

(2011) 07 GUJ CK 0146
In the Gujarat High Court

Case No : Letters Patent Appeal No. 816 of 2011 in Special Civil Application No. 4570 of 2011

Raj Mineral

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 69, 69A
Constitution of India, 1950 — Article 21, 226, 47, 48A, 51A
Mineral Concession Rules, 1960 — Rule 24A, 24B, 31
Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 18, 4A, 9, 9A
Wild Life (Protection) Act, 1972 — Section 18, 26A, 35

Citation : (2011) 3 GLH 257

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : S. N. Shelat, with Mr. Satyam Y. Chhaya, for the Appellant; Prakash Jani, Government Pleader for Respondent: 1, Notice Served for Respondents : 1 - 5, for the Respondent

Judgement

Mr. J.B. Pardiwala, J.—In this appeal, the appellant -original petitioner seeks to challenge judgment and order dated 18th April 2011, passed by learned Single Judge in Special Civil Application No. 4570 of 2011, whereby, learned Single Judge rejected the petition and refused to grant any relief, as prayed for by the appellant - original petitioner.

2. The present appeal depicts a very sorry state of affairs at the end of the State Government as well as the appellant. It has been repeatedly said that the Right to Live is a Fundamental Right under Article 21 of the Constitution of India and it includes the Right to Enjoyment of Pollution-free Water and Air for full enjoyment of life. Further, by 42nd Constitutional Amendment, Article 48-A was inserted in the Constitution of India in Part IV stipulating that the State shall endeavour to protect and improve the environment and to safeguard the Forest and Wildlife of the country. Article 51-A, inter alia, provides that, it shall be the duty of every

citizen of India to protect and improve the natural environment including Forest, Lakes, Rivers and Wildlife and to have compassion for living creatures. Article 47, which provides that, it shall be the duty of the State to raise the level of nutrition and standard of living and to improve public health is also relevant in this connection. The Hon'ble Supreme Court has also said in the case of M.C. Mehta Vs. Union of India (UOI) and Others, that, "life, public health and ecology has priority over unemployment and loss of revenue. The definition of "sustainable development" which Brundtland gave more than 3 decades back still holds good". However, this appeal has, altogether, a different story to narrate, where, there is complete and absolute disregard to the provisions of the Constitution and other statutory Rules and Regulations.

3. The facts, relevant for the purpose of deciding this appeal, can be summarized as under :-

3.1 In the year 1982, the appellant herein preferred an application for grant of Mining Lease in respect of land bearing Survey No. 453/1 paiki, situated at Village: Patanvav, Taluka: Dhoraji, District: Rajkot under the provisions of Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "the Act, 1957") read with provisions of Mineral Concession Rules, 1960 (hereinafter referred to as "the Rules, 1960") for 675 acres and 09 gunthas. Record reveals that, in the year 1982, lease for an area, admeasuring 162 acres was granted in favour of the appellant - original petitioner. Thereafter, vide order dated 3rd July 1991, additional area of 358 acres was also allotted in favour of the appellant -original petitioner for the purpose of mining. Record reveals that the State Government, vide order dated 3rd July 1991, was pleased to sanction the grant to the appellant - original petitioner an area, admeasuring 196 acres on certain terms and conditions. The terms and conditions, as reflected from the order, are reproduced hereinbelow :-

(1) Out of the total area of survey No. 453/1 which is 675 acres and 9 gunthas 325 areas of forest land should be demarcated and may be set apart and the matter regarding making lease deed of Forest Area should be considered after the approval of the Forest & Environment Deptt. of the Government of India.

(2) There are two temple in the Forest/Revenue Area. A condition in the lease deed of revenue area should specifically provide that Shri Vyas shall see that road/walkway passing through the revenue land do not create any hindrance in way of persons coming for worship of the diaties in the temple. They should also see that sufficient margin is left and same is taken for safety of people visiting the temple from hazards of the mining operating.

