IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

INTERLOCUTORY APPLICATION NO.86 OF 2014
IN
WRIT PETITION(C) NO. 435 OF 2012

Goa Foundation ....Petitioner

versus

Union of India and others ....Respondents

And in the matter of:

M/s Bandekar Brothers Private Limited ....Applicant

ORDER

1. Through the instant interlocutory application, the applicant-M/s Bandekar Brothers Private Limited has prayed for a direction to the concerned authorities for restraining them from auctioning the mined mineral ore produced by the applicant prior to 22.11.2007, through e-auction. This prayer is premised on the foundation, that the applicant's above stated mined mineral ore cannot be sold, under the orders passed by this Court. In this behalf, it was the contention of the learned counsel for the applicant, that the applicant had mined 67,285 metric tons of iron ore (Grade 63.19% Fe approximately) prior to 22.11.2007, and therefore, the applicant should be released the aforesaid iron ore, with the right to dispose of the same. A similar submission was made by the applicant for the disposal of 1,00,000 metric tons of old dump (grade 46.15% Fe approximately).

2. According to the learned counsel for the applicant, the mineral ore mined prior to 22.11.2007, cannot be treated as having been illegitimately mined, and as such, the applicant as also all other similarly placed mining lease holders, should be released the same with liberty to sell the same.

3. Mr. A.D.N. Rao, Advocate, learned amicus, vehemently opposes the prayer made on behalf of the applicant. While doing so, he placed reliance on the decision rendered by this Court in Goa Foundation versus Union of India (2014) 5 SCALE 364. Our pointed attention was invited to the following observations recorded therein:

> "67. As we have held that the deemed mining leases of the lessees in Goa expired on 22.11.1987 and the maximum period (20 years) of renewal of the deemed mining leases in Goa has also expired on 22.11.2007, mining by the lessees in Goa after 22.11.2007 was illegal. Hence, the order dated 10.09.2012 of the Government of Goa suspending mining operations in the State of Goa and the order dated 14.09.2012 of the MoEF, Government of India, suspending the environmental clearance granted to the mines in the State of Goa, which have been impugned in the writ petitions in the Bombay High Court, Goa Bench (transferred to this Court and registered as transferred cases) cannot be quashed by this Court. The order dated 10.09.2012 of the Government of Goa and the order dated 14.09.2012 of the MoEF will have to continue till decisions are taken by the State Government to grant fresh leases and decisions are taken by the MoEF to grant fresh environmental clearances for mining projects.
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> 68. On 05.10.2012, this Court while issuing notice in Writ Petition (C) No.435 of 2012 (Goa Foundation vs. Union of India & Others) also passed orders that all mining operations in the leases identified in the report of the Justice Shah Commission and transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended. Thereafter on 11.11.2013, this Court passed an order that the inventory of the excavated mineral ores lying in different mines stockyards/jetties/ports in the State of Goa made by the Department of Mines and Geology of the Government of Goa be verified and thereafter the whole of the inventorised mineral ores be sold by e-auction and the sale proceeds (less taxes and royalty) be retained in separate fixed deposits (lease-wise) by the State of Goa till this Court delivers judgment in these matters on the legality of the leases from which the mineral ores were extracted. In our order passed on 11.11.2013, we had also directed that this entire process of verification of the inventory e-auction and deposit of sale

> proceeds be monitored by a Monitoring Committee appointed by the Court. The Monitoring Committee comprising Dr. U.V. Singh (Additional Principal Chief Conservator of Forests, Karnataka), Shri Shaikh Naimuddin (former Member of Central Board of Direct Taxes) and Parimal Rai (Nominee of Govt. of Goa) have in the meanwhile monitored the e-auction. We extract hereinbelow the relevant portion of the interim report dated 12.03.2014 of the Monitoring Committee :
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> > "After the two e-auctions, the total ore auctioned is about 1.62 million MT and the total value realized is 260.68 crores approximately. As directed by this Hon'ble Court, the State Government has been requested to maintain separate accounts, lease wise and keep the sale proceeds as fixed deposits in Nationalzed Banks.
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> > The process of transportation of ore for export has not yet been initiated because of the storage charges being demanded from the successful bidder by the Marmagoa Port Trust (MPT). As a result, the process of e-auction

is likely to slow down. The extent of storage charges demanded is as per Annexure MC III."

