

(2014) 09 KAR CK 0072
In the Karnataka High Court
Case No : W.P. No. 30978/2008 (GM-MMS)

Srinivasa Minerals Trading Company	Vs	APPELLANT
State of Karnataka		RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32
Forest Act, 1963 — Section 4, 80
Mines and Minerals (Development and Regulation) Act, 1957 — Section 2(d), 21, 21(5)

Citation : (2015) 2 AKR 330 : (2015) ILR 793 : (2015) 1 KCCR 78

Hon'ble Judges : D.H. Waghela, C.J.; Ashok B. Hinchigeri, J

Bench : Division Bench

Advocate : Ashok Haranahalli, Senior Counsel for H. Aravind, Advocate for the Appellant; D. Nagaraj, Additional Government Advocate, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner herein is a partner in the firm styled as Srinivasa Minerals Trading Company and has invoked Articles 226 and 227 for the prayer couched in the following terms:

"(a) Issue a writ of mandamus or such other writ, directing respondents to release the minerals, seized from stack yard of the petitioner, which have been purchased by the petitioner under bills dated 02.04.2008 and 02.05.2008 as per (Annexures-A & B) respectively and; which were permitted to be transported under permit dated 20.03.2008, 31.03.2008 and 24.04.2008 (Annexure-F1 to F3), subject to petitioner furnishing Bank Guarantee to the satisfaction of the 2nd respondent, for the value of the ore, which petitioner has sought to lift, under his representation dated 26.09.2008 as per (Annexure-H) subject to such other conditions as may be deemed just and proper and subject to further orders of this Hon"ble Court".

2. After petition being filed on 30th September 2008 at Dharwad, at the time of

admission hearing on 03.10.2008, an order to the Government Advocate to take notice for respondents 1 to 4 was made with an effective order as under:

"2.....

3.....

4.....

5. Since the claim of J.M. Vrushabendraiah to the said stock sold to the petitioner herein is subject matter of writ petition in W.P. No. 9335/2008 on the file of this Court and also in view of the order passed in similar matter by this Court, this Court is of the opinion that it is just and necessary to direct the respondents to permit the petitioner to lift the materials which are seized and presently lying in his stack yard subject to the condition that the petitioner shall furnish bank guarantee for the market value of the goods which he intends to lift from his stack yard which is now under the control of respondents.

Call this matter along with WP. No. 9335/2008 and in the meanwhile, the respondents are permitted to file their objections, if any".

3. After the above order, the petition does not seem to have been attended or pursued. It may be noted here that the aforesaid W.P. No. 9335/2008 filed by J.M. Vrushabendraiah has been dismissed on 10.12.2013 as withdrawn, upon a memo for that purpose being filed for the petitioner. However, when the present matter was listed for hearing on 08.01.2014, an order as under was made:

"Memo for withdrawal is rejected at this stage.

The Petitioner is directed to file second set of entire record of the case and take instructions as to why the bank guarantee, supposed to have been furnished under the interim order, should not be encashed by the respondents.

Learned AGA is also requested to file detailed statement of objections, if any, with details of the proceedings held subsequent to the interim order herein in respect of the original leaseholder. If full and proper instructions are not received by learned AGA to place all the facts on record, the officers concerned of the Forest Department and the Department of Mines and Geology shall be asked by him to remain personally present before the Court on the next date of hearing.

The petition shall be listed for hearing on 22.01.2014."

On 22.01.2014, the petition was ordered to be listed on 04.02.2014, as requested by learned AGA. Subsequently, on 17.06.2014, the following Order was made:

"None present for the petitioner.

The matter is ordered to be listed for final hearing on the admission board on 19.06.2014, in the interest of justice and in order to afford an opportunity to the petitioner to present its case."

4. After a change in learned advocate appearing for the petitioner, the matter was argued for the petitioner by learned senior advocate Mr. Ashok Harnahalli. In the meantime, an affidavit dated 18.02.2014 of Sri. Ganesh. V, working as Range Forest Officer, Sandur (North) Range, Sandur, Bellary district was filed, to submit inter alia as under:

"1.....