The land is vicinity of temples now new existence in Forest and found in forest future should be excluded from mining and proper case will have to be taken by Shri Vyas to prevent any damage to the monuments by blastings.

This applies to revenue area as well as future grant if any in forest area.

(3) If the 325 acres of forest area to be demarcated and left out of mining lease does not include the Osam Mataji Temple and the Mahadev Temple then the temple sites and surrounding area should also be left out over and above the forest area.

(4) Of the remaining 350 acres comprising of gauchar and Kharata land, about 162 acres in already granted earlier to Mr. Vyas. Remaining 196 acres is granted to him with a condition that he will atleast double his processing capacity as earlier proposed by him.

(5) Mr. Vyas should be asked to surrender 88 hectars which has been granted to him in Bhavnagar District for Perlite but for which Mining Lease is yet not executed. The same can be granted to Thaker in case the latter is still desirous of taking mining lease in the area after considering the case on merits as per rules.

(6) Mr. Vyas would be carry out only underground mining so the surface area is not disturbed.

3.2 After this order was passed by the Joint Secretary to the State of Gujarat, Industries, Mines and Energy Department, the appellant - original petitioner was asked to approach the Collector for the purpose of execution of Mining Lease Deed with clear stipulation that if Mining Lease Deed is not executed within 06 months from the date of order sanctioning it, the order of sanction may be revoked under the provisions of Rule 31 of the Mineral Concession Rules, 1960. Thereafter, Lease Deed was executed as per Rule 31 - Form "K" of the Rules, 1960.

3.3 The appellant - original petitioner started mining activity since then. It appears that the Lease Deed was for a period of 20 years, as per order dated 1st April 1982. The period of lease came to an end in the year 2002. However, record reveals that, one year before expiry of the lease period, the appellant - original petitioner preferred an application for renewal of Mining Lease, as required mandatorily as per Rule 24A of the Rules, 1960. Rule 24A, Clause (1) reads as under :-

(1) An application for the renewal of a mining lease shall be made to the State Government in Form J, at least twelve months before the date on which the lease is due to expire, through such officer or Authority as the State Government may specify in this behalf.

3.4 However, record reveals that, no orders were passed by the Authorities concerned in this regard and the appellant - original petitioner continued mining activity in the allotted area only on the strength of deeming fiction, as provided under Rule 24A (6). Rule 24A (6) reads as under :--

(6) If an application for renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government passes order thereon..

3.5 It appears that, vide order dated 24th March 2011, passed by Collector, Rajkot, the appellant - original petitioner was directed to forthwith, discontinue the mining activity over the land on the ground that the excavation activity by the appellant - original petitioner over a passage of time, has resulted into large tunnel because of appellant - original petitioner's haphazard and unsafe mining. One more reason for the Collector to direct the appellant - original petitioner to stop the mining activity is that, if allowed to continue, it will cause serious damage and danger to the stability of "Osam Hill". It appears that, before taking this decision, the appellant - original petitioner was issued a Show-cause Notice dated 7th March 2011 calling upon him to show cause, as to why he should not be asked to stop mining activity in "Osam Hill". Free translation of the said is reproduced hereinbelow :-

As per the said lease agreement the 20 years periods of lease expired in 2002 and eight years period has been passed and as on today your lease is not renewed by the Government, therefore, you are called upon to explain why your lease agreement should not be treated as deemed termination in violation of the various conditions of the lease agreements.

In violation of the said terms and conditions agreements your Company has extracted and excavated the Osam Hill area by making a deep tunnel thereby, created a unsafe situation for the stability of the Osam Hills (photo copy of the indicative photographs is enclosed herewith). Moreover, the Osam Hills are Historical/Religious and on account of your activity hill area is degraded and affected the environment/vegetarian and irreparable damage cause to the hill and the mining operation is carried out with unsafe practice, and to obstruct the perlite, tunnels are made which are not restored again, and put to safe condition.

