

(2009) 08 KAR CK 0054

In the Karnataka High Court

Case No : Writ Appeal No's. 5377 of 2007 and 23782 of 2005

Ramgad Minerals and Mining Pvt. Ltd.

APPELLANT

Vs

Muneer Enterprises and Others
 Dinesh Kumar Singhi
Vs State of Karnataka, Government of Karnataka and Union
of India (UOI)

RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2, 3 (2)
Mineral Concession Rules, 1960 — Rule 28, 28A, 29, 29A

Citation : (2009) 5 KCCR 3628

Hon'ble Judges : P.D. Dinakaran, C.J

Bench : Single Bench

Advocate : Krishnan Venugopal for M.M. Swamy and K.N. Panindra, for the Appellant; M.R. Achar for M.A. Vijay, for R1, Basavaraj Karreddy, G.A. for R1, R2 and R3, Y. Hari Prasad, CGSC for R3 and R4, D.L.N. Rao and S.R. Anuradha, for R5, for the Respondent

Judgement

P.D. Dinakaran, C.J.—Core Issued:

1) Whether the renewal of mining lease in favour of the original lease holder, {M/s. Dalmia Cements (Bharat) Limited} on 3.7.1986 with effect from 25.1.1983 without obtaining prior permission u/s 2 of the FC Act is illegal and void ab-initio and would render the mining lease non-est or whether non-obtaining prior approval for renewal of mining lease in a forest area u/s 2 of the FC Act would only render the renewal voidable and whether the same can be cured by Central Government by passing an ex-post facto order u/s 2 of the FC Act?

2) Whether the transfer of mining lease by the original lease holder {M/s .Dalmia Cements (Bharat) Limited} in favour of the appellant herein suffers from any legal infirmity?

3) Whether the in-principle I Stage transfer granted u/s 2 of the FC Act ex-post facto can regularise illegality as of non-obtaining of prior permission u/s 2 of the

FC Act before renewal of mining lease in forest area?

4) Whether on the facts and circumstances of the case, the impugned mining area is available for notification u/s 59(1) of the Act?

5) Whether the order passed by the learned Single Judge is justified or calls for interference in this appeal?

6) Whether the writ petitioner in W.P. No. 23782/2005 is entitled to relief sought for in the writ petition, in view of our finding in writ appeal?

2. Writ Appeal No. 5377/2004 is filed by Respondent No. 3 in W.P. No. 31690/2003 being aggrieved by the order dated 10.11.2004 wherein the learned Single Judge of this Court has allowed the writ petition filed by the first respondent herein and quashed the impugned, order dated 16.3.2002 passed by the State Government granting sanction to transfer mining lease No. 2010 in favour of the appellant herein (third respondent in the writ petition) and consequently has set aside the direction issued by the second respondent-Director of Mines and Geology, Bangalore, dated 27.5.2003.

3. The first respondent herein-filed W.P. No. 31690/2003 under Articles 226 and 227 of the Constitution of India seeking for a declaration that the order No. CI 14 MMM 2002 dated 16.3.2002 passed by the first respondent in the writ petition-State of Karnataka granting sanction to transfer ML No. 2010 in favour of the third respondent(appellant herein) is illegal and void and to issue a direction to the first and second respondents not to entertain any complaint preferred by the third respondent on the strength of ML No. 2010 by issuing appropriate writ or order and to quash the direction contained in the order dated 27.5.2003 passed by the second respondent-Director of Mines and Geology.

4. According to the first respondent herein (writ petitioner in W.P. No. 31690/2003):

(i) that one Srl.Rambahadur Thakur had been granted mining lease No. 95 to extract iron ore over an extent of 36.42 Ha., in the forest area of Jaisinghpur village, NEB Range, Sandur Taluk, Bellary District in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter called "the MMDR Act") r/w Mineral Concession Rules, 1960 (hereinafter called "the MC Rules") for a period of thirty years from 12.2.1960;

(ii) that the said mining lease was transferred in accordance with the provisions of the MMDR Act and the MC Rules to the petitioner and the said lease was renewed from time to time and the first renewal of the mining lease was granted for a period of ten years on 13.8.1992 under mining lease bearing No. 2151;

(iii) that the Central Government had given prior approval under the provisions of Section 2 of the Forest (Conservation) Act, 1980 (hereinafter called "the FC Act");

(iv) that the State Government issued a notification on 16.2.2000 according sanction for the second renewal of the mining lease for a period of ten years with

effect from 12.2.2000 to 11.2.2010;

(v) that the Director of Mines & Geology, by his letter dated 9.1.2002 addressed to the Deputy Director, Mines and Geology, Hospet, directed to take survey and demarcation of the area renewed in favour of the petitioner and submit a report within a week as the boundary dispute was raised by M/s. Dalmia Cement (Bharat) Limited (alleged transferor of its lease to the third respondent). The Director of Mines & Geology has also stated that O.S. No. 53/1993 filed by M/s. Dalmia Cements (Bharat) Limited on the file of the court of the Civil Judge and JMFC, Hospet has been dismissed on 26.9.2001 and M/s. Daimia Cements (Bharat) Limited has surrendered the mining lease granted to them and there is no subsisting dispute;

(vi) that in pursuance of the said letter, the Deputy Director of Mines and Geology, Hospet arranged for the survey and demarcation of area covered by the renewed mining lease enclosing the copy of the report of the survey and demarcation along with the letter dated 5.2.2002 addressed to the second respondent. Thereafter, the renewed lease bearing No. 2339 came to be executed and registered as document No. 775;

(vii) that M/s. Ramghad Minerals (Dalmia), the third respondent in the writ petition had lodged a complaint stating that petitioner had encroached upon the leased area in their possession and therefore, boundary of the petitioner's mining lease area should be surveyed by both the officials of the Mines and Geology and the Forest Department and a report should be submitted; otherwise, complaint would be made to the higher authority to stop the mining operation by the petitioner and therefore, the petitioner was prepared for a joint survey of his area by both the Departments and actually requested the Director of Mines and Geology to make arrangements for making a joint survey of its area and subsequently, both the officials of the Mines and Geology Department and the Forest Department met on 26.3.2003 and after discussing the matter, prepared the minutes dated 27.3.2003 and came to the conclusion that the original survey and demarcation report made at the time of the grant of lease was not available and it was essential to proceed with the work and decided to request the Director of Mines and Geology to make available the original reports and accordingly requested the second respondent to make available the original survey and demarcation reports of not only the petitioner but also various other leases granted in the sector and the reports are not yet made available by the Department of Mines and Geology for proceeding with the joint survey;

(viii) that in the meanwhile, the Forest officials of Sandur and Hospet orally directed the petitioner to stop the working of the mines and the petitioner was constrained to file W.P. No. 16569/2003 against the illegal direction issued by the Forest Department and this Court issued interim order dated 11.4.2003 for a period of ten weeks and further extended the same by ten more weeks on 9.6.2003;

(ix) that M/s. Dalmia Cements (Bharat) Limited had been granted mining lease in 1953 for thirty years and it came to be renewed on 7.3.1986 for twenty years with effect from 25.1.1983 in ML No. 2010 for iron ore over an area of 331.44 hectares in Jaisinghpur village, Sandur Taluk, Bellary District (Forest Area) which is situated to the North of the lease granted to the petitioner;

(x) that while granting renewal of the lease in favour of M/s. Dalmia Cements (Bharat) Limited on 25.1.1983, no prior approval of the Central Government was obtained as per the provisions of Section 2 of FC Act and some doubt having been expressed as to the applicability of the said provisions to the renewal of the mining lease granted earlier to the 1980 Act, several persons including M/s. Dalmia Cements (Bharat) Limited, filed writ petitions in this Court and obtained an interim order to carry on mining activities;

(xi) that ultimately, the Supreme Court in T.N. Godavarman Thirumulkpad Vs. Union of India and others, held that the provisions of the Act are mandatory and if mining leases in the forest area had been granted or renewed without the prior approval of the Central Government under the 1980 Act, they are illegal and the State Government should take immediate steps to stop work in the mines and take suitable steps regarding compliance of provisions of the FC Act and every State Government should promptly ensure total cessation of all such activities forthwith;

(xii) that pursuant to the said order of the Hon'ble Supreme Court, Deputy Conservator of Forest, Bellary, by his common notice dated 17.1.1997 issued notice to M/s. Dalmia Cements (Bharat) Limited who has been granted mining lease (renewal) in the forest area to stop working of the mines with a warning that if they continue to do so, it would amount to contempt of the court;

(xiii) that in view of the said specific direction to stop the mining work as prior permission u/s 2 of FC Act had not been obtained as per the decision of the Hon'ble Supreme Court in Godavarman's case, M/s. Dalmia Cements (Bharat) Limited has stopped mining operations as the State Government had not obtained prior approval of the Central Government u/s 2 of the FC Act and subsequently also they did not take any steps nor State Government took any steps to get the prior approval of the Central Government under FC Act in respect of ML No. 2010 held by M/s. Dalmia Cements (Bharat) Limited and therefore, the said renewal of the lease in favour of M/s. Dalmia Cements (Bharat) Limited is illegal and void;

(xiv) that by letter dated 27.3.2000 addressed to the Director of Mines and Geology, M/s. Dalmia Cements (Bharat) Limited informed that they have stopped mining operation in view of the notice given by the Forest Department as per the decision of the Hon'ble Supreme Court and therefore, they propose to determine the lease and surrender the same and the State Government was given twelve months notice as required under para-8 of the mining lease deed executed by them and Government of Karnataka through the second respondent intimated

that lease may be determined on the expiration of twelve months or earlier if permitted;

(xv) that M/s. Dalmia Cements (Bharat) Limited by its letter dated 16.6.2001 surrendered the lease deed book in respect of ML No. 2010 as directed by the second respondent and the Deputy Director of Mines and Geology, Hospet has issued a certificate on 31.1.2002 that M/s. Dalmia Cements (Bharat) Limited has paid Rs. 22,332/-, the balance of the dues as per audit report and there were no dues in respect of the above said lease;

(xvi) that M/s. Dalmia Cements (Bharat) Limited filed O.S. No. 53/1993 in the court of the Civil Judge and JMFC, Hospet, against the writ petitioner for permanent injunction on the ground that the petitioner has trespassed into the area covered by its lease and the suit came to be dismissed for non-prosecution on 26.9.2001.

