upto the Hon''ble Supreme Court on the specific statement detailed hereinabove on oath by the State of Rajasthan, the State Government vide notification dated 05.02.2008 has arbitrarily/illegally withdrawn the prohibition against non-tribals for grant of mineral concessions within the Schedule-V areas and fresh applications from all and sundry after 30 days of the notification aforesaid invited. On the same day, the State Government is stated to have issued guidelines with regard to the grant of mining lease/s and prospective licence/s etc in the Scheduled area of the State.

2. The further case of the petitioners is that on 06.02.2008, 07.03.2008 and 16.04.2008, they applied for grant of prospecting licence and mining leases in District Banswara - a scheduled area. It has been submitted that the petitioners were the first applicants and by virtue of also belonging to scheduled tribe, their applications ought to have been at least given preference in consonance with the observations of the Hon''ble Supreme Court in the case of Samatha (Supra) and mining leases granted. However, the petitioners' applications were unlawfully rejected inter alia on the ground of being premature or otherwise incomplete in spite of notice. The applications of the respondent Nos. 5 to 12 were accepted,

processed and LOI issued. On 24.06.2009, the private respondents submitted proposals for diversion of forest land comprised in the area applied for by them of which LOI had been issued. It has been then submitted that in the meantime, on 03.07.2009, the State Government directed that applications for grant of mineral concessions in the scheduled areas in the State filed pursuant to the notification of 05.02.2008 be kept in abeyance and a direction was issued to the Mines and Geological Department, Udaipur that status quo in regard thereto be maintained. Subsequently, on 10.03.2010, the State Government is stated to have issued an order reserving the entire scheduled areas of the State for grant of major mineral concessions only in favour of its own fully owned corporation namely the Rajasthan State Mines and Minerals Ltd. It has been submitted that the process for grant of mineral concessions to the respondent Nos. 5 to 12 was thereafter wrongfully continued in spite of the notification dated 03.07.2009. It has also been submitted that respondent Nos. 5 to 12 have no manner of connection with the scheduled tribes and consequently the processing of their applications and the grant of requisite statutory clearances as a precursor to the grant of mineral concessions to them in scheduled areas was wholly illegal, arbitrary and contrary to the judgment of the Hon'ble Supreme Court in Samatha's case (Supra) and Schedule-V of the Constitution of India. In these circumstances, the petitioners approached the Hon'ble Supreme Court by way of a Writ Petition No. 195/2012 whereupon in the first instance vide order dated 09.05.2012 while issuing notices, the Hon'ble Supreme Court had in the interim directed that no mining lease in the scheduled areas be granted to respondent Nos. 5 & 12, if had not been already granted till the aforesaid date. Subsequently on the matter coming up before the Hon'ble Supreme Court on 21.08.2012, the petitioners were allowed to withdraw the petition under Article 32 of the Constitution of India with liberty to file a fresh petition before this Court under Article 226 of the Constitution of India within a period of four weeks. Hence the present writ petition.

3. In support of the writ petition, the grounds agitated by the petitioners are that (i) the recommendation of the State Government issued on 09.11.2011 for Stage 1 Forest clearance in favour of the respondent Nos. 5 & 12 and the resultant clearance of the Central Government on 13.02.2012 is contrary to the State Government's own circular dated 03.07.2009 imposing status quo on the processing of applications even those filed consequent to the notification dated 05.02.2008 and therefore invalid in law; (ii) that the decision in the case of Smt. Kanta Jain has been upheld upto the Hon'ble Supreme Court in Civil Appeal No. 770/2004 decided on 14.09.2011 which confirmed and upheld the validity of the circulars dated 05.09.2000, 14.09.2000 & 18.12.2000 excluding consideration of non-tribals in the grant of mineral concessions in scheduled areas and thus militated against the consideration/grant of mineral concessions to the respondent Nos. 5 to 12 (non-tribal) in the scheduled areas; and (iii) the consideration and grant to respondent Nos. 5 to 10 & 12 under notification dated 05.02.2008 was contrary to the State Government's own stand upto the Hon'ble

Supreme Court in the case of Smt. Kanta Jain. (iv) it has been submitted that a reading of Schedule-V of the constitution of India in conjunction with Section 11(2) and 11(3) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter "the Act of 1957") would entail an inevitable conclusion from a just construction of the aforesaid provision that scheduled tribes were to be conferred unquestionable preference on their applications for grant of mineral concessions in Scheduled-V areas over all other applications in the non-scheduled tribe category, if at all applications at their instance were entertainable. (v) It has then been contended that subsequent to the State Government's notification dated 03.07.2009 directing status quo on processing of applications for grant of mineral concessions in scheduled areas, the pending applications of the respondent Nos. 5 to 10 & 12 for grant of mineral concessions could not be processed and by doing so the State Government has acted against to its own policy decision rendering its action in grant of leases for the minor mineral marble to respondent Nos. 5 to 12 wholly illegal, arbitrary and liable to be quashed and set aside. (vi) Aside of the aforesaid grounds, a general sweeping ground has also been taken in support of the writ petition that the State Government is bound by the spirit of Schedule-V of the Constitution of India which implies exclusive rights in scheduled area including right to mineral concession to the local scheduled tribals. (vii) It has been submitted that the action of the State of Rajasthan and the officers in the mining department in rejecting the applications for grant of mining lease by the petitioners for mineral marble in District Banswara and the corresponding decision to grant mineral concession in scheduled areas to respondent Nos. 5 to 12 was illegal, arbitrary and ultra vires the Act of 1957, Samatha's case decided by the Hon"ble Supreme Court as also the State Government's own notification dated 03.07.2009 and thus liable to be quashed and set aside.

4. Sr. Counsel, Mr. R.N. Mathur with Mr. Lokesh Sharma, appearing for the petitioners, has in the course of submissions before this Court primarily confined himself to the validity of the notification dated 05.02.2008 and emphatically submitted that such a notification opening up scheduled areas for grant of mineral concessions to non-tribals was fundamentally contrary to the law settled by the Hon"ble Supreme Court and hence liable to be set aside entailing quashing of any/all orders by the State Government granting mineral concessions to non-tribals in the scheduled areas. No other issue was seriously agitated albeit in the written submissions filed, an additional ground - not taken in the writ petition - based on Section 42 of the Rajasthan Tenancy Act, 1955 (hereinafter "the Act of 1955") has been taken.

