

(2020) 11 OHC CK 0014

In the Orissa High Court

Case No : Writ Petition No.6068 Of 2009

M/s Jindal Steel & Power Limited & Another

APPELLANT

Vs

State Of Orissa And Others

RESPONDENT

Date of Decision : 02-11-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Companies Act, 2013 — Section 68, 179

Code Of Civil Procedure, 1908 — Order 6 Rule 14, Order 29 Rule 1

Orissa Minor Minerals Concession Rules, 1990 — Rule 2(o), 3, 10(2), 13

Orissa Minor Minerals Concession Rules, 2004 — Rule 64, 68(1), 68(1)(i), 68(4)

Citation : (2020) 11 OHC CK 0014

Hon'ble Judges : S. K. Mishra, J; Dr. A. K. Mishra, J

Bench : Division Bench

Advocate : Sanjit Mohanty, Patitapaban Panda, R.R. Swain, S. Mohanty, S. Patnaik, Jagannath Patnaik, B. Mohanty, T.K. Patnaik, A. Patnaik R. P. Roy, N. Panda, D.K. Nayak, S.K. Nayak, S.K. Sahoo, Subir Palit

Final Decision : Dismissed

Judgement

S.K.Mishra, J.

1. By this writ petition, the petitioner- M/s Jindal Steel & Power Limited has prayed for issuance of a writ of mandamus to quash the notice dated

03.03.2009, Annexure-4 issued by the Asst. Collector-in-Charge-Cum-Tahasildar, Banarpal directing the petitioner no.1-Company to pay an amount

Rs.1,23,57,883.00/- towards Royalty, Penalty Surface Rent and Dead Rent by 13.03.2009 in terms of Rule 68(1)(i) of the Orissa Minor Minerals

Concession Rules, 2004. The Jindal Steel & Power Limited is a Company incorporated under the provisions of the Companies Act, 1956, having its

Registered Office at Delhi Road, Hissar, Haryana. The petitioner no.1-Company is setting up an Integrated Steel Plant at Similipada, district Angul in

the State of Orissa. The petitioner no.2 is the Head of the Department (F & A) of the petitioner no.1-Company and is a citizen of India.

2. The petitioner no.1-company entered into a Memorandum of Understanding (MOU) with the Government of Orissa on 03.11.2005 for setting up of

a Beneficiation Plant at Deojhar, Keonjhar & Integrated Steel Plant at Angul having production capacity of 6 MTPA and 1100 MW Captive Power

Plant with a total investment of Rs.22,420 Crores. In the said MoU, the State Government had promised to extend various facilities in respect of land,

water, electricity, coal and Iron Ore for setting up the proposed 6 MTPA Steel Complex.

3. In pursuant to the MoU dated 03.11.2005, the Orissa Industrial Infrastructure Development Corporation Limited (IDCO) executed lease deed dated

30.07.2007 for outright payment for industrial plots with the petitioner no.1 company for lease of land comprising of Ac.346.46 dec. at a total

consideration of Rs.8,18,46,941/- subject to the terms and condition mentioned in the lease deed.

4. It is further pleaded that the petitioner no.1 company requires approximately 5750 acres of land for setting up the Steel Plant, out of which IDCO

has already leased out a total area of 2900 Acres of land including Government and Private Lands by executing lease deeds (including Lease Deed

dated 30.07.2007) with the petitioner no.1 Company for setting up of the proposed steel plant. After the possession of the lands, the same were

handed over to the petitioner no.1 Company. The petitioner no.1 Company started construction of raising boundary wall of the Steel Plant in terms of

the MoU dated 03.11.2005.

5. It is submitted that as the leased out land in terms of lease deed dated 30.7.2007 for Ac.346.47 dec. (including Ac.112.75 dec. of land in village

Basudevpur) comprised of both low lying area as well as rocky and uneven surface, the petitioner no.1 Company, in order to set up the integrated

steel plant, had to make the filling, leveling and grading of land by cutting uneven surface by removing earth, stone and moorum from the said uneven

surface of the leased out area and utilizing the same for filling up/leveling/grading the low lands of the lease out area. It is pleaded that the petitioner

no.1 Company has never dug out/excavated anything from the leased out land for winning of any minor mineral excepting cutting uneven surface as

well as removing earth, stone and moorum from the said uneven surface of the leased out area and utilizing the same for filling up/leveling/grading the low lands within the leased out area.

