

(2010) 08 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 14317, 10659 and 13006 2009

Shree Cement Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 226, 226(3), 297, 298
Land Acquisition Act, 1894 — Section 4, 6, 6(1)(b)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 30, 6, 6(1)(b)
Rajasthan Land Revenue Act, 1956 — Section 89

Citation : (2011) 2 RLW 1368

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : S.M. Mehta, with Anurup Singhi for Shree Cement Ltd., Ajeet Kumar Sharma for Grasim Industries Ltd. and R.P. Singh, A.A.G. for State of Rajasthan, for the Appellant; A.K. Bhandari with Vaibhav Bhargava, Advocate and Jairaj Tantia for Respondents No. 5 and 6 for Adani Power Limited, S.S. Raghav and Sailesh Prakash for Union of India, for the Respondent

Final Decision : Allowed

Judgement

Mahesh Chandra Sharma, J.—These three writ petitions have been filed by the petitioners Shree Cement Limited (in short "the petitioner SCL", M/s. Grasim Industries Limited (in short the petitioner GIL) and State of Rajasthan, against the final order No. 73/2009 passed on 29.7.2009 passed by the Tribunal (Mines) under respondent Union of India in the Suo Motu Revision No. 1.3.2008 RC-I, wherein the letters of Intent dated, 22.11.2007, 23.8.2007 and 4.11.2007 (respectively issued in favour of the petitioner GIL, M/s. India Cement Limited (ICL) and the petitioner SCL) issued by the State of Rajasthan, have been set aside. Since the order dated 29.7.2009 of the Union of India has been challenged in all these three writ petitions, they are being disposed by this common order.

SBCW 14317/2009 (by the petitioner SCL).

The State of Rajasthan issued a Notification dated 20.2.2007 (Published on 27.2.2007) inviting application for Mining lease of limestone (cement grade) for an area of 6.24 sq. km. Near Village Parasrampura (Gothra). The petitioner SCL applied on 26.3.2007 in the prescribed form I, with requisite fees and affidavits to Mining engineer, Sikar duly acknowledge on 30.3.2007 by him and allotting reference No. ML-47/2007 and after processing of the applications received from various applicants and comparison of credentials thereof, State Government took in principle a decision to grant mining lease for setting up of the cement plant. The State Government to ensure actual materialization of the investment also took specific undertaking from the petitioner SCL for establishing a Cement Plant with a capacity of 3.0 Million Tonnes of Cement per annum within a period of 18 months from the date of execution of Mining lease at or near village Gothra and issued the Letter of Intent bearing No. F. 2(113) Khan/Group-2/2007 dated 23.8.2007 asking the petitioner SCL to submit the Environment Clearance from Ministry of Environment and Forests, Govt. of India in terms of MOEF notification dated 14.9.2006 the approved Mining Plan and Progressive Mine closer Plan from Indian bureau of Mines and "No objection" from Forest Department so as to complete for grant of Mining Lease thereafter. As in the case of petitioner SCL the relaxation u/s 6(1)(b) of Mines and Minerals (Development and Regulation) Act, 1957 was also required, copy of LOI was sent to the Director, Department of Mines and Geology, Udaipur for sending proposal for obtaining relaxation from Central Govt. A memorandum of understanding was also executed between the petitioner SCL and State Government on 30.11.2007 on occasion of Resurgent Rajasthan - Partnership Summit. The Forest Department vide letter dated 21.9.2007 confirmed that applied area is not falling inside any forest area. The petitioner SCL applied for Environment Clearance of proposed integrated cement project, captive power plant and limestone mining at village Gothra to the MOEF on 22.10.2007. The MOEF on 22.10.2007. The MOEF conveyed the terms of reference on 12.3.2008 and by following requisite procedures including the Public hearing on 27.2.2009, granted the Environment clearance vide letter dated 15.7.2009. The State Government sent on 2.2.2008 its proposal to Central Govt. seeking relaxation u/s 6(1)(b) of MMDR Act, 1957. The State Government through Industries Department issued Notification u/s 4 of the Land Acquisition Act, 1894 (in short Act of 1894) dated 20.11.2007 for plant land of 142.26 Hectares and another Notification dated 17.3.2008 for 572.26 Hectares of Limestones bearing land. After following the established procedures, notification dated 25.6.2008 u/s 6 of the Act of 1894 had been issued for plant land and another notification dated 15.4.2009 for mines land. Smt. Pratibha Singh, Ex. MLA, (the respondent No. 3), vide her letter/complaint dated 1.3.2008 approached the Secretary (Mines), Ministry of Mines, Govt. of India, New Delhi stating that the State Government of Rajasthan is proposing acquisition of land for 3 cement companies, namely, the petitioner SCL, India Cement Ltd. and the petitioner GSL and sought stay against the Land Acquisition proceedings by the