Further, more as it is contended by you in view of the Gujarat Mineral Concession Rules, 1960 (Now Rule-2010) Rule 24-A, deemed renewal can not be considered as you have violated the various terms and conditions. Therefore, you are called upon to explain and clarified for the issue of your lease termination you are given the opportunity of being heard as a part of natural justice on 14/03/2011 at 12:00 p.m. in my office. If you fail to appear and submit your representation, if any otherwise the decision will be taken on merits exparte which may please be noted."

3.6 After giving an opportunity of hearing, a final decision was taken and ultimately, mining activity has now been stopped pursuant to order passed by Collector, Rajkot dated 24th March 2011.

3.7 Before we proceed further, it is expedient to state that, before this action came to be taken, it appears that, on 4th February 1997 a Show-cause Notice was issued by the Chief Secretary, Government of Gujarat, Industries and Mines Department calling upon the appellant - original petitioner to show cause as to why mining activity of the appellant -original petitioner should not be stopped. At the relevant point of time, it appears that the appellant - original petitioner had

replied to the same. Once again, on 3rd April 1997, second Show-cause Notice was issued and the same was replied by the appellant - original petitioner. In respect of this, at the relevant point of time, no concrete steps were taken by the Authorities to see that the mining activity is stopped immediately inspite of the fact that even in 1997, the Authorities felt extensive damage is caused to "Osam Hill". It is only after a period of more than five years that the Authorities have thought fit now to take this action after a deep slumber.

3.8 It is, at this stage, that the appellant - original petitioner aggrieved by the order passed by the Collector, Rajkot restraining him from carrying on any mining activity in "Osam Hill" in the area allotted by way of lease that the appellant - original petitioner though fit to challenge the said decision by way of filing Special Civil Application No. 4570 of 2011. The learned Single Judge took into consideration the irreparable loss caused to the forest area and environment as well as the stability of the "Osam Hill" and the historic monument - ancient temple/jain temple and the situation - location of the quarry in question, which is adjacent to the notified forest area i.e. within radius of 01 k.m. thought fit not to grant any relief in favour the appellant - original petitioner, taking into consideration the public interest. As a matter of fact, the learned Single Judge has taken pains to reproduce free translation of the relevant part of the impugned order, which was in vernacular Gujarati language and we would also like to reproduce the same, which reads as under :--

As stated earlier, the leaseholder is granted a lease on the area of Osam Hill, a historical & archaeological hill which has been developed for the tourism purpose by the State Government. The underground excavation in this Osam Hill is being done by the leaseholder which has resulted into tunnel as per the Geo-technical report and the pillars in certain sized have not been constructed which are required to be constructed as per the rules. Therefore, the dangerous situation for the stability of the entire hill has been created and due to the said reason, the existence of this Osam Hill and the entire environment has been put in danger. Moreover, because of this excavation, a serious danger has been created for the places having historical & religious importance and environment and irreparable loss has been caused to the wild life. Further, an ancient temple of Deity Matri & a Jain temple are situated on this Osam Hill, as the place is having religious importance, the people in a large number visit the place. The big tunnel has been created due to excavation of perlite minerals by the leaseholder. The mining is being done in insecured form and therefore, there is a probability of occurrence of a big mishap. Because of all these reasons, for the breach of different conditions of the Contract Deed and for the breach of lease, the notice vide letter No. Geologist -WS-1775, dtd. 07/03/2011 of this office was issued to Raj Minerals for showing the reason as to why this lease should not be terminated. The hearing was fixed on 14-03-11, if any submission is required to be made.

A written reply was submitted on behalf of Raj Minerals on the hearing on 14/03/11. As per the details of their written reply, as per Rule 24(b) of MCR, the

perlite minerals is being used in their captive unit and in accordance with 24 (a), an application has been submitted within time limit for renewal of lease. Further, as per the Mining Scheme, underground mining is being made by them as per approved mining plan and sufficient security steps are taken for it.

