

(2002) 05 RAJ CK 0088
In the Rajasthan High Court
Case No : C.W.P. No. 4207 of 2000

Uma Paliwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-05-2002

Acts Referred:

Constitution of India, 1950 — Article 14
Evidence Act, 1872 — Section 115
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15
Rajasthan Minor Mineral Concession Rules, 1986 — Rule 4
Wild Life (Protection) Act, 1972 — Section 18, 19, 20, 21, 22

Citation : AIR 2002 Raj 348 : (2003) 2 RLW 1118

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : Ramakant Pareek, for the Appellant; Bharat Vyas and R.A. Katta and M. Rafiq, Addl. Advocate Gen., for the Respondent

Final Decision : Allowed

Judgement

Arun Madan, J.—Uma Paliwal (petitioner), sole Proprietor of Shruti Marble in whose favour a mining lease for "marble" over 23204 sqm. area near village Rayawala Tehsil Jamwaramgarh district Jaipur duly granted initially for 10 years w.e.f. 9-9-1981 was transferred by order dated 24-2-1988 and registered transfer agreement dated 8-3-1988 by way of this writ petition has sought an appropriate writ or direction for quashing and setting aside :--

(1) an order dated 2-9-2000 (Ann. 10) of the Dy. Conservator of Forest, Jaipur (West) (respondent No. 4);

(2) letters dt. 10-10-1999 (Ann. 7) and 16-8-2000 (Ann. 9) insofar as they relate to the mine of the petitioner, by holding her to be entitled to operate her mine in question in accordance with Rajasthan Minor Mineral Concession Rules, 1986 (for short Rajasthan Rules), and

(3) for further directing the respondents not to interfere with her mining

activities over the mining lease area in question.

2. Admitted facts relevant for deciding this petition are stated concisely thus-- the petitioner has been operating the mines since the date of transfer of the mining lease in her favour. She applied for renewal of her mining lease on 19-2-1991 but her renewal application was not disposed of on merits within stipulated time, therefore, it was deemed to have been refused in accordance with the Rajas than Rules against which she preferred revision petition before the State Government under Rule 47 of the Rajasthan Rules, wherein the State Government set aside the deemed refusal on 19-7-94 by directing the competent authority to consider her renewal application on merits.

3. However, the petitioner was asked to submit diversion proposals on the pretext of the mining lease area having fallen in the "reserved forest" and hence she presented diversion proposal within time along with requisite material before the competent authority and thereupon the State Government recommended her case for diversion of the forest area and sent it to the Central Government (Ministry of Environment and Forest) for seeking prior approval for renewal purpose in her favour keeping in view the provisions of Section 2 of the Forest (Conservation) Act. 1980 (for short, Forest Act. 1980), in the form prescribed under the Forest Rules, 1980.

4. Undisputably the Central Government after having carefully considered the proposal of the State Government, ultimately agreed for diversion of 4.01 hectares of forest land for renewal of the mining lease in favour of the petitioner subject to fulfilment of certain conditions stated in temporary approval order dt. 3-3-1997 (Ann. 1), as per which the petitioner (user agency) was allowed to work the broken up area for six months, within which the prescribed conditions were to be complied with, so that the Central Government may issue final approval only upon compliance report as to fulfilment of prescribed conditions.

5. Admittedly upon having complied with conditions prescribed in temporary approval (Ann. 1) by the petitioner within the time, the Central Government after having considered relevant factors finally accorded prior approval by order dt. 10-7-1997 (Ann. 2} for renewal of the mining lease in favour of the petitioner with the stipulation inter alia that compensatory afforestation would be raised over equivalent non-forest land and the penal afforestation would be raised over 60.2 hectares of degraded forest land at her costs, besides reclamation of mined area.

6. It is the case of the petitioner that had the State Government so also Central Government not been conscious of the fact upon having considered that, the area in question has been falling within notified area as per Section 18 of Wildlife Protection Act. 1972 (for short "Wildlife Act"), (whereas though such an area was not finally notified u/s 26-A of the Wildlife Act but both the State and Central Governments had only considered that the area in question was a part of wildlife sanctuary of Jamwaramgarh), the question of grant of approval on the part of

the Central Govt. through its orders (Ann. 1 and 2) in favour of the petitioner for renewal of her mining lease in an alleged "reserve forest" would not have arisen?

7. It is also the case of the petitioner that notification dt. 31-5-82 u/s 18 of the Wildlife Act was published on 10-6-82 in Rajasthan Rajpatra proposing to constitute Jamwa Ramgarh wildlife sanctuary but village Rayawala where the mining lease area of the petitioner is situated, was not included in such notification dt. 31-5-82, nor steps as require by Sections 19 to 26-A of the Wildlife Act had ever been taken by the State Government, nor the area declared u/s 18 has been finally notified as "sanctuary" u/s 26-A nor is it deemed sanctuary within the meaning of Section 66(4) because "reserved forest" area falling within the area declared u/s 18 is not reserved forest area as declared under the Indian Forest Act. 1927 (for brevity "old Forest Act"), nor proceedings Under Sections 19 to 25 were pending on the date of commencement of Wildlife (Protection) (Amendment) Act, 1991. In support of aforesaid contentions, Shri Ramakant Pareek learned Advocate for the petitioner relied upon the decision of this Court in Ganpati Marbles v. State of Rajasthan (1997) 1 Raj LR 196.

8. It is also not in dispute that in compliance with conditions of Central Government approval dt. 10-7-97 (Ann. 2) followed by directions of the State Government, the petitioner had deposited Rs. 66,165/- and Rs. 9,93,300/- towards compensatory and penal afforestations on 23-5-1997, inasmuch as non-forest land of 27 bighas 5 biswas was transferred to the forest department in lieu of 4.01 hectares of forest land of the mining lease in question. Only upon fulfilment of these conditions and having considered relevant factors including prior approval of the Central Government the State Government granted renewal in favour of the petitioner w.e.f. 9-9-1991 for 20 years for mining lease area over 2.3225 hectares area by order dt. 8-9-97 (Ann. 3), which too was got registered by lease deed dt. 22-9-97 (Ann. 4), inasmuch as dead rent of the mining lease area was revised and enhanced from Rs. 1,16,144/- to Rs. 1,62,602/- per annum by order and memo dt. 9-12-97 (Ann. 5 and 6).