State Government. The Central Govt. forwarded same to the State Government on 5.3.2008 and without waiting for response of State Govt. on the basis of another letter dated 18.3.2008 granted ex parte interim stay on 20.3.2008. The State Government on 9.4.2008 informed the Central Government that only Letters of Intent have been issued and Mining lease is yet to be granted. It was also stated that acquisition of land is being done under the Act of 1894 and further that in respect of Land Acquisition matter, if any one has any grievance, the person should file the objection before Land Acquisition Officer (LAO) for its redressal and that under Act of 1894 the administrative orders cannot be issued for staying the land Acquisition proceedings. A copy of the revision application was also sought and it was requested to vacate the stay so that investment for industrialization of State can be materialized and thereby local population is provided employment. The petitioner SCL also received hearing notice on 25.6.2008 and was provided a copy of the complaint dated 1.3.2008. The petitioner SCL filed its preliminary objections dated 19.9.2008 to the respondent No. 1 inter alia challenging the jurisdiction of Mining Tribunal at Letter of Intent stage-when the mining lease is yet to be sanctioned/agreement is yet to be executed and over the Notification issued under Land Acquisition Act, availability of alternate remedy, maintainability of complaint-without disclosing extent, nature characterizes and ownership of the land of aggrieved persons to tell whether land falls within the purview of Mining lease to be executed. The Central Government (Tribunal) finally vide order dated 29.7.2009, set aside the impugned order i.e. letter of intent dated 22.11.2007, 4.11.2006, and 23.8.2007 issued by the State of Rajasthan in favour of the petitioner GIL, ICL and the petitioner SCL. The crux of the order passed by the Central government is that the consent of the land owners was not obtained before issuing the letters of intent. It was observed that in accordance with Rule 22(3)(h) of Mineral Concession Rules, 1960 the applicants are required to give the description of the areas with particular reference to the fact as to whether the applicant has surface rights over the area in which he is making an application for grant of mining lease. Even in the mining lease application form there is specific column to this effect and the mining lease applicant has to give it in writing as to whether he is the owner of the surface rights of the land applied for mining lease and if not, the consent of the owners and occupier land owners be obtained in writing and filed. Against this order of the Central Government the petitioner SCL filed the writ petition mentioned above.

2. In the writ petition filed by the petitioner SCL, this court issued notice of this petition to the respondents on 18.11.2009 and status quo was directed to be maintained by the parties as it was existed on that date. In the writ petition Smt. Pratibha Singh, Ex. M.L.A. was also impleaded as respondent No. 3. After service of notice on her no reply to the writ petition was filed by her. On June 10, 2010, the petitioner SCL filed an application (Application No. 25927 of 10.6.2010) under Article 226 of the Constitution of India for impleading Adani Power Limited through its Deputy General Manager, as respondent No. 5 and 6. Another

application (Application No. 25928 of 10.6.2010) was also filed by the petitioner SCL for maintaining status quo by the respondents 5 and 6 also. These applications were allowed by this Court vide its order dated June 11, 2010. Adani Powers Limited through its Managing Director and Deputy General Manager were impleaded as respondents 5 and 6 and further this Court in the interest of justice directed the newly added respondents 5 and 6 to stop its construction on the land in dispute. The respondents 5 and 6 filed detailed reply to the writ petition. The petitioner SCL filed rejoinder to the reply to the writ petition filed by the respondents 5 and 6 and sought directions for removing towers from the petitioner SCL's mining area in terms of Govt. decision in the meeting held on 25.6.2010 and direction for canceling the approval dated 31.8.2009 (Annexure R-5/2) and further direction for canceling the impugned permission letter dated 3.12.2009 (Annexure R-5/4).

SBCW 13006/2009 (by the State of Rajasthan)

3. In the writ petition filed by the State of Rajasthan, order dated 29.7.2009 passed by the Tribunal was challenged canceling the letter of Intents issued in favour of the petitioner GIL, the petitioner SCL and ICL (who have been impleaded as respondents 3 to 5 in this writ petition). It has been stated in the writ petition that on 16.6.2000 the State declared an area near village Khirod free for Cement grade Limestone in which three applications were received ML No. 14/2000 submitted by GIL was accorded priority and a letter of Intent was issued to the applicant with certain conditions that were required to be fulfilled prior to grant of the Mining Lease, Since the conditions were not fulfilled the LOI was cancelled vide order dated 7.2.2005. Again vide notification dated 2.12.2000 another area of 49 sq. kms. near village Khirod was declared free for Cement Grade Limestone in which two applications were received and ML 6/01 filed by GIL was accorded priority and LOI was issued along with certain conditions. Since the conditions were not fulfilled this LOI was also cancelled vide order dated 7.2.2005. Again vide notification dated 23.3.2003 another area of 8.25 sq. kms. Near Village Khirod was declared free for Cement Grade Limestone in which 5 applications were received. ML No. 12/2003 by ICL was accorded priority and LOI was issued on 23.8.2007 along certain conditions. Vide Notification dated 27.2.2007 another area of 6.24 sq. kms. Near Village Khirod was declared free for Cement Grade Limestone in which 19 applications were received and ML No. 47/2007 filed by SCL was accorded priority and LOI was issued on 23.8.2007 along with certain conditions. GIL challenged both the orders of cancellation of their LOIs dated 7.2.2005 before the respondent No. 1. The respondent No. 1 allowed both the revision petitions and set aside the order dated 7.2.2005. The State Government was directed to give an opportunity of hearing to GIL and pass fresh orders within a period of 90 days. GIL was provided opportunity of hearing and vide order dated 22.11.2007 the State issued fresh LOI in favour of GIL. It is stated that LOIs granted to the respondents 3 to 5 were conditional in accordance with Rule 22(4) of Mineral concession Rules, 1960 and in terms of the LOIs, Environmental Clearance as well as getting prepared Mining Plan from