5. On notice, three separate replies to the writ petition have been filed by the contesting respondents. One by the State and one by respondent Nos. 5 to 8 and other by respondent Nos. 9, 10 & 12. The respondents have a common strand in the replies and not surprisingly as they indeed have commonality of defences to the writ petition. Sr. Counsels, Mr. R.P. Singh, Mr. A.K. Sharma and Mr. K.K. Sharma, have at the outset raised several preliminary objections to the very

maintainability of the writ petition. It has been submitted that the petitioners are guilty of *suppresio veri* and *suggestio falsie* in setting up their case *inter alia* based on Government of Rajasthan's order dated 03.07.2009 suppressing the fact that vide a subsequent order dated 17.03.2011 the holding in abeyance of applications under the notification dated 05.02.2008 and status quo in regard thereto had been clarified to exclude LOIs already granted before 03.07.2009. It has been submitted that this fact was in the knowledge of the petitioners and should be deemed to be so as all the petitioners are old hands in the game of obtaining of mineral concessions having applied for various mineral concessions in their past throughout the State of Rajasthan and thereafter traded their mining leases earlier obtained. Further in any event, Sr. Counsel have submitted, the order dated 17.03.2011 had been disclosed to the petitioners in the proceedings before the Hon'ble Supreme Court in Writ Petition No. 195/2012 under Article 32 of the Constitution of India. It has been submitted that the circular dated 17.03.2011 took the bottom away from the petitioners case founded upon the Government's earlier order dated 03.07.2009. It is submitted that the suppression of circular dated 17.03.2011 is suppression of material facts and the writ petition agitating a case contrary thereto should entail its dismissal in limine on this ground alone. Sr. Counsel have further submitted that the writ petition is further liable to be also dismissed inasmuch as while in para 25 of the petition, it has been stated by the petitioners that they have not preferred similar or identical petition before this Court, the petitioner Nos. 1 & 4 in fact had filed such cases. It has been submitted that the petitioners Man Singh Meena had filed a writ petition bearing SBCWP No. 462/2009 wherein it was prayed that the notification dated 05.02.2008 be quashed and State Government be restrained from allotting/renewing mining lease in scheduled areas except to persons belonging to the scheduled tribe category. It has been submitted that on the aforesaid petition, an interim order dated 02.09.2009 was passed restraining grant of renewal of mining leases in scheduled area except to scheduled tribe persons. The said writ petition was referred by the learned Single Judge to the Hon'ble Division Bench on 18.12.2010 and thereafter dismissed as withdrawn on 31.01.2011. No liberty to file afresh was prayed for or granted. It has been submitted that similarly the petitioner No. 4, Magan Devi Meena, had filed SBCWP No. 11729/2010 at the Principal Seat at Jodhpur praying that the orders dated 03.07.2009 and 10.03.2010 through which a total ban has been imposed by the Government of Rajasthan on the grant of major mineral concession in Schedule-V areas be set aside. The said writ petition was also withdrawn by the petitioner Magan Devi on 27.07.2012.

6. Counsel have submitted that the issue/s agitated in the present writ petition therefore have already been agitated by two of the petitioners before this Court by separate writ and thereafter withdrawn without any liberty to pursue the same cause of action afresh. It has been submitted that for invoking the equitable extraordinary jurisdiction of this Court, it was incumbent upon the petitioners in issue to disclose the factum of similar challenges, as in this writ

petition, having earlier been made before this Court. In failing to do so the petitioners should be held to have not approached this Court with clean hands. It has been submitted that albeit writ petition No. 195/2012 before the Hon"ble Supreme court was withdrawn by the petitioner under its order dated 21.08.2012 with liberty to file a writ petition before this Court, yet the liberty granted by the Hon"ble Supreme Court does not entail condonation of the obligation of the petitioners to furnish details of earlier litigation involving similar and/or identical issues. It was submitted that on this count also the writ petition is liable to be summarily dismissed. It has been further submitted that from their own say, the petitioners also appear to have applied for grant of mining leases in District Banswara in pursuance to the impugned notification dated 05.02.2008 which permitted both the scheduled tribe and non-scheduled tribe person/corporation/ companies to apply for mining leases in Schedule-V areas. It was submitted that having availed of the benefit under the notification dated 05.02.2008, and applied for grant of mining lease but having failed, the petitioners cannot be allowed to turn around and challenge the very notification dated 05.02.2008 after taking a chance thereon. This, it has been submitted, would tantamount to breach of the equitable principle of one not being allowed to both approbate and reprobate. The principle of estoppel by conduct would also operate in the circumstances on the petitioners challenging the notification dated 05.02.2008.

7. It was then submitted that aside of the aforesaid objections, a challenge to notification dated 05.02.2008 in the year 2012 irrespective of the petitioners approaching the Hon"ble Supreme Court in the meantime, is a delayed challenge and the writ petition is liable to be dismissed on the ground of laches. In the meantime, the respondent Nos. 5 to 10 and 12 have expended crores of rupees in the process of readying for mining operations. It has been submitted that mere liberty to approach this Court granted by the Hon"ble Supreme Court to the petitioners when they withdrew the writ petition No. 195/2012 does not absolve the petitioners from satisfying this Court the reason for the delay in filing the writ petition for the period before the petitioners approached the Hon"ble Supreme Court. No explanation whatsoever has been even proffered to explain the said delay and the writ petition is deserving of dismissal on this count. The further case of the private respondents is that in pursuance to the notification dated 05.02.2008 over 70 mining leases/quarry licence/prospecting licences have already been granted by the State Government in Schedule-V area of Banswara District and are presently operative. Apart from that, 60 LOIs had been issued by the competent authority under the Rules of 1986 before 03.07.2009 when a decision was taken by the State Government to maintain status quo which direction subsequently came to be modified vide letter dated 17.03.2011 excluding from the rigor of notification dated 03.07.2009, LOIs already issued under notification dated 05.02.2008 before 03.07.2009. It has been submitted that LOIs issued to the private respondent prior to 03.07.2009 could not fructify into mining leases at the relevant time as the area for which LOIs had been issued fell under a forest necessitating the obtaining of clearance/approval from

the Central Government in the Ministry of Environment & Forest for use of forest land for non-forest purpose. The requirement of this permission had delayed the grant of mining lease to the holders of LOIs such as respondent Nos. 5 to 10 & 12. It has been submitted that apart from the respondent Nos. 5, 10 & 12, one Prabhash Rajgadia and another Poonam Rajgadia were also granted LOI before 03.07.2009 and in their case also clearance/approval from the Central Government in respect of diversion of forest land was required to be obtained before grant of mining lease. The proposals for grant of approval of diversion of forest land with regard to the answering respondents as also with regard to Prabhash Rajgadia and Poonam Rajgadia were forwarded by the State Government to the Central Government under the provision of the Forest (Conservation) Act, 1980 at the same time yet the petitioners oddly, but apparently for ulterior motives, have indulged in a selective challenge to the LOIs of the respondent Nos. 5 to 10 & 12 being further processed. It has been further submitted that scores of beneficiaries of the notification dated 05.02.2008, aside of the answering respondent Nos. 5 to 10 & 12 are necessary parties to the writ petition and in their absence no relief can be claimed or granted only qua the petitioners as a partial quashing and setting aside of the notification dated 05.02.2008 cannot be contemplated.