9. Admittedly the petitioner was carrying on mining operations over the lease area with latest technology by investing huge money inasmuch as has been paying lacs of rupees towards royalty, sales tax, excise duty, income tax etc. by virtue of mines operation. Undisputedly, crores of rupees are invested at the mining lease area by developing machineries, which are presently lying unused as a result of inaction on the part of the respondents. It is also not denied at the bar that about 300 persons are employed with the petitioner's mines besides more than 50 persons being engaged in the units of sowing marble blocks. Similarly, open cast mining operations are carried on only in broken up area downwards and not on virgin area in compliance with renewal conditions.

10. Thus, despite mining operations having been carried on since 9-9-1981 and renewal of the mining lease granted upto 8-9-2011 by State Government under its order dated 8-9-97 (Ann. 3) upon having obtained prior approval of the Central Government the dispute arose suddenly when the State Government

again referred to the Central Government by its letter dated 18-9-99 for consideration of its approval, to which the Central Government responded by stating in its letter dated 10-10-99 (Ann. 7) that in case of the petitioner, no time was stipulated while granting approval on 10-7-97, hence the State Government should also ensure cessation of mining activity in this case also before adding the area to Sariska Tiger Reserve.

11. As against it Shri Pareek drew my attention to the proposals and recommendations thereon made by the State Government, so as to show that the State Government sought approval of the Central Government for a period after renewal as is contemplated in the guidelines for approval under the Forest Act, 1980. Shri Pareek laid stress to have a look at the State Government's response (Ann. 8) which reads as under :--

Government of Rajasthan

Forest Department

No. F. 1 (45) Forest/93/ Jaipur, dated 26-4-2000

Shri S. C. Sharma, Additional Inspector General of Forests (Wildlife), Ministry of Environment and Forests CGO Complex, Lodi Road, New Delhi

Sub. : Diversion of 4.01 ha. of forest land in favour of M/s. Shruti Marbles.

Ref. : Your DO Letter No. 8B/04/797/ 95/FC. dt. 10-10-1999.

Sir, With reference to the subject and your letter cited above, I am directed to say that after getting permission from Government of India for the renewal of the mining lease in favour of M/s. Shruti Marbles vide GOT letter No. 8-B//04 /797/95/FCC dt. 10-7-1997, the Mining Department has already issued an order renewing the lease for a period of 20 years from 9-9-1991.

In the above circumstances, it does not appear feasible for the State Government to ensure the cessation of mining activity in this case unless the renewal permission is withdrawn. GOI should in fact consider re-examining the whole case in the light of the legal provisions and the permission given by them.

Yours faithfully,

Sd/- (Sankatha Prasad)

Officer on Special Duty"

12. But, despite that (Ann. 8) the Central Government (AIG (FC) MOEF) New Delhi by its letter dated 16-8-2000 (Ann. 9) annexing therewith opinion of the Solicitor General of India, requested the State Government to ensure cessation of mining activity in case of the petitioner as per DO letter dt. 10-10-99 (Ann. 7).

13. It is the case of the petitioner that since as per letter (Ann. 8) admittedly it was not feasible for the State Government to ensure cessation of the mining

activity because State Government had already taken a conscious decision obviously as a result of renewal of mining lease having granted for 20 years that too after getting permission of the Central Government, but the Dy. Conservator of Forests (Respondent No. 4) directed to stop mining operations forthwith by impugned order dated 2-9-2000 (Ann. 10), against which the petitioner preferred representation dated 4-9-2000 (Ann. 11) to the State Government but of no avail. Hence this writ petition.

14. Upon service of the show cause notice, the State Government (respondents 2 to 4) in reply laying much stress on the orders of the Apex Court (1) dt. 14-2-2000 followed by another one dated 28-2-2000 in T.N. Godavarman's case, (2000 (4) Scale 165), and (2) dt. 10-7-2000 in Naveen M. Raheja v. Union of India (AIR 2000 SCW 4034) (Ann. R5) contended that the area in dispute was declared as "Reserved Forest" under the Rajasthan Forest Act, 1953 as is evident from a notification dated 31-5-1982 (Ann. R2) issued u/s 18 of the Wildlife Act declaring certain areas including the areas in dispute as Jamwa Ramgarh Wildlife Sanctuary.

15. A rejoinder by the petitioner has been filed to the reply of the respondents-State Government but again the State Government filed its reply to the petitioner's rejoinder, along with affidavit of the Dy. Conservator of Forests (respondent No. 4) duly accompanied with certain documents (Ann. A to B) viz. order dt. 22-8-77 of the Apex Court in Environment Law Centre WWF-1 v. Union of India (Ann. A) and order of the Collector, Jaipur dt. 21-8-98 (Ann. B).

16. Without disputing the fact that while granting renewal on 10-7-97 (Ann. 2) it was considered that the area notified u/s 18 of the Wildlife Act, the Union of India (respondent No. 1) in reply took only stand that with reference to DO letter of the State Forest Secretary, the Central Govt. had advised by letter dt. 10-10-99 to ensure cessation of the mining activity in the area before adding the same to tiger reserve. Moreover, averments of the writ petition and rejoinder have not specifically been denied by the respondent Union in its reply. Thus, in this view of the matter the grant of the approval for renewal was the conscious decision of the respondents-State and Union.