"2.....I further state that this Hon"ble Court by its "interim order" dated 03.10.2008 was pleased to direct the release of the seized mineral subject to furnishing the Bank Guarantee. Accordingly, the petitioner furnished Bank Guarantee for the sum of Rs. 2,24,28,100/- (Two Crores Twenty Four Lakhs Twenty Eight Thousand One Hundred only). Pursuant to the furnishing of the Bank Guarantee, the seized mineral was released to the petitioner..

.....

"3. I state that, it is the case of the petitioner that, the mineral is mined and extracted from the area covered under M.L. No. 2173 and that he had purchased the same under purchase bills dated 02.04.2008 and 02.05.2008. It is further stated that the Lessee had independently approached this Hon"ble Court by way of Writ Petition No. 9335/2008 impugning the action of the 3rd respondent in seizing the mineral and registering an FIR bearing FOC No. 47/2008-09 dated 31.05.2008 vide Annexure-B to the said writ petition..... I state that subsequent to the interim orders, the forest authorities had conditionally released the machinery & tools subject to furnishing Bank Guarantee for the sum of Rs. 60 lakhs.

"4. I state that in the said FOC case, the instant petitioner has also been arrayed as accused No. 2 along with the Lessee, i.e., the petitioner in Writ Petition No. 9335/2008. It is relevant to state that the name of the instant petitioner has been included at the time of filing of the charge sheet (CC No. 47/2010) and the same is pending trial.

"5.....

"6. I state that in view of the investigation launched by Lokayuktha, the Forest Department and Mines Department were fully occupied in assisting Lokayuktha in then ongoing investigation. I further state that during and pursuant to the investigation by Lokayuktha, forest offence cases came to be registered against the lessees/individuals/companies who had encroached upon and mined in forest lands without requisite approval and also against such of those who indulged in trading/transportation of the minerals.

"7.....

"8.....

"9. I state that in respect of both Sandur North and South Ranges, a statement detailing various Bank Guarantees received and the present status of the cases is

furnished in a tabulated form for the sake of brevity and convenience. The copies of the same are herewith produced and marked as Annexures-R-3, R-4, R-5 & R-6.

"10. I state that subsequently on the directions of the Hon''ble Apex Court, the Central Bureau of Investigation (CBI) has registered cases and investigations are in progress.....

"11.....

"12. I state that a batch of Writ Petitions, viz., W.P. No. 8034/2008, 8035/2008, 8361/2008 and 9335/2008 and 10954/2008 came to be listed before this Hon''ble Court. The petitioners therein individually preferred memos for withdraw praying for leave of this Hon''ble Court to withdraw the Writ Petitions. This Hon''ble Court was pleased to permit the petitioners to withdraw the Writ Petitions.....

"13. I state that subsequently, the Hon''ble Apex Court by its Judgment and Order dated 18.04.2013 rendered in Writ Petition (Civil) No. 562/2009 was pleased to hold thus in para-39.

"We make it clear that we have not understood the above statement as an admission on the part of the Federation and it is on a consideration of the totality of the facts placed before us that we accept the findings of the survey conducted by the Joint Team constituted by the orders of this Court and the boundaries of each of the leases determined on that basis. We further direct that in supersession of all orders either of the authorities of the State or Courts, as may be, the boundaries of leases fixed by the joint team will henceforth be the boundaries of each of the leases who will have the benefit of the lease area as determined by the Joint Team. All proceedings pending in any court with regard to boundaries of the leases involved in the present proceeding shall stand adjudicated by means of present order and no such question would be open for reexamination by any body or authority."

"14. I state that pursuant to the above order by the Hon''ble Supreme Court, certain lessees have approached the Hon''ble Dharwad Bench of this Hon''ble Court and the Hon''ble Court was pleased to quash the FOC cases registered against the petitioner therein..... However, the State has preferred Special Leave Petitions (SLP) before the Apex Court in Crl. P. No. 10869/2013 and Crl. P. 10117/2013.

"15.....