8. The answering respondents further submitted that the writ petition by five petitioners who had independently applied for grant of mineral concession in scheduled area under notification dated 05.02.2008 cannot be filed as a joint petition as each of them had an independent cause of action turning on varied facts against the answering respondents, if at all. A joint writ petition as filed is therefore not maintainable, conflicted by misjoinder of parties and in the overall facts and circumstance of the case, an abuse of the salutary jurisdiction of this Court under Article 226 of the Constitution of India. It has been submitted that aside of the above, in terms of the liberty granted by the Hon'ble Supreme Court under its order dated 21.08.2012 the petitioners Man Singh Meena and Magan Devi Meena are not entitled to press for relief in respect of the rejection of their applications for grant of mineral lease. Further so far as the application of petitioner No. 3, Ramrati Meena, is concerned, it has been submitted that there is absolutely no conflict with the area applied for by any of the respondent Nos. 5 to 10 & 12. So far as the applications of petitioner Nos. 2 & 5 are concerned, even they, it has been stated, in the facts and circumstances of the case cannot claim a right vis a vis an answering respondents inasmuch as no relief has been claimed in respect of rejection of their mining lease applications - if at all the said relief could be claimed in a belated writ petition after the two petitioner aforesaid failed to avail of their alternative remedy under Rule 43 and 47 of the Rules of 1986. It is denied that any of the fundamental right of the petitioners under Article 14, 19 & 21 of the Constitution of India read with Schedule-V of the Constitution of India and Section 11(2) of the Act of 1957 have been violated. It has been submitted that for one reliance upon Section 11(2) of the Act of 1957 in support of the writ petition is misplaced inasmuch as the applications in issue

filed by the respondent Nos. 5 to 10 & 12 were for grant of mineral concession for minor mineral under MMCR Rules, 1986 and in terms of Section 14 of the Act of 1957, the provisions of Sections 5 to 13 (inclusive) do not apply to minor minerals. It has been denied that Ministry of Environment & Forest of the Union of India has processed the case of approval in respect to the private respondent Nos. 5 to 10 & 12 in any manner contrary to law as each of them is an independent company and a separate juristic entity.

9. It has been further submitted that State Government being the owner of mineral wealth is entitled to determine the area in which it would grant mining lease. And - albeit the State Government had earlier in pursuance of its apparent misreading of the judgment of the Hon'ble Supreme Court in the case of Samatha (supra) vide circular dated 05.09.2000, 14.09.2000 & 18.12.2000 directed that no mineral concession would be granted to non-scheduled tribe persons in scheduled area covered under notification dated 12.02.1980, yet on a reconsideration of the matter and a correct reading of the judgment in the case of Samatha (Supra) in a proper prospective, on 05.02.2008 the State Government withdrew the prohibition on grant of mineral concession in the scheduled area to non-tribals.

10. Consequent to the notification dated 05.02.2008, the scheduled areas were opened for grant of mineral concession in accordance with the extant MMCR Rules, 1986 to all persons including non-tribals. It is submitted that it is no doubt true that on 03.07.2009 the State Government subsequently issued instructions to the Director, Mines and Geology Department to maintain status quo with regard to the sanctioning of mining leases etc. in scheduled area consequent to which pending applications including LOIs issued to respondent Nos. 5 to 10 & 12 were kept in abeyance. On 17th March, 2011 the State Government again issued an order requiring the Director, Mines and Geology Department to dispose of cases of minor mineral leases in scheduled area pending with him in which LOIs had been issued prior to 03.07.2009. However the approval of the State Government was to be obtained prior to sanction of mining leases thereon. It has been submitted that all policy prescription of the State Government for grant of mineral concession in Scheduled areas from time to time are a matter of discretion of the State Government. No ground whatsoever has been made out by the petitioners for dislocating or upsetting the policy decision of the State Government for consideration and grant of mineral concession to all and sundry on fulfillment of requisite condition in scheduled areas including District Banswara to those who had applied between 05.09.2000 and 03.07.2009 and as clarified under the circular of 17.03.2011. It was submitted that cases of those granted mining leases between 05.02.2008 and 03.07.2009 and the cases of those who were granted LOIs during this period could not be distinguished on any intelligible differentia and hence the parity. The difference had arisen owing to the fortuitous circumstance of the area applied for falling within the forest area and the necessity of obtaining approval u/s 2 of the Forest (Conservation) Act, 1980. It has been submitted that LOIs were issued to the answering

respondents between 29.05.2009 and 22.06.2009 and proposal for diversion of forest land by making a cluster of 64 hectare was processed by the Mining Department and sent to the Forest Department on 24.06.2009. Final proposals had been forwarded to the Forest Department before 03.07.2009. It has been submitted that to keep homogeneity between the applicants who had been granted mineral concession during the period dated 05.02.2008 and 03.07.2009 and those who by fortuitous circumstance of their lease area falling in forest area could not convert the LOI issued into mining lease, the State Government issued circular dated 17.03.2011 to ensure completion of the processes lawfully commenced.

11. It has been further submitted on behalf of the respondent Nos. 5 to 10 & 12 that the petitioners have no fundamental right to insist that mining in scheduled area should either entirely cease or only should be restricted to tribals. No legal foundation has been made out by the petitioners in support of the aforesaid submission and no reference to any statute or rule has been made. Contrarily, the policy of the State Government under the notification dated 05.02.2008 read with order dated 17.03.2011 provided, at the relevant time, to the contrary and thereunder scores of mining leases and other mineral concession to non-tribals are presently operative. The formulation of the policy by the State Government is the matter of its prerogative and absent any unconstitutionality, as in the present case or discrimination such as not made out in the present case, cannot be interfered with by the Hon''ble Courts in the extraordinary jurisdiction under Article 226 of the Constitution of India.