17. During the course of hearing, on 7-12-2001 this Court framed twofold questions with a view to resolve the controversy at issue :--

(1) Whether approval of the Central Govt. for renewal of the mining lease under orders dt. 3-3-97 (Ann. 1) and 10-7-97 (Ann. 2) would be permissible under the provisions of Forest Act, 1980?

(2) Whether the petitioner can be restrained from carrying on mining activity in the mining lease area in question despite she having obtained orders of approval of the Central Govt. (Ann. 1 and 2)?

18. Before dwelling upon the controversy at issue, at the outset, I may have a brief re"sume" of the decisions cited at the bar.

19. In *B.R. Enterprises Vs. State of U.P. and Others*, the Apex Court held as under :

First attempt should be made by the Courts to uphold the charged provision and not to invalidate it merely because one of the possible interpretation leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the Courts have been endeavouring, sometimes to give restrictive or expansive meaning keeping in view the nature of legislation, may be beneficial, penal or fiscal etc. Cumulatively it is to subserve the object of the legislation. Old golden rule is of respecting the wisdom of Legislature that they are aware of the law and would never have intended for an invalid legislation. This also keeps Courts within their track and checks on individual zeal of going wayward. Yet in spite of this, if the impugned legislation cannot be saved the Courts shall not hesitate to strike it down. Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution. These interpretation spring out because of concern of the Courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the Courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, the Courts have taken help from the Preamble, Objects, the scheme of the Act, its historical background, the purpose for enacting such a provision, the mischief, if any which existed, which is sought to be eliminated. The principle of reading down, however, will not be available where the plain and literal meaning from a bare reading of any impugned provisions clearly shows that it confers arbitrary, uncanalised or unbridled power."

20. In *Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and another*, on the interpretation of statutes, the Apex Court observed that words are the skin of language, and the language opens up the bay of the maker's mind. The Legislature gives its own meaning and interpretation of the law. It does so employing appropriate phraseology to attain the object of Legislative policy which it seeks to achieve. It is an accepted principle of interpretation so as to sustain the provision as well as to effectuate the purpose of the statute.

21. In *Tarun Bharat Sangh, Alwar Vs. Union of India and others*, an interlocutory direction that no mining operation of whatever nature shall be carried on within the protected area w.e.f. 31-12-91 was issued in view of the facts and circumstances of the case where a Committee was appointed and necessary instructions were given by the Apex Court. It was a case where notification dated 1-1-1975 u/s 29 (3) of the Rajasthan Forest Act, 1953, declaring Sariska as a protected forest was issued, and which itself contemplated an enquiry as to "the nature and extent of the rights of the State Government and of private persons

in or over the forest land or waste land comprised therein". The Apex Court observed that the inquiry u/s 29 (3) has nothing to do with the mining privileges claimed by the miners who, to the extent they derive their rights under a grant from the State subsequent to 1-1-1975. cannot claim any private rights in or over the forest land. According to the Apex Court, the purpose of the notification declaring the area as a Game Reserve under the Rajasthan Wild Animals and Birds Protection Act, 1951; or the declaration of the area as a sanctuary under the Wildlife (Protection) Act, 1972 and the notification dated 1-1-1975 declaring the area as a protected forest under the Rajasthan Forest Act, 1953 is to protect the forest wealth and wildlife of the area.

Re. Common Citations of both the parties

In Pradeep Krishen Vs. Union of India and Others, the Apex Court held that the procedure in regard to acquisition of rights in and over the land to be included in a Sanctuary or National Park has to be followed before a final notification u/s 26A or Section 35(1) is issued by the State Government. It was a case where a procedure for the acquisition of rights in or over the land those living in the vicinity of the areas proposed to be declared as Sanctuaries and National Parks Under Sections 26A and 35 of the Act has not been undertaken and the final notification Under Sections 26A and 35 had not been made, the State Government was not in a position to bar the entry of villagers living in and around the Sanctuaries and the National Parks. Therefore, the order of State Government permitting the villagers living in or around the proposed parks/ sanctuaries to enter the parks/ sanctuary and collect tendu leaves was held to be not violative of any provision of the Act.

22. In The State of U.P. Vs. Dy. Director of Consolidation and Others, the land in dispute was notified as reserved forest u/s 20 of the Indian Forest Act, 1927 by a notification. The Apex Court observed that once a notification u/s 20 of the Forest Act declaring a land as reserve forest is published, then all the rights in the said land claimed . by any person come to an end and are no longer available and, therefore, the notification was held binding on the Consolidation authorities in the same way as a decree of a civil Court. It was a case where the respondents holding the land as Sirdar could very well file objections and claims as to the nature of the land before the Forest Settlement Officer but they did not file any objection or claim before the authorities in the proceedings under the Forest Act and, therefore, the Apex Court held that after the notification u/s 20 of the Forest Act, the respondents could not have raised any objections qua the said notification before the Consolidation Authorities, which were held as bound by the notification as it having attained finality.

23. In T.N. Godavarman Thirumulkpad Vs. Union of India and others, the Apex Court ordered that 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 ongoing activity within any forest in any State throughout the country,

without the prior approval of the Central Government, must cease forthwith.

24. The Apex Court further observed that 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 the 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. The Apex Court directed as under :

"It is, therefore, clear that the running of saw mills of any kind including veneer or ply wood 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."

25. In my considered view, no doubt, mining of any mineral is non-forest purpose and is not permissible without prior approval of the Central Government. Even as per decision of the Apex Court, quoted above, mining of any mineral in forest reserve is permissible only with prior approval of the Central Government. In the instant case, only after afore quoted directions dated 4-3-1997 T.N. Godavarman Thirumulkpad Vs. Union of India and others, prior approval of the Central Government as regards renewal of the mining leasing area in question in favour of the petitioner has already been accorded by order dated 10-7-97 (Ann 2) and taken by the State Government.