"16. The Hon''ble Supreme Court of India vide its Order dated 18.04.2013 has accepted the recommendation of Central Empowered Committee regarding "C" category mines and has inter alia summarized in para-50(7) and (8) as follows:-

(7) The recommendations contained in paragraphs VI and VII (Pg. 56 to 57) of the Central Empowered Committee report dated 03.02.2012 are accepted,

meaning thereby, the leases in respect of "C" category mines will stand cancelled and the recommendations of the Central Empowered Committee (Para VII Pg. 56) of report dated 03.02.2012 with regard to the grant of fresh leases are accepted.

(8) The proceeds of the sales of the Iron Ore of the "C" category mines made through the Monitoring Committee will stand forfeited to the State. The Monitoring Committee will remit the amounts held by it on its account to the SPV for utilization in connection with the purposes for which it had been constituted.

"17. Further, it is submitted that the petitioner had procured the mineral (Iron Ore) from the M.L. No. 2173 which falls in category "C" mines. The said M.L. was the lease of the petitioner Sri. J.M. Vrushabendraiah in Writ Petition No. 9335/2008.

Therefore, the respondent may be permitted to invoke and encash the Bank Guarantees furnished with regard to the Forest Offence Case No. 47/2008-09 registered against the original lessee Sri. J.M. Vrushabendraiah and the petitioner.

However, realization of Bank Guarantee by the respondent State shall not absolve either the petitioner or the erstwhile lessee of M.L. No. 2173 i.e., Sri. J.M. Vrushabendraiah of any additional recoveries and others, which shall be determined as per the proceedings initiated by the Government and or any other agency, with regard to "C" category mining leases. The respondent should have the liberty to initiate such further or future action in respect of the original lessee Sri. J.M. Vrushabendraiah and the petitioner.

Wherefore, in view of the above it is humbly prayed that this Hon"ble Court may be pleased to reject the above writ petition with cost and permit the respondent to invoke and encash the bank guarantee, in the interest of justice."

5. The above submission made on oath on behalf of the respondents are not denied by the petitioner; and the averments made in the petition are also not pressed into service by seeking to withdraw the writ petition by filing a memo in that regard. It was only on account of the aforesaid order dated 08.01.2014 of this Court, that the parties have appeared with arguments only in respect of encashment of Bank guarantees which is stated at the Bar to have been kept alive by renewing it from time to time. It is for the said limited purpose that the following averments in the writ petition were pointed out and relied upon:

"1. Petitioner is a Contractor and a Trader; who purchases Minerals from the Mine Lease holders/owners and, sells it to different buyers, sometimes overseas, and during the course of his business some time in April/May 2008, he had purchased a total quantity of 29,000 Metric Tonnes of Iron ore mined by them; from J.M. Vrishabendraiah, a Mine Lease Holder of Block No. 2173 of Ramghad village. Copies of Bills and the Invoice under which, the purchases were made on 02.04.2008 and 02.05.2008 respectively; are produced herewith and marked as Annexures-A & B.

"2. It appears Sri. J.M. Vrushabendraiah, who holds Mining Lease registered as ML. No. 2173 granted on 24.08.1993, which lease is valid and operative and for a period of 20 years under which, he is permitted mining iron ore and red oxide in the lands over an extent of 8.13 acres in Sy. No. 19 of Ramghad village, Sandur Taluk, Bellary district, which are patta lands (revenue lands) owned by one Sri. M. Rama Naik, had mined the ore sold to the petitioner herein.....

"3. It is necessary to point out, the petitioner herein apart from being a trader of mined minerals; also takes the "contract work" and had extracted the minerals within the "leased area" of said Vrushabendraiah; under a separate contract. It is after such seizure of certain "mined ore" in the forest land, which was alleged to be that of Sri. Vrushabendraiah, with reference to which, said Vrushabendraiah had pointed out that, he had nothing to do with the said extracted ore; which was being seized from outside his leased area and within the "forest land" belonging to the Government.....

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"14. The respondents cannot seek to retain the seized mineral and allow it to be wasted, specially when the petitioner has offered to protect the interest of the Department, by furnishing requisite security, even by way of Bank Guarantee, in the event of the materials being required to be confiscated as belonging to either J.M. Vrushabendraiah or the Government from the forest area and said goods not being liable to be released in favor of the petitioner; who is a bonafide purchaser for value....."