The notice dtd. 07/03/2011 issued to Raj Mineral by this office in this case and the written reply dtd. 14/03/2011 produced on behalf of the Raj Mineral proprietary in connection with this notice were considered and all aspects were taken in to consideration.

Looking to the papers of this case, the total land admeasuring Hec. 144-88.-31 were granted at two stage including the land admeasuring Hec.65-00-00 of the village Patan Vav vide order dtd. 01/04/82 and the land admeasuring Hec. 79-88-31 vide order dtd. 03/07/91, for Perlite minerals mining lease for 20 years to Messrs Raj Minerals. Upon expiry of the said lease, the application for renewal was submitted on 28/06/2001 which is pending in the Government at preset, but meanwhile, a proposal has been made for cancellation of this lease on permanent basis because of existing created situation.

The leaseholder is required to comply with the Condition NO.1 &2 of the order dtd. 03/07/91 of the Industry, Mines & Energy Department of the Government and the condition NO.5 of the Contract Deed. But, prior to the commencement of the use of the mining lease. the leaseholder had not obtained permission from the Forest & Environment Department of Central Government as per the Forest Preservation Act, moreover as stated earlier, as per the details of the letter dtd. 31/05/2005 of the Director of Archeology, the relics of Buddhism & Jainism which are important in view of the archeology are situated on Osam Hill and if the work of mining lease is kept continued, the probability of destruction of historical & archaeological relics has been expressed. Moreover, an ancient religious place of Deity Matri is situated on this place and a numerous people visit for worshipping by the public road. In accordance with the condition No.5 of Contract Deed, before doing mining activity in radius-of-fifty meters from public road and lake, there is a provision of obtaining permission of the Collector but the leaseholder had not obtained any permission from the Collector till today before the operation of mining lease. Because of the said reason, there is a probability of occurrence of a big mishap and such a situation has been created.

Further, as the relics of Buddhism & Jainism and old temple are situated on this Osam Hill, the State Government has taken a decision to develop this Osam Hill as comprehensive tourism place. Because of the said reason, people will visit this Osam Hill in a large scale. Moreover, there is a movement of people in a large scale on the public road because at present, the religious places are situated there.

In addition to this, this area bearing Survey No,453/1-B, admeasuring Acre 325-00 Guntha has been declared as protected forest vide the notification dtd, 12/07/1972 of the Agriculture. Forest & Co-operation Department of the

Government. In accordance with the conditions of lease, it has been clarified that it is necessary to obtain the permission of the Forest Department in view of preservation of environment. However, the permission has not been obtained. Further, as per the conditions which have been prescribed by the Forest & Environment Department order dtd 02/ 04/2008. Pursuant to the recent judgment dtd. 04/08/06 of the Hon''ble Supreme Court and oral order dtd. 15/ 02/11 of the Hon''ble Gujarat High Court, prohibition has been ordered to be made for doing any kind of mining work within the area of one kilometer from the limit of protected forest. The territory of this area i.e. the protected forest and the lease is less than one kilometer. Meaning thereby, they are adjacent. In this circumstances, as a part of compliance of the directions of the the Hon''ble Supreme Court/High Court also, it is not appropriate to continue the excavation of this perlite as a part of preservation of environment, public security, public monuments, religious places. And therefore, it has become very necessary to prevent the activity of mining operation immediately in the interest of public and for public security.

(Emphasis supplied)

3.9 It appears that, before the learned Single Judge, a contention was raised that the order passed by the Collector, Rajkot dated 24th March 2011 is without jurisdiction as Collector has got no powers to pass an order restraining the appellant - original petitioner from continuing with the mining activity. This contention was negated by the learned Single Judge taking the view that, as per Section 69 and 69-A of the Bombay Land Revenue Code, complete powers and rights over the mines and mineral are conferred on and vested in and deposited with the Government and the Collector is Government's Chief Executive.