(xvii) that M/s Dalmia Cements (Bharat) Limited since had always created trouble to the petitioner in W.P. No. 31690/2003 with ulterior motives, though it had ceased to work in the area covered by the lease, the petitioner filed W.P. No. 6304/98 before this Court which was disposed of on 26.6.2001;

(xviii) that in writ petition No. 6304/1998, M/s. Dalmia Cements (Bharat) Limited contended that it was no longer interested in working in the mines situated in the land adjoining the petitioner's land and therefore, no boundary dispute as such existed between respondent No. 1 herein-writ petitioner in Writ petition No. 31690/2003 and M/s Dalmia Cements (Bharat) Limited and the said writ petition No. 6304/1998 was disposed of by setting aside the order passed by Director of Mines as the same was found to be illegal, reserving liberty to the appropriate authority to take action in accordance with law;

(xix) that renewal of the mining lease in favour of M/s. Dalmia Cements (Bharat) Ltd. without obtaining prior approval u/s 2 of FC Act is illegal, void ab-initio and non-est and there was no subsisting lease held by the company M/s. Dalmia Cements (Bharat) Limited in ML 2010 as the lease had been surrendered and lease deed book has also been surrendered to the competent authority and therefore, lease in favour of M/s. Dalmia Cements (Bharat) Limited had become nonexistent in the eye of law and area covered by ML No. 2010 had to be notified for regrant under Rule 59 of the Rules wherein the area which was previously held or is being held under a mining lease etc., will not be available for grant unless an entry to the effect that the area is available for grant is made in the registers and the availability of area for grant is notified in the official gazette specifying the date from which such area shall be available for grant;

(xx) that the State Government instead of notifying the area as being available for grant, has illegally transferred the area covered by ML No. 2010 in favour of the third respondent in Writ Petition No. 31690 of 2003- appellant herein;

(xxi) that if the availability of the area had been notified, all the persons

including the petitioner in Writ petition No. 31690/2003 would have been in a position to apply for grant of mining lease in respect of that area and this opportunity has been denied to it and other contesting applicants and therefore, it is aggrieved by the action of the State Government;

(xxii) that on 4.2.2002- M/s. Dalmia Cements (Bharat) Limited has sent an application to the first respondent through the Director of Mines and Geology seeking permission to transfer of mining lease in favour of the third respondent, and the State Government without applying its mind has passed the order on 16.3.2002 granting sanction to the transfer of the mining lease No. ML 2010 held by M/s. Dalmia Cements (Bharat) Limited for iron ore over an extent of 819 acres (331.55 hectares) in Jaisinghpur village, Sandur Taluk, Bellary District in favour of the third respondent and on the strength of such illegal transfer of a non-existent lease, the third respondent went on complaining to the Forest Department as well as the Directorate of Mines and Geology on false allegations that the area covered by ML 2010 is being trespassed by the petitioner and the said conduct of the respondent resulted in sheer harassment to the petitioner;

(xxiii) that the third respondent in the writ petition-appellant herein sent a complaint to the Director of Mines and Geology alleging that certain things which are not known to the petitioner, because a copy of the complaint has not been sent to the petitioner, and on the basis of the said complaint, Director of Mines and Geology has directed the Deputy Director, Department of Mines and Geology, Hospet to make arrangements to conduct the survey and demarcation of the boundary between the mining leases of the petitioner (ML No. 2339) and the third respondent (ML No. 2010) and submit a report to him even though there is no dispute with regard to boundary between the third respondent and the petitioner;

(xiv) that the petitioner in its representation dated 7.6.2003 addressed to the Ministry for Mines and Geology, Government of Karnataka submitted that there is no boundary dispute between the petitioner and the third respondent and that the third respondent does not hold any valid lease and requested to pass appropriate orders and to direct the Director of Mines and Geology to see that the Forest Department and the Mining Department conducts a joint survey of only the area covered by ML No. 2339 of the petitioner; and

(xxv) that being aggrieved by the order of transfer of mining lease No. 2010 in favour of the third respondent, the endorsement dated 16.3.2002 and order dated 27.5.2003, wherein it has been ordered to conduct a survey and demarcation of the boundary between mining lease of the petitioner (ML 2339) and that of the third respondent-M/s. Ramghad Minerals and Mining Pvt. Ltd., (ML No. 2010) and required a report to be submitted to the Office of the second respondent, the respondent No. 1 herein (writ petitioner) has filed Writ Petition No. 31690/2003 for the reliefs referred to above.

5. Respondent No. 3 in Writ petition No. 31690/2003 appellant herein filed

objections statement to the writ petition averring:

(i) that the writ petition is not maintainable either in law or on facts and the same is liable to be dismissed in limine;

(ii) that the relief sought for in the writ petition challenging the order of transfer of lease in favour of the third respondent and also the direction issued by the second respondent calling for the survey are not amenable to the writ jurisdiction;

(iii) that the petitioner in Writ petition No. 31690/2003 has no locus standi to challenge the order of transfer lease as he is not a party to the same in any manner and he cannot be said to be aggrieved by any order;

(iv) that there is a revision provided under Rule 54 of the MC Rules which is an efficacious alternative remedy provided under law and therefore, petitioner cannot maintain this writ petition;

(v) that in view of the averments made in the petition itself that petitioner is ready for the joint survey of the area, the relief seeking for quashing the order dated 27.5.2003 wherein direction has been issued for survey of the area granted under mining lease held by petitioner and the third respondent (ML 2010 and 2339), does not survive;

(vi) that O.S. No. 53/93 is dismissed for non-prosecution and was not decided on merits and petitioner cannot take advantage of the said dismissal order;

(vii) that it is not correct to state that M/s. Dalmia Cements (Bharat) Limited have surrendered their mining lease, but the said company had infact made an application dated 27.3.2001 giving twelve months notice to the State Government with effect from 1.4.2001, expressing their intention to surrender the lease due to severe labour problems;

(viii) that the said request was not considered by the State Government by passing any order and subsequently, the lease was transferred by M/s. Dalmia Cements (Bharat) Limited to the third respondent-appellant by passing appropriate orders;

(ix) that the averments made in the writ petition that the lease of the petitioner had been renewed with prior approval of the Central Government as per Section 2 of FC Act is not supported by any document;

(x) that the petitioner has been in the habit of violating the mining laws by encroaching the adjacent areas granted to others and third respondent the petitioner has a track record in the matter of encroachment;

(xi) that in fact, the petitioner and the third respondent have a common boundary line on one side which is straight and long line; and as the petitioner has crossed the line, the officials of the Forest Department as recently as in December, 2002 have observed that the petitioner is encroaching upon the area

of the respondent and restricted the petitioner from encroaching into the area, which is prima facie in the lease of transfer granted to the third respondent and has recommended for joint survey by the Department of Mines and Geology and petitioner is making all attempts to prevent the survey by filing petition after petitions;

(xii) that M/s. Dalmia Cements (Bharat) Limited were granted mining lease in 1953 for a period of 30 years, which was renewed on 7.3.1986 to do the mining operations in the area measuring 331.44 hectares at Jaisinghpur village, Sandur Taluk, Bellary District;

(xiii) that the Central Government has given prior approval in principle for approval of renewal of mining lease of the Forest land in favour of M/s. Dalmia Cements (Bharat) Limited by communication dated 24.12.1997 and the said approval was sanctioned as per the request of the State Government dated 30.12.1991 and M/s. Dalmia Cements (Bharat) Limited was constrained to stop its operations on account of severe labour problems;

(xiv) that M/s. Dalmia Cements (Bharat) Limited had made an application on 27.3.2001 to the State Government proposing to surrender the lease held by them effective from 1.4.2001 and the said application was pending consideration and the State Government had not passed any orders accepting the surrender and during the pendency of the application, M/s. Dalmia Cements (Bharat) Limited requested the State Government to transfer the said lease in favour of the third respondent under Rule 37 of the Rules by order dated 16.3.2002 subject to certain conditions stipulated in the order and the third respondent has applied for the prior approval for renewal which is pending consideration and in view of the said order of transfer, third respondent has been in possession of the extent of area granted to earlier lessee M/s. Dalmia Cements (Bharat) Limited, and the said company had never surrendered the lease at any point of time and the request for surrender was only a proposal and the same was yet to be considered by the State Government;

(xv) that the transfer of lease has taken place without accepting the surrender proposal much before the expiry of the notice period and as such the same is valid;

(xvi) that mere returning the lease deed book along with a proposal to surrender the lease would not amount to actual surrender until the State Government accepts the same by passing the order after complying with the necessary requirements like survey and demarcation etc.,

(xvii) that in the absence of any order passed in that behalf accepting the termination, the application of the writ petitioner was still pending consideration and the transfer of lease made in favour of the third respondent is only for the remaining lease period and third respondent is entitled to have the same for the balance lease period;

(xviii) that as no surrender of fresh grant has taken place, the question of invoking Rule 59 of the Rules does not arise at all, and the lease has been transferred to the third respondent under Rule 37 of the Rules for balance lease period and the same cannot be questioned by the petitioner who is in no way concerned with the said transfer in any manner;

(xix) that the petitioner in Writ Petition No. 31690/2003 is neither interested nor an affected party by the transfer of the lease made in favour of the third respondent and he has absolutely no locus standi to question the same by filing the writ petition and even assuming that he is aggrieved and has locus standi to challenge the transfer, he has an alternative and efficacious remedy under Rule 54 of the Rules before the Tribunal and therefore, the writ petition is not maintainable and liable to be dismissed;

(xx) that as the area held by both the petitioner and the third respondent is in dispute with regard to boundaries, it is necessary for the respondent Government to conduct a joint survey and resolve the issue and also to stop the illegal mining activities of the petitioner in the disputed area and therefore, the writ petition is liable to be rejected;

(xxi) that the petitioner in Writ Petition No. 31690/2003 is intentionally trying to avoid the survey proposed to be conducted by both the Forest Department and the Department of Mines and Geology;

(xxii) that the department of Forest has raised serious objections to the illegal mining activities conducted by the petitioner in the areas of the third respondent and accordingly, directed the petitioner to get a joint survey conducted for demarcating the boundary lines; and

(xxiii) that the Director of Mines and Geology is competent and is duty bound to conduct the survey in order to settle the disputes between the adjacent lease holders and therefore, the prayer for quashing the endorsement cannot be granted and therefore, the third respondent sought for dismissal of the writ petition.

6. The fourth respondent in the writ petition-Union of India filed objections statement contending:

(i) that the writ petition pertains to locus standi of the petitioner to raise the issue of a boundary dispute with the third respondent;

(ii) that the mining lease No. 2010 obtained by the third respondent is not a valid one;

(iii) that no cause of action is shown against the fourth respondent;

(iv) that M/s. Dalmia Cements (Bharat) Limited has not obtained approval of the Central Government under FC Act in respect of the area in question;

(v) that on a proposal forwarded by the Government of Karnataka dated

30.12.1991 for renewal of mining lease No. 2010 in favour of M/s. Dalmia Cements (Bharat) Limited over an area of 819.20 acres of forest land in Bellary District under FC Act, it accorded in-principle I stage clearance under FC Act for renewal of mining lease No. 2010 over an area of 201.50ha. of forestland;

(vi) that the temporary working permission over already broken up area was also granted for a period of six months;

(vii) that since no compliance report on the conditions stipulated in-principle I stage clearance issued by the fourth respondent was received, I stage clearance stood expired on 23.12.2002, in view of the guidelines issued by Ministry vide letter dated 14.9.2001 that the conditions stipulated in in-principle I stage clearance shall be complied within five years period;

(viii) that the land previously leased to M/s. Dalmia Cements (Bharat) Limited under MMDR Act stood reverted back to the State Government after 23.12.2002 i.e. five years from the issuance of in-principle I stage approval and, therefore, the Forest Department cannot entertain any claim from

the third respondent without a valid FC Act Clearance with respect to the area in question;

(ix) that it is the Forest Department which has to be in physical possession of the surrendered land, till the said land is rediverted under FC Act for non-forestry purposes; and

(x) that the third respondent does not have any stake in the land in question, as it does not have any approval under FC Act and therefore, occupation of the area by the third respondent is illegal.

7. The writ petitioner filed rejoinder to the objections statement filed by the third respondent averring:

(i) that in the objections statement filed by the third respondent it has made a false statement that M/s. Dalmia Cements (Bharat) Limited had given twelve months notice to State expressing their intention to surrender the lease due to severe labour problems;

(ii) that it is impossible for the petitioner to encroach upon and work in the area granted in favour of the third respondent as immediately after the survey of northern boundary of the area covered in ML No. 2339, it was found that there is a huge trench about a depth of 80 meters and the third respondent is misleading this Court and also the authority; and

(iii) that the mining lease of the petitioner was renewed after the Central Government granted prior approval on 8.4.1997 under the FC Act and subsequently it was clarified by the Central Government by communication dated 24.8.1988 that the approval is for twenty years with effect from 12.2.1990 and therefore, the State Government has granted the second installment of the first renewal in favour of the petitioner which is perfectly legal and question of survey

and demarcation of the petitioner's area does not arise in as much as the area was surveyed on 2.2.2002 and the third respondent is trying to mislead the court by referring to the statement of the petitioner in W.P. No. 16569/2003 which is directly against the illegal action of the Forest Authorities in orally stopping the mining operation of the petitioner; and

(iv) that M/s. Dalmia Cements (Bharat) Limited had surrendered an area of 197 Ha on 16.4.1999 and it agreed in principle for approval for renewal of mining lease over an extent of 201.50 Ha. in its favour.