69. As we have held that renewal of all the deemed mining leases in the State of Goa had expired on 22.11.2007, the mining lessees will not be entitled to the sale value of the ores sold in caution but they will be entitled to the approximate cost (not actual cost) of the extraction of the ores....."

(emphasis is ours)

Based on the aforesaid observations, it was the vehement assertion of the learned amicus, that an inventory of all the mined mineral ores lying in different mines/stockyards/jetties/ports in the State of Goa was ordered to be prepared by the Monitoring Committee (appointed by this Court). It was further directed, that the entire mined mineral ores (of which the inventory was prepared) was to be sold by way of e-auction. It was pointed out, that this Court had clearly expressed, that the holders of the mining leases were not to be entitled to the proceeds thereof. In other

words, the mining lease holders could not claim the sale value of the mined mineral ores sold by way of e-auction. This Court in its directions had explicitly held that they would be entitled only to the approximate cost (not actual cost) incurred by them during the extraction of the mined mineral ores. In view of the above directions of this Court, learned amicus submitted, that the prayers made in the application were clearly unacceptable.

4. In addition to the aforesaid submission, it was also the contention of the learned amicus, that the prayer made by the applicant was wholly unjustified in view of the provisions of the Mineral Concession Rules, 1960 (hereinafter referred to as the 'Mineral Rules'). Insofar as the instant aspect of the matter is concerned, reliance was first placed on Rule 27(2)(la) of the Mineral Rules. The same is extracted hereunder:

"27. Conditions - (1) Every mining lease shall be subject to the following conditions:

(a) to (u)xxx xxx xxx

(2) A mining lease may contain such other conditions as the State Government may deem necessary in regard to the following, namely, :-

(a) to (l) xxx xxx xxx

(la) the time limit for removal of mineral, ore, plant, machinery and other properties from the leasehold area after expiration, or sooner determination or surrender or abandonment of the mining lease."

(m) to (o) xxx xxx xxx"

A perusal of the above Rule leaves no room for any doubt, that the State, while granting a mining lease, had the discretion to fix the time limit for removal of the mined mineral ore etc. from the lease hold area. In order to demonstrate that such

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a period was provided for, our attention was drawn to Rule 31 of the Mineral Rules. Rule 31 is being extracted hereunder:

> "31. Lease to be executed within six months.- (1) Where, on an application for the grant of a mining lease, an order has been made for the grant of such lease, a lease deed in Form K or in a form as near thereto as circumstances of each case may require, shall be executed within six months of the order or within such further period as the State Government may allow in this behalf, and if no such lease deed is executed within the said period due to any default on the part of the applicant, the State Government may revoke the order granting the lease and in that event the application fee shall be forfeited to the State Government.
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> (2) The date of the commencement of the period for which a mining lease is granted shall be the date on which a duly executed deed under sub-rule (1) is registered."

A perusal of the aforesaid Rule reveals, that a lease deed in Form K is mandatorily required to be executed within six months of the order of grant of such lease (or within such further period as the State Government may allow). Our attention was then invited to Form K (mining lease deed), and more particularly, to paragraphs 5 and 6 of Part IX thereof. The aforesaid paragraphs are being extracted hereunder:

> 5. the lessee/lessees having first paid discharged rents, rates, and royalties payable by virtue of these presents may at the expiration or sooner determination of the said term or within six calendar months thereafter (unless the lease shall be determined under clauses 1 and 2 of this part and in that case at any time not less than three calender months nor ore than six calendar months after such determination) take down and remove for his/their own benefits all or any ore mineral excavated during the currency of lease engines, machinery, plant, buildings, structures, tramways, railways and other works, erections and conveniences which may have been erected, set up or placed by the lessee/lessees in or upon the said lands and which the lessee/lessees is/are not bound to deliver to the State Government under clause 20 of Part VII of the Schedule and which the State Government shall not desire to purchase.