6. It is relevant to mention that the sand, earth, stone and moorum generated during cutting of uneven surface of land have never been utilized for any construction purpose nor have been transported and/or removed out of the leased hold area granted by IDCO for setting up of the steel plant. The said sand, earth, stone and moorum generated from cutting of uneven surface of land were used only for filling, leveling and grading of low lying land within the lease hold area of the petitioner no.1 Company.

7. Since the work of leveling and grading of earth by giving even size does not amount to either extraction or removal of minor mineral, such as earth, stone and moorum nor involves any quarry operation for extraction or removal of any minor mineral, in fact the petitioner no.1 Company is leveling and grading the surface of the land so that the same would be a plain level field, upon which the civil construction can be carried out for setting up of the Steel Plant. Such leveling and grading work is neither a quarry nor a mining operation.

8. It is submitted that said work of leveling/grading of earth would not amount to excavation of minor minerals, rather the said work tantamount to bona fide leveling/grading of the site as permitted by IDCO under Clause 12 of the Lease Deed dated 30.7.2007. Further such leveling/grading work is only to make the leased out land feasible for setting up of the steel plant.

9. It is further submitted that neither any excavation or collection or removal has been done for winning of minor minerals nor the same has been disposed of by the petitioner no.1 Company. Rather the earth, stone and moorum from the uneven surface of the leased out area are being utilized for bona fide domestic consumption i.e. for filling up/leveling/grading the low lands for construction/setting up of the Steel Plant in terms of MoU dated 3.11.2005 as well as Clause 54 of the Lease Deed dated 30.7.2007.

10. It is submitted that the petitioner no.1 Company has obtained the lease of Ac.346.47 dec. vide Lease Deed dated 30.7.2007 (Anenxure-1) from IDCO for the purpose of setting up of its Steel Plant. Petitioner no.1 Company has never obtained either any Prospecting Licence under Chapter-II or Mining Lease under Chapter-II or Quarry Lease under Chapter-IV or Quarry

Permit under Chapter-V nor participated in any auction under Chapter-VI of the Rules 2004 for winning i.e. extraction and/or removal of any Minor Minerals.

11. As the matter stood, thus, the Tahasildar, Banarpal (opposite party no.3) issued notice dated 16.2.2009 to the Executive Director of petitioner no.1

Company alleging therein that the petitioner no.1 Company has unauthorizly extracted and removed 870029 Cum of Earth in village Basudevpur (over

Ac.112.75 dec. of

land in village Basudevpur) and has used in constructions/maintenance of different civil work, without obtaining prior permission from the Competent

Authority, which is illegal extraction & removal of minor minerals as per Rule 68(1)(i) of the Rules, 2004 and directed the petitioner no.1 Company to

show cause as to why Royalty and Penalty amounting to Rs.1,23,57,883.00/- will not be realized for such illegal activity.

12. Thereafter, the petitioner no.1 Company filed a show-cause before the opposite party no.3. Its grievance is that without giving adequate

opportunity of hearing to the petitioners and without giving any reasons including provisions of law, the opposite party no.3 rejected their show cause

and directed the petitioner no.1 Company to pay the aforesaid amount towards Royalty and Penalty by 13.3.2009. Hence, this writ petition,

13. The opposite party no.1 has filed counter affidavit. The opposite party no.1 contended that the writ petition is not maintainable as it devoids of

merit and liable to be rejected. The opposite party no.1 further claims that the similar issue arose before the Hon'ble Supreme Court in Civil Appeal

No.2235 of 1996, wherein the Hon'ble Supreme Court has held that the use of minor minerals on the railway track, after being excavated from the

land, not coming under the expression 'bona-fide domestic consumption', the said operation would be a quarrying operation under Rule 2(o) of

Orissa Minor Minerals Concession Rules, 1990 and consequently the embargo contained in Rule 3 of the Orissa Minor Minerals Concession Rules,