6. In support of the above averments of the writ petition, learned counsel for the petitioner has taken leave to produce the statements of accounts of the petitioner, showing the payments made towards purchase of minerals from the lessee Sri. J.M. Vrushabhendraiah against the bills dated 02.04.2008 and 02.05.2008 respectively. Thus, it is sought to be confirmed and proved, by relying on the relevant statement of accounts issued by Andhra Bank and petitioner's own statement of accounts for the period from 01.04.2008 to 31.03.2009 that payments have been made to Sri. J.M. Vrushabhendraiah for the Iron Ore purchased by the petitioner, for the purpose of sale and export.

7. As seen earlier, the petition and the prayer are only for seeking release of the iron ore from the stack yard of the petitioner on condition of furnishing bank guarantee; and once that purpose was served by the first order of interim relief on 30.09.2008, the petition was not attended or pursued and sought to be withdrawn without any adjudication and even without filing a second set of papers for hearing by the Division Bench. The first interim order dated 30.09.2008 was made herein expressly on the basis that, "since the claim of J.M. Vrishabendraiah to the said stack sold to the petitioner herein is subject matter of W.P. No. 9335/2008 on the file of this Court....." Now, that W.P. No. 9335/2008 is dismissed as withdrawn and the petitioner is made an accused No.

2 with J.M. Vrishabendraiah in C.C. No. 47 of 2010.

8. It has to be further noted that pursuant to the proceedings before the Hon"ble Supreme Court and the orders made therein, the M.L. No. 2173 granted to J.M. Vrishabendraiah falls in category "C" mines of which iron ore is ordered to be sold by the Monitoring Committee and proceeds thereof stands forfeited to the State.

The backdrop in which, the said order was made could be gathered as under, as far as it is relevant for the present purpose, from the order dated 29-04-2011 of the Apex Court in Government of Andhra Pradesh v. Obulapuram Mining Company Private Limited and Others [(2011) 12 SCC 495]:

"2. The Central Empowered Committee in it's Report dated 15th April, 2011, [Report No. 1] has recommended that mining operations in the cases of fifteen mining lease holders be suspended with immediate effect to which the response of the State of Karnataka is as follows:

"The recommendations made by CEC are acceptable to the State Government. In respect of certain recommendations, necessary steps have to be initiated. However, the State is committed to curb the menace of illegal mining and will take all necessary action in this behalf, including those steps which are recommended by CEC."

"In view of the said response of the State Government, we direct, by an ad interim order, that no mining operations and transportation in respect of mining leases given to following fifteen mining lease holders shall be carried out till further orders. The fifteen mining lease holders are as follows:

- [1] Shri Ram Rao. M. Poal
 - [2] Adarsha Enterprises
 - [3] J.M. Vrushbhendraiah
 - [4] Sparkline Mining Corporation
 - [5] Shiva Vilas Trust
 - [6] J.M. Vrushbhendraiah
-"

Thereafter, the Apex Court in its judgment and order dated 18.4.2013 in W.P. (Civil) No. 562/2009 Samaj Parivartana Samudaya and Others Vs. State of Karnataka and Others, held:

"2. Over exploitation, if not indiscriminate and rampant mining, in the State of Karnataka, particularly in the District of Bellary, had been purportedly engaging the attention of the State Government from time to time. In the year 2006, Justice U.L. Bhat Committee was appointed to go into the issues which exercise,

however, did not yield any tangible result. Thereafter, the matter was referred to the Lokayukta of the State and a Report dated 18.12.2008 was submitted which, prima facie, indicated indiscriminate mining of unbelievable proportions in the Bellary district of the State. It is in these circumstances, that the petitioner-Samaj Parivartana Samudaya had instituted the present writ petition under Article 32 of the Constitution complaining of little or no corrective action on the part of the State....