8.1 The learned Single Judge after hearing the learned Senior counsel appearing for the petitioner, the learned senior counsel appearing for Respondent No. 3, the Addl. CGSC for Respondent No. 4 and the learned HCGP for Respondents 1 and 2, by order dated 10.11.2004 held that the writ petitioner had locus standi to file the writ petition as M/s. Dalmia Cements (Bharat) Limited has surrendered nearly 197 Ha of their mining area to the Forest Department and at least the available mining area should have been notified by the State Government for grant of mining lease as required under Rule 59 of the Rules, so that the general public could have participated by filing applications for grant of the mining lease. Since the petitioner was deprived of this opportunity, he is an aggrieved person and therefore, he has locus standi to maintain the petition.

8.2 The learned Single Judge further held that the renewal of lease in favour of M/s. Dalmia Cements (Bharat) Limited without prior approval u/s 2 of FC Act was illegal and void in view of the decision of the Hon'ble Supreme Court in Godavarman's case, as no renewal of mining lease could be made without prior approval of the Central Government in respect of a lease for mining in forest area, and in particular, in-principle I stage clearance granted u/s 2 of FC Act had expired on 23.12.2002, after expiry of five years from the date of issue i.e. on 24.12.1997 and there was no proposal made by the State Government for renewal of mining lease No. 2010 in favour of M/s. Dalmia Cements (Bharat) Limited; and therefore, the lease made in favour of M/s. Dalmia Cements (Bharat) Limited was not existing and could not have been transferred as mining lease was void on 25.1.1983, since the renewal of mining lease was made without prior approval of the Central Government as required u/s 2 of the FC Act; and hence the impugned order of the State Government is wholly illegal and invalid and therefore, even the directions issued by the Director of Mines and Geology on 27.5.2003 is without jurisdiction.

8.3 The learned Single Judge further held that in view of the said findings and conclusions reached by him, the other contentions canvassed by the learned senior counsel for the parties to the lis pales into insignificance; and therefore, the same need not be considered for disposal of the writ petition and accordingly, allowed the writ petition as referred to above.

9.1 Being aggrieved by the said order of the learned Single Judge dated 10.11.2004 allowing the writ petition, the third respondent in the writ petition

has preferred this appeal.

9.2 During the pendency of the appeal, M/s. JSW Steel Ltd., earlier called as M/s Jindal Vijayanagar Steel Ltd., made an application for impleading and the said application has been allowed by order dated 8.6.2007 and the proposed applicant has been impleaded as Respondent No. 5 in this writ appeal.

10. W.P. No. 23782/2005 is filed seeking for a direction to the first and second respondents to forthwith dispose of the application of the petitioner after hearing him on the subject

and to grant him the licence to operate 819.20 acres of the forest mining area in Jaisingpur village covered by the erstwhile mining lease ML 2010.

11. The petitioner in Writ petition No. 23782/2005 contends:

(i) that he is a mining contractor and applied for the grant of lease of 819.20 acres of forest land in Jaisinghpur village, NEB Range, Sandur Taluk, Bellary District, since M/s. Dalmia Cements (Bharat) Limited decided and taken steps to surrender the same and Muneer Enterprises-writ petitioner in W.P. No. 31690/2003 had also similarly applied for grant of a lease of the same area and the applications are pending;

(ii) that the first and second respondents-State of Karnataka by its Secretary to Government, Department of Mines and Director of Mines and Geology without considering the petitioner's and the other pending applications, arbitrarily, illegally and surreptitiously transferred the surrendered lease of M/s. Dalmia Cements (Bharat) Limited to Ramghad Minerals and Mining Pvt.Ltd., a party not eligible to the same, particularly vis-a-vis the petitioner;

(iii) that the said proceeding was challenged in W.P. No. 31690/2003 (By Muneer Enterprises), and the said writ petition was allowed by order dated 10.11.2004 and appeal filed against the order passed in the said writ petition is pending consideration in W.A. No. 5377/2004 and granted stay only with regard to cancellation of lease and to maintain statusquo regarding survey and, therefore, there is no impediment for the respondents to consider the pending mining applications.; and

(iv) that he filed revision before the third respondent which was dismissed by order dated 2.5.2005 and therefore, the writ petition is filed seeking for the above referred reliefs.

12. Respondents 1 and 2 in Writ petition No. 23782 of 2005 have filed statement of objections averring:

(i) that it is true that petitioner had applied for grant of mining lease in respect of 819.20 acres of the forest mining area in Jaisinghpur village, Sandur Taluk, Bellary District on 3.5.2001. The mining lease ML 2010 was granted to M/s. Dalmia Cements (Bharat) Limited for a period of twenty years on 25.11.1983;

(ii) that during the subsistence of the lease period, application was filed for renewal of the lease. M/s. Dalmia Cements (Bharat) Limited filed application for surrender of the leased area;

(iii) that in the meanwhile, they have also transferred ML 2010 in favour of M/s. Ramghad Minerals and Mining Pvt. Ltd. and the said transfer is questioned in W.P. No. 31690/2003 and the order of transfer was quashed and being aggrieved by the same, W.A. No. 5377/2004 is filed before this Court and the same is pending consideration;

(iv) that in the said writ appeal, this Court granted an order of stay of the order dated 10.11.2004 passed by the learned Single Judge in so far as it relates to quashing of the Government order dated 16.3.2002, and directed respondents 2 and 3 in the writ appeal to proceed in processing the application, if any, for renewal of lease u/s 2 of FC Act and to send its report to the fourth respondent-Union of India within two months from the date of the order;

(v) that being aggrieved by the interim order granted by the Division Bench of this Court in writ appeal, appellant in the writ appeal approached Hon''ble Supreme Court in SLP No. 11508/2006 and Hon''ble Supreme Court of India after verifying the facts and circumstances of the case has disposed of the SLP with the following observation:

Having heard the learned Counsel for the parties, subject to the following directions, we are not inclined to interfere with the impugned order. Firstly, we make it clear that the survey to be carried out by the Director of Mines and Geology will continue. Secondly, that the decision dt.13.9./2006 of the Central Government will not create any rights/equities in favour of respondent No. 1 herein M/s. Ramghad Minerals and Mining Pvt. Ltd., as the matter is pending before the High Court.

Looking to the complexity and the stakes involved in this matter, the Division Bench of the High Court is requested to expeditiously hear and dispose of this matter.

If possible, the matter may be listed for final hearing in the second week of November, 2007.

Special Leave petitions herein are disposed of.

(vi) that in view of the above referred facts and circumstances of the case, it is not possible to consider the application of the petitioner for grant of mining lease until and unless the disputed question of facts are settled by the Division Bench of this Court and, after the decision of the Division Bench in the pending appeal, pending application of the petitioner has to be considered and therefore, writ petition is liable to be dismissed at this stage.

13.1 Heard the learned Senior counsel Sri. Krishnan Venugopal appearing for the appellant in W.A. No. 5377/2004, learned Senior counsel Sri. M.R. Achar

appearing for the writ petitioner-respondent No. 1 in W.A. No. 5377/2004, the learned Government Advocate appearing for Respondents 2 and 3, learned Central Government Standing Counsel appearing for respondent No. 4 and the learned Senior counsel Sri. D.L.N. Rao appearing for the fifth respondent in the writ appeal.

13.2 We have also heard the arguments of Sri. D.L.N. Rao, learned Senior counsel, appearing for the writ petitioner in W.P. No. 23782/2005, learned Government Advocate appearing for Respondents 1 and 2 and the learned Central Government Standing Counsel appearing for Respondent No. 3 in the writ petition.

14.1 The learned Senior counsel Sri. Krishnan Venugopal appearing for the appellant in the writ appeal submitted:

(i) that the writ petitioner in Writ Petition No. 31690/2003 has not averred material facts in the writ petition and is only interested in avoiding the measurement of boundary of the area alleged in his favour and he has taken us through the various proceedings that were initiated pertaining to the complaint by M/s. Dalmia Cements (Bharat) Limited predecessor interest of the appellant regarding the encroachment of area leased in their favour by the writ petitioner;

(ii) that the writ petitioner in Writ Petition No. 31690/2003 has made an application to carry on mining activity within 7.5 meters of the common boundary of M/s. Dalmia Cements (Bharat) Limited and Deputy Director of Mines and Safety, Bellary directed the writ petitioner to stop working within 7.5 meters of the claimed common boundary with M/s. Dalmia Cements (Bharat) Limited until a binding agreement was reached between the parties;

(iii) that being aggrieved by the said direction, writ petitioner filed W.P. No. 24865/1997 alleging that the Deputy Director has no authority to pass the order;

(iv) that thereafter on 6.11.1997 the Director of Mines Safety, Bellary has also passed order withdrawing the work on the ground that there was no settled boundary and the boundary pillars were not erected at suitable intervals;

(v) that later the writ petitioner filed W.P. No. 6304/1998 challenging the order of Mines and Safety dated 6.11.1997 on the ground that only the Director General, Mines Safety had the power to pass an order withdrawing the permission dated 6.11.1993 to work within 7.5 meters of the common boundary and the said writ petition was allowed and order dated 6.11.1997 was set aside on the ground that no hearing had been given and natural justice had been violated and the writ petitioner was only interested in seeing that the encroachment made by him in the area which had been leased to M/s. Dalmia Cements (Bharat) Limited could not be detected and was preventing the survey and demarcation of boundary of the lease granted in favour of the M/s. Dalmia Cements (Bharat) Limited;

(vi) that the averments made in the writ petition that the lease for mining iron ore granted in favour of the writ petitioner had been renewed after prior

permission had been obtained from the Central Government under the FC Act is not true and no document whatever is produced in that behalf;

(vii) that the writ petitioner-first respondent herein and the fifth respondent stood on the same footing as the lease had been renewed without obtaining prior permission u/s 2 of the FC Act and therefore, writ petitioner had no locus standi to challenge the transfer made by M/s. Dalmia Cements (Bharat) Limited in favour of the appellant herein and, if the said facts had been brought to the notice of the learned Single Judge, the learned Single Judge would have taken a different view in the matter regarding the locus standi of the writ petitioner to file writ petition;

(viii) that the learned single Judge has set aside the transfer made in favour of the appellant by M/s. Dalmia Cements (Bharat) Limited erroneously on the ground that the renewal of the lease of the appellant was without prior permission of the Central Government u/s 2 of the FC Act; that it was illegal and void ab-initio and did not confer any right on M/s. Dalmia Cements (Bharat) Limited as M/s. Dalmia Cements (Bharat) Limited had lost their leased hold right on the leased property; and that therefore M/s. Dalmia Cements (Bharat) Limited could not have transferred a non-existent lease.

