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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.17676 OF 2024

In the matter of an application under Articles 226 & 227 of the Constitution of India.

- 1. Sarda Mines Private Limited Petitioners**
2. Mr. Arjun Saraswat
-Versus-

- 1. State of Odisha Opp. Parties**
**2. Director Mines, Department
of Steel & Mines,
Government of Odisha,
Bhubaneswar**
**3. The Deputy Director Mines,
Joda Cicle, District
Keonjhar, Odisha**

Advocates appeared in this case:

For Petitioners : M/s. Gopal Jain (Sr. Adv.)
Sudarshan Nanda, G. Rasgotra,
M. Kharbanda, D. Moorjani, E. Gupta,
K.S. Duggal & S. Kar, Advocates

For Opp. Parties: Mr. Pitambar Acharya, Advocate General
with M/s. S.B. Panda, Ms. A. Dash, ASC

CORAM:

THE HON'BLE MR. JUSTICE KRISHNA S. DIXIT

THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

J U D G M E N T



Date of hearing & judgment : 15.05.2026

PER KRISHNA S. DIXIT, J.

Petitioner-Company had made an application dated 21.07.1998 under Rule 24A in the prescribed Form-J of Mineral Concession Rules, 1960. The application having been processed, was allowed eventually resulting into the grant of a Mining Lease for 30 years vide order dated 11.02.1999 made under Section 8 of The Mines & Minerals (Development & Regulation) Act, 1957. Pursuant to this grant, a formal Lease came to be executed in Form-K under Rule 31 of 1960 Rules on 14.08.2001 for a period of 20 years that would expire on 13.08.2021. Petitioner carried on Mining Operation for winning the minerals till 31.03.2014. Petitioner secured Environmental Clearance dated 22.09.2004 and Forest Clearance dated 21.06.2001, their validity period being co-terminus with the Mining Lease.

2. When things were going smooth, OP No.3 issued a letter dated 31.03.2014 hereafter 'Suspension Order', which



proved to be a bolt from the blue, interdicting Mining Operations on the ground that there was no valid Environmental Clearance. This resulted in the subject Mine being included in the C.E.C. Report dated 25.04.2014 and as a consequence, there was suspension of Mining Operations for all purposes pursuant to Apex Court's interim order dated 16.05.2014 entered in **Common Cause v UOI**, (2016) 11 SCC 455. Petitioner's Representations dated 16.08.2014 and 21.08.2014 for having the subject letter rescinded ended in vain and therefore, I.A. No.42 of 2015 and I.A.No. 186810 of 2019 was filed seeking an order for resumption of Mining Operations, which to an extent came to be favoured by the Apex Court vide order dated 15.01.2020.

3. In terms of above order of Apex Court, the OP No.3, vide Order No.280 dated 31.01.2020 permitted resumption of Mining Operations (Resumption Order), there apparently being valid Environmental Clearance and Forest Clearance. However, the said Order did not mention anything about the



period of 5 years & 10 months during which the Mining Operations stood suspended because of Suspension Order. Therefore, Petitioners made Representation dated 28.06.2024 requesting for compensatory addition of the said period for the purpose of mining. There being a stony silence from the side of the OPs, this Petition is filed on 23.07.2024 with the following principal prayer:

“Issue a Writ of Mandamus or any other appropriate writ directing the Opposite Party No. 1, Opposite Party No. 2 and Opposite Party No. 3 to consequently add the 5 years and 10 months period C’V which was lost due to the wrongful closure of the mine, in terms of Clause 4 (Part IX) of the Lease Deed dated 14.08.2001 (initial 20 years);

Issue a writ of Mandamus or any other appropriate writ directing the Opposite Party No. 1, Opposite Party No. 2 and Opposite Party No.3 to permit the Petitioner No.1 to undertake the mining operations over an area of 947.046 ha in Thakurani Iron Ore Mines, Block-B, Village Soyabaii District- Keonjhar, Odisha for the lost 5 years 10 months between 01.04.2014 and 31.01.2020 due to the wrongful actions of the Opposite Parties.”

After service of notice, the OPs having entered appearance through the learned AGA, have filed the Counter Affidavit dated 21.11.2024 resisting the Petition.