Registered Qualified practitioner to fulfill the conditions imposed by the State. The State issued Notification u/s 4 of the Act of 1894 on 17.3.2008 and 20.3.2008. It has been given out in the petition that in an unprecedented move, the respondent UOI took a suo moto cognizance u/s 30 of the Mines and Mineral (Development and Regulation) Act, 1957 (in short, MMDR Act) on a petition dated 2.1.2008 filed by Smt. Pratibha Singh, MLA calling in question LOIs granted to GIL, SCI and ICL. Vide impugned order dated 29.7.2009 the Tribunal set aside the LOIs issued by the State in favour of GIL, ICL and SCL. This order of the respondent UOI cannot foray into other statutes and pass order prohibiting acquisition of land. In the Notification of Acquisition of land it was specifically mentioned that if any interested person had any objection to the Notification the same should be submitted to the LAO within a period of 30 days. The State in this way submitted that there was an equally efficacious alternative remedy available to them under the Act of 1894. In these circumstances the state prayed for quashing of the order of the Tribunal dated 29.7.2009. It may also be mentioned that in the writ petition filed by the State of Rajasthan, M/s. Grasim Industries Limited (GIL), who was impleaded as respondent No. 3, and Shree Cement Limited Beawar who was impleaded as respondent No. 4, filed separate reply to the writ petition. In the reply it was prayed that the petitioner State of Rajasthan is fully entitled to get the reliefs prayed for in the prayer clause and further it was prayed that a further direction may be issued to the respondent No. 1 Union of India to proceed and sanction pending application of State Government for grant of relaxation u/s 6(1)(b) and approve the mining plan for applied area. In the writ petition filed by the State of Rajasthan M/s. Adani Power Limited also moved an application for being impleaded as respondents 6 and 7 on July 8, 2010. Along with the application an application under Article 226(3) of the Constitution of India was also filed for vacating the interim order granted by this Court.

4. It may also be mentioned that the respondent No. 4 i.e. SCL, filed reply to the writ petition and stated that the respondent No. 2 or her family did not own any land in applied area by SCL which is amply proved by nomination papers along with sworn affidavit of 11.11.2008 of respondent No. 2 herself, which has been enclosed as Annexure-R/4/2. This has not been controverted by the respondent No. 2 by filing reply or any document.

On July 8, 2010 applicants Adani Power Limited through its Managing Director and Adani Power Limited through its Deputy General Manager filed application No. 27863 of 8.7.2010 under Article 226 of the Constitution of India read with Order 1 Rule 10 CPC for impleading the applicants as parties to the writ petition applicants Adani Power Limited also filed application No. 27864 of 8.7.2010 for vacating the interim order dated 20.10.2009. As the applicants Adani Power Limited were already permitted to be impleaded as respondents 5 and 6 in the writ petition filed by the petitioner SCL and after hearing the parties this Court passed interim order on June 11, 2010 directing the respondents 5 and 6 to stop its construction on the land in dispute, there is no further need to pass any

orders on both the applications filed by Adani Power Limited.

SBCW No. 10659/2009 (by the petitioner GIL)