(ix) that the learned Single Judge erred in proceeding on the basis that a portion of the leased area measuring 195 Ha. had been surrendered by M/s. Dalmia Cements (Bharat) Limited which is also not based upon the material on record and holding that renewal of lease in favour of the appellant without prior permission u/s 2 of FC Act would be void and that the transfer effected by M/s. Dalmia Cements (Bharat) Limited in favour of the appellant herein is illegal, void ab-initio and non-est and consequently set aside the order directing measurement of boundary of the area leased in favour of the writ petitioner and the appellant herein;

(x) that having regard to the provisions of Section 2 of FC Act and the Rules framed thereunder, the finding of the learned Single Judge is contrary to the material on record and therefore, arbitrary and liable to be set aside;

(xi) that the only mode by which M/s. Dalmia Cements (Bharat) Limited could have determined the lease or surrendered the lease is contained in Rule 29 of the Rules and M/s. Dalmia Cements (Bharat) Limited has only issued twelve months notice for termination of lease and to surrender the leased area in favour of the State and before the said period of twelve months expired, application for transfer was made and the same has been passed in accordance with law by the State permitting transfer of the leasehold right by M/s. Dalmia Cements (Bharat) Limited in favour of the appellant herein;

(xii) that the in-principle I Stage approval had been granted in favour of M/s. Dalmia Cements (Bharat) Limited in respect of the lease granted to M/s. Dalmia Cements (Bharat) Limited and the said in-principle I stage approval u/s 2 of the FC Act was valid for five years and before the completion of the said period of

five years from the date of in-principle I stage approval granted by the Central Government u/s 2 of the FC Act i.e., 24.12.1997, transfer has been effected on 16.3.2002 and therefore, as on the date of transfer, there was a valid in-principle I stage approval granted u/s 2 of FC Act;

(xiii) that the renewal of lease without obtaining prior permission u/s 2 of FC Act could not be illegal, void ab-initio or non-est and in view of the decision of the Hon"ble Supreme Court in case of Godavarman"s-1 and 2 case itself, it is clear that if the renewal or grant of lease in respect of forest area without obtaining prior permission of the Central Government u/s 2 of the FC Act would be void not in the sense that it is illegal and void ab-initio or non-est but would not be legal and would not enable the lessee to carry on non-forest activity in the forest area and non-forest activity including the mining of iron ore can be started only after obtaining prior permission from the Central Government u/s 2 of FC Act and the Hon"ble Supreme Court itself in Godavarman-2 case has directed that wherever application for prior permission u/s 2 of FC Act is pending consideration, same shall be processed and after the permission is granted, it is open to the lessee to start mining operation in the forest area and therefore, the finding of the learned Single Judge that renewal of mining lease in respect of land in forest area without obtaining prior permission from the central Government u/s 2 of FC Act could be illegal, void ab-initio and non-est and lease would become non-existent cannot at all be sustained and the same is liable to be set aside;

(xiv) that even where mining activity was carried on without obtaining licence or without obtaining prior permission u/s 2 of the FC Act, Hon"ble Supreme Court has not held that the said default on the part of the lessee or the Government in obtaining prior permission from the Central Government u/s 2 of the FC Act would only prohibit the lessee from carrying out non-forest operation in forest area including mining of iron ore and other minerals;

(xv) that the question as to whether it is mandatory to obtain prior permission of the Central Government under FC Act before renewal of the lease was mandatory and such action would render the renewal void was in a fluid stage and in Godavarman"s case AIR 1997 SC 1228 it has been specifically laid down that such transfer should be void; however, in the same case, Hon"ble Supreme Court by subsequent order dated March 14, 1997 has directed the State Government to process the pending applications for grant of prior permission from the Central Government u/s 2 of FC Act and has directed that it is open to the lessees to start mining operations after prior permission from the central Government u/s 2 of the FC Act and the case of the appellant would squarely fall within the ambit of the Godavarman"s case and therefore, in view of Article 141 of the Constitution of India it would be the law of the land and binding upon the respondents and therefore, the transfer would not be non-est or illegal and void ab-initio and would only be irregular and at the most prevent the lessee from carrying out mining operation in the forest area till proper permission has been obtained u/s 2 of the FC Act;

(xvi) that in view of provisions of Rule 29, Rule 14, Rule 19 and other provisions of the Rules, mere statement alleged to have been made by the appellant that he had 197 Ha of land in the forest area will not operate as estoppel of the statute and said statement has to be considered in the light of circumstance as such statement is. made by M/s. Dalmia Cements (Bharat) Limited and mere fact that in-principle I stage approval granted in favour of M/s. Dalmia Cements (Bharat) Limited was only in respect of 210 Ha of land and not in respect of entire extent of land measuring 819 acres would not in any way affect the validity of the lease of the entire extent and there was no surrender of any lease area by M/s. Dalmia Cements (Bharat) Limited to the Government and the entire area which had been leased in favour of M/s. Dalmia Cements (Bharat) Limited has been transferred in favour of the appellant in the writ appeal;

(xvii) that the appellant has also obtained in-principle I stage permission u/s 2 of the FC Act and it is open to the Central Government to pass ex-post facto order validating the transfer made by M/s. Dalmia Cements (Bharat) Limited and the transaction cannot be termed as illegal, void ab-initio and non-est;

(xviii) that the appellant is not seeking a direction to the Central Government to pass an ex-post facto order regulating renewal of lease in favour of M/s. Dalmia Cements (Bharat) Limited and consequential valid transfer in favour of the appellant, but only submitting that it is open to the central Government to pass ex-post facto order which would validate non-obtaining of prior approval u/s 2 of the FC Act subject to terms and conditions as laid down in the Rule and appellant would be satisfied if an observation is made in the order that Central Government has recognised passing of ex-post facto order in respect of prior approval granted u/s 2 of the FC Act and therefore, the transfer of lease in favour of the appellant in the appeal by M/s. Dalmia Cements (Bharat) Limited is justified and the order passed by the learned Single Judge is liable to be set aside as the same is not based upon the material on record under the provisions of the Rules and Section 2 of the FC Act; and

(xix) that the observations made by the Hon"ble Supreme Court in the case of Nature Lovers Movement Vs. State of Kerala and Others, would clearly show that Hon"ble Supreme Court has laid down that non-obtaining of prior approval under the FC Act can be regularised by issuing ex-post facto order by Central Government and to that extent the interest of the appellant shall be safeguarded.

15. Sri. M.R. Achar, learned Senior counsel appearing for the writ petitioner-first respondent in the writ appeal submitted:

(i) that the main question that arose for determination before the learned Single Judge was as to whether the lease in favour of M/s. Dalmia Cements (Bharat) Limited was in existence on the date of transfer and could be validly transferred and in view of the categorical pronouncement made by the Hon"ble Supreme Court that mining lease or renewal of mining lease in a forest area without prior

permission u/s 2 of the FC Act is illegal and void ab-initio would clearly show that M/s.Dalmia Cements (Bharat) Limited did not have any existing lease on the date of transfer as the renewal of lease of M/s. Dalmia Cements (Bharat) Limited on 2.3.1986 with effect from 25.1.1983 was without obtaining prior permission u/s 2 of the FC Act and therefore illegal, void ab-initio and non-est and therefore, there was no existing lease which could be transferred by M/s. Dalmia Cements (Bharat) Limited in favour of the appellant in this appeal;

(ii) that the arguments that are now advanced regarding the conduct of the writ petitioner-first respondent in the appeal as also the contention that the prior permission u/s 2 of the FC Act can be regularised by passing an ex-post facto order by the Central Government were not argued before the learned Single Judge and what was urged before the learned Single Judge was that the in-principle I Stage approval granted u/s 2 of the FC Act itself would ex-post facto regularise the lease in favour of M/s. Dalmia Cements (Bharat) Limited and the arguments submitted by the learned Senior counsel for the appellant regarding locus standi of the first respondent-the writ petitioner and suppression of the fact is a new argument which is argued for the first time in this appeal and the said argument was not advanced before the learned Single Judge and therefore, cannot be entertained;

(iii) that there is no merit in the contention of the learned Senior counsel for the appellant that writ petitioner had also taken advantage of the ex-post facto order and that he had not obtained prior approval u/s 2 of the FC Act before renewal of the lease;

(iv) that the renewal of lease in favour of the writ petitioner was made after obtaining the approval u/s 2 of the FC Act and hence, the question of ex-post facto regularisation would not arise;

(v) that M/s Dalmia Cements (Bharat) Limited itself had admitted that it had surrendered 197 Ha. of land to the Forest Department and that it had determined the lease and surrendered the balance extent of land by letter dated 27.3.2001 and in view of the provisions of Rule 39 of the Rules the determination of the lease and surrender would come into effect immediately after issuance of notice under Rule 29 of the Rules and M/s. Dalmia had also surrendered the lease deed and paid the dues to the Forest Department and therefore, there was surrender of land which had been leased in favour of M/s. Dalmia Cements (Bharat) Limited and there was no existing lease which could be transferred in favour of the appellant herein; and hence the finding of the learned Single Judge that M/s. Dalmia had no existing lease on the date of transfer 16.3.2002 in favour of the appellant herein is justified and based upon the material on record and there is no error or illegality in the said order of the learned Single Judge;

(vi) that the suit filed by M/s. Dalmia was dismissed and in the writ petition filed by the first respondent herein, M/s. Dalmia had admitted that he had surrendered the lease and question of any dispute regarding the boundary of the

forest land leased in favour of the appellant and the first respondent herein did not survive and the material on record would clearly show that M/s. Dalmia had no intention of continuing the lease and had determined the lease and surrendered the same and there was no lease deed to be transferred in favour of the appellant herein and in-principle I stage permission granted to M/s. Dalmia was not at all availed of by M/s. Dalmia by complying the conditions and six months time had been given for complying the in-principle I Stage consent conditions which M/s. Dalmia did not comply with and therefore, the said in-principle I stage permission granted u/s 2 of the FC Act lapsed and even otherwise, after the expiry of five years the said in-principle I stage permission granted u/s 2 of the FC Act lapsed since M/s. Dalmia did not comply with the conditions of the said permission and therefore, question of any ex-post facto order or regularisation of renewal would not arise;

(vii) that any renewal of lease without permission u/s 2 of the FC Act is illegal, void ab-initio and non-est and cannot be treated as voidable as prior permission is required to be taken and prior permission cannot be granted ex-post facto and in any view of the matter, the appellant has not yet taken final permission u/s 2 of the FC Act;

(viii) that the wordings of the principle laid down by the Hon"ble Supreme Court in Godavarman"s case clearly show that renewal of mining lease in forest area without prior permission u/s 2 of the FC Act would be illegal, void ab-initio and non-est and would not confer any title on the lessee and M/s. Dalmia have not complied with the conditions of the in-principle I stage permission granted u/s 2 of the FC Act;

(ix) that the transferee could not have made an application and obtained in-principle I stage permission u/s 2 of the FC Act and as transfer itself is void, no title vested with the appellant as rightly held by the learned Single Judge;

(x) that there is no merit whatsoever in the contention of the learned senior counsel appearing for the appellant that the writ petitioner was interested in side-tracking the issue of encroachment of land leased in favour of M/s. Dalmia Cements (Bharat) Limited and transferred to the appellant and that the writ petitioner was not at all ready for demarcating the boundary of the lease executed in favour of the appellant and the first respondent-writ petitioner as it is clear from the averments made in the writ petition itself that writ petitioner was ready to submit for joint survey of the land leased in favour of the writ petitioner and M/s. Dalmia Cements (Bharat) Limited allegedly transferred to the appellant;

(xi) that the writ petitioner-first respondent had obtained the final permission u/s 2 of the FC Act before the renewal of the lease was granted in its favour and therefore, writ petitioner did not stand on the same footing and had locus standi to challenge the transfer made in favour of the appellant, since the land which was subject matter of lease in favour of M/s. Dalmia Cements (Bharat) Limited

had been surrendered and was available for notification in which case, the writ petitioner who was holding lease in respect of the adjoining land can file application for grant of mining lease in respect of the said area also;

(xii) that the in-principle I Stage permission granted u/s 2 of the FC Act is only in respect of 201.50 Ha. and not in respect of 819.20 Ha. and therefore, the entire extent of area of lease 819.20 Ha. could not have been transferred in favour of the appellant;