12. Counsel for the respondents have further submitted that the judgment of the Hon''ble Supreme Court in the case of Samatha (Supra) was delivered in the context of the specifics of the extant Andhra Pradesh laws obtaining under regulations made by the Hon''ble Governor for A.P. scheduled areas by resort to his overriding power under para 5 of Schedule-V of the Constitution of India. It has been submitted that no such regulation overriding extant law (such a MMCR 1986) has been issued by the Hon''ble Governor of Rajasthan in respect of schedule area notified under the presidential notification dated 12.02.1980. It has been submitted that consequently the principles enunciated in Samatha's case (Supra) do not attract in the State of Rajasthan for determination of the question as to whether non-tribals can be granted mineral concessions in scheduled areas. In the absence of any disability imposed by law, the provisions of MMCR Rule, 1986 with regard to grant of minor mineral concessions and extant policy of the Government from time to time would be operative. Under the MMCR Rules, 1986, there is no prohibition with regard to grant of mineral concession to non-tribals in scheduled areas. Rule 4(8) of MMCR Rules, 1986 merely provides that no prospecting licence, mining lease or other mineral concession in respect of a minor mineral shall be granted in the scheduled area without obtaining the prior recommendation of the Panchayati Raj Institutions at appropriate level as prescribed under Rajasthan Panchayati Raj (Modification of Provisions in their application to the Scheduled Areas) Act, 1999. It is submitted

that compliance with Rule 4(8) as also with the provisions of Rajasthan Panchayati Raj (Modification of Provisions in their application to the Scheduled Areas) Act, 1999 has been made in the case of respondent Nos. 5 to 10 & 12. As far as the judgment in the case of Kanta Jain is concerned, it has been submitted that the said judgments were rendered in the context of the policy circulars dated 05.09.2000, 14.09.2000 & 18.12.2000 which policy prescription was superseded and altered at the relevant time under notification dated 05.02.2008. It has been submitted that the applications for grant of mineral concession for the mineral marble to respondent Nos. 5 to 10 & 12 were made in the altered policy regimen following the notification dated 05.02.2008 and the notification prior thereto which stood suppressed and the judgment in Kanta Jain's case have no relevance to the grant of mineral concession to respondent Nos. 5 to 10 & 12 in the scheduled area of the State of Rajasthan. It has been submitted that following the order dated 17.03.2011, the proposals of diversion of forest land of the respondent Nos. 5 to 10 & 12 which were held in abeyance in view of the earlier instruction dated 03.07.2009 were processed by ADM (E&D), Udaipur to the APCCF, Jaipur on 09.05.2011. The case was thereafter further considered in accordance with MMCR 1986 and other obtaining laws/notifications/instructions/orders and nothing illegal can be attributed to the grant of mineral concession based thereon to the private respondents.

13. It has been submitted that in the case of Balco Employees Union (Regd.) Vs. Union of India & Ors., three Hon'ble Judges of the Hon'ble Supreme Court expressed strong reservations with regard to the correctness of majority decision in Samatha's case observing that in terms of Article 145(3) of the Constitution of India, the substantial question of constitutional law pertaining to interpretation of schedule-V of the Constitution of India ought to have been left to a five Judges Bench of Hon'ble Supreme Court. It was further held in Balco's case (Supra) that in any case Samatha's case (Supra) did not have any bearing on the decision of an identical issue of grant of mineral concession in scheduled areas to non-tribals in the State of Madhya Pradesh in view of the fact that no regulation para materia with Section 3 of A.P. Schedule Area Land Transfer Regulation, 1989 issued under Para 5 of Schedule-5 of the Constitution of India obtained in the State of M.P. The submission made by counsel in this case is that where regulations under Para 5 of Schedule-V of the Constitution of India have not been made and issued overriding/modifying the extant State or Central Laws, the principles enunciated in Samatha's case would not be determinative of the question of legality of grant of mineral concession rights in Schedule-V areas to non-tribals. It was submitted that the State Government in its wisdom modified its policy on the grant of mineral concession to non-tribal in Scheduled area and thereupon issued notification dated 05.02.2008 in supersession of its previous policy circulars dated 05.09.2000, 14.09.2000, 18.12.2000. Consequently, applications were invited from all seeking grant of mineral concession in the area of District Banswara after expiry of 30 days from the notification dated 05.02.2008. Whereupon on applications made, LOIs were granted to the

respondent Nos. 2 to 10 & 12. Thereafter under circular dated 17.03.2011, the LOIs issued to the respondent Nos. 5 to 10 & 12 were processed and mining leases granted. It was submitted that the case of the private respondents Nos. 5 to 10 & 12 falls within the enunciation of law in Balco's case by the Hon''ble Supreme Court. Reliance by the petitioners on the judgment of the Hon''ble Supreme Court in the case of Sandur Manganese and Iron Ores Ltd. Vs. State of Karnataka and Others, was inapposite to the issues in the present writ petition as in Sandur's case (Supra) was one where a preferential allotment u/s 11 of the Act of 1957 was under consideration of the Hon''ble Supreme Court. The Hon''ble Supreme Court, in the context of the above issue, in Sandur's case (Supra) opined that the preference to applicants for mineral concession could not be granted dehors the conditionalities of Section 11(2) of the Act of 1957 and consideration of amounts invested by an applicant was therefore an extraneous criteria consequent to which a decision based thereon was liable to be set aside. It was submitted that aside of the irrelevance of the judgment in Samatha's case (Supra) and Sandur's case (Supra) to the issue presently before this Court, Section 5 to 13 of the Act of 1957 relate to major minerals and do not attract to minor minerals (presently the case) as it is clearly and specifically stated in Section 14 of the Act of 1957.

14. It was then submitted by Sr. Counsel for the respondents that for grant of mineral concession in the State of Rajasthan the MMDR Act 1957; MMCR Rules, 1986; Rajasthan Forest Act, 1953; Schedule Tribe and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Forest (Conservation) Act, 1980 are applicable and within the extant legal regimen read with circulars dated 05.02.2008 and 17.03.2011, at the relevant time, the grant of mineral concession to the respondent Nos. 5 to 10 & 12 in the scheduled area notified by the President under notification dated 12.02.1980 cannot be faulted with or legally held to be unsustainable. It was submitted that the private respondent Nos. 5 to 10 & 12 have a right to carry out any business of their choice under Article 19(1)(g) of the Constitution of India with reasonable restriction lawfully imposed. No restrictions in law were however operative at the time when the answering private respondents were granted minor mineral concession under the MMCR Rules, 1986. The private respondents, it was stated, were/are fully compliant with requirement of all extant laws and thus entitled to enjoy the mining leases granted to them in Banswara District for minor mineral marble following the notification dated 05.02.2008 read with circular dated 17.03.2011. It has been prayed that the writ petition therefore be dismissed.