5. It is borne out from the facts that on 16.6.2000 the State declared an area near village Khirod free for Cement Grade Limestone in which three applications were received ML No. 14/2000 submitted by GIL was accorded priority and a letter of Intent was issued to it with certain conditions that were required to be fulfilled prior to grant of the Mining Lease. Since the conditions were not fulfilled the LOI was cancelled vide order dated 7.2.2005. Again vide notification dated 2.12.2000 another area of 49 sq. kms. Near Village Khirod was declared free for Cement Grade Limestone in which two applications were received and ML 6/2001 filed by GIL was accorded priority and LOI was issued along with certain conditions. Since the conditions were not fulfilled this LOI was also cancelled vide order dated 7.2.2005. GIL challenged both the orders of cancellation of their LOIs dated 7.2.2005 before the respondent No. 1. The respondent No. 1 allowed both the revision petitions and set aside the order dated 7.2.2005, The State Government was directed to give an opportunity of hearing to GIL and pass fresh orders within a period of 90 days. GIL was provided opportunity of hearing and vide order dated 22.11.2007 the State issued fresh LOI in favour of GIL. It is stated that LOIs granted to the petitioner GIL was conditional in accordance with Rule 22(4) of Mineral Concession Rules, 1960 and in terms of the LOIs, Environmental Clearance as well as getting prepared Mining Plan from Registered Qualified Practitioner to fulfill the conditions imposed by the State. The State Government issued Notification u/s 4 of Act of 1894 on 17.3.2008 and 20.3.2008. The respondent UOI took a suo moto cognizance u/s 30 of the Mines and Mineral (Development and Regulation) Act, 1957 (in short MMDR Act) on a petition dated 2.1.2008 filed by Smt. Pratibha Singh, MLA calling in question LOIs granted to GIL, SCL and ICL. Vide impugned order dated 29.7.2009 the Tribunal set aside the LOIs issued by the State in favour of GIL, ICL and SCL. This order of the respondent UOI has been challenged by the GIL as mentioned above. It was stated by the petitioner GIL in the writ petition that no power is available to the Central Government either to revise or to stay any order or proceeding initiated under the provisions of the Act of 1894, thus invoking the revision powers of the State Government was patently illegal and without authority of law. Ms. Pratibha Singh, the then MLA or for that matter the villagers named in the sheets had no locus standi to challenge the grant of Letters of Intent to the petitioner and two other cement companies. No illegality or material irregularity was disclosed in the representation dated 1.3.2008 and no material was available to the Central Government even prima facie show that the letters of intent granted by the State Government were in contravention of the MMDR Act or the Rules of 1960 in order to justify suo moto exercise of revisional power. Power of the State Government to acquire land for a company or for public purpose is guided and controlled by the Act of 1894 and it is only the State government to decide as to whether a particular land is needed for public purpose, the Act of 1894 provide a adequate measures to safeguard the interest

of owners of surface rights/khatedari tenants, in this manner an adequate and efficacious statutory remedy was available to the villagers in the matter of Acquisition under the Act of 1894 and the Central government has no authority to pre-empt the decision of the State Government under the Act of 1894. Rule 22(3)(h) specifically provides that where the applicant has not obtained consent of owner who has surface rights over the area, he can furnish such consent after execution of the lease deed but before entry into the said area. Second proviso to Rule 22(3)(h) has been enacted with the intention of giving a free hand to the State Government in the matter of grant of Mining lease but at the same time safeguarding the interest of the owner of the surface rights. The petitioner GIL prayed that the order passed by the Tribunal dated 29.7.2009 is liable to be set aside.

On July 8, 2010 applicants Adani Power Limited through its Managing Director and Adani Power Limited through its Deputy General Manager filed application No. 27867 of 8.7.2010 under Article 226 of the Constitution of India read with Order 1 Rule 10 CPC for impleading the applicants as parties to the writ petition. Applicants Adani Power Limited also filed application No. 27866 of 8.7.2010 for vacating the interim order dated 20.10.2009. As the applicants Adani Power Limited were already permitted to be impleaded as respondents 5 and 6 in the writ petition filed by the petitioner SCL and after hearing the parties this Court passed interim order on June 11, 2010 directing the respondents 5 and 6 to stop its construction on the land in dispute, there is no further need to pass any orders on both the applications filed by Adani Power Limited. It may also be mentioned that the petitioner GIL filed reply to the application under Article 226(3) of the Constitution of India and the application for impleadment of the applicants and prayed both these applications may be dismissed.

6. It may be mentioned that a meeting was held on 9.8.2010 at 5.00 p.m. in CR No. 2 of the Secretariat under the Chairmanship of Principal Secretary, Mines for resolving the issue of realignment of power transmission line being laid by M/s. Adani Power Ltd. In the said meeting after detailed deliberations following decisions were taken regarding payment of Rs. 2.15 crores to M/s. Adani Power Ltd. by M/s. Grasim Industries, M/s. India Cement Ltd. and M/s. Shree Cement Ltd.:-

(i) M/s. Grasim Industries Ltd. and M/s. Shree Cement Ltd. will pay to M/s. Adani Power Ltd. Rs. 75 lacs each by three post dated cheques of Rs. 25 lacs each within three days from the date of issue of order of Hon"ble High court. These cheques will be post dated in such a manner that the first second and third cheques are realized on completion of one month, two months and three months respectively from the date of handing over the cheques to M/s. Adani Power Ltd.

(ii) M/s. India Cement Ltd. will also pay Rs. 65 lacs to M/s. Adani Power Ltd. by three post dated cheques of Rs. 25 lacs, Rs. 25 lacs and Rs. 15 lacs in the same manner as stated above at item No. (i).

While enclosing the copy of the minutes of the meeting dated 9.8.2010 Adani Power Limited respondents 5 and 6 filed an application to dispose of the writ petition against Adani Power Limited and prayer was made that the minutes and map may be taken on record and the writ petition against Adani Power Limited be disposed off in terms of the minutes. It may be mentioned that in the meeting held on 9.8.2010 no representative from M/s. India Cement attended the meeting.