(xiii) that in view of the observations made by the Hon''ble Supreme Court while rejecting the SLP filed against the interim order passed by this Court on 19.4.2006, the appellant cannot take advantage of the order that is passed as in-principle I stage approval u/s 2 of the FC Act and question of this Court considering the question as to whether Central Government can pass an ex-post facto order so as to regularise the renewal made without obtaining prior permission u/s 2 of the FC Act cannot be decided by this Court, as this Court clearly observed while passing the interim order on 19.4.2006 that the said question is to be decided by the Central Government and the same is confirmed by the Supreme Court and the SLP filed against the said order has been dismissed;

(xiv) that the question of central Government granting ex-post facto permission in regularising the renewal which is illegal, void ab-initio and non-est would not arise, as a void order which is illegal, void ab-initio and non-est cannot be rectified or regularised and therefore, the order passed by the learned Single Judge is justified;

(xv) that the definition of the word Void'' in Black''s Law Dictionary, Sixth Edition, pages 1573 and 1574 is defined as null, ineffectual, nugatory, having no legal force or binding effect enabling any law to support the purpose for which it was intended and the facts which are void and incapable of ratification;

(xvi) that the renewal of lease without obtaining prior permission u/s 2 of the FC Act would render the same void and no order of regularisation of such occupation or encroachment could be passed after FC Act came into force without obtaining prior approval of the Central Government in terms of Section 2 of the FC Act (vide Nature Lovers Movement Vs. State of Kerala and Others, ; and

(xvii) that having regard to the categorical pronouncement of the Hon''ble Supreme Court in Godavarman''s case, the renewal of lease in favour of M/s. Dalmia Cements (Bharat) Limited without obtaining prior approval u/s 2 of the FC Act is illegal, void ab-initio and non-est and therefore, there was no existing lease in favour of M/s. Dalmia Cements (Bharat) Limited which can be transferred in favour of the appellant and therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

16. Sri. D.L.N. Rao, learned Senior counsel appearing for the fifth respondent in the writ appeal submitted;

(i) that the contentions that are urged by the learned Senior counsel for the appellant before this Court are the contentions which were not urged before the learned Single Judge and have been argued for the first time and therefore cannot be entertained;

(ii) that admittedly the renewal of lease granted to M/s. Dalmia Cements (Bharat) Limited on 7.3.86 with effect from 25.1.1983 was without obtaining prior permission u/s 2 of the FC Act and therefore, in view of the decision in Godavarman's case, the said renewal would be illegal, void ab-initio and non-est and lease had become nonexistent and lapsed and was not available to M/s. Dalmia Cements (Bharat) Limited to transfer in favour of the appellant and ought to have been notified in which case the aspirants seeking for mining lease would have made applications for grant of mining lease;

(iii) that though M/s. Dalmia Cements (Bharat) Limited had been granted in-principle I stage permission u/s 2 of the FC Act M/s. Dalmia Cements (Bharat) Limited did not choose to comply with the conditions of the said permission as it was not interested in continuing the lease and was intending to determine and surrender the lease to the Government and has in fact on 27.3.2001 addressed letter to the Government surrendering the lease to the Government and the said request of M/s. Dalmia Cements (Bharat) Limited would come into effect from 27.3.2001 itself as M/s. Dalmia Cements (Bharat) Limited surrendered the lease deed and paid the amount which was due to be paid to the Authority granting lease towards the lease which had been granted to him and therefore M/s. Dalmia Cements (Bharat) Limited had surrendered the lease in favour of the Government and the land vested with the Government and was not available for M/s. Dalmia Cements (Bharat) Limited to transfer in favour of the appellant on 16.3.2002;

(iv) that the speed with which the application for transfer has been approved by the Government would clearly show that M/s. Dalmia Cements (Bharat) Limited - the appellant and the concerned Authorities have colluded and defrauded the Department and the Government and the transfer of the non-existing lease has been rightly set aside by the learned Single Judge;

(v) that what is required u/s 2 of the FC Act is the prior approval of Central Government for mining in forest area and said prior approval cannot be granted ex-post facto as the said interpretation that ex-post facto approval would render provisions of Section 2 of the FC Act regarding prior approval and mining lease which cannot be permitted;

(vi) that M/s. Dalmia Cements (Bharat) Limited did not choose to comply with the conditions of the in-principle I stage permission granted u/s 2 of the FC Act since it had determined to surrender the lease and in fact had surrendered the lease to the Government, there was no existing lease in favour of M/s. Dalmia Cements (Bharat) Limited for effecting transfer in favour of the appellant and it was not open to the appellant to again obtain in-principle approval from the

Central Government u/s 2 of the FC Act;

(vii) that so far as the direction given by the Hon'ble Supreme Court to scrutinise the applications filed u/s 2 of the FC Act is concerned, only those cases which are covered by the pronouncement of the Hon'ble Supreme Court Godavarman's case-II would be covered by the said decision and question of passing an ex-post facto order by the Central Government regularising non-obtaining of prior approval u/s 2 of the FC Act before granting renewal of lease cannot be permitted;

(viii) that the lease granted in favour of M/s. Dalmia Cements (Bharat) Limited had been validly determined by M/s. Dalmia Cements (Bharat) Limited itself after issuing notice on 27.3.2001 and by surrendering the lease deed and paying the amount due to the Authority which had granted the lease towards the mining lease granted to him and therefore, on 16.3.2002 there was no existing lease which could be transferred by M/s. Dalmia Cements (Bharat) Limited in favour of the appellant;

(ix) that in view of the provisions of Rule 28 and Rule 28-A of the Rules the mining lease which had been granted in favour of M/s. Dalmia Cements (Bharat) Limited had lapsed in 1999 itself as admittedly M/s. Dalmia Cements (Bharat) Limited stopped mining lease operations in 1997 itself in view of the direction issued by the Forest authorities and as no sanction u/s 2 of the FC Act had been obtained and therefore, as on the date of transfer dated 16.3.2002 there was no existing lease in favour of M/s. Dalmia Cements (Bharat) Limited to be transferred to the appellant;

(x) that the leases and renewals which are illegal, void ab-initio and non-est cannot be rectified and void leases cannot be construed as voidable which could be rectified by passing ex-post facto order;

(xi) that M/s. Dalmia Cements (Bharat) Limited-the appellant had committed fraud on the department seeking transfer of non-existing lease and question of rectifying or regularising non-existing lease which is illegal, void ab-initio and non-est would not arise and there is no direction issued by the Hon'ble Supreme Court in any of the cases that ex-post facto order regularising the prior approval u/s 2 of the FC Act can be passed by the Central Government ;and

(xii) that there is no merit in the writ appeal and the same is liable to be dismissed.

17. The learned Senior counsel Mr. Krishnan Venugopal, appearing for the appellant, in reply to the arguments of the learned senior counsel appearing for the first respondent and the fifth respondent in the writ appeal, submitted:

(i) that the material on record would clearly show that the notice of closure which had been issued to the appellant was pursuant to the directions in Godavarman's case-1 and 2 and therefore, the appellant's case is clearly covered by the directions issued in Godavarman's case and any direction issued

by the Hon"ble Supreme court is the law of the land;

(ii) that even assuming that the in-principle I Stage approval granted u/s 2 of the FC Act would lapse after five years from the date of issue, since the transfer has been effected prior to the expiry of five years on 16.2.2002 itself and according to the Central Government the in-principle I Stage approval granted u/s 2 of the FC Act was in existence;

(iii) that the decision of the Hon"ble Supreme Court in Godavarman"s case in the subsequent decision would clearly show that the Supreme Court has never laid down that the renewal of the mining lease in forest area without obtaining permission u/s 2 of the FC Act is illegal, void ab-initio and non-est and would render the lease non-existent and the directions issued by the Hon"ble Supreme Court in the decisions cited by him would clearly show that the Hon"ble Supreme Court was interested in implementing the provisions of Section 2 of the FC Act and has directed the consideration of the application filed u/s 2 of the FC Act seeking prior approval and has permitted the lease holders to start mining operations after the permission Section 2 of the FC Act has been granted by the Central Government under the FC Act and therefore, non-obtaining of prior approval u/s 2 of the FC Act before renewal of the mining lease in a forest area would not render the lease illegal and void ab-initio or non-est and it would only be an irregularity which can be cured by passing an ex-post facto order by the Central Government u/s 2 of the FC Act which the Supreme Court itself has specifically recognised and directed the Central Government to pass the order;

(iv) that the appellant has stopped mining lease operations since permission u/s 2 of the FC Act is not yet issued and appellant is not seeking for a direction to the Central Government to pass an ex-post facto order regularising the non-obtaining of prior approval u/s 2 of the FC Act;

(v) that the lease granted in favour of M/s. Dalmia Cements (Bharat) Limited was in force on the date of transfer and has been validly transferred in favour of the appellant and no illegality whatsoever is pointed out in the transfer of lease, except the argument of the writ petitioner that the said transfer is in respect of a non-existing lease and therefore, the transfer of lease is valid and appellant cannot carry on mining operations in the forest area in the absence of permission granted u/s 2 of the FC Act and necessary directions be issued to the Central Government to pass orders on the application of the appellant for granting permission u/s 2 of the FC Act so as to enable the appellant to carry on mining operations;

(v) that in any view of the matter, the finding of the learned Single Judge that renewal of mining lease in the forest area without obtaining prior permission u/s 2 of the FC Act is illegal, void ab-initio and non-est and would render the lease deed nonexistent and therefore, could not be transferred to the appellant is contrary to law and decision of the Hon"ble Supreme court in Godavarman"s case-I and II cannot be sustained and is liable to be set aside;

(vi) that the order of the learned Single Judge quashing the order, ordering joint survey of the land leased in favour of the appellant and the first respondent, is also liable to be dismissed as the same is passed as a consequence of declaration that the transfer in favour of the appellant was illegal, void ab-initio and non-est and the writ petitioner himself has consented for joint survey in the writ petition; and

(vii) that there is no merit in the contention that the lease in favour of M/s. Dalmia Cements (Bharat) Limited had lapsed under Rule 28-A of the Rules as no order had been specifically passed by the Government that the lease in favour of M/s. Dalmia Cements (Bharat) Limited had lapsed and question of renewal of lease by filing an application would not arise and Rule 28 and 28-A of the Rules have to be read together and therefore, the writ appeal is entitled to be allowed.

18. We have given careful consideration to the contentions of the learned senior counsel appearing for the parties and scrutinised the material on record in the light of the decisions cited by the learned senior counsel appearing for the parties.

19. Having regard to the contentions urged, the core issues that arise for our determination in this appeal and writ petition are:

1) Whether the renewal of mining lease in favour of the original lease holder, {M/s. Dalmia Cements (Bharat) Limited} on 3.7.1986 with effect from 25.1.1983 without obtaining prior permission u/s 2 of the FC Act is illegal and void ab-initio and would render the mining lease non-est or whether non-obtaining prior approval for renewal of mining lease in a forest area u/s 2 of the FC Act would only render the renewal voidable and whether the same can be cured by Central Government by passing an ex-post facto order u/s 2 of the FC Act?

2) Whether the transfer of mining lease by the original lease holder {M/s. Dalmia Cements (Bharat) Limited} in favour of the appellant herein suffers from any legal infirmity?

3) Whether the in-principle I Stage transfer granted u/s 2 of the FC Act ex-post facto can regularise illegality as of non-obtaining of prior permission u/s 2 of the FC Act before renewal of mining lease in forest area?

4) Whether on the facts and circumstances of the case, the impugned mining area is available for notification u/s 59(1) of the Act?