3.10 The judgment and order, passed by the learned Single Judge, has been assailed by the appellant - original petitioner in this appeal, substantially on the ground of jurisdiction of the Collector to pass the impugned order.

4. We have heard learned senior Counsel Mr. SN Shelat appearing with Mr. Satyam Y. Chhaya for the appellant - original petitioner and Mr. P. K. Jani, learned Government Pleader, appearing for the respondents.

5. Leaned senior Counsel for the appellant - original petitioner put forward following contentions :-

5.1 Section 69 of Bombay Land Revenue Code, 1879 speaks about vesting of right to mines and mineral product in the State of Gujarat and the Section makes it very clear that even the right of the State Government is subject to provisions of Mines and Mineral (Regulation & Development) Act, 1957. It is to be noted here that the dispute involved in present litigation is with respect to "Perlite" mineral which is major mineral, and therefore, provisions of Mines Act, 1952, Mines and Mineral (Regulation & Development) Act, 1957 and Mineral Concession Rules, 1960 would be applicable in facts of the present case [as per Section 13 of

Mines and Minerals (Regulation & Development) Act, 1957, the Central Government has framed the Mineral Concession Rules, 1960 for major mineral].

5.2 As per Section 4A of the Mines and Minerals (Regulation & Development) Act, 1957, powers for pre-mature termination, of prospecting licenses or mining leases in respect of any mineral other than the minor mineral is vested with the State Government subject to its consultation with the Central Government. The relevant provision of Section 4A reads as under :-

4A. Termination of prospecting licenses or mining leases :-

(1) Where the Central Government, after consultation with the State Government is of opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, control of flood, prevention of pollution, or to avoid danger to public health or communications or to ensure safety of buildings, monuments or other structures or for conservation of mineral resources or for mainlining safety in the mines or for such other purposes, as the Central Government may deem fit, it may request the State Government to make a premature termination of a prospecting license or mining lease in respect of any mineral other than a minor mineral in any area or part thereof, and, on receipt of such request, the State Government shall make an order making a premature termination of such prospecting license or mining lease with respect to the area or any part thereof. *****

It is submitted that as per Section 4A in case of premature termination, power is with the State Government subject to its consultation with the Central Government even in case where danger to safety of buildings, monuments or other structures is the issue whereas in the present case, the Collector has passed the order, which is not legal and/or competent.

5.3 It is submitted that the appellant was granted lease dated 3rd July 1991 for underground mining, so the surface area is not disturbed. As per provisions contained in the Mining Act, 1952, more particularly, as per Section 22 and 22 A, the Chief Inspector and/or Inspector working under the Indian bureau of Mines, are the Competent Officers for passing of order of prohibition with respect to operation of mining confined to major mineral. Thus, the observation made by the learned Single Judge with respect to confirmation of power to Collector under Bombay Land Revenue Code, 1879, is not legal and the same is not sustainable as per the Scheme of Mines Act, 1952 as well as Mines and Mineral (Development & Regulation) Act, 1957.

5.4 In view of pendency of renewal application of the appellant (p. 119), as per Rule 24A (6) of Mineral Concession Rules, 1960, the appellant is under deemed renewal. Now, as per Rule 24B of Mineral Concession Rules, 1960, since the lease in favour of the appellant was for captive consumption, the same was entitled for a renewal atleast for a further tenure of 20 years. Rule 24B reads as under:-

24B. Renewal of mining lease in favour of a person using the mineral in his own

industry :-

Every person who is holding mining lease for a mineral which is used in his own industry shall be entitled for the renewal of his mining lease for a period (not exceeding twenty years) unless he applies for a lesser period. ****

5.5 Further as per Rule 26, power for refusal or grant of mining lease is vested in the State Government. Relevant provisions of Rule 26 reads as under :-

26. Refusal of Application for grant and renewal of mining lease :-

[The State Government may, after giving an opportunity of being heard and] for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for]

5.6 Even as per Rule 27(5), the State Government is competent to determine the lease if the lease holder fails to make payment of royalty as per Section 9 or Section 9A of the Act. Thus, as per the provision contained in Mineral Concession Rules, 1960 r/w. relevant provision of the Act, the Collector is not competent to pass any order even for prohibiting a lease holder from mining with respect to major mineral, and hence, the order passed by the Collector is without jurisdiction.