7. The learned counsel for the petitioners argued that Section 30 of the MMDR Act read with Rules 54 and 55 of the Mineral Concession Rules, 1960 (Rules of 1960 for short) confers power of revision on the Central Government against any order made by the State Government or other authority in exercise of powers conferred on it by or under MMDR Act. The revisional power of the Central government can be exercised of its own motion or on an application made by the aggrieved party and the Central Government may, for sufficient cause, stay the execution of order against which the revision application has been made. It is evidently clear that in the representation dated 1.3.2008, the revisional power of Central Government was invoked against proceedings under the provisions of the Act of 1894 rather than the order passed by the State Government under the MMDR Act. Invoking of revisional powers in such a situation was patently illegal arbitrary and without the authority of law and the impugned order dated 29.7.2009 is liable to be quashed and set aside. The learned counsel argued that the Central Government failed to appreciate and consider that the powers of the State Government to acquire land for a company or for public purpose is guided and controlled by the Act of 1894. The mineral wealth vests in the State Government. The Act of 1894 and the Rules framed thereunder provide adequate measures to safeguard the interest of owners of surface rights/khatedar tenants. Thus, an adequate and efficacious statutory remedy was available to the villagers in the matter of alleged acquisition of their land under the provisions of the Act of 1894. The Central Government has no power or authority to interfere in the matter of acquisition of land or to pre-empt the decision of the State Government under the Act of 1894. It was submitted that what could not be done directly was sought to be done indirectly by the Central Government in the garb of exercise of revisional powers against Letters of Intent issued in favour of the petitioner companies. The Central Government acted mala fide and illegally in holding that the grant of Letters of Intent was not in accordance with the Rule 22(3)(h) of the Rules of 1960 and Mining Lease application Form No. 1. The Central Government has not only misconstrued the aforementioned provisions but this also appears to have been done with a view to favour the representationists by interfering in the matter of land acquisition in an improper and illegal manner. It was submitted that from the very beginning the intention of the Central Government was to help and assist the applicants in land acquisition proceedings rather to examine the illegality of the action of the State Government under the MMDR Act. Acquisition of land for mining purpose and to extract mineral a pragmatic and practical approach is required to be made in case mineral being

land like in the present case. The minerals which vests in the State are National Wealth and it is not for the owner/holder of surface rights to decide as to whether or not he should permit the State to excavate and utilize the mineral available in the land he holds. u/s 89 of the Rajasthan Land Revenue Act, 1956 (Act of 1956) the khatedar tenants/owners of surface rights can only claim a right of compensation to be determined by the Collector of the District in which the land is situated and such compensation is required to be determined in accordance with the provisions of the Act of 1894. The Central Government has illegally and arbitrarily granted an absolute right to the owner of surface rights in the matter of grant of Mining Lease including the provisions of MMDR Act and the act of 1956. A bare perusal of the representation submitted by the Ex. M.L.A. (respondent No. 3) Nawalgarh clearly shows that by filing the said representation they sought that the land acquisition proceedings be stayed. Again on 18.3.2008 the Ex. M.L.A. had written a letter to the Secretary (Mines) Mines Department Government of Rajasthan, Jaipur thereby requesting him to direct the State Government to stay land acquisition proceedings. Soon after the receipt of the representation the Central Government by its order dated 20.3.2008 granted an ad interim stay on further action by the State Government in pursuance of the Letters of Intent and Notifications dated 6.3.2008 and 18.3.2008 respectively issued by the State Government for acquisition of land in favour of M/s. Shree Cement Ltd. and M/s. India Cement Limited till further orders. Thereafter by order dated 29.7.2009 the Government of India allowed the suo moto revision application alleging unfounded and misconceived contravention of Rule 22(3)(h) of the Mineral Concession Rules, 1960. The occasion for obtaining consent or no objection from the khatedars or surface right holders arises only after the grant and execution of mining lease when the mining lease holder proposes to enter upon the surface for the purposes of mining. The learned counsel in these circumstances pray that the entire action of the Central Government in issuing order dated 29.7.2009 is illegal, arbitrary, unjustified and is colourable exercise of power.

8. The petitioner SCL upto 30.6.2009 already obtained consent for 825.15 bighas of land of mining lease area (adequate for next 5-10 years of mining operations or so) and reported same to the office of the Mining Engineer, Sikar and the State's Director of Mines and Geology, Udaipuru and also stated that efforts for obtaining consent from other tenants/holder of khatedari rights is in progress. By 12.9.2009 consents had been obtained for total area of 943.02 Bighas and stands so reported vide letter dated 12.9.2009, been stated by the petitioner SCL that the State Government's name is stated as actual land holder in Revenue records/jamabandhi (Khatoni) and not the agriculturists, who have just tenancy rights over the land for the purpose of agriculture subject to payment of yearly rent and other charges. The State Government is owner of the land and tenants are having only occupancy rights over it. The learned counsel invited attention of this Court over copy of specimen jamabandhi (Khatoni) of village Gothra (Samvat 2062-2065 of Khatha New No. 157 old 477 showing State as