15. Heard the counsel for the petitioners and the respondents. Perused the writ petition and replies thereto. Noted the provisions of the Constitution of India, MMDR Act 1957, MMCR Rules 1986 and the notification dated 05.02.2008, the order dated 03.07.2009 issued by the State Government and the clarificatory order dated 17.03.2011. Considered in the context of the judgments of the Hon''ble Supreme Court in Samatha's case (Supra) and in Balco's case (Supra).

16. I find substance in the contention of the answering respondents that the writ petition as filed is a gross abuse of the process of this Court. It is no doubt true that the Hon''ble Supreme Court while allowing the petitioners to withdraw the writ petition before its order dated 21.08.2012 has granted liberty to the petitioners to file a fresh writ petition before this Court. That, in my most respectful opinion, would not denude the petitioners of their obligation of coming with clean hands before this Court with a full disclosure of material facts while seeking to invoke the extraordinary equitable jurisdiction of this Court under Article 226 of the Constitution of India. From the reply to the writ petition filed by the respondents, it has transpired that the petitioners Nos. 1 & 4 had approached this Court on an earlier occasion. The writ petitions filed by the petitioner Nos. 1 & 4 were withdrawn. In the case of Man Singh Meena, a challenge was fundamentally made to the notification dated 05.02.2008 and in the case of Magan Devi Meena, notification dated 05.02.2008 was invoked, not challenged but a challenge was made to the order dated 03.07.2009. The notification and the order aforesaid are also in question at the instance of the petitioners in the present writ petition but the earlier challenges have not been disclosed nor the outcome thereon stated. It is trite that as the remedy under Article 226 of the Constitution of India is an equitable extraordinary remedy, it is fundamental for the petitioners to make a full disclosure of material facts before this court. In my considered opinion, filing of writ petition No. 10067/2011 by Man Singh Meena and its withdrawal on 30.05.2012 and the filing of writ petition No. 11729/2010 by Magan Devi Meena and its withdrawal on 27.07.2012 both without liberty to file afresh were material facts for addressing inter alia question of res-judicata and constructive res judicata. The Hon''ble Supreme Court in the case of Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, has held that where a petitioner withdraws a petition filed by him in the High Court under Article 226/227 of the Constitution of India without permission to institute a fresh petition, the remedy under Article 226/227 of the Constitution of India should be deemed to have been abandoned by such petitioner in respect of the cause of action agitated in the writ petition and it would not be open to her to file a fresh petition in the High Court under the same Article. It was held by the Hon''ble Supreme Court that the principle underlying Rule 1 of Order XXIII of CPC should be extended in the interests of administration of justice to cases of withdrawal of the writ petition as such a view was dictated on the ground of public policy and would discourage the litigants from indulging in breach-hunting tactics. The enunciation of law by the Hon''ble Supreme Court as detailed hereinabove, in my most considered opinion, cannot be circumvented by the petitioners on the basis of the liberty granted by the Hon''ble Supreme Court to file a petition before this Court without anything more. Liberty granted would only relate to the filing of the petition, but the petitioner would be under a duty to satisfy the court in the context of extant law as to how the writ petition was maintainable when earlier writ petition/s also agitating a similar/identical issue were filed, but withdrawn without any liberty. The infraction of the procedural laws thus attributed to the petitioner Nos. 1 & 4

would by association afflict others. The writ petition, to my mind, would be liable to be dismissed on this short ground alone.

17. It has also been established from the pleadings on record that the petitioners themselves sought to take the benefit of the notification dated 05.02.2008 which is under challenge before this Court and had made applications thereunder for grant of mining leases in the scheduled area i.e. District Banswara. In my considered opinion, if at all the petitioners were aggrieved of this notification dated 05.02.2008 in opening up the scheduled areas to all and sundry for grant of mineral concession, it was for them to forthwith or at least with reasonable expedition approach this Court and seek their remedy. Instead the petitioners took their chances in moving applications with reference to the notification dated 05.02.2008 and after having failed to obtain the mining lease, thereupon on one ground or another have sought to challenge the notification dated 05.02.2008. This aspect of the matter, in my considered opinion is indicative of the petitioners seeking not so much vindication of justice or majesty of law in challenging the notification dated 05.02.2008, but seem to be using the salutary jurisdiction of this Court under Article 226 of the Constitution of India for advancing their own private commercial interest without anything more. The petitioners do not appear to have challenged the rejection of their applications for grant of mining lease for the mineral marble pursuant to the notification dated 05.02.2008 by invoking remedies under Rules 43 and 47 of the MMCR Rules, 1986. In the case of Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand and Others, the Hon''ble Supreme Court, albeit in the context of recruitment process, has held that the appellants therein having appeared in the written examinations and participated in interview, etc. to determine their suitability, their non-selection could not allow them to turn back to allege that the procedure for selection was without jurisdiction. In my considered opinion, the principle to be culled out from the judgment aforesaid is that a person cannot be allowed to take a chance with the an existing state of affairs without any protest and after being unsuccessful in the process be allowed to challenge on any ground whatsoever the very validity of the process in which he participated. For the aforesaid reason, in my considered opinion, the petitioners having applied for grant of mineral concession under the notification dated 05.02.2008 and having failed, it does not lie in their mouth to challenge the notification dated 05.02.2008 in any manner whatsoever. Whatever challenges, the petitioners may have conceivably had, in equity, stands abandoned by the petitioners on the basis of their conduct and of acquiescence. On this count also the writ petition at the instance of the petitioners is unsustainable and deserving of dismissal. Further, the present writ petition had been filed before this court on 27.05.2012. The petitioners appear to have approached the Hon''ble Supreme Court sometime only in the year 2012. The period during which the writ petition No. 195/2012 was pending before the Hon''ble Supreme Court would be liable to be condoned. Yet it was for the petitioners to satisfy this Court as to why a challenge to the notification dated 05.02.2008 was not pursued by them for over three years to its logical