26. Even in subsequent orders and directions issued by the Apex Court in IA Nos. 418 & 420 in T.N. Godavarman's case (supra) on 20-12-99 much emphasis was laid by making it clear, "as far as this Court is concerned, it had prohibited the carrying on of any non-forest activity in a forest area without permission of the Central Government". Here I must also quote exact observations as under :

"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 or 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."

27. As regards order dt. 14-2-2000 in Interim application filed by Mr. P. K. Manohar, Advocate in T. N. Godavaraman's case (supra), the Apex Court restrained respondent Nos. 2 to 32 therein from order the removal of dead, diseased, dying or wind fallen trees, drift wood & grasses etc. from National Park or Game Sanctuary "or for-est". Such interim order was passed on the application which was filed only for clarification that the order dt. 12-12-98 contained a ban against the removal of any fallen trees or removal of any diseased or dry standing tree from the areas notified u/s 18 or 36 of the Wildlife Act.

28. On interim application in T. N. Godavaraman case (Item No. 1B- IA No. 511) the Apex Court directed by order dt. 28-2- 2000 as under :--

"In the order dt. 14-2-2000, the words "or forest" in the 2nd line from bottom of page 4 are ordered to be deleted. The sentence would read thus :--

".....In the mean time, we restrain respondents Nos. 2 to 32 from ordering the removal of dead, diseased, dying or wind fallen trees, drift wood and grasses etc., from any national park or game sanctuary....."

29. A careful look at and analysis of the afore quoted orders of the Apex Court, referred to by the Union of India and the respondents herein, makes it very crystal that the Apex Court prohibited only -- (1) illegal cutting of trees; (2) cutting of trees without prior permission, and (3) carrying on of any non-forest activity in a forest area, without prior permission of the Central Govt. Even the permission to carry on the mining operations was granted by the Apex Court if the applicant carry out afforestation hopefully on an area greater or larger than the area on which the trees are to be cut. Moreover interim restraint order was limited to the National Park or Game Sanctuary and not "forest" in respect of removal of dead, diseased, dying or wind fallen trees, drift wood and grasses etc. therefrom. Thus viewed, removal of aforesaid materials from National Park or Game Sanctuary only have been restrained and not the mining activity. However, the Apex Court did not restrain the Central Government in T. N. Godavarman's case (supra) from giving approval for renewal of the mining lease in accordance with Forest Act, 1980 especially when the Central Government on the request and proposal of the State Government has considered matter of renewal under Rule 5 (2) of the Forest (Conservation) Rules, 1981 that the forest land proposed for non forest use purpose forms part of area notified u/s 18 of the Wildlife Act.

30. Moreover as expounded by the Apex Court in Pradeep Krishen Vs. Union of India and Others, if the procedure for acquisition of rights in or over the areas notified u/s 18 of the Wildlife Act which is proposed to be declared as sanctuary or national parks has not been undertaken and final notification Under Sections

26A & 35 has not been issued, the State Govt. cannot ensure cessation of any non forest activity in the forest area notified. In the instant case, undisputably no final notification has been issued u/s 26A, so there is no violation in permitting the petitioner to carry out mining activity over the area in dispute.

31. As regards opinion of Solicitor General of India (Shri Harish N. Salve) expressed in his letter dt. 18-7-2000 addressed to Shri S. C. Sharma, Addl. IGF (Wildlife) (MOEF), on the basis of which Shri V. B. Kumar, AIGF (FC) (MOEF) wrote a letter dt. 16-8-2000 (Ann 9) to the Forest Secretary of the respondent State requesting to ensure cessation of mining activity in case of Shruti Marbles (petitioner), only suggestion therein was that whenever a permission to mining activity in National Parks & Sanctuaries is sought, the applicant be asked to first seek clearance of the Supreme Court, and if the Supreme Court directs the grant of any such permission or even clears the grant of any such permission, then the matter can be considered.

32. On the aforesaid analogy. Oil & Natural Gas Commission moved an application in T.N. Godaraman's case before the Apex Court for clearance relating to carrying on of oil exploration in Jaisalmer area in Rajasthan but after hearing S/Shri Mukul Rohatgi and Shri Harish N. Salve, Solicitor General, the Apex Court was of the view (as is depicted by letter dt. 20-3-02 of Shri Mukul Rohatgi addressed to Shri R. S. Prabhu Advocate for ONGC Supreme Court New Delhi) that the applicant (ONGC) ought to have moved the Central Government first for permission and moving the application directly before the Court was a misconceived step, and that being so, Shri Rohatgi advised the ONGC to move application before the MOEF for permission/clearance to carry on of oil exploration in the Jaisalmer area. However, order dt. 20-3-02 in IA Nos. 733-734 in T. N. Godavaraman's case makes it clear that applications of the ONGC for directions & impleadment were dismissed holding that such applications in writ petition (C) No. 202/1995 are misconceived as the said writ petition is primarily concerned with the forest land.

33. "National Park" as defined in Section 2(21) of the Wildlife Act, means an area declared, whether u/s 35 or Section 38, or deemed, under Sub-section (3) of Section 66, to be declared as a National Park. "Sanctuary" is defined in Section 2(26) of the Wildlife Act, which means an area declared, whether u/s 26A or Section 38, or deemed under Sub-section (3) of Section 66, to be declared as a wildlife sanctuary. Chapter IV of the Wildlife Act inter alia deals with National Parks and Sanctuaries.

34. Section 18 before its amendment by Act 44 of 1991 empowers the State Government to declare by notification any area to be a sanctuary if the area is concerned to be of adequate ecological, faunal, floral, geomorphological natural or zoological significance. After its amendment, Section 18 provides that the State Government may, by notification declare its intention to constitute any area other than an area comprised within any reserved forest or territorial waters as a Sanctuary if it considers that such area is of adequate ecological, faunal,

floral, geomorphological, natural or zoological significance for the purpose of protecting, propagating or development wildlife or its environment.