1990 makes it crystal clear that the Railway Administration can not undertake the quarrying operation unless a permit is granted in its favour and

consequently if the Railway Administration utilizes the minor minerals from the land for the railway track, it would be bound to pay the royalty

chargeable under the Orissa Minor Minerals Concession Rules. The liability for

payment of royalty accrues under Rule 13 of the Orissa Minor

Minerals Concession Rules, 1990 and no doubt speaks of a lease deed. If the Railway Administration though not a lessee and at the same time is not

authorized under Rule 3 to undertake any quarrying operation for the purpose of extraction of minor minerals, then for such unauthorized action, the

Railway Administration would be liable for penalties, as contained in Rule 24 of the Orissa Minor Minerals Concessions Rules 1990. This being the

position and in view of the prohibition contained in sub rule 2 of Rule 10 of the Orissa Minor Minerals Concessions Rules, 1990 and taking into account

the fact that such minor minerals would be absolutely necessary for laying down the railway track and maintenance of the same, the Hon^{ble}

Supreme Court held that the Railway Administration would be bound to pay royalty for the minerals extracted and used by it in laying down the

railway track.

14. The specific case of the opposite party no.1 is that in reply to averments made in para 8, it is submitted that although the petitioner no.1 Company

has been leased out certain amount of land in village Basudevpur in Angul district for the purpose of setting up of the steel plant, the petitioner has

neither been permitted to extract/remove the minor minerals such as earth, stone, moorum from the said site nor the petitioner has sought for any

permission from the Government for the same. It is further pleaded by the opposite party no.1 that the sand, earth, stone and moorum generated from

the cutting of uneven surface of leased out land and utilization of the same for filling, leveling and grading of low lying land within the lease hold area

of the petitioner is certainly not a ^{bona-fide} domestic consumption, rather it is commercial activity. Hence, the petitioner no.1 Company is liable for

royalty and penalty for utilization of the earth, stone, sand and moorum in leveling/grading the lease hold area in terms of the provisions of the Act and

the Rules governing the Minor Minerals. Such leveling and grading work do not coming under the expression of ^{bona-fide} domestic consumption. It

is a quarrying operation for the purpose of extraction of minor minerals.

15. The opposite party nos.2 and 3 have filed their counter affidavit stating that the alternative forum available under Rule 64 of the Orissa Minor

Minerals Concessions Rule has not been exhausted, hence, the writ petition is not maintainable.

The opposite parties claim that the present petitioner not the owner of the lease in question, he has only the lease hold rights over the same and cannot

use generated minor minerals for bona-fide domestic consumption The judgment relied upon by the petitioner in the show-cause reported in AIR 2006

ORISSA 154 is not applicable to its case. The petitioners also claim that since the lease have only the surface right as per the lease deed and has

received the land in as is where is condition, he cannot utilize the Minor Minerals such as sand, moorum, earth, stone etc. for the commercial use for

erection of the Industrial unit and the petitioner is liable to pay a ground rent and other statutory dues to the concerned authorities including Royalty as

leviable as in the present case.

16. The learned Senior Advocate Shri Sanjit Mohanty appearing on behalf of the petitioner-company assailed the annexure-4 stating that the question

in this writ petition is, whether royalty and penalty are liable to be paid by the petitioner under the 2004 rules for utilizing earth, stone, moorum which

has been generated in process to leveling and grading low lying land uneven land lease of the petitioner company by IDCO for setting of the steel

plant. He argued that the petitioner company entered into a Memorandum of Understanding (MoU) with the Government of Odisha on 3.11.2005 for

setting up integrated Steel Plant at Angul having production capacity of 6 MTPA and 1100 MV Captive Power Plant. In the said MoU, the State

Government has promised to extend various facilities in respect of land, water, electricity, coal and iron ore for setting up of the said plant.

17. Pursuant to the MoU dated 3.11.2005 Odisha Industrial Infrastructure Development Corporation Ltd., (IDCO) executed lease deed on outright

payment for industrial plots with the petitioner for lease of land comprising of area 346.47 dec. (including Ac.112.75 village Basudevpur) at a

consideration of Rs.8,18,46,941/-for 99 years in village Basudevpur under Banarpal Tahasildar, respectively, subject to the terms and conditions

mentioned in the lease deed. Both the aforesaid land are low laying area as well as rocky and uneven surface. The petitioner company in order to set

up the integrated Steel Plant had to make the filling, leveling and grading of the land by cutting uneven surface by removing earth, sand, moorum from

the said uneven surface of the leased out area and utilizing the same for filling, leveling and grading the low lands in the leased out land area.