"3. The writ petition was entertained and the Central Empowered Committee (hereinafter for short "the CEC") was asked to submit a report on the allegations of illegal mining in the Bellary region of the State of Karnataka. The very initial order of this Court is dated 19.11.2010 and was restricted to six mining leases granted in favour of M/s. Bellary Iron Ore Pvt. Ltd., M/s. Mahabaleswarapa & Sons, M/s. Ananthapur Mining Corporation and M/s. Obulapuram Mining Company Pvt. Ltd. What followed thereafter is unprecedented in the history of Indian environmental jurisprudence. It is neither necessary nor feasible to set out the series of Reports of the CEC and the various orders of the Court passed from time to time. Rather, a brief indication of the core Reports of the CEC and the main orders passed by the Court will suffice to understand what had happened so to enable the Court to unravel the course of action for the future.

"4. The initial Reports submitted by the CEC in response to the orders of the Court having indicated large scale illegal mining at the cost and to the detriment of the environment, a stage came when by order dated 29.7.2011 a complete ban on mining in the district of Bellary was imposed..... As the materials placed before the Court (including the Report of the Lokayukta dated 18.12.2008) indicated large scale encroachment into forest areas by leaseholders and ongoing mining operations in such areas without requisite statutory approval and clearances, a Joint Team was constituted by this Court by order dated 6.5.2011 to determine the boundaries of initially 117 mining leases which number was subsequently extended to 166 by inclusion of the mines in Tumkur and Chitradurga districts. The result of the survey by the Joint Team revealed a shocking state of depredation of nature's bounty by human greed. Objections of the lease holders to the survey came early and were subjected to a re-examination by the special team itself under orders of the Court dated 23.9.2011 in the course of which 122 cases were re-examined and necessary corrections were effected in 33 cases. Thereafter, the CEC submitted its Report termed as the "Final Report" dated 3.2.2012 which is significant for two of its recommendations. The first was for categorization of the mines into three categories, i.e., "A", "B" and "C" on the basis of the extent of encroachment in respect of the mining pits and over burden dumps determined in terms of percentage qua the total lease area...."

.....

The "Category-C" comprises of leases wherein (i) the illegal mining by way of (a) mining pits outside the sanctioned lease area have been found to be more than

10% of the lease area and/or (b) over burden/waste dumps outside the sanctioned lease areas have been found to be more than 15% of the lease areas and/or (ii) the leases found to be involved in flagrant violation of the Forest (Conservation) Act and/or found to be involved in illegal mining in other lease areas. The number of such leases comes to 49.

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"23.....The directions on the basis of which the CEC had proceeded and has submitted its Reports are within the framework of the terms of reference of the CEC as determined by this Court by order dated 14.12.2007. Needless to say, acceptance of the recommendations made by the CEC on the basis of which orders of the Court are formulated is upon the satisfaction of the Court. We, therefore, close the issue by holding the contentions made to be wholly untenable.

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"25.. On the other hand, the learned Amicus Curiae, Shri Shyam Divan, has submitted that the present is a case of mass destruction of the forest wealth of this country resulting not only in a plunder of scarce natural resources but also causing irreparable ecological and environmental damage and degradation. The learned Amicus Curiae has submitted that the extent of illegal mining that had happened in the three districts of the State of Karnataka is unprecedented. The relevant data compiled by different bodies has been placed by the learned Amicus Curiae to indicate that in the Bellary-Hospet region the annual production of Iron Ore had increased from 12.4 MMT in the year 2001-02 to 44.39 MMT in the year 2008-09. The then Chief Minister of the State had made a statement on the floor of the legislative assembly on 9.7.2010 that 30.49 MMT of illegal Iron Ore has been exported from the State of Karnataka between 2003-04 to 2009-10 valued at approximately Rs. 15,245 crores. In the year 2009-10 alone the total quantity of illegal Iron Ore exported stood at 12.9 MMT. During the inspection carried out by the Indian Bureau of Mines in December, 2009 it was found that not a single mining lease was operating without violating the provisions of the MMDR Act and the FC Act.....