conclusion prior to approaching the Hon"ble Supreme Court. No attempt whatsoever has been made by the petitioners to explain the delay (excluding the period the matter was under challenge before the Hon"ble Supreme Court) in filing the writ petition challenging inter alia the notification dated 05.02.2008 in the month of August, 2012. Even though the limitation provisions under the Act of 1963 do not per se attract to petitions under Article 226 of the Constitution of India, yet under the doctrine of laches, a delayed challenge in a petition under Article 226 of the Constitution of India is not to be entertained as an aggrieved party is under an obligation to approach the Court with reasonable expedition. The word "reasonable" no doubt is a matter of uncertain connotation yet in the context of laches, it has been held by the Hon"ble Supreme Court that the delay of more than the period of limitation under the Act of 1963 relevant to a civil suit on the cause of action in issue would be sufficient to hold that the writ petition was liable to be dismissed only on the ground of laches. A civil suit for declaring the notification dated 05.02.2008 as illegal and ultra vires could have to be filed within three years of its publication with reference to Article 58 of the Limitation Act which provides that a suit for declaration other than that covered by Article 56/57 of the Limitation Act has to be filed within 3 years commencing the date when the right to sue first accrued. In the instant case, excluding the period spent by the petitioners in pursuing the remedy before the Hon"ble Supreme Court by resort to a writ under Article 32 of the Constitution of India, there appears to be a delay of more than three years in challenging the notification dated 05.02.2008 by this writ petition and consequently the challenge in the writ in so far as it relates to a challenge to notification dated 05.02.2008, is liable to be dismissed also on the ground of laches.

18. Aside of the aforesaid, the clarificatory circular dated 17.03.2011 whereunder the LOIs granted to the private respondents during the period 05.02.2008 and 03.07.2009 were processed has not been challenged before this Court. In fact the circular dated 17.03.2011 has been suppressed from this Court. On this count also, in my considered opinion, the writ petition is lacking in fundamental merit and also liable to be dismissed. Further as pointed out by the respondents in the reply to the writ petition, over 70 mining leases have been granted in the scheduled areas of Banswara District pursuant to the notification dated 05.02.2008 and are operational and yet they have not been inexplicably put to any challenge by the petitioners. Similarly the petitioners have also not put to challenge the processing of LOIs granted to Prabhash Rajgadga and Poonam Rajgadga prior to 03.07.2009 and processed thereafter under circular dated 17.03.2011 issued by the State Government fructifying into a mineral concession in the scheduled areas. Only a selective challenge thus appears to have been made in respect of the LOIs granted to respondent Nos. 5 to 10 & 12 between 05.02.2008 and 03.07.2009 and further processed for grant of mining lease under the circular dated 17.03.2011. A selective challenge, to my mind, is indicative of the petitioners not coming before this Court with clean hands and a clean heart and the invocation of judicial review powers of this Court only to

impugn the mineral concession granted to respondent Nos. 5 to 10 & 12 appears to be mala fide and therefore not amenable to the equitable extraordinary jurisdiction of this Court.

19. It has also to be noted that the present writ petition has been jointly filed by five petitioners, each of whom had applied under the impugned notification dated 05.02.2008 for grant of a mining leases in scheduled areas of Banswara District and which applications were dismissed. No appeal or revision under Rules 43 and 47 MMCR Rules 1986 was filed by the petitioners. In the present writ petition, a prayer inter alia is that this Court in the event of finding that notification dated 05.02.2008 is valid, should direct fresh consideration of the applications of petitioners Nos. 2, 3 & 5 in accordance with law for reason of the fact that the Hon"ble Supreme Court granting liberty to approach this Court under its order dated 21.08.2012 had excluded the right of the petitioners Man Singh Meena and Magan Devi Meena to claim relief in respect of the rejection of their applications for grant of mining lease. In my considered opinion, each of the petitioners had an independent right and cause of action with regard to the rejection of his/her mining lease. Article 226 of the Constitution of India does indeed confer extraordinary jurisdiction in the High Courts and the said jurisdiction is not cribbed and confined by ordinary limitations of procedure prescribed under the Code of Civil Procedure. Yet the Hon"ble Supreme Court in the case of Dhanyalakshmi Rice Mills and Others Vs. The Commissioner of Civil Supplies and Another, has held that where each of the petitioners had an individual and independent cause of action, a joint petition by such petitioners would be hit by misjoinder of parties and it would not be proper in such circumstances to entertain such a petition.

20. Thus even though the writ petition as laid before this Court would have been liable to be dismissed on multiple grounds as detailed hereinabove, yet in my consideration opinion, in the overall facts of the case, it would be appropriate to address the merits of the petitioners case which fundamentally relates to allegations of the absence of any right in law inhering in non-tribals for the grant of mineral concession in scheduled areas notified under the presidential notification dated 12.02.1980 for the State of Rajasthan.

21. The lynchpin of the argument of the petitioners in laying a challenge to the notification dated 05.02.2008 is that by opining up the scheduled areas in the State of Rajasthan for grant of mineral concessions to non-tribals, the judgment of the Hon"ble Supreme Court in the case of Samatha (Supra) and enunciation of law therein has been violated. Reliance has also been placed on the notification dated 03.07.2009 issued by the State of Rajasthan to contend that the grant of mining lease to non-tribal in the Schedule-V areas in the State of Rajasthan subsequent to 03.07.2009 is wholly arbitrary hence illegal and liable to be set aside.

22. Grant of mineral concession in respect of minor minerals in the State of Rajasthan is governed by MMCR Rules, 1986 and policy decisions of the State of

Rajasthan as extant from time to time. The issue therefore for consideration of this Court is as to whether the grant of LOIs to the respondent Nos. 5 to 10 & 12 before 03.07.2009 pursuant to their applications following the notification dated 05.02.2008 for the mineral marble in Banswara District which is part of scheduled areas notified by the President under notification dated 12.02.1980 and the further processing of the aforesaid LOIs under the circular dated 17.03.2011 to fructify into mining leases is illegal, arbitrary and unconstitutional or otherwise liable to be quashed and set aside on any ground. In my considered opinion, the petitioners have no case whatsoever for the reasons detailed hereinbelow.