35. A comparative look at the provisions contained in pre and post amended Section 18 of the Wildlife Act makes it patent that earlier the State Government could straightway declare any area to be a sanctuary by issuing a notification but under amended Section 18, the State Government has first to declare its intention to constitute any area other than an area comprised within any reserved forest or territorial waters as a sanctuary. As held in *Pradeep Krishen Vs. Union of India and Others*, when a notification is issued u/s 18, the Collector is required to enquire into and determine the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the sanctuary; and after issuance of such a notification, no right can be acquired in or over the land comprised within the said limits except by succession, testamentary or otherwise.

36. Once a notification is issued u/s 18. Section 20 bars the accrual of new rights. Section 21 of the Wildlife Act requires that the Collector to publish notification in the regional language in every town and village in or in the neighbourhood of the area comprised therein specifying the situation and limits of the sanctuary and calling upon persons claiming any right to prefer the claim before the Collector specifying the nature and extent of such right and the amount and particulars of the compensation, if any, and the claim in respect thereof, The Collector is then expected to inquire into the claim preferred by any person and pass an order admitting or rejecting the same in whole or in part. If such a claim is admitted in whole or in part, the Collector may either exclude such land from the limits of the proposed sanctuary or proceed to acquire such rights unless the right holder agrees to surrender his rights on payment of agreed compensation, worked out in accordance with the provisions of the Land Acquisition Act, 1894 or allow the continuance of any right of any person in or over any land within the limits of the sanctuary. If he decides to proceed to acquire such land or right in or over such land, he shall proceed in accordance with provisions of the Land Acquisition Act.

37. Section 24 provides for acquisition of extant rights, Section 26A was introduced by way of amending Act 44 of 1991 which provides as under :--

"26A. (1) When -

(a) a notification has been issued u/s 18 and the period of preferring claims has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as a sanctuary, have been disposed of by the State Government: or

(b) any area comprised within any reserve forest or any part of the territorial waters, which is considered by the State Government to be of adequate ecological, faunal, floral, geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wildlife or its environment,

is to be included in a sanctuary.

The State Government shall issue a notification specifying the limits of the area which shall be comprised within the sanctuary and declare that the said area shall be a sanctuary on and from such date as may be specified in the Notification;

XXX XXX XXX

(3) No alteration of the boundaries of a sanctuary shall be made except on a resolution passed by the Legislature of the State."

38. Similarly Section 35(1) of the Wildlife Act inter alia provides as under :

"35 (1) Whenever it appears to the State Government that an area, whether within a sanctuary or not, is by reason of its ecological, faunal, floral, geomorphological, or zoological association or importance, needed to be constituted as a National Park for the purpose of protecting, propagating, or developing wildlife therein or its environment, it may, by notification, declare its intention to constitute such area as a National Park."

39. Section 35 deals with National Parks and Sub-section (3) thereof provides that where any area is intended to be declared as a National Park, the provisions of Sections 19 to 26A (both inclusive) except Clause (c) of Section 24(2) shall, as far as may be, apply to the investigation and determination of claims, and extinguishment of right, in relation to any land in such areas as they apply in the matters in relation to any land in a Sanctuary. Thus, as is obvious from analysis, made above, the procedure in regard to acquisition of rights in and over the land to be included in a Sanctuary or National Park has to be followed before a final notification u/s 26A or Section 35(1) is issued by the State Government.

40. It is the case of the respondent State that the area of Jamua Ramgarh Sanctuary had been notified by notification dated 31-5-82 (Ann R2) as comprised of the "reserve forest" and, therefore, constituted a deemed sanctuary u/s 66(4) of the Wildlife Act, which provides as under :--

"66 (4) For the removal of doubts, it is hereby further declared that where any proceeding under any provision of Sections 19 to 25 (both Inclusive) is pending on the date of commencement of the Wildlife (Protection) (Amendment) Act, 1991 any reserve forest or a part of territorial waters comprised within a sanctuary declared u/s 18 to be a sanctuary before the date of such commencement shall be deemed to be a Sanctuary declared u/s 26A."

41. As per Collector's order dt. 21-8-98 (Ann B), proclamation u/s 21 of the Wildlife Act has been issued for the first time on 15-11-97 in respect of the notification dt. 31-5-82 (Ann R2). The proceedings or procedure prescribed Under Sections 19 to 25 (both inclusive) of the Wildlife Act can be held to have commenced only when a proclamation by Collector as provided u/s 21 of the Wildlife Act is issued after issuance of Notification u/s 18 of the Wildlife Act. In

the in-stant case, even before the Amendment Act 41 of 1991 having come into force, no proclamation had ever been issued in respect of the Notification dt. 31-5-82 and it is only after the Amendment Act 41 of 1991. proclamation u/s 21 in respect of the Notification u/s 18 (dt. 31-5-82 Ann R2) has been issued only on 15-11-97. Therefore, in my considered view, present one is a case where after issuance of Notification dated 31-5-82 u/s 18 for declaring Jamwa Ramgarh as Sanctuary, proceedings or procedure Under Sections 19 to 25 of the Wildlife Act have neither commenced nor were pending on the date of commencement of the Wildlife (Protection) (Amendment) Act, 1991, rather as analysed above proclamation u/s 21 was issued much after the commencement of the aforesaid Amendment Act, 1991, for the first time on 15-11-97 as is evident from Collector's order dt. 21-8-98 (Ann B) and thus viewed. I do not find any substance in the case of the respondent State as to the "deemed sanctuary" by virtue of Section 66(4) of the Wildlife Act, in respect of the Jamwa Ramgarh area under notification dt. 31-5-82. Hence it is held that Jamwa Ramgarh area is not a deemed Sanctuary right from original notification dt. 31-5-82 by virtue of Section 66(4) of the Wildlife Act, because of the fact also that no final notification to that effect u/s 26A or 35 of Wildlife Act has at all been issued till or even after the Amendment Act (41 of 1991) came into force.