18. It is further submitted that the petitioner no.1 Company has never dug out/ excavated anything from the leased out land for winning of any minor mineral excepting cutting uneven surface as well as removing earth, stone, moorum from the said uneven surface of the leased out area and further the said sand earth, stone and moorum generated during cutting of uneven surface have never utilized for any constructions purpose nor have been transported or removed from the leased hold area granted by IDCO for setting up the Steel Plant and as such the same does not amount to quarry operation for winning of any minor minerals. Hence, it does not attract payment of royalty and interest and more so, the petitioner company is having the surface rights over the leased out area and paid the cost of the land and paying rent and cess to the State Government for the self-same purpose, whereas the lessee who holds the mining lease stood in a different footing as per the 2004 Rules. Therefore, the petitioner is not liable to pay any amount towards royalty and interest as demanded by the Tahasildar under Annexure-4 and inasmuch as the Tahasildar has no jurisdiction to issue such notice under Rule 68(1) of the Orissa Minor Minerals Concessions Rules, 2004.

19. He relied on the reported case of Nalini Kumar Das v. State of Orissa & Ors. AIR 2006 ORISSA 15 and submitted that the petitioner cannot be held liable for payment of royalty for extracting minerals from his own land. Further, he relied upon the case of State of Rajasthan v. Hindustan Zinc Ltd., 2013 Volume 2 Supreme Court Today, 129 and submits that if the minerals removed from the lease hold area, royalty is chargeable but if minerals remain in the lease area which are dump or return to the mother earth cannot be chargeable for payment of royalty. He also relied upon the reported case of State of Orissa and Others v. Union of India and Another, (2001) 1 Supreme Court Cases 429 and argued that the petitioner is not liable to pay the penalty and royalty as claimed by the opposite party. He also relied upon the case of Promoters and Builders Association of Pune v. State of Moharashtra and Others, (2015) 12 Supreme Court Cases 736.

Mr. Subir Palit, learned Additional Government Advocate submits that the judgment of the Hon'ble Supreme Court in the case of State of Orissa and Others v. Union of India and Another (supra) in fact supports the case of the opposite party and goes against the stand taken by the petitioner. He

also argues that the minor minerals having used by commercial purpose not for domestic purpose cannot be said to be exempted from royalty and

penalty. It is also argued by Mr. Subir Palit, learned Additional Government Advocate that the writ petition may not be maintainable as there is no

averments in the writ application that the appeal has been preferred by the company through one of its principal officer nor there any mention that the

Board of Director Authorized Shri Murali Dhar Sinha, Head of the Department (F & A) of the present writ petition on its behalf. We have also heard

learned Senior Advocate Shri Jagannath Patnaik on this account.

20. In order to consider the case, we have to take note of various provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as "the

Code") as well as the Companies Act, 2013. Order 6, Rule-14 of the Code provides pleading to be signed by party which is quoted below:

"Every pleading shall be signed by the party and his pleader (if any):

Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized

by him to sign the same or to sue or defend on his behalf."

Order 29, Rule-(1) of the Code provides for subscription and verification of pleading on behalf of a Company which is quoted below:

"In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case."

Section 179 of the Companies Act, 2013 provides for the powers of Board which quoted as below:

"(1) The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise

and do:

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the

memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting:

Provided further that the Board shall not exercise any power or do any act or

thing which is directed or required, whether under this Act or by the memorandum or

articles of the company or otherwise, to be exercised or done by the company in general meetingâ??.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

(3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:â?

(a) to make calls on shareholders in respect of money unpaid on their shares;

(b) to authorise buy-back of securities under Section 68;

(c) to issue securities, including debentures, whether in or outside India;

(d) to borrow monies;

(e) to invest the funds of the company;

(f) to grant loans or give guarantee or provide security in respect of loans;

(g) to approve financial statement and the Board's report;

(h) to diversify the business of the company;

(i) to approve amalgamation, merger or reconstruction;

(j) to take over a company or acquire a controlling or substantial stake in another company;

(k) any other matter which may be prescribed:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal

officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to

(f) on such conditions as it may specify:

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or

otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such

conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the

meaning of this section.