Land holder and Shri Pappu Ram and others as tenant Khastkar. In this regard the petitioner company sent intimation to Mining Engineer Sikar with copy to State's director Mines and Geology vide letter dated 30.6.2009 (Annexure-8). The petitioner SCL, filed reply to the writ petition in the writ petition filed by the State and stated that the respondent No. 2 or her family did not own any land in applied area by SCL which is amply proved by nomination papers along with sworn affidavit of 11.11.2008 of respondent No. 2 herself, which has been enclosed as Annexure R-4/2. This has not been controverted by the respondent No. 2 by filing reply or any document. It was also informed that the petitioner company had been consistently investing in setting up Cement Plants and it is envisaged to increase and double its production and therefore it has since been proposed to install a 3.0 MTPA capacity cement plant within 15 months of land acquisition and other formalities with an investment proposal of Rs. 750 crores based on mineral limestone of the applied area.

9. I have heard the learned counsel for the parties and gone through the writ petitions and the reply to the writ petitions and rejoinder.

10. Before proceeding further it would be necessary to have a look at the various provisions of the act and Minor Mineral Concession Rules.

Article 297 of the Constitution of India unequivocally declares that all lands, minerals and other things of value underlying the ocean ... shall vest in the Union and be held for the purposes of the Union. Article 298 defines the extent of the executive power of the Union and of each State thus:

298. Power to carry on trade, etc.--The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:

Provided that -

(a) the said executive power of the Union shall, insofar as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and

(b) the said executive power of each State shall, insofar as such trade or business or such purpose is not one with respect to which the State legislature may make laws, be subject to legislation by Parliament.

The Union and the States have both been vested with powers to legislate in respect of mining rights under the Seventh Schedule to the constitution. The respective rights of the Union and the States in this regard are contained in the following entries in the said Schedule:

List I, Entry 54: Regulation of mines and mineral development to the extent to which such regulation and development under the control of Union is declared by Parliament by law to be expedient in public interest.

List II, Entry 23: Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

In exercise of the above powers, the Union legislature has enacted the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "the Act"). The Act has been substantially amended and several drastic changes introduced in 1986 with a view, inter alia, to prevent unscientific mining, remove bottlenecks and promote speedy development of mineral based industries.

Section 6 of the Act, which is necessary for the present controversy reads as under:

6. Maximum area for which a prospecting licence or mining lease may be granted.¹ [(1) No person shall acquire² [* * *] in respect of any mineral or prescribed group of associated minerals³ [in a State]-

(a) one or more prospecting licences covering a total area of more than twenty-five square kilometers; or

4[(aa) one or more reconnaissance permit covering a total area of ten thousand square kilometers:

Provided that the area granted under a single reconnaissance permit shall not exceed five thousand square Kilometers; or]

(b) one or more mining leases covering a total area of more than ten square kilometers:

Provided that if the Central Government is of opinion that in the interests of the development of any mineral, it is necessary so to do, it may, for reasons to be recorded by it, in writing, permit any person to acquire one or more prospecting licences or mining leases covering an area in excess of the aforesaid total area;

5[(c) any reconnaissance, permit, mining lease or prospecting licence in respect of any area which is not compact or contiguous:

Provided that if the State Government is of opinion that in the interests of the development of any minerals, it is necessary so to do, it may, for reasons to be recorded in writing, permit any person to acquire a reconnaissance permit, prospecting licence or mining lease in relation to any area which is not compact or contiguous;]

(2) For the purposes of this section, a person acquiring by or in the name of another person a 6[reconnaissance permit,] prospecting licence or mining lease which is intended for himself shall be deemed to be acquiring it himself.

7[(3) For the purposes of determining the total area referred to in sub-section (1), the area held under a 8[reconnaissance permit,] prospecting licence or mining lease by a person as a member of a co-operative society, company or other corporation or a Hindu undivided family or a partner of a firm, shall be

deducted from the area referred to in sub-section (1) so that the sum total of the area held by such person under a 9[reconnaissance permit,] prospecting licence or mining lease, whether as such member of partner, or individually, may not, in any case, exceed the total area specified in sub-section (1).]

Section 30 confers revisional powers on the C.G. It reads:

30. Power of Revision of Central Government.--The Central Government may, of its own motion or on application made within the prescribed time by an aggrieved party, revise any order made by the State Government or other authority in exercise of the powers conferred on it by or under this Act.

These are the provisions of the Act relevant for our purposes.

Turning now to the rules framed under the Act which also have a material bearing on the present issues, they are contained in Chapter IV of the Mineral Concessions Rules, 1960 which deals with the grant of mining leases in respect of land the minerals in which vest the government. Rule 22 outlines the procedure in respect of applications for MSL. It requires the application to be made in a prescribed form and accompanied by a fee of Rs. 5000 and certain documents and particulars. Rules 24 and 26 prescribe the procedure for disposal of such applications. Sub-rules (1) and (3) of Rule 24 are relevant for our present purposes and are extracted below:

24. Disposal of application for mining lease.--(1) An application for the grant of a mining lease shall be disposed of within twelve months from the date of its receipt.