5.7 The order of the Honourable the Apex Court formulating the very basis of the restraining/prohibitory order by Collector is misapplied inasmuch as the same only brings within its ambit National Parks/Sanctuary notified under Sections 18, 26A or 35 of the Wild Life (Protection) Act, 1972, which is not the case herein. It is simply clarified that the mining activity is not carried out on/or near by areas so to say.

5.8 The appellant is doing mining activity as per approved Mining Plan, that too approved by Indian Bureau of Mines.

6. Per contra, learned Government Pleader Mr. Jani, appearing for respondents submitted that u/s 69-A of the Bombay Land Revenue Code, 1879, the Collector is vested with the powers and exercising such powers u/s 69-A, the impugned order has been passed, which cannot be said to be without jurisdiction. He further submitted that the mining area is situated near the "Osam Hill", upon which, a religious temple is also situated and there is a constant flow of pilgrims on and around this Hill. He invited attention of the Court to the photographs taken by the Authorities suggesting that the appellant - original petitioner has dug a huge underground tunnel, which, by passage of time, will make the base of the hill hollow and will make the hill weak, resulting into a huge disaster, which might be caused by a landslide or even endangering the labourers who are working inside the tunnel. He further submitted that the Collector, after personal visit, has taken the decision asking the appellant - original petitioner to stop the mining activity.

6.1 Learned Government Pleader Mr. Jani further submitted that this is not a case of premature termination of licence but it is just an order, restraining the appellant - original petitioner from continuing with the mining activity in public interest. He further submitted that, as a matter of fact, the application for renewal of Lease Deed, after the expiry of the earlier lease period, is still pending with the Authorities and the Authorities have yet to take final decision in this regard.

6.2 Learned Government Pleader Mr. Jani further submitted that the Commissioner of Geology and Mining Department, Gandhinagar has also informed the Secretary, Industries and Mines Department, not to renew the lease, as prayed for by the appellant -original petitioner. He further submitted that, no error can be said to have been committed by the learned Single Judge in dismissing the Writ Petition, warranting any interference at our hands in this appeal.

7. We have given our anxious thoughts and considerations to the rival contentions of the respective parties and we are of the opinion that the appellant - original petitioner is not entitled to any relief.

7.1 The main crux of the contention with regard to the jurisdiction of the Collector to pass the impugned order is that, as per Section 4A of the Act, 1957, powers for premature termination of prospecting licenses or mining leases in respect of any mineral other than the minor mineral, is vested with the State Government subject to its consultation with the Central Government. The contention is that, "Perlite" is a major mineral, which is an "Amorphous Volcanic Glass" having relatively high water content. According to the appellant - original petitioner, it is only the State Government, which, in consultation with the Central Government, can take the decision to prematurely terminate the Mining Lease.

7.2 Prima facie, we are of the view that the whole contention is misconceived. As observed earlier, this is not a case of premature termination of Lease Deed. The most disturbing feature of this entire matter is that, in spite of the fact that the period of lease expired in 2002 and one year before the expiry, the appellant - original petitioner preferred an application for renewal of the lease, as required under the Rules, no decision, as on today, has been taken by the Authorities. There is no order on record to even remotely suggest that the Authorities have taken decision not to renew the lease further, keeping in mind the public interest. It is only on the strength of the provisions of Rule 24A of the Rules 1960 that the appellant - original petitioner continued with the mining activity as the period of that lease is deemed to have been extended by a further period till the State Government passes orders thereon. If the Authorities would have been little vigilant, perhaps, this day would not have come when they have realised the consequences of allowing the petitioner to continue with the mining activity resulting into serious ecological problems. Almost two decades back, Hon"ble Supreme Court, in the case of Rural Litigation and Entitlement Kendra and Others

Vs. State of Uttar Pradesh and Others, sounded a note of caution saying that, "the consequences of interference with ecology and environment have now come to be realised. It further observed that, "it is necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact". The Hon'ble Supreme Court also observed that, "it has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation. Preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must undertake. It is a social obligation and let every Indian citizen be reminded that it is his fundamental duty as enshrined in Art. 51A (e) of the Constitution".