42. In *Ganpati Marbles v. State of Rajasthan* 1997 (1) Raj LR 196 (supra) which related to the present impugned notification dt. 31-5-82 as to the Jamwa Ramgarh sanctuary, this Court has specifically held that village Rasawala has not been included for the purpose of making it a part of wildlife sanctuary; and even after declaring the intention of State Government under amended Section 18 of the Wildlife Act, a final notification u/s 26A has yet to be issued because in the absence of such final notification, it cannot be said that the area declared in a notification u/s 18 is sufficient to hold that it forms part of wildlife sanctuary. The decision in *Ganpati Marbles v. State of Rajasthan* was delivered on 16-12-1997. As per decision thereto* no such final notification u/s 26A of the Wildlife Act as to Jamwaramgarh sanctuary had been issued by the State Government. Thus when the area does not fall in the forest land in the government record, it should not be treated as forest land. In this view of the matter I do not find any substance in the contention raised on behalf of the respondent-State as to the decision of *M/s. Ganpati Marbles* (supra) having laid down incorrect law and being per incuriam. I am conscious of the fact that it was a case where the major part of the petitioner therein's land did not fall within the forest land area as was admitted and evident from the map submitted by the State, therefore, it was directed that the mining lease should not be denied to the petitioner only on the ground that mining land of petitioner applied for fell within the forest area or within the area of wildlife sanctuary. Ultimately it was held that the petitioner should be treated at par with the mines owners, whose lands are around the land applied for by the petitioner or are situated in that area.

43. Be that as it may, I may reiterate that as expounded in *Tarun Bharat Sangh, Alwar Vs. Union of India and others*, once an area is declared as a protected

forest, it comes within the purview of the Forest Act, 1980. It becomes a forest land within the meaning of Section 2 and resultantly, no non-forest activity can be carried on the said area except with prior approval of the Central Government, inasmuch as even the State Government cannot carry on any such non-forest activity. Thus the grant of mining leases and their renewal by the State Government, without obtaining prior approval of the Central Govt. in respect of the mines situated within protected forest, after January 1, 1975 is contrary to law. That apart, according to Rule 4 (6) of the Rajasthan Minor Mineral Concession Rules, 1986 too, no mining lease could have been granted or renewed within the forest "without clearance from the Central Government in accordance with the Forest (Conservation) Act, 1980 and the rules made thereunder". It was a case (supra) where admittedly no such prior approval or clearance of Central Government was obtained, whereas in the case at hand, prior approval of the Central Government has undisputably been already obtained by the State Government before renewal of the mining lease in favour of the petitioner.

44. In the case at hand, notification u/s 18 was issued on 31-5-82, published in Rajasthan Gazette dt. 10-6-82 proposing to constitute certain areas as Jamwa Ramgarh wildlife sanctuary. As analysed above, on 2-10-91 when Amendment Act, 1991 amending provisions of Wildlife Act came into force, obviously no proceeding Under Sections 19 to 25 (both inclusive) was pending. After having issued notification on 31-5-82, for the first time proclamation was issued u/s 21 on 15-11-97. Be that as it may, even in a case where any proceeding Under Sections 19 to 25 was pending on the date of commencement of the Amendment Act, 1991, (i.e. 2-10-91) then only area of "reserved forest" within the meaning of Clause (25-B) of the Wildlife Act, 1972 can be deemed to be a sanctuary. As per Clause (25-B), "reserved forest" means the forest declared to be reserved by the State Government u/s 20 of the Indian Forest Act, 1927, while as per Clause (26), "sanctuary" means an area declared, whether u/s 26A or Section 38 or deemed, under Sub-section (3) of Section 66, to be declared, as a wildlife sanctuary.

45. Here it is only the case of respondents that the mining area in dispute was declared as "reserved forest" under the Rajasthan Forest Act, 1953 and it was not their case that such area in question was declared as "reserved forest" under Indian Forest Act, 1927 as required and envisaged in Clause (25-B) or (26) of the Wildlife Act. Hence, the area in dispute cannot be held as deemed sanctuary even u/s 66(4) of the Wildlife Act.

46. Two certificates dt. 13-6-94 & 3-4-96 have been produced, by which State Government certified that as per notification dt. 31-5-82 revenue area of village "rayawala" did not fall within revenue area of Jamwa Ramgarh Wildlife sanctuary. Though contrarily, along with additional affidavit. State Government produced letter dt. 24-1-97 (Ann AA1) to show that certificate dt. 3-4-96 of the Asstt. Secretary was cancelled for the reasons that Asstt. Secretary was not competent

to issue such certificates, but it has not been indicated that certificate dt. 3-4-96 was incorrect.

47. It is the case of respondent State that mining area of the petitioner falls within revenue area of village Rayawala which is a part of 61 Deegota Forest Division as mentioned at S.No.6 in a notification dt. 12-1-61 (Ann R1), inasmuch as entire Deegota forest division 61 was included in Jamwa Ramgarh Wildlife sanctuary as notified in notification dt. 31-5-82 (Ann R2). It is also the case of the respondents that even when the proposal was sent to the Central Government for diversion, of 4.01 hectare of the land area of mining lease of the petitioner, it has specifically mentioned in the proposal itself by the petitioner that the area is a part of "reserve forest", inasmuch as it was stated to be part of Wildlife Sanctuary of Jamwa Ramgarh forest land.