4. Learned Senior Advocate appearing for the Petitioners urged the following grounds in support of the Petition:



i. The initial tenure of the Lease admittedly is 20 years reckoned from 14.08.2001 and therefore, its period would expire on 13.08.2021. There were Environmental Clearance dated 22.09.2004 & Forest Clearance dated 21.06.2001 and therefore, letter dated 31.03.2014 suspending the Mining Operations is *ab initio void* and otherwise also illegal. As a consequence, the said letter is liable to be set at naught and the period of 5 years & 10 months lost has to be added while computing the Lease Period of 20 years.

ii. The letter dated 31.03.2014, which suspended the Mining Operations, has been issued by an incompetent authority, namely OP No.3, and also in the absence of jurisdictional facts of The Orissa Minerals (Prevention of Theft, Smuggling & Illegal Mining and Regulation of Possession, Storage, Trading and Transportation) Rules, 2007. For the wrong act of the State functionary, the lawful right of the Petitioners to carry on Mining Operations has been cut short and therefore, the State is bound to yield the



compensatory period of 5 years & 10 months lost in suspension of mining activities.

iii. The Central Government vide letter dated 15.01.2015, had confirmed that the Environmental Clearance dated 22.09.2004 was valid & subsisting which the OPs themselves vide communication dated 29.01.2015 acknowledged that interdiction of Mining Operation was due to interim order dated 16.05.2014 of the Apex Court and not any defect in the Environmental Clearance. In any event, the said interim order of the Apex Court was the net effect of the Suspension Order dated 31.03.2014. Therefore, State has to rectify the mistake and reconstitute the lost Lease Period.

iv. The Suspension Order dated 31.03.2014 having been made by OP No.3 unilaterally despite having enormous financial & industrial implications, is in violation of principles of natural justice, which are considered to be Article 14 jurisprudence and therefore, is liable to be set at naught with all consequential benefits.



v. The Apex Court, vide order dated 15.01.2020, made in **Common Cause v. UOI**, (2021) 20 SCC 448, has itself directed grant of resumption of Lease and in furtherance thereof, the OPs have issued Resumption Order. As a corollary of this, Petitioners have to be given additional period of 5 years & 10 months and therefore, the State could not have maintained stony silence to Petitioners' Representation dated 28.06.2024.

In support of his submission, Mr.Jain, learned Senior Advocate pressed into service certain Rulings.

5. Learned Advocate General Mr.Pitambar Acharya assisted by learned AGA Mr.S.B.Panda resists the Writ Petition on the following grounds:

i. The Suspension Order was issued on 31.03.2014 whereas Writ Petition has been filed on 23.07.2024 and thus, there is enormous delay & laches that come in the way of granting any relief to the Petitioners.



- ii.** After the 2015 Amendment, the provisions of Section 8A come in the way of extending the Lease Period beyond 50 years in any circumstance and therefore, the Writ Court cannot grant relief contrary to the intent and policy content of the Statute.
- iii.** Petition is broadly barred by *res judicata*, inasmuch as Petitioners' WPC No.3115 of 2021 seeking extension of Lease Period has been negated by a Co-ordinate Bench of this Court vide order dated 10.01.2022 and that the said order is put in challenge in CA No. 8995 of 2022 that is now pending on the file of the Apex Court.
- iv.** OP No.3 being the Competent Authority under 2007 Rules, has issued the Order dated 31.03.2014 suspending the Mining Operations for want of Environmental Clearance in the light of Central Government Order dated 15.01.2015.
- v.** Petitioners are not justified in invoking *force majeure* in the instrument of Lease, inasmuch as the concept is defined in the very same instrument, and that case of the Petitioners is miles away from it.



Mr.Acharya also banks upon certain Citations in support of his contentions

6. Having heard learned counsel for the parties and having perused the Petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

6.1. The record of the case reveals and there is no dispute at the Bar as to there being a Mining Lease for a period of 20 years with clause for extension of another period of 10 years and that the 20 years period shall be reckoned from 14.08.2001 and the same would expire on 13.08.2021. Leases of the kind have statutory character, the same being governed by the provisions of 1957 Act and 1960 Rules promulgated thereunder. It hardly needs to be stated that statutory lease of the kind would create vested interest in the leasehold area and therefore, that would constitute property to which constitutional guarantee avails under Article 300-A.



6.2. The word 'Property' employed under Article 300A of the Constitution of India apparently includes the leasehold rights, there being nothing to derogate from this view and therefore, even in respect of Statutory Mining Lease of the kind, Constitutional protection avails, subject to all just exceptions. This view gains support from ***Julabhai v. State of Gujarat***, AIR 1995 SC 142. In DD Basu's **Indian Constitutional Law**, Fourth Edition, Kamal Law House Publication at page-1627 it is written as under:

"... The word 'property'.-The word 'property' connotes everything which is subject to ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value of which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering citizen's relation to physical thing, as right to possess, use and dispose of it in accordance with law. Mines, minerals and quarries are property attracting Art. 300A..."