(emphasis supplied)

7.3 In the case of M.C. Mehta Vs. Union of India (UOI) and Others, Hon'ble Supreme Court observed in Para 47 and 48 as under :-

47. The mining operation is hazardous in nature. It impairs ecology and people's right of natural resources. The entire process of setting up and functioning of mining operation require almost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to township which has tendency to degrade environment and are likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur. The fullest disclosures including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that public and all those concerned including Authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory Authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by such entrepreneurs. When questioned, the regulatory Authorities have to show that the said Authorities acted in the manner enjoined upon them. Where the regulatory Authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and peoples life, health and property, the principles of accountability for restoration and compensation have to be applied.

48. The development and the protection of environments are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, the development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. We may note that to stall fast the depletion of forest,

series of orders have been passed by this Court in T. N. Godavarman's case regulating the felling of trees in all the forests in the country. Principle 15 of Rio Conference of 1992 relating to the applicability of precautionary principle which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proposing effective measures to prevent environmental degradation is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a strait-jacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there maybe irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment.

7.4 We are of the view that", even if the contention as regards the jurisdiction of the Collector to pass the impugned order is accepted, we are not inclined to grant any relief in favour of the appellant - original petitioner as reasons are very obvious. The appellant - original petitioner cannot be permitted to continue with the mining activity, more particularly, when extensive damage has been caused to the area and any further activity is likely to endanger the public life and property. Not only this, but some monumental structures are also likely to be damaged.

7.5 The powers conferred by Article 226 of the Constitution of India on the High Courts are certainly very wide and confer on them discretion of a most extensive nature. That discretion, however, must, necessarily be exercised in accordance with judicial considerations and well established principles. The High Court will certainly not hesitate in issuing an appropriate direction, order or writ when necessary, but no person can claim to be entitled to such an order or writ, as a matter of course, without satisfying the High Court that the case is suitable one for the issue of such an order or writ Thus, mere fact that an order is without jurisdiction or that, there is an error apparent on the face of the record, is not sufficient to justify the issue of a writ. In addition to that, it must be established that the order has resulted in manifest injustice. It is, therefore, open to the High Court to refuse to issue writ, if it feels that if the writ prayed for is issued, it will clearly effectuate an injustice in the case.

7.6 It must also be borne in mind, as was observed in the case of Veerappa Pillai Vs. Raman and Raman Ltd. and Others, that :-

Such writs as are referred to in Art. 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate Tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record "and such act, omission error or excess has resulted in manifest injustice".

The words we have underlined (here into) show clearly that the mere fact that an order is without jurisdiction or that there is an error apparent on the face of the record is not sufficient to justify the issue of a writ. In addition to that it must be established that the order has resulted in manifest injustice. It is therefore open to the High Court to refuse to issue a writ if it feels, as was felt by the learned Single Judge in the present case that if the writ prayed for is issued "it will clearly effectuate an injustice in the case.

