

(2009) 04 KAR CK 0024
In the Karnataka High Court
Case No : Writ Petition No. 3812 of 2009

V.S. Lad and Sons

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Forest (Conservation) Act, 1980 — Section 2
Karnataka Forest Act, 1963 — Section 62 A, 62 B

Citation : (2009) CriLJ 3760 : (2009) 6 KarLJ 430 : (2009) 3 KCCR 2067 :
(2010) 7 RCR(Criminal) 751

Hon'ble Judges : P.D. Dinakaran, C.J.; V.G. Sabhahit, J

Bench : Division Bench

Advocate : S. Vijayashankar, Adv for K.N. Phanindra, for the Appellant; Udaya Holla, General and B. Veerappa, Government Advocate, for the Respondent

Judgement

P.D. Dinakaran, C.J.

1.1. Whether the report of the Lokayukta could be the basis for registering the First Information Report dated 3.2.2009 against the petitioner and to pass an order dated 3.2.2009 seizing the iron ore alleged to have illegally mined in the forest area as well as the tools, vehicles and machinery used for such illegal mining; and whether such FIR and the order of seizure can be quashed by exercising the power of judicial review under Article 226 of the Constitution of India, are the questions that arise for our consideration in the present writ petition.

1.2. The petitioner is a registered Partnership Firm. The petitioner is in the field of mining since 1956.

1.3. The petitioner was originally granted a mining lease in the year 1956 bearing M.L. No. 1524 for extracting iron ore for a period of twenty years over an extent of 161.38 hectares in Lakshmipura village, Sandur taluk, Bellary District, which was extended further for a period of twenty years from 6.7.1978 with

effect from 31.7.1976, and the same expired on 31.7.1996.

1.4. When the petitioner sought for second renewal of the said mining lease dated 31.7.1996, the petitioner filed an application seeking clearance u/s 2 of the Forest (Conservation) Act, 1980 (for short, "the FC Act") as the area involved is a forest land; and the State Government in turn sought prior approval of the Central Government u/s 2 of the FC Act, for diversion of the forest land for the non-forest activity viz., for mining purpose. The forest department gave clearance u/s 2 of the FC Act, but reduced the extent of land to 105.06 hectares of land instead of the original extent of 161.39 hectare.

1.5. Accordingly, the Central Government, by order dated 30.5.1997 granted final clearance u/s 2 of the FC Act in favour of the petitioner for diversion of 105.06 Hectares of Forest land in Lakshmipura village, Sandur Taluk, Bellary district for extraction of iron ore for a period of ten years co-terminus with the mining lease issued under the Mines and Minerals (Development and Regulation) Act, 1957 (for short, MMDR Act).

1.6. The Forest Department conducted a joint survey and demarcated the boundaries of the mining lease area of the petitioner and thereafter the petitioner entered into an Agreement dated 7.8.1997 with the Deputy Conservator of Forests, Bellary Division, Bellary representing the Government of Karnataka, viz., the fourth respondent.

1.7. Later, on the request made by the petitioner, the Central Government, by order dated 2.11.1998 modified the forest land lease for a period of twenty years with effect from 6.7.1996. The State Government, in turn, passed an order dated 16.2.1999 extending the lease of the forest land granted to the petitioner for a period of twenty years from 6.7.1996 co-terminus with the lease granted under the MMDR Act. In continuation of the said order dated 16.2.1999, the State Government issued a notification dated 28.4.2000 sanctioning the renewal of the mining lease in favour of the petitioner firm for a period of twenty years with effect from 31.7.1996 over an extent of 105.06 hectares of land in Sannajagalahuvi (Lakshmipura) village, Sandur taluk, Bellary district. Pursuant to the Notification dated 28.4.2000, the State Government, represented by the Director of Mines and Geology, Bangalore executed mining lease deed bearing M.L. No. 2290 in favour of the petitioner on 11.12.2000, similar to the Agreement dated 7.8.1997, but for which the petitioner would not have been granted the mining lease.