That being the position, interference of the State or its functionaries in the Mining Operation of a Statutory Lease, which is admittedly not terminated, cannot be justified unless shown to have been done strictly in accordance with law. Despite vehement submission of Learned AG, the



legality of Suspension Order dated 31.03.2014 has not been demonstrated by showing that its author had jurisdiction under 2007 Rules or that, there existed jurisdictional facts for warranting exercise of arguable statutory power.

6.3. The Mining Operations came to be interdicted by OP No.3 vide order dated 31.03.2014 that too sans any opportunity of hearing to the Petitioners herein. Mining Operations of such a large scale if halted will have far reaching consequences on the livelihood of workmen. It hardly needs to be stated that operating a Mining Industry of the size involves huge financial investment, requires enormous infrastructural facilities and a colossal workforce, this view broadly gains support from ***State of Meghalaya v. All Dimasa Students Union***, (2019) 8 SCC 177. There being a plea to this effect in the Pleadings of the Petitioners which have not been contradicted in species. The Suspension Order therefore, could not have been made without giving an opportunity of hearing to the stakeholders in general and to the Petitioners in particular. Our system



treats the principles of natural justice as sacrosanct and their violation, as of necessity, has to render the action vulnerable for challenge, subject to all just exceptions. What heavens would have fallen down, had the Petitioners been heard before passing the said Order, remains a mystery wrapped in enigma. No plausible explanation is offered in the Counter filed by the OPs, as to the circumstances that led to denial of opportunity of hearing. Therefore, the said Order, regardless of its terminology, is liable to be voided *ab initio* as rightly argued by learned Senior Advocate Mr.Jain.

6.4. The vehement contention of learned AG that the Suspension Order dated 31.03.2014 has not been challenged by the Petitioners is difficult to agree with, in view of specific pleadings in the Petition paragraphs-K & X, which read as under:

“K. BECAUSE the suspension letter dated 31.03.2014 was wrongly issued by the Opposite Party No.3 on erroneous grounds leading to financial and operational setbacks to the Petitioner No. 1. It is submitted that where a party has suffered due to wrongful action, equitable redress should be provided. Therefore, granting the Petitioner No. 1 an opportunity to undertake mining operations for the 5 years and 10 months lost as



a result of the wrongful actions of Opposite Parties would rectify the injustice faced by Petitioners. ...

X. BECAUSE even otherwise the order dated 31.03.2014 was passed by the Opposite Party No.3 without any notice or any opportunity of hearing to the Petitioner No. 1 and has therefore been passed in complete violation of the principles of Natural Justice. Thus, the order dated 31.03.2014 is void-ab-initio and is liable to be set aside by this Hon'ble Court.”

The Makers of Constitution have widely phrased the powers of Writ Court specifically giving up conventional constraints which do operate in English Law of Writs. Added, the Suspension Order is *non est* in the eye of law, as discussed *infra* and therefore, a formal prayer for its quashment is unnecessary. This view gains support from **Kiran Singh v. Chaman Paswan**, AIR 1954 SC 340, wherein it is said that an order without jurisdiction being nullity, can be assailed or resisted, wherever it is sought to be enforced and even in collateral proceedings. A Writ Court cannot turn down a worthy cause on technical grounds of the nature. Justice Oliver Wendell Holmes Jr. in **Davis v. Mills**, 194 U.S. 451 (1904) said as under:

“...constitutions are intended to preserve practical and substantial rights, not to maintain theories...”



6.5. Let us examine the text & context of Suspension Order dated 31.03.2014. For ease of reference the same is reproduced:

“No. 1554/Mines. Dt. 31.03.2014

xxx xxx xxx

Sub: Suspension of Mining Operation in respect of Thakurani Block - B Iron Mines over 947.046 hecets. of Sarda Mines (P) Limited.

Sir,

With reference to the subject cited above, I am to say that the validity of Environmental Clearance order No.J-11015/1176/2007-IA.II(M), dated 29.10.2008 issued by MOEF, Govt. of India for production of 15 MTPA ROM in respect of your Thakurani Block B Iron Mines over 947.046 hecets. expired on 31.03.2014.

You are therefore requested stop all kind of mining activities within your aforesaid M.L. area w.e.f. 01.04.2014 until further order....”