23. Under the presidential notification dated 12.02.1980, District Banswara inter alia has been notified to be a scheduled area under Schedule-V to the Constitution of India which provides for the special measures for the administration and control of scheduled areas and Schedule Tribes. Under Para (5) of Schedule-V of the Constitution of India, the Governor has the power to issue any public notification directing that any particular Act of Parliament or of the Legislature of the State shall not apply to a scheduled area or any part thereof in the State or shall apply to a scheduled area or any part thereof in the State subject to such exceptions and modifications as he may on his satisfaction direct in the notification to be operative even retrospectively. Under the Para 5(2) the Hon'ble Governor also has been empowered to make regulations, inter alia for the good government of scheduled areas, effective the date of consent of the President of India. No such power under Para 5(1) in Para 5 (2) of the Vth Schedule to the Constitution of India however has been exercised by the Hon'ble Governor of Rajasthan. Consequently the obtaining law in the State of Rajasthan for grant of minor mineral concession remains under the MMCR Rules, 1986. Rule 4(8) of MMCR Rules 1986 incorporated effective 12.04.2002 provides that no prospecting licence, mining lease or other mineral concession in respect of a minor mineral shall be granted in the scheduled area without obtaining the prior recommendation of the Panchayati Raj Institutions at appropriate level as prescribed under Rajasthan Panchayati Raj (Modification of Provisions in their application to the Scheduled Areas) Act, 1999 (hereinafter "the Act of 1999"). Section 3 of the Act of 1999 provides that "notwithstanding anything contained in the Rajasthan Panchayati Raj Act, 1994 or in any other law for the time being in force, the provisions of the said Act or any other law, as the case may be, shall, as respect of the Scheduled Areas of the Rajasthan be applicable subject to the following exceptions and modifications, namely: Clause (i) that no prospecting licence or mining mineral for minor minerals in the Scheduled Areas shall be granted to any person or body of persons without obtaining prior recommendation of the Gram Sabha or the Panchayati Raj Institution at such level and in such manner as may be prescribed. A reading of Section 4(8) of MMCR Rules, 1986 and the corresponding Section 3 of the Act of 1999 indicates that there was no prohibition at the time relevant intended or made by the Rajasthan State Legislature whereunder mining lease to non-tribals could not be

granted in the scheduled areas. Only a procedural mechanism was introduced specifically for grant of mining lease in the scheduled area notified by the President. It is thus evident that far from any prohibition in the grant of mineral concession in scheduled area to non-tribals, the legal regimen in the State of Rajasthan in fact at the relevant time visualized grant of such mineral concession subject to the procedural safeguard of prior recommendation of the Gram Sabha or the concerned Panchayati Raj Institution in the scheduled areas. It is however true that even without any legislative prohibition or the modification of state laws by the Hon"ble Governor by resort to the ample powers under Para 5 of Schedule-V of the Constitution of India, the State Government in the exercise of its executive power can restrict and/or regulate the grant of mineral concession in the scheduled areas to any category of persons completely or to a limited extent. This appears to have been done by the State Government vide its three circulars Nos. 05.09.2000, 14.09.2000 and 18.12.2000. Challenges to the aforesaid circulars in the case of Smt. Kanta Jain have also indeed been upheld upto the Hon"ble Supreme Court and consequently the powers of the State Government on this count cannot be doubted.

24. However, it cannot be equally doubted that the State Government has the power to modify its policy decisions from time to time. This appears to have been done by the State Government vide notification dated 05.02.2008 on a fresh understanding of the directions of the Hon"ble Supreme Court in the case of Samatha (Supra) followed by the judgment of Balco (Supra). Thereupon the scheduled areas as notified by the President under notification dated 12.02.1980 were opened up for consideration of applications for consideration of grant of mineral concession to all and sundry i.e. tribals and non-tribals with requisite eligibility. It is in pursuance to the notification dated 05.02.2008 that the petitioners and respondent Nos. 5 to 10 & 12 had made the applications for grant of mineral concession in respect of minor mineral marble. Along with the answering respondents over 100 other applicants, mostly non-tribal, had made similar applications for grant of mineral concession. It is not disputed that 70 mining leases were granted in the scheduled areas on consideration of the applications under notification dated 05.03.2008 and prior to "orders of abeyance/status quo" issued on 03.07.2009. In the meantime, the respondent Nos. 5 to 10 & 12 as also Prabhash Rajgadga and Poonam Rajgadga had been issued letters of intent before 03.07.2009, but could not be granted mining leases for reasons of the necessity of obtaining the approval of the Central Government u/s 2 of the Act of 1980 as the applications pertained to areas falling partially or wholly in the forest area. Resulting from the order dated 03.07.2009, in spite of grant of LOIs further processing for grant of mining leases to the respondent Nos. 5 to 10 & 12 & others appears to have been stalled till the State Government under its order dated 17.03.2011 clarified that the abeyance/status quo under the order dated 03.07.2009 was not operative in respect of LOIs granted prior to 03.07.2009 on the applications made pursuant to the notification dated 05.02.2008. The reasoning and the logic of the order

dated 17.03.2011 appears to have been that the applicants for mineral concession in District Banswara, a scheduled area, pursuant to the notification dated 05.02.2008 constituted one homogeneous class and mining leases/mineral concessions having been granted to 70 applicants prior to 03.07.2009, the remainder applicants who had been granted LOIs on their applications, but could not be granted mining leases for the fortuitous circumstance of want of requisite clearance u/s 2 of the Act of 1980, could not be treated differentially. Thus the applications made under the notification dated 05.02.2008 on which LOIs had been issued had to be taken to their logical conclusion. In my considered opinion, the circular dated 17.03.2011 aside of not being put to challenge before this Court appears to have been a reasonable clarification/policy of the State Government to sustain the homogeneity of the applicants for the grant of mining lease pursuant to the notification dated 05.02.2008 and not segregate an otherwise homogeneous class owing to a fortuitous circumstance.