5) Whether the order passed by the learned Single Judge is justified or calls for interference in this appeal?

6) To what relief the appellant is entitled to?

7) Whether the writ petitioner in W.P. No. 23782/2005 is entitled to relief sought for in the writ petition, in view of our finding in writ appeal?

and we answer the above Issues for determination as follows:

Issue No. 1: The renewal of mining lease in the forest land without obtaining

prior permission u/s 2 of the FC Act would not render the lease deed illegal, void ab-initio and non-est but is only voidable and the same can be regularised by passing an ex-post facto order by Central Government u/s 2 of the FC Act.

Issue No. 2: In the negative.

Issue No. 3: In the negative.

Issue No. 4: In the negative.

Issue No. 5: The order passed by the learned Single Judge is liable to be set aside.

Issue No. 6: As per the final order

Issue No. 7: In the negative for the following:

REASONS

20. Issue No. 1 to 7: These issues are considered together since they are interconnected and to avoid repetition.

21. It is necessary to cull out the relevant provisions of the MC Rules and Section 2 of FC Act before considering the contention of the Senior counsel appearing for the parties, in the light of the principles laid down by the Hon'ble Supreme Court in the decisions relied upon by the counsel.

22. Rule 29 of the MC Rules deals with termination of lease by the lessee and the same reads as follows:

Rule-29. Restrictions on determination of lease

(1) The lessee shall not determine the lease except after notice in writing of not less than twelve calendar months to State Government or to such officer, or authority as the State Government may specify in this behalf:

[PROVIDED that where a lessee holding a mining lease for a group of minerals applies for the surrender of any mineral from the lease on the ground that deposits of that mineral have since exhausted or depleted to such an extent that it is no longer economical to work the mineral, the State Government may permit the lessee to surrender that mineral, subject to the following conditions, namely;

(a) the lessee applies for such surrender of mineral at least 6 months before the intended date of surrender; and

(b) the lessee gives an undertaking that he will not cause any hindrance in the working of the mineral so surrendered by any other person who is subsequently granted a mining lease in respect of that mineral:]

[Provided Further that where a lessee applies for the surrender of the whole or a part of lease-hold area on the ground that such area is barren or the deposits of minerals have since exhausted or depleted to such an extent that it is no longer

economical to work in such area, the State Government shall permit the lessee, from the date of receipt of the application, to surrender that area if the following conditions are satisfied, namely:

- (a) the leasehold area to be surrendered has been properly surveyed and is contiguous;
- (b) the lessee has paid all the dues payable to the Government under the lease up to the date of application, and
- (c) the lessee has obtained a certificate under Rule 29A.

PROVIDED also that surrender of the lease area by the lessee shall be permitted only thrice during the period of the lease on fulfilling the conditions--

- (i) that at least a period of five years has elapsed since the last surrender; and
- (ii) that the provisions of the mining plan including the environment management plan thereof have been complied with,

(2) Every application for the surrender of a part of lease-hold area In accordance with the provisions of Sub-rule(1), shall be accompanied by a deposit of two hundred rupees for meeting the expenditure for the purpose of survey and demarcation of the area to be surrendered:

Provided that the lessee shall deposit such further amount, not exceeding two hundred rupees, as may be demanded by the State Government for meeting any additional expenditure for the said purpose within one month from the date of demand of such deposit;

Provided Further that where the whole or any part of the amount deposited has not been expended, it shall be refunded, It shall be refunded to the lessee within two months from the dates of the Completion of the work of survey and demarcation of the area to be surrendered.

(3) Upon the Issuance of the order by the Regional Controller of Mines or the officer authorized by the State Government In this behalf, as the case may be, under Sub-rule (6) of Rule 23-F of Mineral Conservation and Development Rules, 1988, for forfeiting the sum assured, on non-performance of the measures contained in the approved mine closure plan referred to in Sub-rule (1) of Rule 23-A of Mineral Conservation and Development Rules, 1988 by the lessee, it shall be the responsibility of State Government to realize any letter of credit or bond or any other surety, guarantee provided or obtained as financial assurance for the purpose of performance of protective, reclamation and rehabilitation measures as contained in the approved mine closure plan and shall carry out such measures either by itself, or appoint an agent to do so.]

23. Rule 28 of the MC Rules deals with lapse of lease which reads:

Rule-28. Lapsing of Leases

(1) Subject to the other conditions of this rule where mining operations are not commenced within a period of one year from the date of execution of the lease, or is discontinued for a continuous period of one year after commencement of such operations, the State Government shall, by an order, declare the mining lease as lapsed and communicate the declaration to the lessee.

(2) Where a lessee is unable to commence the mining operation within a period of one year from the date of execution of the mining lease, or discontinues mining operations for a period exceeding one year for reasons beyond his control, he may submit an application to the State Government, explaining the reasons for the same; at least three months before the expiry of such period.

(3) Every application under Sub-rule(2) shall be accompanied by a fee of Rs. 200.

(4) The State Government may on receipt of an application made under Sub-rule (2) and on being satisfied about the adequacy and genuineness of the reasons for the date on which the lease would have otherwise lapsed, extending or refusing to extend the period of the lease:

Provided, that where the State Government on receipt of an application under Sub-rule (2) does not pass an order before the expiry of the date on which the lease would have otherwise lapsed, the lease shall be deemed to have been extended until the order is passed by the State Government or until a period of two years, whichever is earlier.

[Explanation: 1. Where the non-commencement of the mining operations within a period of two years from the date of execution of mining lease is on account of --

(a) delay in acquisition of surface rights; or

(b) delay in getting the possession of the leased area; or

(c) delay in supply or installation of machinery; or

(d) delay in getting financial assistance from banks, or any financial Institutions; or

(e) ensuring supply of the mineral in an industry of which the lessee is the owner or in which he holds not less than 50% of the controlling interest.

and the lessee is able to furnish documentary evidence supported by a duly sworn affidavit, the State Government may consider if there are sufficient reasons for non-commencement of operations for a continuous period of more than one year.

Explanation 2: Where the discontinuance of mining operations for a continuous period of two years after the commencement of such operations is on account of --

(a) orders passed by any statutory or judicial authority; or

(b) operations becoming highly uneconomical; or

(c) strike or lock out,

and the lessee is able to furnish documentary evidence supported by a duly sworn affidavit, the State Government may consider if there are sufficient reasons for discontinuance of operation for a continuous period of more than one year.]

[Explanation 3: In case of mining lessee who has undertaken reconnaissance operations or in case of mining lessee whose capital investment in mine development is planned to be in excess of Rs. 200 crores and where the mine development is likely to take more than two years, the State Government shall consider it to be sufficient reason for non-commencement of mining operations for a continuous period of more than two years.]

24. Rule 28-A of the MC Rules reads thus:

28-A. (1) Where a lessee is unable to commence the mining operations within a period of two years from the date of execution of the mining lease, or discontinues mining operations for a period exceeding two years for reasons beyond his control, he may submit an application to the State Government explaining the reasons of the same at least within six months from the date of its lapse:

Provided that the lease has not been revived under this provision for more than twice during the entire period of the lease.

(2) Every application under Sub-rule (1) shall be accompanied by a fee of Rs. 500/-.

(3) The State Government on receipt of an application made under Sub-rule(1) and on being satisfied about the adequacy and genuineness of the reasons or non-commencement of mining operations or discontinuance thereof taking into consideration the matters specified in the Explanation to Rule 28, pass an order reviving the lease.]

25. Rule 37 of the MC Rules deals with transfer of lease and the same reads as follows:

37. Transfer of Lease-(1) The lessee shall not, without the previous consent in writing of the State Government and in the case of mining lease in respect of any mineral specified in Part A and Part B of the First Schedule to the Act, without the previous approval of the Central Government]--

(a) assign, sublet, mortgage or in any other manner, transfer the mining, lease, or any right, title or interest therein, or

(b) enter into or make any bona fide arrangement, contract or understanding whereby the lessee will or may be directly or indirectly financed to a substantial extent by, or under which the lessee's operations or undertakings will or may be

substantially controlled by, any person or body of persons other than lessee:

Provided Further that where the mortgagee is an institution or a Bank or a Corporation specified in Schedule V, it shall not be necessary for the lessee to obtain any such consent of the State Government.

(1A) The State Government shall not give its consent to transfer of mining lease unless the transferee has accepted all the conditions and liabilities which the transferor was having in respect of such mining lease.

(2) Without prejudice to the provisions of Sub-rule(1), the lessee may, transfer his lease or any right, title or interest therein to person who has filed an affidavit stating that he has filed an up-to-date Income Tax returns, paid the Income Tax assessed on him and paid the Income Tax on the basis of self-assessment as provided in the Income Tax Act, 1961, on payment of a fee of five hundred rupees to the State Government.

PROVIDED that the lessee shall make available to the transferee the original or certified copies of all plans of abandoned workings in the area and in a belt 65 meters wide surrounding it:

PROVIDED FURTHER that where the mortgagee is an institution or a Bank or an Corporation specified in Schedule V, it shall not be necessary for any such institution or Bank or Corporation to meet with the requirement relating to Income Tax to meet with the requirement relating to income tax:

PROVIDED FURTHER that the lessee shall not charge or accept from the transferee any premium in addition to the sum spent by him, in obtaining the lease, and for conducting all or any of the operations referred to in Rule 30 in or over the land leased to him.

(3) The State Government may, by order in writing determine any lease at any time if the lessee has, in the opinion of the State Government, committed a breach of any of the provisions of Sub-rule (1) or Sub-rule (1A) or has transferred any lease or any right, title, or interest therein otherwise than in accordance with Sub-rule(2)

PROVIDED that no such order shall be made without giving the lessee a reasonable opportunity of stating his case.

26. Section 2 of the FC Act reads as follows:

2. Restriction on the dereservation of forests or use of forest land for non-forest purpose - Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing -

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation -For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for--

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, water holes, trench marks, boundary marks, pipelines or other like purposes.

27. It is clear on scrutiny of the material on record that M/s. Dalmia Cements (Bharat) Limited had been granted mining lease in the year 1953 for a period of thirty years for carrying on mining operations in respect of 331.44 Ha situated at Jaisingapur village, Sandur Taluk, Bellary District before the expiry of the period of lease, application was filed for renewal of lease and by order dated 3.7.1986 the said lease was extended for a period of twenty years with effect from 25.1.1983. It is also an admitted fact that while granting renewal of lease by order dated 3.7.86 with effect from 25.1.83 prior permission of the Central Government u/s 2 of the FC Act was not obtained. However, it is the contention of the appellant, as averred in the writ appeal, that the application for obtaining prior approval of the Central Government u/s 2 of the FC Act had also been made along with the application for renewal, but the said application for prior approval u/s 2 of the FC Act was not processed by the State Government and only an order of renewal has been passed. In any view of the matter, the fact remains that as on the date of renewal of the mining lease granted in favour of M/s. Dalmia Cements (Bharat) Limited on 3.7.86 renewing the lease for a period of twenty years from 25.1.1983 no permission u/s 2 of the FC Act had been obtained. It is also clear on scrutiny of the material on record and principles laid down by the Hon''ble Supreme Court in the decisions prior to the decision of the Hon''ble Supreme Court in T.N. Godavarman Thirumulkpad Vs. Union of India and others, though it has been laid down that prior approval of the Central Government u/s 2 of the FC Act is necessary for carrying on mining activity which is a non-forest activity in the forest area, it was only in Govdavarman's case (supra) the Hon''ble Supreme Court observed as follows:

4. The Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat*, *Rural Litigation and Entitlement Kendra v. State of U.P.* and recently in the order dated 29.11.1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*). The earlier decision of this Court in *State of Bihar v. Bansi Ram Mandir* has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

5. We further direct as under:

1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the Country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

28. In view of the directions issued by the Hon'ble Supreme Court in *Godavarman's case-1* referred to above, notice was issued by Director of Mines

and Geology to M/s. Dalmia Cements (Bharat) Limited on 1.2.1997, as follows:

Your attention is invited to the order dt. 12.12.96 of the Hon''ble Supreme Court of India passed in W.P. (Civil) No. 202/95 filed by Sri. T.N. Godavarman Thirumulkpad v. Union of India and Ors. connected with W.P. No. (Civil) 171/96.