Textually speaking, it does not contain a mandate which Statutory Orders of the kind would, inasmuch as it employs the term “requested”. Secondly but significantly, it proceeds on a wrong premise that there is no valid & effective Environmental Clearance. Mr. Jain is right in telling us that the Environmental Clearance dated 22.09.2004 is valid & co-terminus with the tenure of Lease in question, so far as 4 MTPA is concerned. OP No.3-Deputy Director has made



strenuous effort to read Central Government's alleged denial of Environmental Clearance for enhancing the quantity of mining from 4MTPA to 15 MTPA vide order dated 29.10.2008 as having subsumed the Environmental Clearance. This stuns us, to say the least. No other reason is given. We need not state that the validity of a Statutory Order of the nature has to be adjudged on the basis of reasons discernable from its womb vide **Mohinder Singh Gill v. The Chief Election Commissioner**, AIR 1978 SC 851.

6.6. Mr.Jain contends that the impugned Suspension Order is a nullity, its author not being competent to make it. Mr.Acharya draws our attention to Schedule-1 of 2007 Rules, to repel the same. The very Preamble to the Rules reads as under:

"... S.R.O. No. 412/2007- In exercise of the powers conferred by Section 23C of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the State Government do hereby make the following rules for prevention of theft, smuggling & illegal mining and to regulate the possession, storage, trading and transportation of minerals in the State of Orissa and for the purposes connected therewith, namely: ..."



The above Order is structured on an erroneous premise that there is no valid Environmental Clearance, when there is one dated 22.09.2004 coupled with Forest Clearance dated 21.06.2001, both having validity co-terminus with tenure of the Lease in question. The text & context of 2007 Rules show the object & intent of Rule Maker. Absence of Environmental Clearance is not within the contemplation of any provision of these Rules. In ***The Barons of the Exchequer v. Heydon***, [1584] EWHC Exch J 36, it has been held that a Statute cannot be used for a purpose alien to which it has been made, and where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, vide ***Taylor v. Taylor***, 1875 LR ChD 426. Even assuming that OP No.3 has jurisdiction, the same could not have been exercised in the absence of jurisdictional facts, which the subject Rules would take cognizance of. Existence of power is one thing



and its exercise is another. Mere existence least justifies the exercise.

6.7. The vehement submission of Mr.Acharya that OP No.3, even if arguably was not a competent authority, has issued the Suspension Order, with *bona fide* and therefore, such actions are immune from assailment, does not merit acceptance. Reasons for this are not far to seek: Firstly, an action cannot be said to be *bona fide* when essential facts are not ascertained by exercising reasonable diligence. There is absolutely no justification for assuming the absence of Environmental Clearance dated 22.09.2004 for 4 MTPA, which aspect the Central Government itself clarified. Secondly, there is no explanation as to why hearing opportunity was to be denied to the Petitioners in a serious matter like this. What heavens would have fallen down, had they been given a post-decisional hearing, remains culpably enigmatic. Thirdly, *bona fide* decision arguably immunises the decision-maker from personal liability, but does not infuse life into a *non est* instrument of law. In matters like, this the



Authorities should be very cautious regard being had to the enormity of implications on Mining Industry and the livelihood of hundreds of poor workers (stated to be 2000 herein). *Much is not necessary to specify and less is insufficient to leave it unsaid.*

6.8. Mr. Acharya next presses into service two decisions of Co-ordinate Benches of this Court to contend that, in identical fact matrix, relief having been denied to litigants of the kind, the Petition at hand should meet the same fate. In WPC No.21564 of 2019 between **Ramesh Prasad Sao v. State of Odisha** decided on 19.11.2019, the Court declined the request for add-on of the lost period of the lease, inasmuch as the litigant therein had entered into a supplementary lease deed and thereby had waived whatever arguable grievance he had. We need not say that waiver, acquiescence, estoppel, etc. avail as good grounds to resist Petitions of the kind. Therefore, this decision does not come to the rescue of OPs. In WPC 11475 of 2023 between **JDL Limestone & Dolomite Mines v. State of Odisha** decided



on 20.02.2024, there again was a supplementary lease deed and therefore, what happened in **Ramesh Prasad Sao** *supra* happened to the said Petitioner. Admittedly, there is no any supplementary lease in the case at our hand. It was **Lord Halsbury** who said more than a century ago that, a decision is an authority for the proposition that it actually laid down in a given fact matrix, and not for all that which logically follows from what has been so laid down vide **Quinn v. Leathem**, [1901] AC 495 (HL). In fact, Petitioners' WP (C) No.3115 of 2021 for extension of Lease by another tenure period having been negatived by a Coordinate Bench vide order dated 10.01.2022, now the *lis* pends before the Apex Court in C.A. No.8995 of 2022. That would not resjudicate the present Petition in any way, the foundational facts and the causes of action being completely different.