1.8. Thereafter, the petitioner made an application to the forest department seeking for grant of additional area of 15.077 hectares of forest land for dumping overburden waste, installation of conveyer belt and for laying approach roads. The State Government considered the application of the petitioner and sent its recommendation to the Central Government seeking its prior approval u/s 2 of the FC Act. The Ministry of Environments and Forests, Government of India, passed an order dated 14.6.2006 granting first stage approval for diversion of

additional 15.077 hectares of forest land over and above the existing 105.06 hectares in favour of the petitioner, subject to fulfillment of conditions.

1.9. On payment of requisite Net Present Value (for short, "NPV") charges for diversion of additional area of 15.077 hectares of forest land, the first respondent recommended the Central Government to grant final approval for the additional land. The Central Government passed the order dated 9.3.2007 granting final approval u/s 2 of the FC Act in favour of the petitioner for diversion of additional 15.077 hectares of forest land in addition to the already approved area of 105.06 hectares, totaling to 120.137 hectares of forest land. The State Government vide its order dated 29.3.2007 sanctioned the diversion of additional forest land of 15.077 hectares in favour of the petitioner. After completion of the joint survey and fixation of boundaries of the mining lease area including the additional area of 15.077 hectares, the State Government represented by the fourth respondent executed lease agreement dated 24.11.2008 with the petitioner.

1.10. When things stood thus, the 2nd respondent-Forester, relying upon the report of the Lokayukta, lodged First Information Report No. 132/2008-09 (for short, "FIR") in the court of the JMFC, Sandur and also by an order dated 3.2.2009 seized the machinery, equipment, vehicles that were lying in the leased area, including huge quantity of iron ore.

1.11. Based on the report of the Lokayukta, in the FIR dated 3.2.2009, it is stated that the petitioner-Firm has carried out mining outside the mining area granted and thereby damaged the boundaries i.e., exceeding the area granted and by encroaching the forest region and by wrongly identifying the mining area, have carried out illegal mining over 14.30 hectares of the region and by illegally dumping wastes in 4.1 hectares and using 9.7 hectares of region for other purposes and thereby have totally encroached 27.80 hectares of the region which amounts to violation of Sections 12(7)(h)(4) and 24(a)(g), (gg), (h), 73(g), 62, 64(a), 81, 82 and 82(b) of the Karnataka Forest Act, 1962. By order dated 3.2.2009, while seizing the tools, vehicle and machinery, the Forester, referring to the above FIR of even date 3.2.2009, seized the following machinery:

the properties					SI. No	Details of seized
1.	Model	No.	Serial	No.	Excavator-1	No. 60713832
320-1	No.	2.	Model	No.	320	Cat Excavator (E11K) 0067
Excalibur-1	No.		Serial	No.	3.	Volta 11202
Excavator	290-1		Serial	No.	4.	Hyundai NE4 410561
Excavator-1	No.		Serial	No.	5.	Volto 210 12287

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Excavator-1	No.	Serial	No.			0050

1.12. Aggrieved by the FIR dated 3.2.2009 which was received by the jurisdictional Magistrate on 4.2.2009, and the seizure of the machinery, equipment, iron ore and the vehicles by proceedings dated 3.2.2009 of the second respondent, the petitioner has filed the above writ petition praying:

(i) to quash the FIR dated 3.2.2009 bearing FOC No. 132/2008-09 filed in the court of JMFC, Sandur on 4.2.209;

(ii) to quash the seizure order of the second respondent dated 3.2.2009; and

(iii) to declare that the respondents 2 to 4 have no jurisdiction and authority to direct the petitioner to stop the lawful mining operations being carried on within the area leased to the petitioner under the mining lease bearing M.L. No. 2290.