2. The Hon''ble Supreme Court in its interim order dated 12.12.96 held that mining activity (Operations) being non-forest activity is not permissible without prior approval of the Central Government as required u/s 2 of the Forest (Conservation) Act 1980 and directed to take necessary remedial measures. In view of the cessation of all non forest activities in forest areas, without the prior approval of the Central Government under the Forest (Conservation) Act 1980, all such mining operations should be stopped forthwith. This order is to operate and to be implemented notwithstanding any order at variance, made or which may be made by any Government or any authority, tribunal or court including High Court.

You are, therefore, hereby informed to stop mining operations forthwith. The mining operations shall be stopped even where working permission has been issued under Rule 24A(6) of MC Rules, 1960 by the competent authority or as per interim orders issued by the Hon''ble High Court.

Any non-compliance of this notice is violation of the orders of the Supreme Court. You will be personally held responsible and liable for contempt of court.

29.1 In obedience to the above said letter dated 25.1.1997 issued by the Office of the Director, Department of Mines and Geology, M/s. Dalmia Cements (Bharat) Limited stopped mining activity in the forest area and the said fact is admitted in the letter addressed by M/s. Dalmia Cements (Bharat) Limited to the Director of Mines and Geology dated 27.3.2001 regarding determination and surrender of lease that in view of stop order issued by the Director of Mines and Geology, M/s. Dalmia Cements (Bharat) Limited mining operation has come to a halt during the last week of January, 1997.

29.2 However, the point that arose for determination and is required to be considered is as to whether the renewal of mining lease in forest area without obtaining prior permission u/s 2 of the FC Act is illegal and void ab-initio or non-est and would render the renewal of mining lease non-existent or voidable that could be cured by obtaining ex-post facto permission u/s 2 of the FC Act?

29.3 According to Mr. Achar, learned senior counsel appearing for the writ petitioner -the first respondent in this appeal as well as Mr. D.L.N. Rao, learned Senior counsel appearing for the fifth respondent, the said renewal would be illegal, void ab-initio and non-est and would render the mining lease non-existent, but, according to Mr.Krishnan Venugopal, learned senior counsel appearing for the appellant, the said non-obtaining of prior permission under

Section 2 of F.C. Act is only voidable, and the same could be cured or regularised by obtaining ex-post facto permission u/s 2 of the FC Act.

30.1 Of course, learned Senior counsel appearing for respondents 1 and 5 in this appeal are relying upon the observations made by the Hon''ble Supreme Court in the case of Samatha Vs. State of A.P. and Others, wherein the Hon''ble Supreme Court has held as follows:

It is seen from the evidence that the mining leases were granted by the State Government or were transferred and retransferred with the sanction of the State Government from private individuals to juristic persons, the either in the reserved forest or forest land or within the scheduled area. Therefore, all the mining leases or renewals thereof are in violation of the fifth schedule. Equally, mining leases/renewals of mining leases by the State Government are in violation of Regulation 3(1)(a) r/w. Section 3(2) of the Regulation and the FC Act. Therefore, they are all void.

30.2 The learned Senior counsel for the writ petitioner in Writ petition No. 31690/2003 also relies upon the observations made in Rural Litigation and Entitlement Kendra Vs. State of U. P. , wherein the Hon''ble Supreme Court has observed as follows:

We therefore, hold that if any decree or order has already been obtained from any court relating to renewal of these leases, the same shall stand vacated and similarly, any appeal or other proceedings taken to obtain a renewal or against order/decrees granting renewal shall also be non-est.

31.1 However, Mr. Krishnan Venugopal, learned Senior counsel appearing for the appellant relying upon the decision of the Hon''ble Supreme Court in Godavarman''s case-1 and 2, submitted that the present case is covered by the directions issued in Godavarman''s case-2 as the notice for stoppage of work refers to the order passed in Godavarman''s case-2 and therefore the Hon''ble Supreme Court has never treated in the present case that non-obtaining of prior approval u/s 2 of the FC Act as illegal, void ab-initio and non-est and has only treated as such non-obtaining of approval u/s 2 of F.C. Act could be rectified or regularised by passing an ex-post facto approval by the Central Government.

31.2 In support of his contention, the learned senior counsel for the appellant has relied upon the observations made in Godavarman''s case-2, order passed by the Hon''ble Supreme Court on 4.3.97 reported in 1997(3) SCC 312 wherein the Hon''ble Supreme Court has observed as follows:

9. We direct that--

(1) where the lessee has not forwarded the particulars for seeking permission under the FCA, he may do so immediately;

(2) the State Government shall forward all complete pending applications within a period of 2 weeks from today to the Central Government for requisite decisions;

(3) applications received; (or completed) hereafter would be forwarded within two weeks of their being so made,

(4) the Central Government shall dispose of all such applications within six weeks of their being received. Where the grant of final clearance is delayed, the Central Government may consider the grant of working permissions as per existing practice.

General Directions:

10. It is made clear that the order passed by this Court in these matters, including the order dated 12.12.1996 and the present order shall be obeyed and carried out by the Union Government as well as the State Governments, notwithstanding any order or direction passed by a court, including a High Court or Tribunal, to the contrary.

31.3 Mr. Krishnan Venugopal, learned Senior counsel appearing for the appellant also relied upon the decision of the Hon'ble Supreme Court in Godavarman's case reported in 2003(1) SCALE (page-4) wherein Hon'ble Supreme Court has observed as follows:

On consideration of the report of Central Empowered Committee dated December 14, 2002, we issue the following further directions:

1) Mining may be permitted in Forest Areas where specific prior approval u/s 2 of the Forest (Conservation) Act, 1980 has been accorded by the Ministry of Environment and Forest, Government of India. However, in view of this Court's order dated 14.2.2000 passed in I.A. No. 548 no mining activity is permitted within areas which are notified as Sanctuary National Park under Sections 18, 35 of the Wild Life (Protection) Act, 1972 or any sanctuary, National Park or Game Reserve declared under any other Act or Rules made thereunder even if prior approval have been obtained from the MoEF under the FC Act in such an area.

31.4 Mr. Krishnan Venugopal, learned senior counsel appearing for the appellant has also relied upon the order passed by the Hon'ble Supreme Court in Godavarman's case on 17.12.99 [2000(1) Scale 71] wherein the Hon'ble Supreme Court has ordered as follows:

3. These are the IAs filed by N.M.D.C. in which it is stated that it has acquired six leases in Bailadila area which is a forest land in which permission has been granted by the Central Government to carry on mining operations. It is stated that the State of M.P. on 20th August, 1998 has also granted the necessary permission but has observed that while cutting the trees special care should be taken to implement the order of this Court in T.N. Godavarman Thirumulkpad Vs. Union of India and others, .

4. It is clear that as far as this Court is concerned, it had prohibited the carrying on of any non-forest activity in a forest area without the permission of the Central Government. Now that the Central Government has granted permission subject to the conditions which have been or may be imposed, the applicant would of course be at liberty to operate on the said mines. What was prohibited by this Court was illegal cutting of trees and cutting of trees without the

permission of the Central Government. It is nobody's case before us that cutting of trees in carrying on the mining operations in the present case would be environmentally hazardous or contrary to any law especially in view of the fact that an obligation has been cast on the applicant to carry out afforestation hopefully on an area greater to larger than the area on which the trees are to be cut. In this view of the matter, the permission to carry on the mining operations is granted.

31.5 Mr. Krishnan Venugopal, learned Senior counsel appearing for the appellant has also invited our attention to the decision of the Hon''ble Supreme Court in BALCO Employees Union (Regd.) Vs. Union of India and Others, wherein the Hon''ble Supreme Court has not approved the observations made in Samatha's case and has observed as follows:

While we have strong reservations with regard to the correctness of the majority decision in Samatha case....

32. On careful consideration of the contentions of the learned Senior counsel for the parties referred to above in the light of the principles laid down by the Hon''ble Supreme Court in the above referred cases, it is clear that Hon''ble Supreme Court while laying down that renewal of the mining lease in the forest area without prior approval u/s 2 of the FC Act is void, did not express that the said renewal would be illegal and void ab-initio or non-est and lease renewed would become non-est and the very directions issued by the Hon''ble Supreme Court in Godavarman's case on different dates referred to above and observations culled out above would clearly show that Hon''ble Supreme Court was implementing the provisions of Section 2 of FC Act and has not laid down that renewal of mining lease in forest area without obtaining prior approval u/s 2 of the FC Act would be illegal, void ab-initio and non-est and would render the lease non-existent as the observations made by the Hon''ble Supreme Court in Godavarman's case itself on subsequent dates referred to above would clearly show that Hon''ble Supreme Court itself has permitted the mining operations in respect of leases which had been renewed without obtaining prior permission u/s 2 of the FC Act after the order was passed u/s 2 of the FC Act.

33. There is no merit in the contention of the learned Senior counsel appearing for the writ petitioner-the first respondent herein and the learned Senior counsel appearing for the fifth respondent that the said contention that the Supreme Court has declared that what is declared by the Hon''ble Supreme Court in Godavarman's case is only pertaining to implementation of Section 2 of the FC Act and renewal of mining lease in forest area with prior permission u/s 2 of the FC Act would not be illegal and void ab-initio or non-est and would only be voidable and can be cured by obtaining permission u/s 2 of the FC Act was not argued before the learned Single Judge. In fact, the said contention was urged before the learned Single Judge as is clear from the observations made in the order passed by the learned Single Judge at paragraph-26 of the impugned order passed by the learned Single Judge which is as follows:

In all its decisions, the Supreme Court has consistently observed that the mining activity in a forest area can be permitted only after obtaining the approval of the Central Government u/s 2 of the FC Act, 1980. Therefore, it is not possible to agree with the submission made by the learned Senior counsel Sri. G.S. Visweswara appearing for the third respondent that the Supreme Court has not totally prohibited for granting of renewal of mining lease in the forest area without the prior approval of the Central Government u/s 2 of the FC Act, 1980.

34. It is unnecessary to discuss in detail the issue for determination as to whether the renewal of mining lease in the forest area without obtaining prior approval u/s 2 of the FC Act is illegal and void ab-initio or non-est is only an irregularity which can be cured by obtaining permission ex-post facto u/s 2 of the FC Act as it is indisputable that in the present case, the order for stopping the mining operation was issued to M/s. Dalmia Cements (Bharat) Limited only on the basis of the order passed by the Hon''ble Supreme Court in Godavarman's case-1 as it is specifically observed in the said notice which has been culled out supra that the said notice has been issued pursuant to the order passed by the Hon''ble Supreme Court on 12.12.1996 in W.P. (Civil) No. 202/94 and W.P. (Civil) No. 171/96 i.e. Godavarman's case-1.

35. It should also be noted that the application for renewal given by M/s. Dalmia Cements (Bharat) Limited was accompanied by the application for obtaining prior permission u/s 2 of the FC Act. However, on the said application for prior approval u/s 2 of the FC Act, no order was passed on the said application and only an order of renewal of the mining lease was passed on 3.7.1986 and the material on record would further clearly show that the in-principle I stage permission granted under FC Act in favour of M/s. Dalmia Cements (Bharat) Limited was pursuant to the directions issued by the Hon''ble Supreme Court in Godavarman's case-2.