Explanation I.â?"Nothing in clause (d) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State

Bank of India or any other banks established by or under any Act.

Explanation II.â?"In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the

arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day

operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

(4) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of

any of the powers specified in this section.â??

21. In the case of M/s. Nibro Limited â?"vrs.- National Insurance Co. Ltd.: reported in AIR 1991 DELHI 25; it has been held:

â??Order 29, Rule 1 of the C.P.C. does not authorize persons mentioned therein to institute suits on behalf of the Corporation. It only authorizes them to sign and verify the pleadings on behalf of the corporation. It is well settled that under Section 291 of the Companies Act except where express provision is made that the

powers of a company in respect of a particular matter are to be exercised by the company in general meeting- in all other cases the Board of Directors are entitled to

exercise all its powers. Individual directors have such powers only as are vested in them by the Memorandum and Articles.

Thus, unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company.

Needless to say that such a power can be conferred by the Board of Directors only by passing a resolution in that regard.

The question of authority to institute a suit on behalf of a company is not a technical matter. It has far reaching effects. Xx xx xx xx xx xx xx. The

authorization, in the

case of a company can be given only after a decision to institute a suit is taken by the Board of Directors may in turn authorize a particular director, principal officer or

the secretary to institute a suit.â??

In the case of United Bank of India â??vrs.- Naresh Kumar and others: reported in AIR 1997 SC ,3 dealing with the similar question with respect to a

suit filed by a public sector bank, the Hon?ble Supreme Court has held as follows:

â??In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere

technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under

the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is

required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the

company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by against a corporation the Secretary or any Director or other Principal

officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order

29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person

referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors

Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its

behalf and this would be regarded as sufficient compliance with the provisions of

Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being

executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action

of its officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the

circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading

by its officer.??

In a matter arising out of an order of this Court, the Hon?ble Supreme Court in the case of EIMCO ELECON(I) Ltd. ?"vrs.- Mahanadi Coal Fields

Ltd. & Ors.Â (in Special Leave to Appeal (Civil) No.21619 of 2010) considering the merit of such submissions, passed an order on 16.07.2020 as

follows:

â??This Special Leave Petition has been filed against an order dated 16th July, 2010, passed by the Orissa High Court, in Writ Petition (C) No.2334 of 2010,

dismissing the petitioner?s writ petition on the technical ground that the Sales Manager, Debarshi Mitra, was not competent to represent the Company. The matter

was not heard on merits.

Having regard to the fact that the respondents are duly represented, without disturbing the order of the High Court, we grant leave to the Company to file a fresh writ

petition on the same case of action, through its proper or duly authorized representative.â??

22. Hence, in certain situation in public interest a strict adherence to the Rules of filing of proceeding, a suit or a writ petition can be relaxed, especially

when the public interest is involved.

23. Learned counsel for the petitioner relied upon a judgment of the Hon?ble Supreme Court passed in the case of PromotersÂ and Builders

Association of Pune ?"vrs.- State of Maharashtra and Others: (2015) 12 SCC 73 6and a reported judgment of this Court passed in the case of Nalini

Kumar Das vs. State of Orissa and Ors.: AIR 2006 Orissa 154 and argued that there is no provision under the Mines and Minerals

(Development and Regulation) Act, 1857 and Orissa Minor Minerals Concession Rules, 1990 to levy penalty on a lessee for removal and extracting

earth and other minerals from the land in question for its own use.

24. Relying on the case of State of Orissa and others vs. Union of India and another: reported in (2001) 1 SCC 429, learned counsel for the State

argued that operation being quarrying operation by the petitioners Company, the same would be covered under Rule 2(o) of the Orissa Minor Minerals

Concession Rules, 1990 and it would be a bona fide domestic consumption and hence, it will be liable for royalty.

25. In view of the judgment rendered in the reported case of State of Orissa & Ors., vs. Union of India (supra), we are of the opinion that this is a

case, whether the case of the petitioners being a lessee under the IDCO falls within the ambit and scope of person / corporation is liable to pay royalty

and penalty. In view of the judgment passed in the aforesaid case, view taken by this Court in Nalini Kumar Das vs. State of Orissa & Ors (supra)

can be held to be in proper proposition of law. If the Railways, who become the owner of the property, is held liable to pay royalty under the Orissa

Minor Minerals Concession Rules, 2004, we cannot come to the conclusion that a lessee of the original owner shall not be liable to pay royalty and

penalty. Hence, contentions raised by the learned counsel for the petitioners are also not tenable.