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"37..... A manual calculation of the lease areas was also undertaken to compare with the calculation of the lease areas as per the digitized lease sketch. The difference between the two measurements in case of 34 number of "C" category leases is less than +/- 05 ha. The relevant details in this regard which are available in the compilation of documents submitted by the State of Karnataka would be illuminating and are, therefore, indicated below:

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"39..... All proceedings pending in any court with regard to boundaries of the leases involved in the present proceeding shall stand adjudicated by means of present order and no such question would be open for re-examination by any body or authority.

"40. Before proceeding to the next issue we would like to observe that the contention urged on behalf of some of the lessees that dumping of mining waste (overburden dumps) do not constitute operations u/s 2(d) of the MMDR Act is too naive for acceptance. The wide terms of the definition contained in Section 2(d) of the MMDR Act encompasses all such activity within the meaning of expression "mining operations". Use of forest land for such activity would require clearance under the FC Act. In case the land used for such purpose is not forest land the mining lease must cover the land used for any such activity.

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"45. Once the result of the survey undertaken and the boundaries of the leases determined by the Joint Team has been accepted by the Court and the basis of categorization of the mines has been found to be rational and constitutionally permissible it will be difficult for this Court to visualize as to how the Category X" mines can be allowed to reopen. There is no room for compassion; fervent pleas for clemency cannot have even a persuasive value. As against the individual interest of the 49 category "C" leaseholders, public interest at large would require the Court to lean in favor of demonstrating the efficacy and effectiveness of the long arm of the law. We, therefore, order for the complete closure of the Category "C" mines and for necessary follow up action in terms of the recommendations of the CEC in this regard, details of which have already been extracted in an earlier part of this order."

9. It is clear from the above record pertaining to the instant case that the mining operations of the original leaseholder Sri. J.M. Vrushabendraiah, in respect of M.L. No. 2173 as also the minerals seized from the petitioner's stack yard have been the subject matter of investigation by Lokayuktha and also in the criminal cases filed against both the accused persons. Prima facie, both Sri. J.M. Vrushabendraiah and the petitioner have not only operated the mining lease in an illegal manner but they have been involved in offences under the Karnataka Forest Act, 1963, the Forest (Conservation) Act, 1980. Ultimately, the M.L. No. 2173 having fallen into category "C", the mine has been ordered to be closed down by order of the Apex Court. Writ petition filed by Sri. J.M. Vrushabendraiah before this Court was allowed to be withdrawn on 10.12.2013, in view of the orders of the Supreme Court in W.P. 562/2009, on the basis of a memo filed in that regard.

10. Petitioner before us sought to withdraw this petition and put a quietus to the matter. However, when probed about the fate of the bank guarantee it was argued by learned counsel for the petitioner that the Government was not

entitled to encash the same as seizure of the iron ore had neither resulted in confiscation nor were there any pending proceedings in that regard, and the burden of proving that it was mined illegally was on the authorities. While advancing that argument, the petitioner withdrew the memo for withdrawal of the petition; quietly turning the petition from the one only praying for release of the minerals on bank-guarantee to a petition claiming the extraction and storage of the mineral to be legal-without inviting any adjudication in that regard.

Per contra, learned counsel for the respondents submitted that the burden of proving that the ore was not mined illegally is on the petitioner as the seized ore was admittedly procured from the area under M.L. No. 2173, which not only fell in forest area but was also classified as "C" Category lease the ore extracted from which was liable to be forfeited and hence the Government was entitled to encash the Bank guarantee furnished by the petitioner.

11. It is indeed the case of the petitioner that the iron ore was mined under M.L. No. 2173, either by him under a contract with the lessee Sri. J.M. Vrishabendraiah or purchased from the lessee for sale and export, as seen from the bank statements furnished in respect of the transactions.