2.1. Mr. S. Vijayashankar, learned Senior Counsel appearing for the petitioner contends-

(i) that both the impugned proceedings -FIR dated 3.2.2009 and the seizure order dated 3.2.2009 are liable to be quashed as the same are only based upon the report of the Lokayukta which is yet to be accepted by the Government;

(ii) that the Lokayukta report cannot be put against the petitioner, as the petitioner was not given any opportunity of being heard before the Lokayukta;

(iii) that assuming the respondents propose to take action based on the Lokayukta report, the 2nd respondent ought to have given an opportunity to the petitioner to explain its case against the findings in the Lokayukta report;

(iv) that assuming the respondents have got power to initiate action against the petitioner u/s 62A of the Karnataka Forest Act, 1963 (for short, "the KF Act"), the same ought not to have been exercised arbitrarily, illegally and unreasonably against the petitioner;

2.2. In this connection, the learned Senior Counsel brought to our notice the provisions of Sections 62-A and 62-B of the KF Act, Rule 146 of the Karnataka Forest Rules, 1969 (for short, KF Rules) as well as Rule 65 of the Karnataka Forest Manual (for short, "the KF Manual"). Mr. Vijayashankar submits that the procedure contemplated u/s 62-A is a condition precedent for taking any action u/s 62-B. According to the learned senior Counsel, only if the Forest Officer empowered with the powers to investigate into the matter u/s 62-A is satisfied that there is sufficient evidence to prosecute the accused person, the Investigating Officer shall submit a report to the jurisdictional Magistrate to take cognizance of such offences. Without such investigation, much less sufficient evidence to justify the prosecution of the accused person, the forest officer empowered u/s 62-A(i) shall not proceed with, to file a report before the Jurisdictional Magistrate.

2.3. According to the learned senior Counsel, in the instant case, the Investigating officer has not taken any independent investigation nor there is any sufficient legal evidence to justify the prosecution of the accused person as contemplated under 62-B of the Act and therefore, the impugned proceedings is illegal, arbitrary and unreasonable. In other words, the second respondent cannot proceed with the FIR and seize the tools, vehicle and machinery of the petitioner mainly based on the Lokayukta report unilaterally observing that the petitioner has encroached upon the non-leased area and the consequential oral direction of the respondents directing the petitioner to stop the quarry operation is also arbitrary, unreasonable and violative of principles of natural justice.

2.4. Mr. S. Vijayashankar inviting our attention to Rules 146 and 149 of the KF Rules, submitted that even after filing the Lokayukta report, the respondents have received the application for Forest Transit Pass and the second respondent-authority having satisfied himself with the correctness of the statements made in the application, as contemplated under Rule 146(2) of the Karnataka Forest Rules, granted Forest Transit Pass. The second respondent has not refused to issue Forest Transit Pass on any occasion. Similarly, the competent authority also issued Way Permits to the petitioner only after satisfying himself that there was no illegal mining by the petitioner.

2.5. Mr. Vijayashankar invited our attention to the sketches enclosed to the Agreements dated 7.8.1997 and 24.11.2008 entered into between the petitioner and the forest department and contends that the same are not similar to the one relied upon by the Lokayukta; and the sketches obtained through the satellite imagery-Geographic Positioning System ("GPS" for short) do not tally with the sketches enclosed to the Agreements dated 7.8.1997 and 24.11.2008 and are self-contradictory with each other and as such both the FIR dated 3.2.2009 and the order of seizure dated 3.2.2009 seizing the machinery are liable to be quashed and in any event, the respondents have no authority to suspend the mining operation orally and the same is nothing but an arbitrary and unreasonable exercise of power conferred upon the respondents.

3.1. Per contra, Mr Udaya Holla, learned Advocate General, submits that the Lokayukta report being a report submitted by a Statutory Authority can be the basis for filing an FIR and the same cannot be disregarded. The learned Advocate General brought to our notice that before preparing the Satellite imagery, the Lokayukta Team has conducted ground survey and prepared survey sketch of the boundaries and along with other documents and other necessary input have been given to the Karnataka State Remote Sensing Organisation for preparing Satellite imagery. The learned Advocate General, based on the instructions from the Principal Chief Conservator of Forests, submits that the Satellite imagery and the sketch prepared thereon on the basis of the GPS is one of the technical tools for identification of encroachment at macro level. However, the actual boundaries of the leased out area would be determined at the micro level by the ground survey.