26. It is argued by the learned Senior Counsel for the petitioners Company that the order passed by Tahasildar, Banarpal hits by non-compliance of the

principle of natural justice. He relied upon the reported case of Sarguja Transport Service vs. State Transport Appellate Tribunal, AIR 1987 SC 88

(1987 SCR (1) 200). This reported judgment speaks about the principles of invitum beneficium non datur which means the law confers upon a man

no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right would lose it. The said ratio has no application to the

present case. In this case, there is no violation of principle of natural justice, as we are of the opinion that the Tahasildar, Banarpal-opposite party no.3

issued a notice to the petitioners Company to pay royalty and penalty and to show-cause. If the petitioners Company has any issue, it could have

raised before the Tahasildar, Banarpal. However, they have not filed any show-cause and have come to the Court directly. The principle of natural

justice is not violated in this case, as the petitioner had option to file show-cause before the Tahasildar, Banarpal, inter-alia, raising all such issues, law

and fact regarding their non-payment of royalty and penalty. So, we are of the opinion that there is no violation of the principle of natural justice.

27. Another aspect of the case is that a notice was issued to the Executive Director of the petitioners Company on 16.2.2009. The reply was given by

the petitioners Company on 25.2.2009 and after considering the same, the Asst. Collector-In-Charge-Cum-Tahasildar, Banarpal has passed the order

vide Annexure-4 on 03.03.2009. The lease agreement has also been entered into on 30.07.2007. It is also apparent from the records that the notice

dated 16.2.2009 has been filed by the petitioners Company, wherein show-cause was called from the petitioners Company. Thus, in view of the

aforesaid fact, the Orissa Minor Minerals Concession Rules, 2004 will be applicable to the present case. Rule-68 of the said Rules provides for

penalties. Sub-rule (4) of Rule 68 of the said Rules provides for recovery of rent, royalty or tax from such person the mineral so raised. The Orissa

Minor Minerals Concession Rules, 2004 recognizes two types of mineral leases i.e. (i) mining lease and (ii) quarry lease. It is argued on behalf of the

petitioners Company that in this case, the Orissa Industrial Infrastructure Development Corporation, IDCO Towers, Janpath, Bhubaneswar has made

an agreement with the petitioners Company for grant of lease comprising of Ac.346.47 of land for establishment of 6.00 MTPA Integrated Steel Plant

and 900 MW Captive Power Plant Project. Hence, it is argued that this is not a lease which is leviable with royalty for extraction of minor minerals.

The lesser is required to take possession of property on "as it is" condition and no further demand for any development such as earth filling raising

and leveling etc. shall be entertained. Any other improvement or development is purely the responsibility of the lessee. Clause 14 of the lease

agreement, (a Xerox copy of the same has been filed), relied upon by the Petitioners Company under Annexure-1 to the writ petition provides that the

lessor's reserved right will be waived including the minor minerals or if any area covered by the lease and the lessee will have the surface rights over

the land. Thus, if the petitioners Company uses minor minerals in any way, it is violation of the conditions of lease agreement.

28. We are unable to accept the contentions of Mr. Sanjit Mohanty, learned Senior Counsel for the petitioners Company that since the petitioners Company is the lessee of the land, there being no provision for levying royalty on a lessee, this writ petition should be allowed. However, we are of the opinion that even if a lessee of a quarry lease or mining lease is liable to pay royalty, even for minor minerals, then the land occupier, being a lessee under a lease agreement either with the Government of Odisha or any of its corporation, where the lessor has reserved the right to the minerals including minor minerals, then such use of minor for the purpose of the developing the land and for labeling the land, is also liable to pay royalty and in default to pay penalty.

Hence, we do not see any reason to allow the writ application.

The writ petition is dismissed being devoid of merit.

Interim order passed earlier stands vacated.

There shall be no orders as to costs.

As restrictions are continuing for COVID-19, learned counsel for the parties may utilize the soft copy of this judgment available in the High Court's

website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No.4587, dated 25.03.2020.