36. We have already culled out the observations made by the Hon''ble Supreme Court in Godavarman's case-2 in this judgment and the in-principle I Stage approval that was granted u/s 2 of the FC Act in favour of M/s. Dalmia Cements (Bharat) Limited would also clearly reveal that the said approval dated 24.12.1997 has been granted on the basis of the proposal made by the Government on 30.12.91 and the in-principle I stage approval was granted in view of the directions issued by the Hon''ble Supreme Court in Godavarman's case-2 by order dated 4.3.1997 and further, the directions issued by the Hon''ble Supreme Court in Godavarman's case by order dated 17.12.1999 as culled out in this judgment that wherever Central Government has granted permission u/s 2 of the FC Act, the industries which had been ordered to be closed down as per the order in Godavarman's case-1, were permitted to carry out mining operations.

37. The orders passed by the Hon''ble Supreme Court in Godavarman's case referred to above are squarely applicable to the facts of the present case, in respect of closure of mining operations by M/s. Dalmia Cements (Bharat)

Limited. The observations made in Godavarman's case permits the processing of the applications filed u/s 5(2) of the FC Act and issuance of in-principle I Stage permission u/s 2 of the FC Act. As per the directions issued by the Hon'ble Supreme Court in Godavarman's case-2 and also the observations made in Godavarman's case on 17.12.1999 as referred to above, the Supreme Court has directed to implement the provisions of Section 2 of the FC Act, and has permitted even the lease holders whose mining lease has been renewed without prior approval u/s 2 of the FC Act and has stopped, by order of prohibition the activities of the mining lease by the lease holders and also has permitted the said mining operators to commence and carry on the mining operation once the permission u/s 2 of the FC Act has been sanctioned. Therefore, the only conclusion that can be arrived having regard to the observations made by the Hon'ble Supreme Court in Godavarman's case and having regard to the facts of the present case, which is clearly covered by the direction issued by the Hon'ble Supreme Court in Godavarman's case as referred to above, is that Supreme Court has not treated the renewal of mining lease without obtaining prior permission u/s 2 of the FC Act as illegal and void ab-initio or non-est nor has held that said renewal would render lease non-est and has infact held the said illegality of non-obtaining of renewal of mining lease in forest area without obtaining permission u/s 2 of the FC Act can be cured or regularised by the Central Government passing an order u/s 2 of the FC Act ex-post facto. Hence, it is clear that the finding of the learned Single Judge that the renewal of mining lease in favour of M/s. Dalmia Cements (Bharat) Limited on 3.7.1986 with effect from 25.1.1983 in forest area without obtaining prior permission u/s 2 of the FC Act is illegal, void ab-initio and non-est cannot be sustained and the same is liable to be set aside.

38. It is well settled that only the in-principle II Stage permission granted u/s 2 of the FC Act ex-post facto can regularise or cure the illegality of non obtaining of prior approval u/s 2 of the FC Act and an order passed in the in-principle I stage permission granted u/s 2 of the FC Act cannot by itself be treated as an order ex-post facto regularising the illegality of renewal of mining lease in forest area without final order u/s 2 of the FC Act, and therefore though the renewal of lease in forest area cannot be treated as illegal and void ab-initio or non-est, the appellant would not be in a position to carry on the mining operations in forest area without obtaining permission u/s 2 of the FC Act and only if the Central Government passes an ex-post facto order u/s 2 of the FC Act in favour of the appellant, the same would regularise or legalise to the defect of renewal of the mining lease in forest area without obtaining prior permission u/s 2 of the FC Act and only after final order is passed u/s 2 of the FC Act ex-post facto by the Central Government appellant would be able to commence the mining operations if the lease is in existence on the said date and till then the appellant would not be entitled to commence mining operations as no final order has been passed u/s 2 of the FC Act permitting the appellant to carry out non-forest activity namely mining operations in the forest area.

39.1 We do not see any merit in the contentions made on behalf of the writ petitioner-first respondent herein and the fifth respondent that M/s. Dalmia Cements (Bharat) Limited had surrendered the lease which was granted in its favour and there was no lease in existence on the date of transfer 6.3.2002 when the transfer was effected in favour of the appellant as there cannot be transfer of non-existing lease and on surrender of the lease in favour of the Government the leased area vested with the Government and the notification ought to have been issued under Rule 59 of the Rules. It is clear on proper scrutiny of the provisions of Rule 29 of the Rules culled out in this judgment that the only mode by which M/s. Dalmia Cements (Bharat) Limited could have surrendered a portion of the lease in favour of the Government could be under Rule 29 of the Rules.

39.2 Though it is stated in the notice terminating the lease issued by M/s. Dalmia Cements (Bharat) Limited dated 27.12.91 that M/s. Dalmia Cements (Bharat) Limited had already surrendered 197 Ha. of forest land the same could have been done in accordance with the Act and the proviso to Rule 29(1) of the Rules and there is no material whatever to show that there has been surrender of 197 Ha of the leased area by M/s. Dalmia Cements (Bharat) Limited in accordance with the provisions of Rule 29 of the Rules and mere observation in the letter or in the objections statement filed in the writ petition as referred to by the learned Senior counsel appearing for respondents 1 and 5 that M/s. Dalmia Cements (Bharat) Limited had already surrendered the lease and there was no dispute regarding boundary of the leased area between the appellant and the first respondent herein would not itself operate as estoppel as it is well settled that there cannot be any estoppel against statute as laid down by the Hon"ble Supreme Court in Escorts Farms Ltd., Previously known as Escorts Farms (Ramgarh) Ltd. Vs. The Commissioner, Kumaon Division, Nainital, U.P. and Others, and State of U.P. and Another Vs. U.P. Rajya Khanij Vikas Nigam S.S. and Others, .

39.3 There is also no merit in the contentions made on behalf of the first respondent in this appeal-writ petitioner and the fifth respondent in this appeal that M/s. Dalmia Cements (Bharat) Limited had issued notice terminating the lease on 27.3.2001 and the said termination would come into effect on the date of notice itself/on the service of notice on the respondent/on the date it was served upon the Director of Mines and Geology, and thereafter M/s. Dalmia Cements (Bharat) Limited had surrendered the lease deed along with letter dated 16.6.2001 and that they have also paid the amount due to be paid by him under the lease amounting to Rs. 22,332/- and therefore, there was surrender of lease and lease was not in existence on the date of transfer 16.3.2002.

40.1 It is clear on scrutiny of Rule 37 of the Rules dealing with termination of lease that only mode of terminating the mining lease which is a statutory lease granted under the Act and the Rules is by way of issuing twelve months notice of termination and the termination would be operative only after the expiry of twelve months from the date of notice.

40.2 The notice issued by M/s. Dalmia Cements (Bharat) Limited would also clearly show that the said notice dated 27.12.2001 gave twelve months notice to the respondent with effect from 1.4.2001 and would be operative from 1.4.2002 and only thereafter termination of lease would come into effect and the wordings of the notice under the Rule would clearly show that only upon the expiry of the notice period of twelve months, the lease would stand terminated and not on the date of issuance of notice and mere fact that M/s. Dalmia Cements (Bharat) Limited had surrendered the lease deed for taking further action in response to the letter of the Director of Mines and Geology which is prior to the expiry of twelve months notice and also the fact that he has paid the dues which is also before the expiry of twelve months stand given in the notice would not by itself mean that the Government had accepted the termination notice before the expiry of twelve months as there is no order passed by the Government accepting the surrender before the expiry of twelve months.

41. It is also well settled that all the ingredients of surrender of lease must be made to be effective as laid down by the Hon'ble Supreme Court in W.H. King Vs. Republic of India and Another, and Puttegowda Vs. State of Karnataka and Others, There is no order passed by the Director of Mines and Geology accepting the termination of lease before the expiry of twelve months notice that is on 1.4.2002 and on the other hand, the conduct of the State in permitting transfer of lease by M/s. Dalmia Cements (Bharat) Limited in favour of the appellant on 16.3.2002 before expiry of period of twelve months would clearly show that the Government had not accepted termination of lease prior to expiry of twelve months notice and therefore, the reasoning of the learned Single Judge that M/s. Dalmia Cements (Bharat) Limited had surrendered the land in view of the letter written by him and the submission made in the writ petition filed by the writ petitioner would clearly show that it cannot be sustained and the same is liable to be set aside.

42.1 There is also no merit in the contention of the learned Senior counsel appearing for the fifth respondent that M/s. Dalmia Cements (Bharat) Limited had stopped mining operations in the last week of January, 1997 as admitted in its termination notice dated 27.3.2001 that in view of the provisions of Rule 28-A of the Rules the lease had lapsed.

42.2 It is clear on scrutiny of the contents of provision of Rule 28 and Rule 28-A of the Rules as culled out above that the lapse of lease would be under Rule 28 and Rule 28-A only deals with the revival of the lease and there is no order passed by the State Government stating that the lease in favour of M/s. Dalmia Cements (Bharat) Limited had lapsed as required under Rule 28 of the Rules and since there was no order declaring that the lease in favour of M/s. Dalmia Cements (Bharat) Limited had lapsed, question of making an application for revival under Rule 28-A of the Rules would also not arise.

42.3 It is clear from the perusal of the impugned order that the learned Single Judge has proceeded to quash the impugned order dated 27.5.2003 ordering

joint survey as a consequence of quashing of the order of transfer dated 16.3.2002; that the writ petitioner first respondent herein has expressed his willingness to the joint survey and in view of our answer to the issues for determination, and that as there was dispute between the parties regarding the area of lease in favour of the writ petitioner and the first respondent, the said order 27.5.2003 is entitled to be confirmed and does not call for interference in exercise of the writ jurisdiction of this Court. Accordingly, we answer Issues 1 to 5.

43. Issues 6 & 7: In view of our answer to Issues 1 to 5, we hold that the order passed by the learned Single Judge quashing the order dated 16.3.2002 and ordering joint survey dated 27.5.2003 are liable to be set aside and the writ petition is liable to be dismissed and both the order of transfer 16.3.2002 and the order dated 27.5.2003 impugned in the writ petition are entitled to be confirmed. We further hold that the transfer of lease in favour of the Appellant herein Respondent No. 3 in writ petition No. 31690/2003 is valid. However, the appellant would not be able to operate the impugned mine unless he gets ex-post facto approval u/s 2 of the FC Act.

44. The Writ Petitioner in W.P. No. 23782/2005 who has sought for consideration of his application for grant of lease in respect of the area alleged to have been surrendered by M/s. Dalmia Cements (Bharat) Limited is liable to be dismissed as we have held while answering the points for determination that M/s. Dalmia Cements (Bharat) Limited had not surrendered any portion of the leased area and the area is therefore not available for notification or for consideration of the application for lease by the petitioner in W.P. No. 23782/2005 and accordingly, W.R. No. 23782/2005 is liable to be dismissed.

45. Accordingly, we answer Issue Nos. 6 and 7 and pass the following:

ORDER

- (i) Writ Appeal No. 5377/2004 is allowed;
- (ii) Order dated 10.11.2004 passed in W.P. No. 31690/2003 allowing the writ petition impugned in the writ appeal is set aside;
- (iii) The order of transfer dated 16.3.2002 granting lease ML2010 in favour of the appellant in the writ appeal and the direction issued by the second respondent dated 27.5.2003 are confirmed. However, the appellant would not be entitled to operate the impugned mine unless he gets ex-post facto approval from the Central Government u/s 2 of the FC Act;
- (iv) W.P. No. 23782/2005 is dismissed.
- (v) There shall be no order as to costs either in Writ Appeal No. 5377/2004 or in Writ Petition

No. 23782/2005.