3.2. It is further contended that the mere fact that the petitioner was not heard

by the Lokayukta cannot be a ground to contend that no legal action can be initiated by filing a FIR against the persons who had committed illegality. The Lokayukta report need not by itself be conclusive evidence for initiating action by way of filing FIR against the persons who had committed illegality, but still could be a basis for setting the law in motion by filing FIR against illegal mining in the forest area and to seize the illegally mined iron ore and tools, machineries and vehicles used for such illegal mining. Filing an FIR is only an initiation of action against the petitioner and the respondent is yet to investigate into the matter and therefore the petitioner is not entitled to seek quashing of the FIR on an imaginary ground that the respondent do not propose to investigate the matter or that the respondents have already investigated, but have not found any evidence against the petitioner. Therefore, the prayer to quash the FIR is premature.

3.3. The learned Advocate General further contends that neither the filing an application for issuance of Forest Transit Pass ("FTP", for short) nor issuance of the FTP nor issuance of the Way Permits under Rules 146 and 149 of the Karnataka Forest Rules by itself would not be a ground to reject the Lokayukta report. The alleged infirmity between the field map sketch and the Satellite report also cannot be a ground to reject the Lokayukta report or to quash the FIR dated 3.2.2009 and the seizure order dated 3.2.2009, as the 2nrJ respondent-authority is still continuing investigation.

3.4. The learned Advocate General, however, submits that the respondents are ready to give notice to the petitioner before such field survey and inspection in the presence of the petitioner and Controller of Mines, Indian Bureau of Mines, Bangalore, along with the nominee, not below the rank of the Deputy Director, by the Director General, Survey of India. The learned Advocate General also fairly submits that there cannot be any objection to permit the petitioner to continue the mining operation in the undisputed area and to return the seized machineries for such purpose, but without prejudice to the right of the forest authorities taking action to seize and confiscate the tools, vehicles and machineries, subject to the findings of the joint inspection and further investigation into the matter to be made in the presence of the petitioner, Controller of Mines, Indian Bureau of Mines, Bangalore, along with the nominee of the Director General, Survey of India, who is not below the rank of a Deputy Director, after giving notice to the petitioner.

3.5. The learned Advocate General further submits that the seized Articles would be returned to the petitioner provided the petitioner gives an undertaking to hand-over the possession of the impugned tools, vehicles and machinery as and when required by the respondent for further investigation or by the jurisdictional Court for the trial as well as for seizure and confiscation proceedings that might be initiated by the authorities concerned under the provisions of the Forest Act, if necessary, in future.

4. We have given our careful consideration to the submissions of both sides.

5. In view of rival contentions referred to above, the following questions arise for our consideration:

(I) Whether the report of the Lokayukta can be the basis for the impugned FIR dated 3.2.2009 and the order of seizure dated 3.2.2009?

(II) Whether it is proper for this Court to exercise the power of judicial review under Article 226 of the Constitution of India to quash the First Information Report dated 3.2.2009?

(III) Whether the second respondent is empowered to seize the machinery, equipment, iron ore and vehicles belonging to the petitioner, by an order dated 3.2.2009, for having committed illegal mining operation in the forest area?

(IV) To what relief the petitioner is entitled to?

6.1. Issue No. I

Whether the report of the Lokayukta can be the basis for the impugned FIR dated 3.2.2009 and the order of seizure dated 3.2.2009?

6.2. Of course, it is seriously contended by Mr Vijayashankar, learned senior Counsel appearing for the petitioner that it would be very unsafe for the respondents or for the jurisdictional Magistrate much less to this Court to act upon and/or to initiate, to investigate, to prosecute or to pass any orders based upon the Lokayukta Report which is yet to be accepted by the Government; or based upon the Satellite maps enclosed along with the Lokayukta report and relied upon by the respondents herein identifying the impugned areas as encroached areas by the petitioner, as such report or the maps cannot be a conclusive evidence against the petitioner as they were not parties to the Lokayukta proceedings nor they were given any notice or opportunity to file their objections to the Lokayukta report or the GPS sketches, while registering the impugned FIR dated 3.2.2009 and passing the order of seizure dated 3.2.2009.