7.7 The law in this regard, is well settled. It is a settled principle of law that remedy under Article 226 of the Constitution of India is a discretionary in nature and in a given case, even if some action or order, challenged in the petition, is found to be illegal and invalid, the High Court, while exercising its extraordinary jurisdiction thereunder, can refuse to upset it with a view to doing substantial justice between the parties. In the case of Balvantrai Chimanlal Trivedi, Manager, Raipur Mafg. Co. Ltd., Ahmedabad Vs. M.N. Nagrashna and Others, certain employees of the appellant-Mill had made an application to the Authority under the Payment of Wages Act claiming that they were entitled to be paid according to a particular scale. The Authority held that the folders were entitled to the scale, rejecting the objection of the appellant to its jurisdiction to entertain such application. The appellant then filed a writ petition, but that was summarily dismissed by the High Court. The appellant, therefore, appealed to the Hon''ble Supreme Court of India by special leave and contended that the Authority had no jurisdiction to entertain the application and also disputed its decision on merits. The Hon''ble Supreme Court of India found that the view of the Authority on merits was correct and as regards the other contention, it was of the opinion that there was some force in the contention regarding jurisdiction. Following the ratio laid down in the case of A.M. Allison Vs. B.L. Sen, the Hon''ble Supreme Court of India held that the justice of the case did not require any interference in the circumstances and refused to interfere with the order of the High Court dismissing the writ petition of the appellant even though it had found that there was some force in the contention of the appellant regarding jurisdiction of the Authority under the provisions of the Payment of Wages Act to entertain the application filed by the respondents therein.

7.8 In the case of Kewal Krishan Puri and Others Vs. State of Punjab and Another, while disposing of the petition, the Hon''ble Supreme Court of India has held as under :--

Article 226 grants and extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the Court, exercising this flexible power, to pass such order as public interest dictates and equity projects.

Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon considerations as on public

interest.

15. It has been rightly observed that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable considerations and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal Court of Appeal, which it is not...

7.9 Having regard to the facts and circumstances of the case, we are of the view that this is a fit case where we should refuse to exercise our discretionary jurisdiction under Article 226 of the Constitution of India to quash the impugned order, passed by the Collector, Rajkot dated 24th March 2011, which has been confirmed by the learned Single Judge, while rejecting the Writ Petition. In our opinion, no error, much less an error of law, can be said to have been committed by the learned Single Judge in rejecting the petition and refusing to grant any relief.

8. In this view of the matter, this appeal fails and is hereby ordered to be dismissed with no order as to costs. Notice discharged.

9. Before parting, we are of the view that, taking into consideration the seriousness of the issue, some directions are necessary to the concerned Authorities so as to remind them that a little negligence or lethargy on their part will lead to irreparable damage to the environment and they are obliged to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by mining lease holders. The State Government, in its Industries and Mines Department, is hereby directed to see that;

a) As and when, any application is received for renewal of existing lease, through Collector of a respective District under Rule 24A of the Mineral Concession Rules, 1960, the same shall be decided and disposed of within a period of 03 (three) months from the date of receipt of the application so as to ensure that any lease holder does not take any undue advantage of Rule 24A, Clause (6), which provides for a "Deeming Fiction" saying that, lease shall be deemed to have been extended by a further period till the State Government passes order thereon.

b) Before granting any fresh mining lease or renewing the existing mining lease, the Authorities concerned should ensure that the mining lease holder has complied with statutory provisions, such as Environment (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974 and Forest (Conservation) Act, 1980.

c) The Authorities are directed to ensure that Rules 31 to 41, contained in Chapter V of the Mineral Conservation and Development Rules, 1988, framed u/s 18 of the Mines and Mineral (Regulation and Development) Act, 1957, as they deal with measures, required to be taken by the lessee for protection of

environment from any adverse effect of mining or irreversible consequences thereof are fully complied in letter and spirit.

d) The Authorities are directed to see that though lease may be for a particular period, but they must undertake periodical inspection of the sites, at least once in 06 (six) months to ensure safety of buildings, monuments or other structures or for conservation of mineral resources or for maintaining safety in the mines etc.

The concerned Authorities are hereby directed to ensure that the directions issued are scrupulously followed and shall see to it that the directions, just, do not remain only on paper but strictly complied for the protection of environment and control of pollution, as a result and consequences of mining operations. Any dereliction of duty in this regard, shall be construed very strictly and may amount to contempt of this Court's order.