6.9. Mr.Acharya's next contention that the Lease in question would exceed the statutory period prescribed in Section 8A of 1957 Act, if its extension is granted, cannot be agreed to. Grant of Lease and renewal of Lease are two



principal concepts obtaining in the realm of Law of Lease. The case at hand is neither of grant of lease nor of its extension. It is a specific case of compensatory addition of a period of 5 years & 10 months that was lost because of Suspension Order dated 31.03.2014 during which Mining Operations were unjustifiably interdicted. In fact, pursuant to Apex Court order dated 15.01.2020 made in **Common Cause** *supra*, the Resumption Order has been issued on 31.01.2020, after ascertaining *inter alia* the validity of Environmental Clearance dated 22.09.2004. Once resumption is allowed, there is absolutely no reason or rhyme for the OPs to deny the period of suspension. An argument to the contrary would spurn at law, at reason and at justice. If lessee is prevented from enjoying the leasehold rights for a particular period because of the wrongful act of lessor, the same needs to be added to the lease period.

6.10. Mr.Jain submits that in terms of lease in question, there is a *force majeure* clause and Mining Operations having been interdicted by act of the State, this



clause comes to the aid of Petitioners. In support of this, he places reliance on ***Avtar Singh. v. UOI***, AIR 1993 Del. 156. Per contra, Mr.Acharya, repels this contention by citing a Co-ordinate Bench decision in ***Md. Serajuddin v. State of Orissa***, 1969 SCC Online Ori 4, wherein paragraphs 39 & 40 read as under:

“....39. The rulings and literature on the subject show that where reference is made to "force-majeure", the intention to save the performing party from the consequences of anything of the nature stated above or over which he has no control. I In the present case, the words "force-majeure" do not stand alone, but the clause in which it occurs in the lease contains examples of what was intended to be conveyed by this expression. The intention with which this term "force- majeure" is used in Clause 5 of Part IX has been explained therein as follows:-

"In this clause the expression "Force-majeure" means act of God, War, Insurrection, Riot, Civil Commotion, Strike, Earthquake, Tide, Storm, Tidal Wave, Flood, Lightning, Explosion, Fire and any other happening which the lessee could not reasonably prevent or control."

40. It would, therefore, mean that all such things as mentioned above on which the lessee could not have any control would come within this clause. The words "any other happening which the lessee could not reasonably prevent or control" are to be read and understood ejusdem generis with the words preceding this expression. According to Mr. Justice Mc Cardie the "Force Majeure" clause should be construed with a close attention to words which precede or follow it, and with due regard to the nature and the general terms of the contract. Therefore the words "any other happening" must be given Ejusdem generis construction so as to



engulf within its fold only such happenings and eventualities which are of the 'nature and type illustrated above in the same clause with close attention to the 'nature and terms of the lease, and would not reasonably be within the power and control of the lessee. ..."

Serajuddin *supra* does not much come to the rescue of OPs for the simple reason that the definition of *force majeure*, as it then existed, has itself undergone textual change as under:

"Failure on the part of the lessee/lessees to fulfil any of the terms and conditions of this lease shall not give the Central Government or State Government any claim against the lessee/lessees or be deemed a breach of this lease, in so far as such failure is considered by the said Government to arise from force majeure, and if through force majeure the fulfilment by the lessee/lessees of any of the terms and conditions of this lease be delayed, the period of such delay shall be added to the period fixed by the lease. In this clause the expression "force majeure" means act of God, war, insurrection, riot, civil commotion, strike, earth quake, tide, storm, tidal wave, flood, lightning, explosion, fire, earthquake and any other happening which the lessee/lessees could not reasonably prevent or control."
(underling supplied by us)

6.11. Conventionally speaking, the concept of *force majeure* & *vis majeure* that obtain in the Law of Torts cannot be bodily transplanted to the case at hand, is true. However, when the Lease Deed itself gives a definition clause, one need not confine its expanse. The first part of



the definition above gives discretion to the Government to decide what act can be considered as *force majeure*. The second part employs the term “*any other happening, which the lessee/lessees could not reasonably prevent or control*”. Such a term is conspicuously absent in *Serajuddin supra*. Added, what we have to keep in mind is that we are construing a clause of the contract and not a provision of enactment. There is scope for argument that the Suspension Order dated 31.04.2014 made by State functionary, i.e, OP No.3 could not have been resisted by the Petitioners and therefore, it broadly fits into the expression “*any other happening*” appearing in the definition. This view gains support from the observation in ***Dharam Veer v. UOI***, ILR (1988) II Delhi 71 wherein paragraphs 41 & 43 read as under:

“...41. *The lease deed provides in Part VIII that the lessee will hold and enjoy the rights quietly after paying the rents etc. and performing the covenants and agreements during the term of the lease without any unlawful interruption from or by the State Government or any person rightfully claiming under it*”.