6.3. We are, but, unable to appreciate that the Lokayukta report cannot be a basis for initiating any lawful action against those who are involved in unlawful acts in an illegal manner, One should not forget that the office of the Lokayukta is held by a former Judge of the Apex Court. It is difficult to assume or presume that the said high authority would give a report without any material whatsoever. Therefore, we are unable to digest the contention that the Lokayukta report cannot be a basis for even to initiate an action against an illegal act. However, on the ground that the petitioner did not have an opportunity of being heard before the Lokayukta nor before initiating an action by the second respondent herein based on the Lokayukta report or the sketches enclosed thereto, we do not intend to take any view against the petitioner in this regard as it would be otherwise opposed to the principles of natural justice.

6.4. Of course, it is a settled law that exercise of administrative powers will stand vitiated if there is a manifest error of record or exercise of power is arbitrary or

such power had been exercised on non-consideration or non-application of mind to relevant factors or for non-compliance of the principles of natural justice. But the fact that the petitioner was not given an opportunity before initiating an action based on the Lokayukta report or the sketches enclosed to the report by itself cannot be a ground to quash the FIR dated 3.2.2009 and the seizure order dated 3.2.2009, as the report of the Lokayukta is presumed to be made based on materials that are to be substantiated by the prosecution at appropriate stage. Therefore, it may not be proper for this court to conclude that at prima facie stage, no case was made out.

6.5. Similarly, it is settled law that the electronic evidence is admissible in evidence. It may also be not proper for this court to jump to the conclusion that the respondents are not entitled to place reliance upon the satellite imagery, as the electronic evidence is admissible in evidence; but the same has to be substantiated by the respondents in the trial before the competent court and the petitioner is also entitled to rebut the same so that the Rule of law would prevail. Therefore, to contend that it would not be safe for the respondents to initiate lawful action based on the Lokayukta report or the satellite sketches enclosed therewith against the unlawful acts alleged to have been committed by the petitioner by illegal mining operation encroaching into the forest area in violation of the conditions of the lease agreement entered by the petitioner with the respondents-forest authorities, lacks legal sanctity; because this is not a case where the respondents propose to shut down an activity which is carried on by the petitioners lawfully, but unfortunately, it is the case of the respondents, of course based on the report of the Lokayukta, that the petitioner has allegedly violated the maintenance of ecology and environment; and whereupon the observance of the laws enacted to protect the environment and ecology is sought to be ensured.

6.6. When the Lokayukta finds fault against the executives for their failure to implement such laws to protect the environment and ecology, the petitioner projects the grievance against the executives for acting upon the Lokayukta report. But, under such circumstances, in our considered opinion, the executives should have a free hand to proceed with investigation further into the matter to do their duty conferred by law and by people, particularly when faced with money-power and man-power. Otherwise, the respect for law and people would be lost.

6.7. According to the respondents, the petitioner has encroached into the forest area which is outside the leased out area. Learned Advocate General invited our attention that when the leased out area has been superimposed on the satellite map, the encroachment of the forest area stands clearly established; and that the satellite imagery obtained from the Karnataka State Remote Sensing Application Centre, which is a nodal agency for the entire State with regard to GPS and remote sensing, would prima facie show that the petitioner had encroached upon the forest area, outside the leased out area which is an offence

by itself and the authorities are duty-bound to prevent such illegal encroachment and mining operations apart from seizing the machineries and to confiscate the same by appropriate proceedings.

6.8. Once there is prima evidence to show that the petitioner had encroached upon the forest land and operating its activity outside the limits of the leased out area, learned Advocate General contends that the respondents have no option except to initiate criminal action against the petitioner by filing FIR and seize the minerals mined outside the leased out area, which is a forest produce, together with the tools, machineries and vehicles used in the commission of the offence and also to confiscate the same in appropriate proceedings.

6.9. On the other hand, Mr. Vijayashankar, learned senior Counsel for the petitioner strongly contends that there is an apparent variation between the field sketch enclosed with the Agreements dated 7.8.1997 and 24.11.2008 entered between the petitioner and the forest department and the satellite imagery relied upon in the Lokayukta report, which is the basis for the impugned FIR and the seizure order dated 3.2.2009 and both do not tally with each other even to the naked eye and therefore, there is no encroachment at all.