It was submitted for the Government, by referring to the CEC Report (I) dated 15-04-2011, that the entire area of Ramgarh Block of which Sy. No. 19 (under M.L. No. 2173) forms a part, is in fact "forest area" where no mining lease could have been granted in the first place. In the aforesaid report dated 15-04-2011, CEC has traced the history of Ramgarh Forest area in Sandur, from when it was governed under the provisions of Sandur Forest Act, 1937 and notified as "village forest" thereunder. After transfer of the area to the State Government from the erstwhile ruler of Sandur State, four forest blocks in Sandur Range were also notified u/s 4 of the Karnataka Forest Act, 1963. This region has always fallen under the category of "forest" for the purposes of Forest (Conservation) Act, 1980. The mining leases granted thereunder have been attributed to the actions of certain errant officials whereby fictitious and unauthentic survey numbers from 5 to 35 have been carved out with no change to the legal status of these areas being "forests" and in any case these areas were till 15-03-2003, reserved for mining by the Government/public sector undertakings and the leaseholder J.M. Vrishabendraiah was granted M.L. No. 2173 in 1993, which was not permissible on any account. Following are the relevant portions of the CEC Report (I) dated 15-4-2011:

"10. From the above it may be seen that

(a) the entire area of Ramgarh Block is a forest land and no mining lease in this area can be/should have been granted without obtaining approval under the Forest (Conservation) Act, 1980.

(b) These areas were forest for the purpose of FC Act even before the issue of Notification u/s 4 of the Karnataka Forest Act."

22. The CEC is also of the considered view that in the above matter, the Rules, Regulations and provisions of the MMRD Act, Mineral Concession Rules, the Forest Conservation Act and various Notifications issued by the State Government have been flagrantly violated not because the concerned officers were not aware of them or there was any ambiguity or difference of opinion among the various Departments/officers but because of extremely rich iron ore deposits in these areas and the ease with which it could be mined and the huge amount of money involved. It is therefore necessary that in addition to the other remedial measure and action against the officers, the concerned mining lease holders are made to disgorge the profits made by them because of mining leases illegally granted to them and allowed to operate. It is submitted that the State of Karnataka should ascertain the total quantity of iron ore and other minerals extracted by the respective lease holders and an amount equivalent to five times the normative market value of such minerals is directed to be recovered from them as exemplary compensation."

(emphasis supplied)

12. Therefore it prima facie appears to be a case of illegal mining in forest lands regardless of whether mining lease in M.L. No. 2173 was granted to Sri. J.M. Vrushabendraiah or not. Hence, the seized ore having been definitely mined from forest lands was liable to be confiscated from the stock yard of the petitioner by the Government.

In view of this, the petitioner's contention that the seizure of the iron ore has not resulted in confiscation is not sustainable. Moreover despite the fact that the forest offence cases against the petitioner and the leaseholder appear to have been quashed subsequently by the High Court, without any factual conclusion or order as regards the seized iron ore, mining in forest area itself being unlawful in the first place, it cannot be said that no forest offence was committed by the leaseholder for the extraction of the said ore and the ore was accordingly liable to be confiscated by the Government.

13. Furthermore, learned counsel for the Government has placed reliance on Section 80 of the Karnataka Forest Act, 1963 which reads as:

"80. Presumption that forest produce belongs to Government--When in any proceedings taken under this Act nor in consequence of anything done under this Act or under any other law for the time being in force, a question arises as to whether any forest produce is the property of the State Government, such produce shall be presumed to be the property of the State Government until the contrary is proved, and in case of any prosecution the burden of proving the contrary shall lie on the accused."

The burden of proving the legality of their mined ore, before the authorities concerned, is placed on the petitioner by virtue of the above section.

Even otherwise, as per section 21(5) of the Mines and Minerals (Development

and Regulation) Act, 1957, a person acting without any lawful authority is not permitted to find himself placed in a position more advantageous than a person raising minerals with lawful authority. Relevant part of that provision reads as under:

"21. Penalties. - (1).....(4)

(5) Whenever the person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6)....."