43. *The expression force majeure has been held to mean, act of god, war, insurrection, riot, civil commotion,*



strike. earth quack, tide, storm, tidal wave, flood, lightening; explosion; fire and "any other happening which the lessee could not reasonably prevent or control". Though this is not a case of force majeure in terms, on analogous principles, it appears to us that the unlawful interruption of enjoyment caused to the lessee by the illegal act of respondent No. 2 is something that the lessee could not reasonably prevent or control and the period of this interruption should be excluded from the term of the three year lease. It appears to us necessary as a matter of law and justice to give this consequential relief as a result of our striking down the order of premature termination. Not to do so would result in multiplication of litigation, and depriving the petitioner who has been prejudiced of substantial relief."

What is significant to note is that the OPs cannot gainfully argue that in no circumstance, the period lost can be added to the period of lease, inasmuch as the very *force majeure* clause by text & context provides for addition. Even otherwise, there is an express Covenant in the lease itself for 'Quiet Enjoyment' as enacted in Section 108 of the Transfer of Property Act, 1882. In Mulla's **The Transfer of Property Act**, Tenth Edition, LexisNexis Publication at page-108, it is said:

*"A breach of covenant occurs when there is substantial interference with enjoyment even if it does not amount to dispossession. For instance, in **Sanderson v. Berwick-on-Tweed Corporation**, (1884) 13 QBD 547, there was breach when the lessees field was flooded by overflow from a drain badly constructed by the lessor..."*



It cannot be gainfully argued that the Suspension Order dated 31.03.2014 did not tantamount to substantial interference with the Mining Operations.

6.12. Lastly, the contention of learned AG as to delay & laches also does not much impress us, inasmuch as the Resumption Order has been passed by the OPs on 31.01.2020. This was preceded by an application moved before the Apex Court in Common Cause *supra*. Mr. Jain is right in placing reliance on Apex Court decision in ***Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation***, (2013) 1 SCC 353 wherein paragraphs 13, 14 & 15 read as under:

“13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and



not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable...

14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners...

15. In H.D. Vora v. State of Maharashtra 16 this Court condoned a 30-year delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed."

When substantive rights over and interest in the immovable property such as leasehold are violated trampling the constitutional guarantee under Article 300A, by an *ab initio* void order of a State functionary, the arguable delay & laches pale into insignificance. It is not the case of OPs that the land comprised in the lease in question has been allotted to others and thus, any third party right has been created and therefore, granting of relief to the Petitioners



would be injurious to other's right. Added, Petitioners had made Representations dated 16.08.2014 & 21.08.2014 grieving against the Suspension Order. The OPs, in their communication dated 29.01.2015, acknowledged that the inability to carry on the Mining Operations was on account of Apex Court interim order dated 16.05.2014 made in the Common Cause case, i.e., WPC No.114 of 2014. Further, the Central Government, vide letter dated 15.01.2015, had categorically stated that the Environmental Clearance dated 22.09.2004 was valid and subsisting. The Petitioners had filed I.A. No.42 of 2014 and I.A. No.186810 of 2019 seeking resumption of Mining Operations and the Apex Court allowed the same vide order dated 15.01.2020. Thus, it cannot be said that the Petition is hit by delay & laches.

In the above circumstances, this Writ Petition succeeds. A Writ of Mandamus issues to the OPs to permit the Petitioners to operate the Mining Lease in question for an added period of 5 years & 10 months reckoned from the



Resumption Order dated 31.01.2020 without interference, subject to usual compliances. Costs reluctantly made easy.

This Court places on record its deep appreciation for the able research and assistance rendered by its official Law Clerk-cum-Research Assistant Mr. Mohammed Nihad Sharief.

Web copy of judgment to be acted upon by all concerned.

Krishna S. Dixit
Judge

Chittaranjan Dash
Judge

Orissa High Court, Cuttack
The 15th May, 2025/Prasant