25. The Hon''ble Supreme Court in the case of Balco (Supra) has held that Samatha's case (Supra) was adjudicated in the context of Section 3(1) of the A.P. Scheduled Areas Land Transfer Regulation, 1959 framed by the Hon''ble Governor of A.P. in the exercise of power under Para 5 of Schedule-V of the Constitution of India. The Hon''ble Supreme Court in Balco (Supra) then noted that the Bench hearing Samatha's case (Supra) even otherwise appeared to have breached the mandate of Article 145(3) of the Constitution of India in addressing a substantial question of law as to the interpretation of schedule-V of the Constitution of India when such interpretation could only have been resorted to and undertaken by a Constitutional Bench comprising of five Hon''ble Judges of the Hon''ble Supreme Court. The Hon''ble Supreme Court further held that the principle enunciated in Samatha's case (Supra) would not apply to situations where for the scheduled areas the Governor of the concerned State had not exercised his power under Para 5 of Schedule-V of the Constitution of India and promulgated regulations excluding non-tribals from scheduled area inter alia for grant of mineral concession. So holding the Hon''ble Supreme Court concluded that the judgment in Samatha's case (Supra) conclude(was in apposite to the case arising from the State of M.P. before it as no regulations similar to the A.P. Scheduled Areas Land Transfer Regulation, 1959 had been framed by the Governor of Madhya Pradesh. It is not in dispute that the case in the present writ petition is parallel to the case before the Hon''ble Supreme Court in Balco's case (Supra) and not in Samatha's case (Supra), inasmuch as in Balco's case (Supra), no regulations have been framed by the Governor of Rajasthan similar to A.P. Scheduled Area Land Transfer Regulation, 1959 or otherwise by resort to power under Para 5 of Schedule-V of the Constitution of India. Consequently, in my considered opinion, there is no substance in the case set up by the petitioners that the notification dated 05.02.2008 should be quashed and set aside and the grant of mineral concession to respondent Nos. 5 to 10 & 12 in the scheduled area of Banswara District be rejected in view of the judgment of the Hon''ble Supreme Court in the case of Samatha (Supra). I am also of the

considered opinion that the grant of mining leases to the answering respondents can also not be impugned with reference to the circular dated 03.07.2009 particularly in view of the clarificatory circular dated 17.03.2011 issued by the State Government which is not under challenge before this Court. The LOI holders following the applications for grant of mining lease in scheduled areas under notification dated 05.02.2008 were covered by circular dated 17.03.2011.

26. Consequently, I am of the considered view that neither under any provision of law, nor the judgment of the Hon'ble Supreme Court, nor for that matter because of the order dated 03.07.2009, the LOIs granted to the respondent Nos. 5 to 10 & 12 pursuant to their applications following notification dated 05.02.2008 or the subsequent grant of mining leases to the respondent Nos. 5 to 10 & 12 with reference to circular dated 17.03.2011 are liable to be quashed and set aside.

27. I also find no force in the case set up by the counsel for the petitioners based on Section 42 of the Act of 1955. Section 42(b) of the Act of 1955 provides that the sale, gift or bequest made by a Khatedar tenant of his interest in the whole or part of his holding shall be void if such sale, gift or bequest by a member of Scheduled Caste is in favour of a person who is not a member of the Scheduled Caste or by a member of the Scheduled Tribe in favour of a person who is not a member of the Scheduled Tribe would be void. This ground has been agitated by the petitioners in a vacuum and no factual foundation therefor has been set out in the writ petition and even in the course of submissions before this Court. The case before this Court is not a case where land is being transferred by a Scheduled Tribe/Scheduled Caste Khatedar to a non-Scheduled Tribe/non-Scheduled Caste person. The case at hand does not relate to khatedari land. Instead the land in issue in the scheduled area appears to belong to the land holder i.e. the State Government. A land holder stands in contradistinction to a khatedar who is the tenant of the land holder. No such situation obtains and it is not the petitioners' case in the petition that khatedari land recorded as that of Tribal is being transferred to the respondent Nos. 5 to 10 & 12. The ground based on Section 42(b) of the Act of 1955 agitated belatedly as an afterthought in the written submission is obviously a last desperate attempt to sustain an otherwise untenable writ petition. I find no force in the submission made and it is therefore rejected.

28. The writ petition is wholly without legal foundation, without merit, misdirected on a misplaced foundation of the Samatha's judgment (Supra) overlooking the subsequent judgment of the Hon'ble Supreme Court in the case of Balco (Supra). The writ petition is thus liable to be dismissed with cost.

29. It needs no reiteration that the remedy under Article 226 of the Constitution of India is inter alia an equitable remedy - invocation of which is to be premised as of necessity on the petitioner approaching this Court with clean hands and clean heart with full disclosure of the material facts. As detailed earlier in this judgment, the petitioner Nos. 1 & 4 have suppressed the factum of filing earlier

writ petitions and their withdrawal without as much as liberty to file afresh obtained from this Court at the time of withdrawal. It has also been found that the circular dated 17.03.2011 which was of grave importance in the grant of mineral concession to the private respondents Nos. 5 to 10 & 12 and which has been found to be in the knowledge of the petitioners, was suppressed from this Court in the writ petition. Further it has also been found that the entire premise for the laying of the present writ petition was founded upon the judgment of the Hon''ble Supreme Court in Samatha's case (Supra) which had been distinguished and differed with by the Hon''ble Supreme Court in Balco's case (Supra). Further this petition has been filed after the petitioners applied under the notification dated 05.02.2008, took their chance and suffered rejection making it evident that the petition is not so much to advance the cause of justice and adherence to law but a mere camouflage of the petitioners' disappointment at their own failure masquerading as an alleged violation of Schedule-V of the Constitution of India in grant of mineral concessions to non-tribals. In my considered opinion, albeit the levy of cost is the discretion of this Court, yet where the circumstances obtain as detailed hereinabove, it would be a duty of this Court to levy costs. The court fee for filing a writ petition by deliberate legislative design has been kept at a very minimum of Rs. 25/- with the intent of promoting easy access to justice. Yet it cannot be gainsaid that the liberal access to this Court inheres in itself a responsibility and accountability on the litigants/petitioners to eschew unwarranted litigation in case where similar petitions with identical issues have been withdrawn without liberty and the issue is apparently settled under the dictum of the Hon''ble Supreme Court (Balco's case). Easy access to this Court when misused should be balanced by substantial exit cost. In my considered opinion, this Court would also be failing in its duty to keep the stream of justice pure in the event misdirected writ petitions when dismissed inter alia on account of suppression of material facts were not visited with exemplary cost. The Hon''ble Supreme Court in the case of A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by Its President etc., has held as under:--

43.4 Once the court (discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.

30. Hence this petition is dismissed with cost of Rs. 1,00,000/- to be paid to Rajasthan State Legal Services Authority within a period of three months from the date of this judgment. In the event, the cost directed by this Court were not to be deposited within the stipulated period, the Rajasthan State Legal Services Authority would be free to move an appropriate application before this Court for passing necessary orders for the recovery of cost inter alia if warranted as arrears of land revenue. A copy of this order be sent to the Rajasthan State Legal

Services Authority.