48. In my considered view, even as per the respondent State's case when it was well within their knowledge as to the mining lease area in question having fallen within the forest reserved area or forest land or being a part of alleged wildlife sanctuary Jamwa Ramgarh, then admittedly it was conscious decision on their part to have exercised power to refer the matter for prior approval under the relevant mining laws for renewal or diversion on the land in question under the proposal referred to by Mr. M. Rafiq Khan. On that proposal also, as is evident from documents produced on record, I find that the Chief Conservator of Forest & Chief Wildlife Warden Jaipur agreed with the comments of Dy. CF Jaipur (West) and opined in his letter dt. 15-6-95 addressed to the Principal Chief Conservator of Forest Rajasthan Jaipur that the mining lease area of the petitioner did not fall in the regular route for migrating fauna. Here I may quote the recommendation of principal Chief Conservator annexed to the letter dt. 15-6-95 (supra) as under :--

"Renewal of mining lease over 4.01 hect. broken/cleared Forest area in reserve Forest block Digota compartment No. 61 Range Jamwa Ramgarh Forest Division, Jaipur (West) may be granted in favour of M/s. Shruti Marbles for marble mining subject to the following conditions

- (1) Legal status of forest land so used will remain unchanged.
- (2) Mining activity should be confined to the renewed lease area in case of violation, mining lease shall be liable to be cancelled.
- (3) Period of renewal shall be co-terminus with period of mining lease.
- (4) Lessee will restore the worked up lease area after mining operations are over.
- (5) Lessee will surrender remaining lease area to forest Department.
- (6) The lessee will provide the equivalent non-forest land to Forest Department and will deposit cost of compensatory afforestation over this land to Forest Department."

49. According to letter dt. 28-6-97 of the OSD (Forest) State Government Jaipur,

conditions have been complied with by the petitioner viz. that for forest land measuring 4.01 hectares, 27 bighas 5 biswa of land have been transferred by the petitioner in favour of the Forest department; (2) Rs. 66165/- have been deposited for afforestation; and (3) Rs. 9,93,300/- have also been deposited as damages for 60.2 hectare of forest land, with the forest department. Alongwith aforesaid letter dt. 28-6-97, report of the Divisional Forest Officer Jamwa Ramgarh, and two cash challan's xerox copies for depositing of aforesaid two amounts have also been annexed thereto. On the other hand, I find from letter dt. 24-1-98 (No. F/Misc/DCF/98/728) of the Dy. CF (West) Jaipur addressed to the Principal CCF Rajasthan that they have no original record in respect of Wildlife Jamwaramgarh Sanctuary, inasmuch as the notification dt. 31-5-82 issued u/s 18 did contain typographical errors, for which clarifications were sought many a times but with no response.

50. Para 4.16 of the guidelines dt. 25-11-1994 issued by the Central Government for diversion of forest lands for non-forest purposes under the Forest Act, 1980 reads as under:--

The approval under the Forest (Conservation) Act, 1980 for diversion of forest land for grant/ renewal of mining lease shall normally be granted for a period co-terminus with the period of mining lease proposed to be granted/renewed under MMRD Act, 1957 or Rules framed thereunder, but not exceeding 30 years. While recommending cases for approval under the Forest (Conservation) Act, the user agency/State Government shall indicate the period for which the mining lease is proposed to be granted/renewed under MMRD Act or Rules framed thereunder. However, in the event of non-compliance of stipulations to the satisfaction of the MOEF, the clearance accorded may be summarily withdrawn."

51. Keeping in view Para 4.16, quoted above, so also proposal of the State Government seeking approval followed by temporary & final approvals vide orders dt. 3-3-97 (Ann 1) & 10-7-97 (Ann 2) of the Central Government, having been issued under the provisions of Forest Act 1980 and its rules. I hold that the period of approval accorded by the Central Government is co-terminus with period of renewal of the mining lease in favour of the petitioner. Hence order dt. 10-10-99 (Ann 7) is not sustainable.

52. As regards other impugned orders dt. 16-8 2000 (Ann 9) & 2-9-2000 (Ann 10), I must observe that it is for the first time in the reply to the writ petition that the State and Central Government took the stand that the cessation of the mining activity over the lease in question is essential because of the same having fallen in the area of wildlife sanctuary. It shows that a new case has been made out by the respondents before this Court which cannot be permitted as held in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

53. That apart, the Collector Jaipur in his order dt. 21-8-92 (Ann B) on the proceeding Under Sections 19 to 25 of the Wildlife Act with regard to acquisition of rights in and over the land to be included in Jamwa Ramgarh sanctuary under notification dt. 31-5-82 (Ann R2), from which also it is crystal that Collector had not determined or acquired rights in the area declared under Rajasthan Forest Act, 1951 rather the mining lease holders have been allowed to operate their mines till the expiry of their lease term in the described areas and after expiry the decision to continue shall be taken by the Mines Department in accordance with law.

54. As propounded in Pradeep Krishen Vs. Union of India and Others, unless rights are determined and final notification u/s 26A of the Wildlife Act is published, no restriction can be imposed by the State Government prohibiting persons from entering and removing Tendu Patta (leaves) from the areas notified u/s 18. In the case at hand, as analysed above, the Collector in his order dt. 21-8-98 (Ann B) has not determined the rights regarding claimants in forest areas notified u/s 18, rather he while examining various claims pursuant to proclamation u/s 21 issued for the first time on 15-11-97 after notification dt. 31-5-82 (Ann R2) has held that mining leases can be allowed to be operated in the said area declared u/s 18.

55. However, it is settled law that once a notification even under unamended Section 18 of the Wildlife Act is issued, procedure in regard to acquisition of rights in and over the land to be included in a "sanctuary" or "national park" has to be followed and then final notification u/s 26A or 35(1) must be issued by State Government. Had there been no such legislative intention to follow procedure envisaged in Sections 19 to 25 or then to issue final notification u/s 26A or 35(1), in my considered view, what was the necessity for the Legislature to have introduced under Amendment Act, 1991 by inserting Sub-section (4) to Section 66 of Wildlife Act. Hence I find no substance in the respondents' case that the area declared under unamended Section 18 need not be notified again u/s 26A.