As held by the Apex Court in Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another, :

"7. In our opinion, the demand by the State of Karnataka of the price of the mineral cannot be said to be levy of penalty or a penal action. The marginal note of the section-"penalties", creates a wrong impression. A reading of Section 21 shows that it deals with a variety of situations. Sub-sections (1), (2), (4), (4-A) and (6) are in the realm of criminal law. Sub-section (3) empowers the State Government or any authority authorized in this behalf to summarily evict a trespasser. Sub-section (5) empowers the State Government to recover rent, royalty or tax, from the person who has raised the mineral from any land without any lawful authority and also empowers the State Government to recover the price thereof where such mineral has already been disposed of inasmuch as the same would not be available for seizure and confiscation. The provision as to recovery of price is in the nature of recovering the compensation and not penalty so also the power of the State Government to recover rent, royalty or tax in respect of any mineral raised without any lawful authority can also not be called a penal action. The underlying principle of sub-section (5) is that a person acting without any lawful authority must not find himself placed in a position more advantageous than a person raising minerals with lawful authority.

.....

"15.....The recovery of price of the mineral is intended to compensate the State for the loss of the mineral owned by it and caused by a person who has been held to be not entitled in law to raise the same. There is no element of penalty involved and the recovery of price is not a penal action. It is just compensatory."

Having regard to the above relevant provisions and orders of the Apex Court, it is undisputable that the Government rightfully seized the ore which was unlawfully extracted from forest land whether under the auspices of a mining lease which is now categorized as "C" Category lease and deemed invalid, or otherwise, the proceeds therefrom were liable to be forfeited to the State Government.

14. In any case, it is pertinent to note that the petitioner has filed the present writ petition with the sole prayer of releasing the seized minerals from the stack yard of the petitioner subject to furnishing bank guarantee for the value of the iron ore which the petitioner sought to lift under his representation dated 26.09.2008 and the petition or the prayer do not take within its scope the controversy about legality of the mining activity carried out by Sri. J.M. Vrushabendraiah or the petitioner. Instead, it is revealed in paragraph-3 of the petition quoted hereinabove that after seizure of certain "mined ore" in the forest land, which was alleged to be that of Sri. J.M. Vrushabendraiah, he himself had pointed out that he had nothing to do with the said extracted ore; which was being seized from outside the leased area i.e., "forest land belonging to the government". It is not the case of the petitioner that he is absolved of any liability in the case or proceedings pursuant to which the stock of iron ore in question was seized.

In fact, the petitioner has now even conceded, in their written submissions, that the Deputy Commissioner, Bellary District, has, by his common order dated 16-05-2012, cancelled all the Survey Nos. 5 to 35, directing the Deputy Director of Land Records, Bellary, and the Tahsildar, Sandur to take steps to delete the entries in said survey numbers and take possession of the lands.

15. In these facts and circumstances, it appears to be necessary and in the interest of justice that order sought by the respondent in paragraph-17 of the affidavit of the Range Forest Officer Sri. Ganesh. V, as quoted hereinabove has to be granted, only with the qualification that the petitioner may take up appropriate proceedings to prove that the iron ore seized from his stack yard and released by virtue of the interim order dated 03.10.2008 herein was not tainted with any illegality and hence he would be entitled to reimbursement of the amount paid by encashment of the bank guarantee furnished and kept alive under the interim order.

16. Accordingly, the petition is dismissed subject to the direction that the respondent shall invoke and encash the bank guarantee furnished under the interim Order dated 03.10.2008 and kept alive from time to time, as stated by Shri. Ashok Harnahalli, learned senior counsel. However, the realization of the bank guarantee by the respondent shall not absolve either the petitioner or the erstwhile leaseholder/lessee of M.L. No. 2173 i.e., Sri. J.M. Vrushabendraiah of any additional recoveries which may be determined, by virtue of any other proceedings initiated by the government or any other agency, with reference to M.L. No. 2173. It is however also clarified that the petitioner shall have the liberty to pursue such proceedings as he may be advised, in accordance with law to reclaim the amount of the bank guarantee in question. In the peculiar facts and circumstances, the respondents are directed to immediately invoke and encash the bank guarantee as aforesaid, for the amount of Rs. 2,24,28,100/- (Two crores twenty four lakhs twenty eight thousand and one hundred only) furnished by the petitioner and in any case before 30.09.2014.

In the peculiar facts and circumstances of the case, the petitioner is directed to pay to respondent No. 1, by way of cost Rs. 1,00,000 within one month.