6.10. It is for that reason, the learned Advocate General, placing reliance on the averments made in the statement of objections, submits that the appropriate authority would conduct a further investigation in the matter and proceed in accordance with law. The learned Advocate General further agrees that while deciding the extent of encroachment, after giving notice to the petitioner, an inspection would be conducted in presence of the Petitioner, Controller of Mines, Indian Bureau of Mines, Bangalore and the nominee not below the rank of the Deputy Director by the Director General, Survey of India. In view of the above submission, the contention of the learned senior Counsel for the petitioner that the proceedings vitiate for non-compliance of Rule 62-A and 62-B of the KF Act do not arise, as the respondents are yet to complete the investigation.

6.11. In the circumstances, we hold that the Lokayukta report and the satellite sketch relied on in the Lokayukta report can be the basis for filing the impugned FIR and passing the order of seizure dated 3.2.2009.

6.12. Issue No. 1 is answered accordingly.

7.1. Issue No. (II)

(II) Whether it is proper for this Court to exercise the power under Article 226 of the Constitution of India to quash the First Information Report dated 3.2.2009?

7.2. The power of judicial review under Article 226 of the Constitution of India is akin to the inherent power conferred u/s 482 of the Code of Criminal Procedure. It is a settled law that even though such inherent powers conferred on the High Court are very wide, the very plenitude of the power requires great caution in its exercise and the Courts must be very careful to see that its decision in exercise of such inherent power is based on sound principles as held by the Apex Court in

the case of *Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors.* reported in (2007)12 SCC 1, because the inherent powers conferred on this Court has to be sparingly exercised (i) to give effect to an order under the Code; (ii) to prevent abuse of process of Court; and (iii) to otherwise secure the ends of justice, but in any event not to encourage violations of the provisions of any statutes in force much any conditions of agreement thereunder which empowers the competent authority to take appropriate action against the law breakers and those who violate the conditions of agreement.

7.3. In any event, such powers should not be exercised to stifle a legitimate prosecution and therefore the Courts should refrain from giving a prima-facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court.

7.4. In the instant case, the learned Advocate General comes forward to substantiate the complaint made against the petitioner as to the illegal mining operation carried on outside the leased out area. Therefore, when the evidence is yet to be collected and produced before the Court and the respondents are prepared to substantiate the illegal mining operation by the petitioner, it may not be proper for this Court to use the inherent power to stifle the legitimate prosecution nor to give a prima-facie decision hastily. Hence, we are convinced that it may not be proper for this Court to quash the F.I.R. at this stage.

7.5. Issue No. II is answered accordingly.

8.1. Issue No. (III)

(III) Whether the second respondent is empowered to seize the machinery, equipment, iron ore and vehicles belonging to the petitioner, by an order dated 3.2.2009, for having committed an illegal mining operation in the forest area?

8.2. Parliament enacted the Forest (Conservation) Act, 1980 in order to prevent deforestation which causes ecological imbalance and leads to environmental deterioration. The deforestation causes widespread concern. Section 2 of the FC Act imposes the restriction on de-reservation of forest or use of forest land for non-forest purposes. As per Section 2 of the FC Act, no State Government or authority shall make, except with the prior approval of the Central Government, any order directing (i) that the reserved forest shall be ceased to be reserved; (ii) that any forest land or any portion thereof may be used for any non forest purpose; (iii) that any forest land may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by State Government, and (iv) that any forest land may be cleared of trees which have grown naturally.

8.3. After the Forest (Conservation) Act, 1980 came into force, no mining lease/licence can be granted in the forest area without the prior approval of the Central Government, which is a condition precedent, because Section 2 of the Forest (Conservation) Act starts with non-obstante Clause viz., "Notwithstanding

anything contained in any other law for the time being in force in a State...." Therefore, no non-forest activity can be carried on in the forest area, except with the prior approval of the Central Government, which means, even the State Government cannot carry on any such non-forest activity in the forest area without the prior approval of the Central Government. The fact that the mining activity amounts to non-forest purpose is beyond doubt.