56. That apart once it stands established that notification u/s 18 was issued on 31-5-82 but the procedure with regard thereto as envisaged Under Sections 19 to 25 has not commenced nor was it pending when the Amendment Act, 1991 came into force, inasmuch as proclamation u/s 21 in regard to notification dt. 31-5-82 u/s 18, was issued on 15-11-97 after the Amendment Act 1991 came into force, as is evident from Collector's order dt. 21-8-98 (Ann B), nor any final notification u/s 26A has ever been issued as yet, declaring mining lease area in question as a sanctuary, in my considered opinion, the area declared u/s 18 by notification dt. 31-5-82 cannot be termed as a "deemed sanctuary" by virtue of Section 66(4) of the Wildlife Act.

57. Further, it is not denied rather admitted fact that on the basis of recommendations of State Level Committee constituted by the State Government consisting of high dignitaries, the State Government had obtained approval from

the Central Government and then renewed the mining lease of the petitioner upto 8-9-2011 and pursuant thereto, the petitioner has deposited about Rs. 10,60,000/- in the State Forest Department; 27 bighas 5 biswas land had already been transferred and mutated in favour of the State Forest Department in compliance with the conditions for approval imposed by the Central Government, whereupon the petitioner invested money and deployed heavy machineries involving employment of large number of workers, in this view of the matter doctrine of estoppel so also legitimate expectation applies, thereby the respondents ought not to have restrained the petitioner from mining operations especially when it is not the case of the respondents that there has been breach of any conditions or violation of provisions of mining laws, under which mining lease was granted and renewed in favour of the petitioner. Further more the State Government in its reply to the letter of Addl. IG (Forest) had taken a stand that since the Mining department had already issued an order renewing the lease for 20 years from 9-9-1991, it did not appear to be feasible for it to ensure cessation of mining activity in case of the present petitioner so as to request the Central Government to consider & re-examine the matter as a whole case. Hence in this view of such a stand in my considered view, how could a subordinate officer in the rank of Dy. Conservator at all take action of cessation of mining activities, especially when only mandate of the Apex Court in the cases referred to during the course of hearing or in the impugned orders, is that no mining activity can be carried on in forest area without prior approval of the Central Government.

58. Once the approval had been accorded by the Central Government by order dt. 10-7-97 (Ann 2) on the recommendations of the Committee as provided under the Forest Act, 1980 and Rules, 1981 made thereunder, after having been considered by the Minister of Environment & Forest, Government of India, then the impugned action having been taken by the respondents merely on the advice of a subordinate officer (Addl. Inspector General, Forests) that too without opinion of the concerned Minister for cessation in question, is legally contrary to the approval, itself, granted by the Central Government.

59. The Addl. IGF (MOEF), New Delhi in his letter dt. 10-10-99 (Ann 7) stated as under:--

"However, in one case that of Diversion of 4.01 ha. in favour of M/s. Shruti Marbles, no time period was stipulated while granting approval on 10-7-97. Therefore, the State Government shall also ensure cessation of mining activity in this case also i.e. M/s. Shruti Marbles, before adding areas to Sariska Tiger Reserve."

"You may agree that all such activities which are detrimental to the interest of wildlife and its habitat should be first weaned away before putting proposal into implementation. It will be appreciated if compliance report in the above mentioned cases and other similar cases are furnished to the Government of India at an early date. It will facilitate in making proposition of the State

Government into reality."

60. It appears that the Addl. IG (Forest) (MOEF) before directing cessation of mining activity, in fact, eschewed the factum of proposal for renewal of mining lease in question, having already been weaned away by the State Government before putting it into implementation and approval of the Central Government, which was granted under order dt. 10-7-97 (Ann 2), in favour of the petitioner after having exercised powers and procedure envisaged under the mining laws. Nothing material has been produced on record to show that the mining lease area in question has been added to Sariska Tiger Reserve.

61. As already noticed above, in response to aforequoted letter dt. 10-10-99 (Ann 7), the State Government in its letter dt. 26-4-2000 (Ann 8) had taken a stand that it is not feasible for it to ensure cessation of the mining activity, the Dy. Conservator of Forest (respondent No. 4) could have no jurisdiction to stop the mining activity of the petitioner with reference to letter dated 10-10-1999 (Ann 7) of the Addl. IG (Forest).

62. As a legal and logical corollary to the above, I am of the considered view that the impugned order dt. 2-9-2000 (Ann 10) of the DCF (respondent No. 4) directing to close the mines is totally bizarre and barren of force. Once the mining lease stood renewed under the Mines & Minerals (Regulation & Development) Act, 1957 and the Rajasthan Minor Mineral Concession Rules, 1986 for 20 years, for which final approval was granted by order dt. 10-7-97 (Ann 2) after two years of the State Government having sent the proposal for renewal in question for approval to it along with letter dt. 6-9-1995, during which the matter was scrutinised and examined at different levels and on the recommendations of the committee constituted under the Forest Act, 1980. It was conterminus with the mining lease term, i.e. up to 8-9-2011 (for 20 years from 9-9-1991), the petitioner cannot, therefore, be restrained from carrying on mining activity in the area in question on any of the grounds including that no period was ever stipulated in final approval order dated 10-7-97. The Apex Court has not restrained mining operations in cases like the case at hand, if lease or renewal thereof is granted after approval of the Central Govt. even in the case of sanctuary. Hence the action on the part of the respondents under the impugned letters/orders for cessation of the petitioner's mining operation over her lease area in question are held illegal, whimsical, arbitrary and thereby are liable to be quashed.

63. Resultantly, this writ petition is allowed with no order as to costs. Consequently, the impugned orders/letters dt. 10-10-99 (Ann 7), 16-8-2000 (Ann 9) in so far as they relate to the petitioner, and dt. 2-9-2000 (Ann 10) directing cessation or closure of mining activity over the lease area in question are quashed and set aside. The respondents are further directed not to interfere with her mining activities over the mining lease area in question.