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> 6. If at the end of six calendar months after the expiration or sooner determination of the said terms under the provisions contained in clause 4 of Part VIII of this Schedule become effective there shall remain in or upon the said land any ore or engines, machinery, plant, buildings, structures, tramways, railways and other works, erections and conveniences or other property which are not required by the lessee/lessees in connection with operations in any other lands held by him by them under prospecting licence or mining lease, the same shall if not be removed by the lessee/lessees within one calender month after notice in writing requiring their removal has been

given to lessee/lessees by the State Government be deemed to become the property of the State Government and may be sold or disposed of in such manner as the State Government shall deem fit without liability to pay any compensation or to account to the lessee/lessees in the respect thereof."

(emphasis is ours)

A perusal of the terms and conditions expressed in the lease required to be executed by a mining lease holders, leaves no room for any doubt, that the mineral ore extracted by the lessee, has to be removed within six calendar months from the date of expiration of the mining lease. And further more, if at the end of the above six calendar months, the excavated mineral ore is not removed, then within one calender month after a notice in writing is issued to the lessee/lessees, the extracted mineral ore is deemed to become the property of the State Government. Accordingly, relying on the afore-stated statutory provisions, it was the submission of the learned amicus, that the ore which had remained unremoved after the expiration of the above period of six months, would be deemed to have vested in the State Government.

5. In support of the above submission, learned amicus again invited our attention to Goa Foundation's case (supra), wherein this Court had permitted, that the entire stock of extracted mineral ores would vest in the State Government. In this behalf, our attention was drawn to the following observations:

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"70. The entire sale value of the stock of mineral ores sold by e-auction less the average cost of excavation, 50% of the wages and allowances and 50% of the storage charges to be paid to MPT is thus due to State Government which is the owner of the mineral ores which have been sold by e-auction. The State Government will set-aside 10% of this balance amount for the Goan Iron Ore Permanent Fund for the purpose of sustainable development and inter-generational equity. This entire exercise of calculating the average cost of extraction of ores to be paid to the mining lessees, 50% of the basic wages and dearness allowance to be paid to the workers, 10% of the balance amount towards the Goan Iron Ore Permanent Fund and the balance amount to be appropriated by the State Government will be done by the Director of Mines and Geology, Government of Goa, under the supervision of the Monitoring Committee. Till this exercise is over and the report of the Monitoring Committee will continue and their members will be paid their remuneration allowances as directed in the order dated 11.11.2013."

(emphasis is ours)

6. Learned counsel for the applicant, could not invite our attention to any favourable observations made by this Court in Goa Foundation's case (supra), nor could learned counsel for the applicant invite our attention to any statutory provisions from the Mineral Rules, which would counter the submissions advanced

at the hands of the learned amicus. The submissions advanced on behalf of the applicant were premised merely on the assertion, that the mineral ore which the applicant was claiming a right over, had been legitimately mined before 22.11.2007, and therefore, the applicant had an absolute and legitimate ownership over the same. We may note, that the above position was emphasised, stressed and persistently reiterated to make the stand absolutely crystal clear.

7. Based on the directions issued by this Court in Goa Foundation's case (supra), as also, the provisions of the Mineral Rules, it is not possible for us to accept the prayers made by the learned counsel for the applicant. We are of the

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firm view, that this Court clearly and categorically directed the preparation of an inventory of all the existing extracted mineral ore available as on 11.11.2013. Accordingly, the Monitoring Committee prepared an inventory of all the extracted mineral ore. The inventory included the ore, whether lying at the mine-head or stockyards or jetties or ports in the State of Goa. This Court further directed the sale of the entire extracted ore included in the above inventory was to be made by way of e-auction. It was further directed, that the mining lease holders would not be entitled to the proceeds of the e-auction, but only to an approximate cost (not actual cost) of extraction of the mined mineral ores, and nothing more. As such, the prayer made in the instant application, that the State Government be restrained from selling the extracted mineral ore, and further that, the applicant be permitted to dispose of the same by itself, cannot be accepted.