8.4. The renewal of a lease is really the grant of a fresh lease as held by the Apex Court in *Delhi Development Authority Vs. Durga Chand Kaushish*, and therefore such prior approval of the Central Government in terms of Section 2 of the FC Act would be required when mining lease granted before the commencement of the said Act is renewed after its coming into force.

8.5. As the impugned quarry is located in the forest area and the mining lease was granted only subject to the approval of the Central Government and agreement entered with the State Government, the respondents-forest authorities have every right to initiate action against the persons who violate the terms of the lease and conditions of the lease agreement and the KF Act, also empowers the respondents authorities to seize, confiscate and forfeit the forest produce, tools, vehicles and machineries that are used for illegal removal of the forest produce. Such an exercise of power, in our considered opinion, cannot be termed as arbitrary or unreasonable.

8.6. But, the contention advanced by Mr. Vijayashankar that even after the Lokayukta report, the respondent-forest authorities are satisfied with the details furnished by the petitioner that they have not committed any illegal mining operation in the forest area; nor the respondent refused to grant Forest Transit Pass or way permit under Rules 146 and 149 of the KF Rules; and that there is also an apparent discrepancy between the maps enclosed to the lease agreements entered into between the petitioner and the respondents and the satellite maps relied upon in the Lokayukta report, requires consideration, particularly, when the learned Advocate General agrees that the actual boundaries of the leased out area would be determined at the micro level by conducting a ground survey, after giving notice to the petitioner, in presence of the petitioner, Controller of Mines, Indian Bureau of Mines, Bangalore and the nominee not below the rank of the Deputy Director by the Director General, Survey of India. We are, therefore, of the considered opinion that the petitioner is entitled for return of the tools, vehicles and machinery seized under the impugned order of seizure dated 3.2.2009, subject to the condition that the petitioner shall give an undertaking that they shall produce the same before the respondent or the jurisdictional Court or any other competent authorities as and when required by law.

8.7. Issue No. III is answered accordingly.

9.1. Issue No. IV:

To what relief the petitioner is entitled to?

9.2. In the result, we pass the following:

ORDER

(i) Lok Ayukta report and the sketches attached thereto can be the basis for the respondents to prosecute the FIR dated 3.2.2009 and the Seizure order dated 3.2.2009;

(ii) the prayer to quash the First Information Report dated 3-.2.2009 is rejected, giving liberty to the respondents to proceed in accordance with law, subject to the orders hereunder:

(iii) Deputy Conservator of Forests, Bellary Division, Bellary-fourth Respondent, shall inspect and survey the impugned area leased out to the petitioner, in the presence of the petitioner, the Controller of Mines, Indian Bureau of Mines, Bangalore, along with the nominee not below the rank of the Deputy Director by the Director General, Survey of India, and take appropriate decision as to the alleged encroachment by the petitioner with reference to the survey records and other relevant material available and documents produced in this regard. If any encroachment of forest land is found, the respondents are at liberty to assess the damages caused on account of such illegal mining outside the leased out mining area and recover the same from the petitioner;

(iv) The respondents are directed to return the tools, vehicles and machinery to the petitioner on the condition that the same shall be produced before the respondents/ jurisdictional Magistrate as and when required by law, subject to the finding in the inspection to be conducted by the fourth respondent in the presence of the petitioner and Controller of Mines, Indian Bureau of Mines, Bangalore, along with the nominee not below the rank of a Deputy Director by the Director General, Survey of India, referred to above;

(v) The ore which is already seized by the authorities which is alleged to have been mined outside the leased out area shall be in the custody of the forest authorities and the authorities are at liberty to take appropriate decision in the matter subject to the finding in the inspection and assessment of the damages and to recover the same from the petitioner;

(vi) The respondents are directed to permit the petitioner to undertake the mining operation in the leased out area which is not disputed by the forest authorities;

Writ petition is accordingly disposed of. No costs.