* * *

(3) If any application is not disposed of within the period specified in sub-rule (1), it shall be deemed to have been refused.

* * *

Under Rule 26, the S.G. may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.

Rule 31 prescribes that where an order for grant of a lease is made, a lease deed has to be executed within a period of six months of the order or such further period as the S.G. may allow in this behalf. Failure to do this, if attributable to any default on the part of the appellant, could entail the revocation of the lease. The lease shall commence from the date of the lease deed.

I may next turn to Rule 54 which deals with applications for revision to the C.G. It reads, insofar as is relevant:

54. Application for revision.--(1) Any person aggrieved by any order made by the State Government or other authority in exercise of the powers conferred on it by the Act or these rules may, within three months of the date of communication of

the order to him, apply to the Central government in triplicate in Form N, for revision of the order, the application should be accompanied by a treasury receipt showing that a fee of Rs. 500 has been paid into a government treasury or in any branch of the State Bank of India doing the treasury business to the credit of Central Government under the head of account "128-Mines and Minerals-Mines Department-Minerals Concession Fees and Royalty":

Provided that any such application maybe entertained after the said period of three months, if the applicant satisfies the Central Government that he had sufficient cause for not making the application within time.

* * *

(4) On receipt of the application and the copies thereof, the Central Government shall send a copy of the application to each of the parties impleaded under sub-rule (2), specifying a date on or before which he may make his representations, if any, against the revision application.

Explanation.--For the purposes of this rule, where a State Government has failed to dispose of an application for the grant of renewal of a prospecting licence or a mining lease within the period specified in respect thereof in these rules, the State government shall be deemed to have made an order refusing the grant or renewal of such licence or lease on the date on which such period expires.

Rule 55 provides that the C.G., after getting the comments of the S.G. and other parties on the application and after giving each of them an opportunity to put, forward their comments on the stand taken by others, "may confirm, modify or set aside order (of the S.G.) or pass such other order in relation thereto" as it "may deem just and proper".

11. On a perusal of the Act and the Rules quoted above it is clear that in so far as mining lease are concerned and proceedings for land acquisition are concerned, the aggrieved person has a right to be heard before the LAO and the representation by the respondent Pratibha Singh to the Central Government and thereafter treating the representation as suo moto revision petition by the Central government is not permissible. The Union of India though duly represented and the Ex. M.L.A. duly served notices of the writ petitions filed by the petitioner SCL, petition GIL and the State Government have not controverted the facts stated in the writ petitions. In these circumstances in absence of reply by the Union of India or by the respondent Pratibha Singh, the facts stated by the petitioners in the writ petitions will have to be considered. In the writ petition filed by petitioner GIL and the State of Rajasthan it has been stated that on 16.6.2000 the State declared an area near village Khirod free for Cement grade Limestone in which three applications were received ML No. 14/2000 submitted by GIL was accorded priority and a letter of intent was issued to it with certain conditions that were required to be fulfilled prior to grant of the Mining Lease, Since the conditions were not fulfilled the LOI was cancelled vide order dated 7.2.2005. Again vide notification dated 2.12.2000 another area of 49 sq. kms.

Near village Khirod was declared free for Cement Grade Limestone in which two applications were received and ML 6/2001 filed by GIL was accorded priority and LOI was issued along with certain conditions, since the conditions were not fulfilled this LOI was also cancelled vide order dated 7.2.2005. GIL challenged both the orders of cancellation of their LOIs dated 7.2.2005 before the respondent No. 1. The respondent No. 1 allowed both the revision petitions and set aside the order dated 7.2.2005. The State Government was directed to give an opportunity of hearing to GIL and pass fresh orders within a period of 90 days. GIL was provided opportunity of hearing and vide order dated 22.11.2007 the State issued fresh LOI in favour of GIL. Fresh LOI issued in favour of the GIL after deciding revisions by the Tribunal (Mines), cannot be questioned further in a suo moto revision petition or by way of representation, thus the order passed against the GIL deserves to be quashed and set aside.