8. Additionally, the provisions of the Mineral Rules mandate that the excavated mineral ore is liable to be removed by the lessee within a period of six months, failing which, after the issuance of a notice, the same would stand forfeited to the State Government. On the issue of forfeiture, this Court clearly directed in Goa Foundation's case (supra), that all the extracted mineral ore contained in the inventory prepared by the Monitoring Committee, would vest in the State Government. The directions of this Court, satisfy the vesting of the extracted mineral ore with the State Government, thus negating the requirement of the issuance of any formal notice to the mining lease holders. It is, therefore, difficult for us to accept, the prayers made by the applicant, either for the release of the extracted mineral ore to the applicant, or the liberty to sell the same at its own.

9. In recording our above conclusion, we have also taken note of consideration

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of an unequivocal determination by this Court, that without renewal of the mining

leases, all the leases would be deemed to have expired on 22.11.2007. The State of Goa passed an order dated 10.09.2012 suspending mining operations in the State of Goa. By another order dated 14.09.2012, the Ministry of Environment and Forests, Government of India, suspended the environmental clearances granted to mines in the State of Goa. It is, therefore, apparent that no mining activity was being carried out in the State of Goa after 10/14.09.2012. In the above view of the matter, the instant application filed on 12.08.2014 is wholly misconceived, and merits outright rejection.

10. For the reasons recorded hereinabove, we find no merit in the prayers made in interlocutory application No. 86 of 2014 in Writ Petition(C) No. 435 of 2012. The same is accordingly dismissed.

.....J.
[JAGDISH SINGH KHEHAR]

.....J.
[J. CHELAMESWAR]

NEW DELHI;
OCTOBER 14, 2014.

.....J.
[A.K. SIKRI]

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ITEM NO.1A COURT NO.6 SECTION PIL
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
I.A. 86/2014 in Writ Petition(s)(Civil) No(s).435/2012

GOA FOUNDATION Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

Date : 14/10/2014 This application was called on for order today.

For Petitioner(s) Mr. Prashant Bhushan, Adv.

For Respondent(s) Mr. E. C. Agrawala, Adv.

Mr. M. P. Jha, Adv.

Mr.Shivam Sharma, Adv.
Mr. Mohan Pandey, Adv.

Ms. Madhu Sikri, Adv.

M/s Mitter & Mitter Co., Adv.

Mr. Parijat Sinha, Adv.

Mr. Abhijat P. Medh, Adv.

Mr. Shreekant N. Terdal, Adv.

Mr. D. S. Mahra, Adv.

Mr. Shiv Kumar Suri, Adv.

Mr. Chander Shekhar Ashri, Adv.

Mrs. Sudha Gupta, Adv.

M/s. K. J. John & Co., Adv.

M/s. J. S. Wad & Co., Adv.

Dr. (Mrs.) Vipin Gupta, Adv.

Mr. Rameshwar Prasad Goyal, Adv.

M/s. Parekh & Co., Adv.

Mr.Siddharth Bhatnagar, Adv.
Mr.Rahul Arya, Adv.
Mr. T. Mahipal, Adv.

Mr. P. V. Yogeswaran, Adv.

Ms. Jyoti Mendiratta, Adv.

Mr. A. Venayagam Balan, Adv.

Mr. P. S. Sudheer, Adv.

Mr. Harish Pandey, Adv.

Mr. Amit Sharma, Adv.

Mr. Jayant Mohan, Adv.

Mr. Mohit Abraham, Adv.

Mr. Yashraj Singh Deora, Adv.

Hon'ble Mr.Justice Jagdish Singh Khehar pronounced the order of the Bench comprising His Lordship, Hon'ble Mr.Justice J.Chelameswar and Hon'ble Mr.Justice A.K.Sikri.

The application is dismissed in terms of the signed order.

(SATISH KUMAR YADAV)
COURT MASTER

(PHOOLAN WATI ARORA)
ASSISTANT REGISTRAR

(Signed non-reportable order is placed on the file)