12. The petitioner SCL upto to 30.6.2009 already obtained consent for 825.15 bighas of land of mining lease area (adequate for next 5-10 years for mining operations or so) and reported same to the office of the Mining Engineer, Sikar and the State's Director of Mines and Geology, Udaipur and also stated that efforts for obtaining from other tenants/holder of khatedari rights is in progress. By 12.9.2009 consents had been obtained for total area of 943.02 Bighas and stands so reported vide letter dated 12.9.2009. It has been stated by the petitioner SCL that the State Government's name is stated as actual land holder in Revenue records/jamabandhi (khatoni) and not the agriculturists, who have just tenancy rights over the land for the purpose of agriculture subject to payment of yearly rent and other charges. The State Government is owner of the land and tenants are having only occupancy rights over it. I have looked into the copy of specimen Jamabandhi (Khatoni) of village Gothra (Samvat 2062-2065 of Khatha New No. 157 old 477 showing State as Land holder and Shri Pappu Ram and others as tenant Khastkar. The petitioner SCL sent intimation to Mining engineer Sikar with copy to State's Director Mines and Geology vide letter dated 30.6.2009 (Annex. 8). The petitioner SCL, filed reply to the writ petition filed by the State of Rajasthan and stated that the respondent No. 2 or her family did not own any land in applied area by SCL which is amply proved by nomination papers along with sworn affidavit of 11.11.2008 of respondent No. 2 herself, which has been enclosed as Annexure-R/4/2. This has not been controverted by the respondent No. 2 by filing reply or any document. The petitioner SCL consistently investing in setting up Cement Plants and it has further proposed to install a 3.0 MTPA capacity cement plant within 15 months of land acquisition and other formalities with an investment proposal of Rs. 750 crores based on mineral limestone of the applied area. The stand taken in the order dated 29.7.2009 in this view of the matter cannot come in the way of the petitioner SCL. The petitioner SCL has already obtained the required consent from most of the land owner. Thus considering the uncontroverted facts stated in the writ petition, the order passed by the Central Government against the petitioner SCL deserves to be set aside.

13. The other controversy raised in the writ petition is with regard to payment of Rs. 2.15 crores to M/s. Adani Power Ltd. by the petitioner GIL, M/s. India Cement Ltd. and the petitioner SCL. As mentioned above it is further mentioned that a meeting was held on 9.8.2010 at 5.00 p.m. in CR No. 2 of the Secretariat under the Chairmanship of Principal Secretary, Mines for resolving the issue of realignment of power transmission line being laid by M/s. Adani Power Ltd. In the said meeting after detailed deliberations decision was taken regarding payment of Rs. 2.15 crores to M/s. Adani Power Ltd. by the petitioner GIL, M/s. India Cement Ltd. and by the petitioner SCL.

14. The stand of the State Government that by issuing mining lease on limestone in the area covered in question is an investment for industrialization and by materializing it local population is provided employment.

15. In Dharambir Singh Vs. Union of India (UOI) and Others, , the Apex Court in para 4 stated thus:

4. Thus it would be seen that while granting a prospecting licence or mining lease, the area of discretion has been circumscribed by several factors enumerated in Section 11. In grant of mining lease of a property of the State, the State Government has a discretion to grant or refuse to grant any prospective licence or licence to any applicant. No applicant has a right, much less vested right, to the grant of mining lease for mining operations in any place within the State. But the State Government is required to exercise its discretion, subject to the requirements of the law. Therefore, the Tribunal of the Central government has rightly held that it being in the area of discretion of the State Government, merely because the applicant had applied for, the State Government was not enjoined to grant the mining lease. The petitioner had taken the plea that since he alone had discovered the mines, he has got a preferential right over any other person. The Tribunal of the Central Government and the High Court rightly rejected that contention of the petitioner; that contention has not been pressed before use find no illegality in the order of the Tribunal refusing to grant mining lease to the petitioner nor is there any illegality in the order of the High Court.

16. In the instant case the State Government issued letters of Intent in favour of GIL, SCL and India Cement Ltd. and the State Government has a discretion to grant or refuse to grant any prospective licence or licence to any applicant. No applicant has a right, much less vested right, to the grant of mining lease for mining operations in any place within the State. But the State Government is required to exercise its discretion, subject to the requirements of the law. Thus the State Government rightly issued the Letters of Intent in favour of the petitioner GIL, petitioner SCL and M/s. India Cement Ltd. which cannot be questioned by way of representation or suo moto revision. Thus the order passed by the Central Government deserves to be set aside. For these reasons mentioned above and in terms of the compromise in the joint meeting held on 9.8.2010 as quoted above the writ petitions are allowed with the following

directions:

(i) SBCW No. 14317 of 2009 filed by petitioner SCL, SBCW No. 10659 of 2009 filed by petitioner GIL, and SBCW No. 13006 of 2009 filed by petitioner State of Rajasthan are allowed and the order dated 29.7.2009 passed by the Tribunal (Mines) in the respondent Union of India is quashed and set aside.

(ii) The respondent State shall forward the matter relating to the petitioner SCL afresh for relaxation u/s 6 of the MMDR Act 1957 to the Government of India and the Government of India shall dispose of the matter as early as possible.

(iii) The petitioner SCL and the petitioner GIL shall pay to M/s Adani Power Limited Rs. 75 lacs each by three post dated cheques of Rs. 25 lacs each within three days from today. The first, second and third cheques shall be realized on completion of one month, two months and three months respectively from the date of hearing over the cheques to M/s. Adani Power Ltd. in terms of the minutes of the meeting held on 9.8.2010 filed along with the application filed by the respondents 5 and 6.

(iv) Since the main writ petitions have been disposed there is no need to pass any further orders on the applications filed by M/s. Adani Power Limited in the writ petitions of the State of Rajasthan and the writ petition of petitioner GIL.

(v) No order as to costs.